

COORDINFÂNCIA: 20 YEARS OF STRUGGLE FOR THE REALIZATION OF THE RIGHTS OF CHILDREN AND ADOLESCENTS



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LABOR PROSECUTION SERVICE
NATIONAL COMMITTEE TO COMBATING THE EXPLOITATION
OF CHILD AND ADOLESCENT LABOR - COORDINFÂNCIA

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20 YEARS OF STRUGGLE
FOR THE REALIZATION OF
THE RIGHTS OF CHILDREN
AND ADOLESCENTS



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PREFACE

One of the greatest honors of being Prosecutor General of Labor is having the opportunity to be in a privileged position to accompany the excellent work that members and members of the Labor Prosecution Service develop in fighting all forms of child labor. Working actively with the objective of allowing all material and immaterial support for the full development of this constitutional mission is, without a doubt, one of the greatest professional pride that one can have.

Indeed, the provision of art. 227 of our Constitution can never be turned into a mere inconsequential constitutional promise. This expresses the duty of the family, society, and the State to ensure to children, adolescents, and young people, with absolute priority, a series of rights essential to our own project of humanity must always be remembered and verticalized in individual, collective, and institutional conduct.

It should be noted that the Constitution places this point as essential for the private or public spheres of our society. The protection and promotion of the rights of children and adolescents are embodied as one of the most expressive social rights, subsuming themselves to the concept of second generation's rights, whose performance imposes on the public power the satisfaction of a duty of positive performance (RE 482,611, rap. min. Celso de Mello, j. 23-3-2010, monocratic dec., DJE of 7-4-2010). Thus, the eternal vigilance by the Labor Prosecution Service is of the essence, either in the repression of specific cases, or in the induction of structural public policies, or in the process of social awareness.

It is within this context that this commemorative work of the National Committee to Combating the Exploitation of Child and Adolescent Labor – COORDINFÂNCIA, created by PGT Ordinance No. 299, of November 10, 2000, is inserted. It is a memorable 20 years of collective construction and intense and uncompromising combat in the preservation of childhood and adolescence, embodying the fundamental constitutional precepts of integral protection and absolute priority.

Throughout this success story, the National Committee has developed numerous cutting-edge initiatives, combining intense social and/or interinstitutional articulation and legal engineering to develop

a state of the art in protecting diffuse and collective rights related to childhood and adolescence. Numerous courses have been taken and manuals have been drawn up to create true legal frameworks for members of the Labor Prosecution Service and even for social partners in the integrated protection network. Of the several examples, we highlight the articulation with the Guardianship Councils and the training of Guardianship Councilors and education professionals in person or on an open platform reaching all of Brazil; the institution of the *MPT na Escola* Award; the monitoring of production chains in which child labor is present; performance in promoting professional apprenticeship, including within the socio-educational system. Not to mention the implementation of numerous stages of the *Childhood Rescue* Project in several municipalities in Brazil.

In this same sense, this publication is included. It is a collection that reflects well the extent and verticality of the issues inherent in the daily agenda of the National Committee. These topics are addressed with excellence by members of the Public Attorney's Office, magistrates, labor tax auditors, academics, and jurists of national and international projection. Themes such as the exploitation of child labor in the fields of drug trafficking and sexual exploitation show how there is an entire structure that must be broken through the induction of public policies and repressive state activity to eliminate harmful conditions in which opportunities for these serious violations of human rights that threaten the nation project outlined in our constitutional text.

At this point, the work becomes an indispensable source of research for those who seek to understand the fight against child labor from a humanistic perspective and see in the centrality of this debate the concepts of human dignity and absolute priority as drivers of the protection of children and adolescents. In addition to theoretical support, the analysis of cases throughout the book brings important and solid subsidies to face real-life situations by lawyers and legal operators of our time.

Finally, I invite the reader to use all the knowledge he or she will acquire in order to take the active role of being a builder of the minimum civilization level that will allow our children and adolescents to develop in a full, dignified, and healthy way.

Long live Coordinfância, responsible for promoting and rescuing the citizenship of so many children and adolescents, for effecting the ideals outlined in the Convention on the Rights of Children, and, finally, for fighting so that children and adolescents are not just “paper citizens”, in reference to Gilberto Dimenstein’s expression.

Good reading!

Alberto Bastos Balazeiro
Prosecutor General of Labor

PRESENTATION

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The National Committee to Combating the Exploitation of Child and Adolescent Labor (COORDINFÂNCIA) celebrates 20 years of great struggle, achievements, and challenges since its creation, on November 10, 2000, through Ordinance No. 299, of the Office of the Prosecutor General of Labor. To celebrate these two decades of persistence in defending the fundamental rights of children and adolescents, the Labor Prosecution Service (MPT) prepares and publishes this commemorative work, which also represents the fulfillment of the objective of the National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers, corresponding to strategic axis No. 07, by which the MPT undertakes the promotion of knowledge about the reality of child labor in Brazil and its legal and labor aspects. The work is published in Portuguese, English, and Spanish so that the discussions transcend national borders.

With the purpose of remembering, reconstructing, and reframing the path of many of the actions developed by the MPT through COORDINFÂNCIA, current and former National and Regional Heads contribute to this work. At the same step, without losing sight of the essential democratic construction of knowledge and respect for the plurality of views and lines of thought that should guide the debate on issues relevant to the institution and society, Ministers of the Superior Court of Labor, Judges, Prosecutors, and Labor Auditors, Professors and Researchers, national and foreign, in addition to young members of national movements and public bodies that defend the active participation of young people in the defense and promotion of the fundamental rights of children and adolescents.

With transdisciplinary support, the chapters that make up this Book address the different facets of child labor, its history, and the evolution of the problem, in line with the socio-political realities of these 20 years, as well as rescue and consolidate the MPT's performance in face of the crime, in addition to the strategic projects developed over time, including a constitutional and international perspective. Thus, among the 31 writings that make up the work, there are those that analyze introductory or general

questions in the debate about child labor and the professionalization of adolescents, with historical and socio-political approaches or analyzes of the causes and consequences of the offense and the promotion of the rights of children and adolescents. Others, on the other hand, focus on presenting the work of the MPT throughout this period, sometimes with a poetic or celebratory tone, in other cases by exposing the emergence and evolution of the *Childhood Rescue* Project and specific actions of the respective administrations of the Committee. There are also chapters that approach the internationally established discussion on the protection of children and the right to non-work, and others that focus on examining tricky issues that, in reality, the realization of rights, present themselves as real hard cases – such as structural racism and its relation with child labor, especially in the streets, the commercial sexual exploitation of children and adolescents, and the fight against child labor in drug trafficking. Furthermore, as it could not be left out of the work, there is a chapter that faces the challenges inherent in the exploitation of child labor in the Brazilian Amazon, others that, in turn, present prognoses and perspectives for child labor in Brazil and in the world.

As the discussions are intertwined, sometimes consisting of introductory questions, analysis of hard cases, and prognoses, we chose to organize the writings according to the names of the first authors, in alphabetical order, without considering the topic being addressed.

Before this sequence of the work, the first chapter, authored by Ana Segatti and Cláudia Lovato, takes up the essence of childhood focused on the act of *playing*, also as a public policy to be carried out by the Brazilian State, and presents a project proposal to be developed by MPT and forecasts and prospects child labor for 2025. The second, written by Antônio Vasconcelos and Antônio Mendonça Júnior, addresses child labor from the perspective of the constitutional principles of the economic and financial order, which underlie the legal prohibition of child labor.

Then, Christiana D'arc examines the challenges and potential for fighting child labor in the Brazilian Amazon, with a reading in the light of international and national standards and repercussions resulting from the Covid-19 pandemic. Denise Colin, on the other hand, addresses the role of social protection in the face of child labor, by explaining the *Sistema Único de Assistência Social* (Unified Social Assistance System) –

SUAS – and the Programa de Erradicação do Trabalho Infantil (Child Labor Eradication Program) – PETI. With this analysis, Dulce Torzecki and Jilda Pinto assess the professionalization of adolescents from the critical theory of human rights, while Eliane Araque addresses the reality of domestic child labor and prevention and fighting mechanisms. Elisiane Santos, on the other hand, demonstrates the structural racism inherent in child labor on the streets, marked by the massive presence of black children and adolescents.

Felipe Caetano and Wilson Guilherme introduce the voice of youth in the book, with a focus on the political and social participation of children and adolescents in fighting child labor. The debate follows with the rescue of the doctrine of integral protection in the Brazilian legal system against the prohibition of early work, carried out by Fernanda Brito, and Gabriela Lenz rescues the *ethics of love*, by addressing the collapse experienced by Brazilian children in the context of work child, whether paid or unpaid. Ivan Capelatto, for his part, deals with the commercial sexual exploitation of children and adolescents, and the resulting tragedies from a social, family, and psychological point of view.

Kátia Arruda takes up the myths and truths about child labor, while Lelio Bentes focuses her discussion on the international debate about the worst forms of child labor and the prohibitions resulting from Convention 182 of the International Labor Organization. Resuming the previous discussion, but in conjunction with the actions of the MPT, Luciana Coutinho analyzes PETI from a retrospective perspective of the 24 years of implementation of this public policy, as well as the role of the labor *Parquet* in fighting the exploitation of a child and young people work, with emphasis on the intersection between COORDINFÂNCIA's and PETI's initiatives.

In the context of dialogue with actors who are part of the protection network, Lydiane Machado emphasizes the importance of Guardianship Councils to fight the exploitation of children and adolescents at work. Márcio Rogério, on the other hand, addresses professionalization as a strategy to prevent the incarceration of young people in situations of social vulnerability, a reality present in statistics on juvenile lethality and incarceration in Brazil. Still, in the scope of hard cases, Margaret Matos analyzes the commercial sexual exploitation of children and adolescents as

one of the worst forms of child labor; Maria de Fátima *et al* deals with child labor in drug trafficking and proposes reflections on the enforcing policy in Brazil, while Mariane Josviak addresses the situation of young people in conflict with the law and the relevance of professional apprenticeship, including Public Administration as an inclusion mechanism.

Marques Casara analyzes the occurrence of child labor in the production chains of large companies and the concealment practices that are used to prevent the identification of these links. Noemia Porto discusses artistic, cultural, and sports child labor, including under international regulatory frameworks, and in a comparative perspective, as well as about the incomprehension established about the material competence of the Labor Court to appreciate and judge causes related to the topic.

Oscar Guardiola-Rivea and Fernanda Barbosa, in turn, address the history of fighting child labor in the United Kingdom, bringing an interdisciplinary external perspective, from a view that is not purely legal, but philosophical, sociological, anthropological, on a persistent topic in the Brazilian reality and which still has a presence and marks in British society.

Patrícia Sanfelici presents the *Childhood Rescue* Project as a great matrix of the work of the MPT's Committee and is followed by the poetic reading of the history of COORDINFÂNCIA presented by Rafael Marques. Then, Valesca do Monte rescues the 20 years of COORDINFÂNCIA's history marked by resistance and struggle in the fight against child labor.

In a perspective that could not be missing in the post-labor reform context, Renata Queiroz and Valdemiro Xavier compare child labor and informality and highlight the relevance of a dialogue between public policies for the eradication of child labor and those aimed at expanding the formal labor market. Then, Roberto Padilha discusses the functions performed by the Tax Audit of work in fighting child labor, with an evolutionary approach and emphasis on its performance instruments. In parallel, Simone Rezende presents part of the results of her research on a professional apprenticeship as a mechanism for human development and the social reintegration of adolescents in compliance with socio-educational measures with freedom restrictions.

Walter Ude analyzes child labor in the context of Western modernity, in writing that proposes a decolonial reading of the issue. Then, Xisto de Medeiros Neto addresses the matrices of the fundamental right of children to non-work and Zéu Palmeira, finally, resumes the discussion about child labor in drug trafficking, proposing alternative solutions that go beyond the neoliberal model.

This glimpse of all the chapters that make up this book, carefully chosen and analyzed by the Editorial Committee designated by PGT Ordinances No. 631.2020 and No. 1,150.2020, allows us to extract the richness of the debates initiated by the authors and the correspondence with the quality expected for the work by its Organizers. In addition to all written content, the section designed to consolidate *finalist drawings* for the MPT na Escola Award, composed of productions by children and adolescents on the theme of child labor, as an evident expression of the relevance of promoting relevant awareness from school.

Certain that this book will contribute to greatly enrich the discussions about fighting child labor and promoting the professionalization of adolescent workers in Brazil and in the world, we hope that everyone enjoys reading it and integrate the debates and the essential collective construction that enforces the defense and promotion of human and fundamental rights of those who, constitutionally, are entitled to full protection with absolute priority.

Brasilia, November 10, 2020.

Ana Maria Villa Real Ferreira Ramos
COORDINFÂNCIA National Head

Dalliana Vilar-Lopes
Editorial Committee President



PLAYING, AN EFFECTIVE TOOL FOR THE FIGHT AGAINST CHILD LABOR

ANA ELISA ALVES BRITO SEGATTI
CLAUDIA REGINA LOVATO FRANCO

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Abstract. Given that in Brazil there are about 2 million children and adolescents involved in the exploitation of child labor and that one of our institutional goals is to combat this wound, which affects the dignity of the human person of the worker, this work intends to analyze the prognosis of child labor for 2025 and, thus, answer the question whether Brazil will fulfill the international agreement to eradicate child labor. To this end, we seek studies of law with other branches of knowledge and we present the *MPT-Brincar* Project, a tool to combat sexual exploitation and the work of Brazilian children.

Keywords: Child labor. Sexual Exploitation. *MPT-Brincar* Project.

1 INTRODUCTION

This study will be carried out from the perspective of the Labor Prosecution Service because as members of this institution that are part of the National Head for Combating Child Labor in São Paulo, we are looking for alternatives to mitigate and extirpate work that is not decent, to return, or even giving, in the first order, the dignity of the human person of children and adolescents. It is about documentary research, in an interdisciplinary approach in the areas of education; sociology; social assistance, and law – constitutional and labor –, drawing a parallel on the right to play and child labor.

The work consists of an introduction and is divided into 4 sections. Section I begins, passing through the work of the Labor Prosecution Service, COORDINFÂNCIA in the defense of constitutional precepts; in section II, we will study the Legal Grounds for ending Child Labor, the Millennium Goals, and the prospects for children and adolescents; in section III, we will introduce Play, as an instrument to combat sexual exploitation and child labor. The relationship between the principle of comprehensive child protection and education, psychology, psychoanalysis, and public policies; in section IV, we will discuss some international and national experiences developed for a freer, more just, and supportive society in early childhood. We will bring a new horizon, the *MPT-Brincar* Project, for the articulation and performance of the Labor Prosecution Service, in the fight for the eradication of child labor and sexual exploitation; in the end, we will conclude, that we can think predictions and prospects to face these violations.

2 THE NATIONAL COMMITTEE TO COMBATING THE EXPLOITATION OF CHILD AND ADOLESCENT LABOR OF THE LABOR PROSECUTION SERVICE IN DEFENSE OF CONSTITUTIONAL PRECEPTS

In November 2000, the Labor Prosecution Service established the National Committee to Combating the Exploitation of Child and Adolescent Labor – COORDINFÂNCIA, with the scope of developing a coordinated and effective action in promoting actions aimed at combating the various forms of exploitation of the work of children and adolescents.

The Federal Constitution (BRAZIL, 1988), in its arts. 1, III, and 227, ensures the dignity of the human person as a fundamental principle of the Federative Republic of Brazil and prescribes as

a duty of the family, society, and the State to guarantee to children, adolescents, and young people, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, and family and community coexistence, in addition, to make them safe from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.

Thus, the Brazilian State has adopted the principle of comprehensive protection of children and adolescents, who have come to be considered subjects of rights and obligations, whom the State, family, and society must

protect as a priority. In this context, the Magna Carta (BRAZIL, 1988) prescribed a wide prohibition of early work, prohibiting work for children under 16, except as an apprentice, from the age of fourteen, notably in art. 7, item XXXIII.

In the same sense, the infra-constitutional legislation foreseen in article 403 of the CLT stands out, in its sole paragraph, which still provides that “the work of the minor cannot be carried out in places that are harmful to his/her formation, to his/her physical, psychological, moral and social development and at times and places that do not allow school attendance”.

In view of the principles of human dignity and the comprehensive protection of children and adolescents, it is the responsibility of the State, society, and the family, together, to guarantee the effective right to education, leisure, and professionalization, with the repudiation of exploitation of child labor.

The high number of child and adolescent work requires effective action to combat child labor, which, as a rule, occurs in informal urban activities, domestic work, or family farming. As in these activities, inspection and investigation are limited, preventive actions aimed at public policies, education, and professionalization are developed as more effective measures. It is necessary to make society aware of the damage resulting from child labor, dispelling the myths of early work, and investing in the training of future citizens.

In this context, to combat the exploitation of the work of children and adolescents, the work of COORDINFÂNCIA, currently, is focused on 03 (three) thematic axes that make up the Strategic Project *Childhood Rescue*.

- **Public Policies:** in this Axis, the work of the Labor Prosecution Service with the Public Administration is sought, so that the Executive’s budget preparation complies with the constitutional provisions for the comprehensive protection of children and youth, as well as fulfilling the legal obligation of preference in the execution of public policies and allocation of resources related to the protection of children and decent work.
- **Education:** the Prosecution Service develops the training of educators on the topic of child labor, causes, and consequences, so that they

work with students, aiming at raising awareness about the problem and its myths and truths. Educators are the professionals who have the best conditions to identify situations of early work, as, as a rule, child labor is the main reason for low performance or school dropout. Additionally, the teacher has direct access to communication with the student, and, through the student, with those responsible and the community. After the training, there is the distribution of learning materials and activities developed at the school, and, in the end, there is an award for the works carried out by the students.

- Professionalization: it aims to make apprenticeship effective, under the terms legally established, with the articulation and awareness of companies to comply with the legal quota, focusing on the most vulnerable young population. Apprenticeship is an alternative to regular professionalization, aimed at people over 14 and under 24 (except for people with disabilities, who have no age limit), with mandatory participation in a methodical technical and professional training and learning program, adequate to the physical, moral and psychological development of the apprentice.

These three axes have been implemented in all units of the Labor Prosecution Service. This work suggests the project “*MPT-Brincar*”, in the Education axis, to effectively combat sexual exploitation, child labor, and the promotion of adolescent work.

3 LEGAL GROUNDS FOR ENDING CHILD LABOR: MILLENNIUM GOALS AND PERSPECTIVES FOR CHILDREN AND ADOLESCENTS

What is child labor? These are work activities carried out by children and adolescents who have not yet reached the age to work, according to the legislation in force in the country.

The Labor Prosecution Service, in combating child labor and regularizing the work of adolescents, finds support in the International Legal Order, such as the UN Convention on the Rights of the Child and Conventions nos. 138 and 182 issued by the International Labor Organization, and in the Internal Order, either in the Federal Constitution or in the infra-

constitutional legislation, such as the Consolidation of Labor Laws and the Child and Adolescent Statute.

The Convention on the Rights of the Child, an important human rights instrument, that was adopted by the Assembly of the United Nations on November 20, 1989, and ratified by Brazil on September 24, 1990, recognizes that “the child, for the full and harmonious development of his/her personality, must grow within the family, in an environment of happiness, love, and understanding” and prescribes, in Article 19, the need for States Parties to adopt:

All appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, offenses or abuse, neglect or negligent treatment, mistreatment or exploitation, including sexual abuse, while the child is under the custody of parents, legal guardian or any other person responsible for it (UN, 1989).

The right of the child to be protected against economic exploitation and against the performance of any dangerous work or that interferes with their education, or that is harmful to their health or to their physical, mental, spiritual, moral, or social development is guaranteed (32 of the UN Convention on the Rights of the Child).

It is also incumbent upon the States Parties to adopt measures to establish the minimum age for admission to work and appropriate regulations relevant to working conditions and hours, as well as to respect and promote the child’s right to participate fully in cultural and artistic life, and they should encourage the provision of adequate opportunities for cultural, artistic, recreational and leisure activities, under equal conditions (art. 31, UN Convention on the Rights of the Child).

The International Labor Organization, at the 58th Conference Meeting (Geneva, 1973), approved Convention no. 138 – Minimum Age for Admission (ILO, 1973), which, in Article 1, highlights that

[...] every Member State, in which this Convention is in force, undertakes to follow a national policy that ensures the effective abolition of child labor and progressively raises the minimum age for admission to employment or work at a level adequate to the young person’s full physical and mental development.

It is an important measure to prevent early work and to ensure children a healthy childhood and a methodical technical and professional training for young people, suitable for physical, moral, and psychological development.

Considering that child labor is a global issue, the ILO has also edited Convention 182, providing actions to eliminate the worst forms of child labor and to eliminate them immediately. Article 3 states that the worst forms of child labor include all forms of slavery or practices similar to slavery, use, demand, and supply of children for the purpose of prostitution, pornography production, or pornographic performances; using, recruiting, and offering children for illicit activities, and jobs that, by their nature or the circumstances in which they are performed, are likely to impair the child's health, safety, and morale.

Brazil ratified the above international standards and adopted the principle of comprehensive protection of children and adolescents (CF, art. 227), as well as banning the work of children and adolescents under the age of 16, except as an apprentice from 14 years old (CF, art. 7, item XXXIII; CLT, art. 405 and ECA, art. 67), with night work and unhealthy, dangerous, and painful activities being forbidden to adolescents before the age of 18 or on long working hours and in places or services that hinder their good psychological, moral and social development (CLT, arts. 403, 411, 412 and 413).

The Brazilian State also enacted infra-constitutional legislation, such as Laws nos. 10,097/2000 and 11,788/2008, which provide for apprenticeship and internship, to regulate the adolescent's work.

All this legal framework, international and national, aims to eliminate child labor, a serious violation of human rights, and to promote decent work for adolescents. In this regard, the ILO, in partnership with the Member States, employers' and workers' organizations, and civil society organizations, has stepped up efforts to eradicate child labor and, as "Goal 8.7 of the 2030 Agenda for Sustainable Development of the United Nations", aims to adopt immediate and effective measures to advance the eradication of child labor in all forms by 2025 and the eradication of forced labor by 2030.

The Brazilian Government has introduced the eradication of child labor on the public agenda as a political priority. In 1996, it launched the

National Program for the Eradication of Child Labor, whose objective achieved the support of civil society, unions, businesses, universities, and Organizations, such as ILO and UNICEF. Strategic actions were taken with the aim of achieving the Program's objective, such as the integration between the *Bolsa Família* Program and PETI, the institution of SUAS – Unified Social Assistance System, the incorporation of PETI into LOAS, and redesign of PETI.

According to Law no. 8,742/1993 (LOAS), PETI is an intersectoral program that, within the scope of SUAS, includes income transfer, social work with families, and the provision of Social Services for children and adolescents who are in a working situation. It has national coverage and is developed in an articulated manner by the federated entities, with the participation of civil society (art. 24-C).

In Brazil, according to the National Household Sample Survey (PNAD) 2015, of the Brazilian Institute of Geography and Statistics (IBGE), 2.7 million children and adolescents aged 5 to 17 years worked throughout the national territory.

In 2017, the IBGE released data on child labor in Brazil, based on a new methodology used in PNAD/Continuous, which indicates that, in 2016, 1.8 million children and adolescents from 5 to 17 years old worked in activities prohibited by law, that is, in child labor situations, and data from children and adolescents who work for their own consumption were not considered. It is, therefore, a false reduction of approximately 1 million working children, compared to 2015, according to the Explanatory Note of the National Forum for the Prevention and Eradication of Child Labor.

Therefore, there is a need to move forward with strategic actions to achieve an effective reduction, as it is unlikely that we will be able to eradicate child labor in Brazil by 2025, or any exploitation by 2030, especially now with the Covid-19 pandemic.

4 PLAY AS AN INSTRUMENT TO COMBAT SEXUAL EXPLOITATION AND OTHER FORMS OF CHILD LABOR. THE RELATIONSHIP BETWEEN THE PRINCIPLE OF COMPREHENSIVE CHILD PROTECTION AND EDUCATION, PSYCHOLOGY, PSYCHOANALYSIS, AND PUBLIC POLICIES

The principle of comprehensive protection, art. 227 of the republican Constitution, as already said elsewhere, brings the duty of absolute priority to children, adolescents, and young people and points out several rights that must be observed, among them **education, leisure, and professionalization**, and more, these subjects must be kept **safe of all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression**.

Thus, in order to fulfill our ministerial role, to eradicate child labor, which seems very difficult even for 2030, with the deleterious effects of the pandemic, as stated, it will be necessary to go beyond the law, to seek possibilities in other disciplines.

We suggest PLAY, an institute already provided for in Law since 2016 (Law no. 13,257, of March 8, 2016), as a public policy to be implemented by the State. The same law (BRAZIL, 2016), in its art. 5, puts play as a priority to be developed in public policies, let's see:

Art. 5 Health, food, and nutrition, early childhood education, family and community coexistence, social assistance to the child's family, culture, play and leisure, the space and the environment, as well as protection against all forms of violence and consumer pressure, the prevention of accidents and the adoption of measures to avoid early exposure to marketing communication constitute priority areas for public policies for early childhood.

In early childhood, art. 2 of the referred law (BRAZIL, 2016) defines: “[...] early childhood is considered to be the period that covers the first 6 (six) years or 72 (seventy-two) months of the child's life”, that is, the period of young age.

Playing, for us, operators of the Law, is not well known, however, in the field of education, psychology, psychoanalysis, and sociology there are many scholars of the subject, for example, Pereira, Amparo, and Almeida (2006, p. 23), teaching us the following:

Playing, whether from a social or individual point of view, is not a secondary activity in child development, on the contrary, it provides the main means for the articulations between personal and socio-historical development. Additionally, from the point of view of the school routine, there is a need for discussions about a pedagogical time, involving playing, which is more articulated with the objective and subjective possibilities of the child in its development, even if the school is mainly focused on knowledge acquisition.

As we can see, playing should be considered as an instrument for the child's development, a means of inserting the child into the social context.

Seeking the concept of play, as found in the Michaelis Dictionary of Portuguese (2020), there are six different meanings and those that interest us for this study are the numbers 4 and 5, namely “**playing:** [...] 4 To have fun playing the role of The boys play soldiers. v 5 To have fun pretending to perform any activity: Play reading. v [...]”. **Thus, when playing, social roles are played.** [emphasis added]

With regard to the legal nature, in the search for the essence of what will be playing, we find that it varies according to the discipline to be studied.

Under a socio-anthropological view, playing is not an internal dynamic of the individual, but an activity with social meaning that, like others, needs learning.

Thus, playing is seen as an activity present in the life of the child in different cultures, it has great importance in their personal development. However, the importance is not always recognized by adults; the fact is that emphasis is placed on children's education on formal cognitive aspects, which is why, for us laypeople, it is difficult to visualize the relationship between play and development.

Playing, based on evolutionary psychology, is characterized as adapted and adaptive to the species, seeking to study the possible relationships between culture and phylogenesis in the development of behavior. To that extent, playing, in its own language, expresses the nature of the being. Thus, we could say that the toy library is a space where behavior can be studied, stimulated, and valued, in which we can rescue, or even definitively deliver the dignity of children who suffer some type of violence.

For psychogenetics adepts, such as Dantas (1998), play and playing are two different terms in psychogenetic order, according to which one

precedes the other, since play is prior to playing, and this is social conduct that presupposes rules.

Regarding the psychoanalytic conception of the child and playing, the child's word needs to be heard, to be rescued, not to be the object of the wishes and needs of adults, so we could investigate how the child thinks, feels, perceives the world around them and try to know better about their real yearnings, their fears, and their desires. Each child is different, even among blood brothers, there are differences; therefore, playing should also be analyzed with the same care, looking for differences.

Playing brings the story of each child, it reveals the effects of language and speech on each one, in the form of a transfer circuit, in terms of the unconscious, which is structured by extracting a language. Therefore, using the activity of playing as one of the ways to reveal the inner conflicts of children was without a doubt one of the greatest discoveries of Psychoanalysis. It is through play that the children reveal their conflicts, their fears, reveal good and bad factual situations. We say, then, that in games, the type of social bond that was woven in children's family environment is transferred, externalized, so that they relive the main emotional contents, related to affections, that marked them, will demonstrate acts and facts that are repeated, not only pleasant ones but the ones not pleasant, complicated and difficult ones.

Playing is central to the development of spontaneous child health and conduct, essential to the development of resilience. Offering spaces and environments that favor free playing is providing conditions for the development of creativity, skills, and abilities necessary to exercise the role that belongs to the community in which he/she lives, in the present and in the future.

Scholars of the theme, in a collective work about the importance of playful activities, in elementary school, Hartzz, A. *et al.* (2012, p. 13) concluded that:

Playing is the child's life, it is part of their development, it is the reflection of their inner world, of what they believe, what they know, and even what they imagine. It is through play that a child expresses his or her creativity, naturally exposes everything he or she feels, the joys, the sorrows, anguish and anxieties, doubts, and also certainties. At school, playing is a means of offering the child a pleasant, motivating, planned, and enriched environment, which makes it possible to learn various skills. Therefore, playing is an

important mechanism for the development of children's learning in both intellectual and social aspects. When playing, the child moves his or her fears, anxieties, and internal problems to the outside, taking a hold of himself or herself through action.

Marilene Martins Flores, an expert on the theme, in a telepresence meeting with the authors, on 05/26/2020, adds that

there is a very close relationship between playing and resilience when it comes to preventing violence, research shows that resilient people constantly seek the fulfillment of their dreams, not cultivating grievances or resentments of other people and situations, which are or were adverse or generated frustrations.

For this reason, playing is public policy, whose project must be implemented, as it can develop skills and resilience, a conducive way of living to ward off frustrations and seek children's achievements.

5 INTERNATIONAL AND NATIONAL EXPERIENCES DEVELOPED FOR A FREER, MORE JUST, AND SUPPORTIVE SOCIETY IN EARLY CHILDHOOD. ANALYSIS OF FORECASTS AND PROSPECTS IN BRAZIL. MPT-BRINCAR PROJECT PROPOSAL

As international experiences, we highlight the measures adopted by Finland and Germany.

In Finland, according to Beatriz Guedes (2016), child education is not mandatory, it is up to the parents to enroll, or not, their children in a school, which can be public or private. Early childhood education is based on *playing* until preschool, which means that play is highly valued in the child's development and, according to the national curriculum, although children do not play to learn, they learn by playing and it is very important to understand this issue to understand children's education in the country. Children do not have more than 2 hours of classes and do not have homework, the Finnish national curriculum idealizes that children learn through play and relationships with other children and teachers around them and that is how they make sense of the world, developing their skills and building knowledge.

In Germany, the small German town of Griesheim, with 26,000 inhabitants, has become a playful model. With the support of the government

and researchers from the Technical University of Darmstadt, since the 90's it was decided to equip the various public spaces that children used to visit, such as school, gym, and playgrounds, with safe sidewalks and offering equipment to play. The result was the creation of 25 sustainable playgrounds on the streets, with versatile objects that allowed everything from climbing to make-believe.

In 1961, in Denmark, the International Play Association was created as an international and non-governmental organization that is part of the ECOSOC – United Nations World Council, with the mission of protecting, promoting, and preserving children's play as a fundamental right. IPA International is present in more than 50 countries.

In Brazil, the International Play Association (IPA-Brazil) was established in 1997, as a non-profit organization, and also aims that children and adolescents have opportunities to play freely and access culture and leisure. IPA Brazil offers a training program for professionals, giving children and adolescents the opportunity to play freely, without any discrimination.

The Play Agents, as inferred from the "Results" section of the institution's website, are the people who, with knowledge and competence, create opportunities for children to play freely. They can be: young people, parents, educators, professionals, students, volunteers from civil society organizations, elderly people, etc. In a suitable environment for playing, children will make choices about what they play and who they play with. In these moments, they can be supported and stimulated by the Play Agent – an animator and facilitator of recreational opportunities.

As it turns out, many people can be one of these agents, it is highlighted that there are several courses and activities offered and developed by IPA Brazil, a range of opportunities.

The Marist Solidarity Network, another organization that works to defend and promote the rights of vulnerable children and adolescents developed the *Brincadique?* Project to train educators and different agents of the Rights Guarantee System regarding the strengthening of the right to play in childhood, in schools, NGOs, parks, and other places where children live and interact.

As stated, with this study we intend to present the *MPT-Brincar* Project, which aims to evaluate the current conditions and factors acting in the creation of children within the local community, aspects related to child labor and sexual exploitation in order to detect the processes of violence in the light of children and keep them away from the paths that would direct them towards child labor, with the proposition of playful activities, games, all aimed mainly at early childhood.

Certainly, the characteristic situations of child labor and sexual exploitation are not spontaneously portrayed by children. In reality, there are changes in the child's behavior, mood changes, dominant silence, childish behavior, attitudes that can be identified by Educators.

Thus, the aforementioned project will focus on the training of the Educator, so that he or she has the specific look and knowledge in order to use the indicators through playful play, as a way to recognize behavioral situations that can be worked as a form of transforming action to develop affective bonds and relationships of trust between children and social groups, as well as to identify recurrent, positive or negative, behaviors of children linked to family and social life. It also aims to invite families and the local community to play at home. Games and playful activities lead children to dialogue, questioning, and exchanging experiences, as well as improving creativity and development at all levels: social, physical, cognitive, and emotional.

Play allows the reproduction of the environment in which the child lives, the identification of behaviors or issues experienced by the child, as playing with a doll, can portray the mother's behavior at home; playing with characters can bring behaviors of those responsible for the child or adults with whom he/she relates; it also allows the identification of child labor, when a child plays jumping rope with a doll in his/her arms because daily he/she takes care of his/her younger brother/sister or even rejects contact with an adult who has sexually abused him/her. The child, in play, manifests rules of conduct based on realities lived or that he/she would like to live.

For the beginning of the project, it is necessary to collect data regarding adverse situations experienced by the community, such as child labor, sexual exploitation, etc. Then, the Educator should outline actions to be developed in the *MPT-Brincar* Project, focused primarily on early childhood, from the construction of indicators and exemplary models launched in a booklet, which

will be prepared by specialists, such as pedagogues, psychologists, educators, and law operators. Educators should involve families, those responsible for children and the entire community, with the aim of expanding the process.

The booklet will present the proposal of the *MPT-Brincar* Project, with specific content as to the initial points for approach and survey, as well as suggest play options, playful activities to be developed with the children or even presented to the community and guardians. The closing should take place in an event with the presentation of activities and results obtained by educators.

Finally, with this *MPT-Brincar* Project, we will be able to think and try to reach a Brazil that is less reproductive of cruelties, under the focus of exploitation and for the eradication of all forms of exploitation, whether sexual or other forms of child labor. We may not yet be able to eradicate these wounds until 2030, but we will be able to further mitigate the situation of violence against children and adolescents; to try new possibilities of confronting and eradicating child labor and child sexual exploitation, the wounds that have frightened us for years.

6 CONCLUSIONS

The scope of this work was to present a project proposal, *MPT-Brincar* Project, within one of the three axes of COORDINFÂNCIA activities, Education Axis, as a new tool for the ministerial agency to face exploitation, sexualization, and other forms of child labor in Brazil, what we carried out on the basis of forecasts and prospects, from national and international agencies, to defend constitutional precepts, such as the dignity of the human person of children and adolescents and the principle of comprehensive protection as a corollary of decent work. We find sad prognoses that we will still have a lot of children and adolescents in a situation of exploitation, in child labor in our country, aggravated by the current pandemic.

Initially, we set out to present and analyze the international agreements signed by Brazil, drawing a parallel with the Millennium Goals, regarding the perspectives for children, and adolescents, for the end of child labor. And we were able to verify that we will not be able to comply with the agreement, at least as far as the forecast term is concerned, since the rates have been decreasing very slowly.

We studied several concepts of Play, we saw that the theme is related to the principle of comprehensive protection of the child, we analyzed it in a transversal way, from the perspective of education, psychology, and psychoanalysis. We noted that there is a law dealing with the issue, Law no. 13,257, of March 8, 2016, which included playing as a public policy that must be effectively offered and implemented by the Brazilian State.

From international experiences, we brought the actions studied in Finland and Germany and, among those already practiced at the national level, those carried out by organizations such as the International Play Association – IPA Brazil – and the Marist Solidarity Network, which has been caring and developing, in our country, playing for a freer, more just and supportive society, concerning early childhood.

Analyzing the prognoses and prospects in Brazil, we found that it will not be easy to eradicate child labor, but we can rather mitigate the situation of violence against children and adolescents through the Project Proposal for the Labor Prosecution Service, of the *MPT-Brincar* Project, a new possibility of confronting and eradicating child labor and child sexual exploitation, the wounds that have frightened us for years.

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CHILD LABOR THROUGH CONSTITUTIONAL PRINCIPLES RELATED TO THE ECONOMIC AND FINANCIAL ORDER

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Abstract. This paper analyzes how the constitutional principles of the economic and financial order, provided for in art. 170 of the 1988 Federal Constitution, can be used as a basis for prohibiting child labor. To this end, initially, a succinct concept of the expression “child labor” will be presented. Then, legal and health grounds frequently mentioned will be presented to justify the prohibition against the early work of children and adolescents. Finally, the constitutionally envisaged economic and financial principles will be presented, which can also serve as a basis for the legal prohibition of child labor.

Keywords: Child labor. Early work. Economic order. Principles.

1 INTRODUCTION

It is common for the grounds for prohibiting child labor to be based on legal and health arguments about the need to protect children and adolescents. Any State that intends to reduce or eradicate child labor collaborates, to some extent, to protect its population of children and adolescents. Not without reason, Conventions nos. 138 and 182 of the International Labor Organization (ILO) take care to ensure that the signatory countries institute a minimum age for the inclusion of children¹ in the labor market, as well as urgently guaranteeing the prohibition and elimination of the worst forms of child labor.

For medical science, in the words of Sobrinho (2010), a child is considered a person in development in the period between birth and the advent of puberty. An adolescent is a person who, under physical and psychological aspects, is in a state of maturity and learning from puberty. For legal science, the child is the person of up to twelve incomplete years, and the teenager is the person aged between twelve and eighteen years of age, being, in both cases, in a stage of physical, mental, moral, spiritual, and social development, under the terms of art. 2 and 3 of the Statute of Children and Adolescents (ECA).

Certainly, arguments from Medicine or Law, which are based on the stage of development of children and adolescents as a basis for the prohibition of child labor, are widely accepted in the legal literature. However, this article aims to take a different path, demonstrating that the prohibition of child labor can be based on principles and concepts of law that are not commonly associated with the integral protection of children and adolescents, such as free competition, the social function of ownership, and reduction of regional and social inequalities.

In summary, this article aims to demonstrate how the prohibition of child labor can be based on the regulation of the economic and financial order provided for in the Federal Constitution of 1988 (BRAZIL, 1988), going beyond the exclusive mention of the rights of children and youth.

2 WHAT IS CHILD LABOR?

Roughly speaking, child labor would be all that work performed by people under the age established by law. However, aware of the imprecision that such an open concept can represent, it is necessary to understand the elements that characterize the concept of child labor in a little more detail.

To this end, it is valid to resort to the III National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Worker, elaborated within the scope of the National Commission for the Eradication of Child Labor – CONAETI, linked to the extinct Ministry of Labor, in 2018. According to the mentioned plan,

the term child labor refers to economic activities and/or survival activities, with or without profit, paid or unpaid, carried out by children or adolescents

under the age of 16, except as an apprentice from the age of 14, regardless of their occupational condition².

Evidently, in order to characterize child labor, it is not necessary to have all the requirements required for the characterization of employment relationships. Regardless of whether it is possible or not, whether paid or not, whether there is subordination to the employer or the family, the work activity performed by children under 16 years old, except as an apprentice from the age of 14, under the terms of art. 7, XXXIII, CF/88, characterizes child labor.

It is worth noting that the concept above does not yet exhaust all the possibilities of child labor, prohibited by national and international legislation. In line with Art. 7, XXXIII, CF/88, and ILO Convention no. 182, the worst forms of child labor are prohibited for all persons under the age of 18. For this reason, the III National Plan for the Prevention and Eradication of Child Labor continues to inform that

any activity carried out by an adolescent worker, which, by its nature or by the circumstances in which it is performed, may impair their physical, psychological, social, and moral development, falls within the definition of child labor and is prohibited for persons under the age of 18 years³.

In this sense, therefore, it is concluded that child labor consists of (1) all work activity performed by children under 16, except for apprentices from 14 years old, as well as (2) in all activity, classified as an unhealthy, dangerous, painful, or worse form of child labor, performed by children under 18.

3 LEGAL AND HEALTH GROUNDS FOR THE BAN ON CHILD LABOR

Several national and international standards have tried to emphasize the prohibition of the work of children and adolescents⁴. This chapter will briefly address frequent legal and health arguments mentioned in studies on the topic to support the legal prohibition of child labor.

The prohibition on the exploitation of child labor occurs on the grounds that, both at the international level, with the Universal Declaration of the Rights of Children and Adolescents (1959), and at the national level, with CF/88 and ECA/90, “a new legal view of the child was instituted as a “subject of rights” (bearer of all human rights)”, as informed by Marchi

(2013). In the words of Custódio (2002), work by children and adolescents came to be seen from a legal-social perspective, “based on the principles and rules of the Doctrine of Integral Protection”.

From this perspective, therefore, the prohibition of child labor would find support in the idea that children and adolescents should be treated as human beings in development, who need special protection. According to Mendes (2006), although several international documents have previously addressed the need for special treatment of children, only through the Universal Declaration of the Rights of Children and Adolescents (1959), did the Doctrine of Integral Protection effectively exist on the international stage, “Since, among many considerations, it established that the child, due to its physical and mental maturity, needs appropriate legal protection before and after birth and that humanity owes the child the best of its efforts” (MENDES, 2006, p. 18).

In the Brazilian national landscape, the Doctrine of Integral Protection comes into force three decades later, with the edition of CF/88 and ECA/90. Until then, in Brazil, under the logic of the Irregular Situation Doctrine, based on the 1979 Code of Minors (Law no. 6.697), children and adolescents who did not work or study were treated as probable offenders. “Poor children were seen as potentially abandoned and dangerous, and work, in turn, meant not only keeping them from crime but also educating them in order to instill obedience” (PASSETI, 1999).

The fact is that the constitutional and legal institution for the comprehensive protection of children and adolescents forced an overcoming of the understanding that poor children should work, leading to a rearrangement in the correlation between themes such as “childhood”, “work” and “poverty”.

According to art. 227 of CF/88,

it is the duty of the family, society, and the State to guarantee to children, adolescents, and young people, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, and family and community coexistence, in addition to making them safe from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression (BRAZIL, 1988).

Under this perspective, which also permeates the entire text of ECA/90, children and adolescents are, therefore, subject to a series of rights, and must receive from the family, society, and the State all the support necessary for all these rights are ensured. It is necessary to emphasize that the rights listed, both in art. 227 of CF/88, as in ECA/90, reach all children and adolescents, in clear dialogue with the fundamental objective of the Republic of “promoting the good of all, without prejudice of origin, race, sex, color, age, and any other forms of discrimination” (BRAZIL, 1988).

Under this same perspective, the International Covenant on economic, social and cultural rights, ratified in Brazil through Decree no. 591, 1992, in its art. 10, informs that “special protection and assistance measures must be adopted in favor of all children and adolescents, **without any distinction for reasons of affiliation or any other condition**” (BRAZIL, 1992) (emphasis added).

In this scenario in which the Doctrine of Integral Protection aims to reach all children and adolescents, without any distinction, the right to education gains prominence, while work is understood as an obstacle to the educational path of children and adolescents. It is not without a reason that art. 227 of CF/88 expressly provides that the right to special protection will cover the “guarantee of access for adolescent and young workers to school”. Thus, it seeks to create a hierarchy between rights, emphasizing that the right to professionalization cannot harm the right to attend school. Following this logic, Grunspun (2000) states that early work affects proper education, since school, when it exists, is formal and ineffective, implying the perception of children and adolescents that studies will not contribute to anything in the future.

It is emphasized that, in addition to the fundamentals related to the Doctrine of Integral Protection, which changed the understanding of work in childhood and adolescence, there are also health arguments, which emphasize the damage of early work to the health of children and adolescents.

In a study carried out in 2008 on the self-rated health status of children and adolescents, the researchers concluded that individuals who worked in an urban environment had a lower perception of their own health, while individuals who did not work understood that they were healthy.

In the same sense, the Technical Note to Administrative Rule no. 6, of 02/18/2000, from the Ministry of Labor, states that, in males, ossification is completed at 21 years old, and in females, at 18 years. For this reason, early work in weight-bearing activities, for example, would be contraindicated, as “it could produce bone deformations in children and adolescents, among which it is worth mentioning Scheüermann Juvenile Kyphosis and *Coxa Vara*”.

Additionally, the same Technical Note informs that working with toxic substances (toxic gases, vapors, and dust) tends to harm children and adolescents much more than it would harm adult individuals. This is because “pulmonary ventilation is reduced in children and adolescents, who generally have a higher respiratory rate to compensate for this lower capacity for pulmonary ventilation.”

Finally, the aforementioned Technical Note, from the Ministry of Labor, also informs the damage of early work to the mental health of children and adolescents. In childhood and adolescence, playing and playing games would be important, enabling the construction of a psychically balanced and healthy adult. In view of the succession of unpleasant experiences to which individuals exploited by child labor are exposed, such as fear, insecurity, excessive accountability, it is possible that the neuropsychic system in children and adolescents will become blocked. As a consequence of this, the inability of these individuals to “face new situations would arise, increasing the risks of personality breakdown and generation of unbalanced adults and without conditions for proper insertion in society”.

4 ECONOMIC AND FINANCIAL FOUNDATIONS FOR BANNING CHILD LABOR

Although the grounds presented above are, in themselves, sufficient to justify the prohibition of child labor, there are certainly other factors, of an economic and financial nature, that can be mentioned to support this prohibition.

It is imperative to remember that, in the words of Custódio (2002, p. 21), in the capitalist economic model, economic factors are “the main determinants of the use of child and adolescent labor.” For Cervini and Burger (1996, p. 19), in line with the statement by Custódio (2000),

it is widely accepted that the dimensions, conditions, and content of child labor depend on two orders of macro factors [...]: **poverty**, which forces families to adopt forms of behavior that include the provision of labor for their underage children; **the structure of the labor market**, which offers appropriate spaces for the incorporation of this specific contingent of labor. These two sets of factors operate through the preferences and behaviors of two decision units: family and company. (emphasis added)

Since the economic system emerges as the main cause of the occurrence of child labor, it is necessary to understand it in order to find, in the Brazilian economic system itself, the foundations for the prohibition of early work⁵. As in the natural sciences, in which the virus of a determined pathology is essential for the creation of the respective vaccine, and the snake venom is fundamental for the production of snake antivenom, it is intended to seek economic arguments to justify the prohibition of a phenomenon negative that the economy itself has been producing: the premature work of children and adolescents.

According to art. 170 of CF/88,

The economic order, founded on the valorization of human work and free initiative, aims to ensure a dignified existence for all, according to the dictates of social justice, observing the following **principles**:

I – national sovereignty;

II – private property;

III – property's social function;

IV – free competition;

V – consumer protection;

VI – defense of the environment, including by means of differentiated treatment according to the environmental impact of products and services and their elaboration and rendering processes;

VII – reduction of regional and social inequalities;

VIII – search for full employment;

IX – favored treatment for small companies incorporated under Brazilian law and which have their headquarters and administration in the country.

Sole paragraph. Everyone is guaranteed the free exercise of any economic activity, regardless of authorization from public bodies, except in cases provided for by law (BRAZIL, 1988). [emphasis added]

As Jorge Miranda (1990, p. 431) teaches,

Law is not a mere sum of separate rules, the product of acts of will, or a mere concatenation of articulated verbal formulas. Law is a significant order or set and not conjunction resulting from simultaneous validity; it is consistency or, perhaps more rigorously, consistency; it is a unit of meaning, it is a value incorporated as a rule. And **this ordering, this set, this unit,**

this value, is projected or translated into principles, logically prior to the precepts. (emphasis added)

In this sense, it is logical to assume that the principles, constitutionally provided for, are guidelines about a State project, and must ensure coherence and consistency between the legal rules. “These principles correspond to fundamental political decisions of the original constituent and, for this reason, subordinate all action within the State, as well as the interpretation of constitutional and infra-constitutional rules” (BARROSO, 2001, p. 189).

From this perspective, the constitutional principles that govern the Brazilian economic and financial order must be in harmony with the other norms of the Federal Constitution, and cannot be ignored in the definition of infra-constitutional rules. That said, the idea that the principles provided for in art. 170 CF/88, responsible for the general regulation of the economy in Brazil, dialogue and harmonize with all the provisions in force in the country regarding the prohibition of child labor.

Therefore, it is necessary to analyze how this harmony occurs, emphasizing why some of these economic and financial principles serve as a basis for the prohibition of child labor.

4.1 Social function of property

The Brazilian Constitution of 1934 made provisions regarding the economic order, emphasizing that freedom in the economy could be exercised within the limits of justice and national life. Although it is known that these provisions represented the beginning of a transition to a Social State, only with the Federal Constitution of 1988 did the dictates of a State concerned with intervening to guarantee the reduction of inequalities become effective, raising the social function of property to the level of constitutional principle of economic and financial order.

In this scenario, the fundamental right to property, under the terms of art. 5, item XXII, of CF/88, finds limits in the owner’s duty to ensure that the property performs its social function, thus guaranteeing the country’s economic order. According to Fábio Konder Comparato (1986, p. 75), “it is concluded that if one is facing a collective interest, this social function of the

property corresponds to a power-duty of the owner, sanctioned by the legal order.”

In this same direction, there is Tomasevicius Filho (2003, p. 39) for whom social function

[...] means the exercise of a subjective right, in such a way that it meets the public interest, not only in the sense of not imposing restrictions on the exercise of that right but also in the sense of providing a positive and concrete advantage for society. In this way, it is **understood the idea that ownership obliges or that there is a power duty for the individual to serve the public interest in the exercise of his subjective right.** (emphasis added)

Under this logic, therefore, it is concluded that the means of production cannot lose sight of the public interest, even if they are under private ownership. Therefore, even if, according to Ronald Coase (COASE, 1937), “the company’s objective is to minimize the costs of obtaining information, negotiating contracts and keeping promises, in order to protect itself against market fluctuations,” this search for minimizing costs has legal limits associated with guaranteeing the fundamental rights guaranteed in the Constitution.

According to Esteves (2013), the costs of a company can be classified, among other ways, as variable or fixed, and the cost of labor will sometimes be part of the category of variable costs, sometimes of fixed costs. Labor will be a variable cost whenever it is necessary to pay overtime or production premiums to workers. In turn, labor will be a fixed cost when it consists of the invariable remuneration paid to employees during the period in which the personnel structure does not suffer growth or decrease.

Although, according to this classification, labor is a cost of production, and although, as mentioned above, the objective of a company is to minimize costs, there are limits in the economic order itself to pursue this objective: social function of property, revealed in each of the constitutional and legal provisions, which guarantee the prevalence of public interest over private interest.

Therefore, all the devices already mentioned, including art. 7, XXXIII, CF/88, which reveal the public interest in eradicating child labor in Brazil, are based on the principle of the social function of property. This is because,

since the prohibition of child labor is a collective interest, well-established in the Constitution, ownership of the means of production could never neglect the fulfillment of its social function, which consists, among other things, of not exploiting the early work of children and adolescents.

4.2 Free competition

It is not too much to remember, as Barroso does (BARROSO, 2001, p. 189), that “free enterprise and the appreciation of work are two of the fundamental principles of the Brazilian State and the foundations of the economic order. This is the express statement of arts. 1, IV, and 170, *caput*” of CF/88. In this sense, it is necessary to emphasize that the constitutional recognition of economic freedom is related to the appreciation of work.

On the one hand, there is, therefore, the foundation of free enterprise, which, in the words of Barroso (2001, p. 189):

[...] it can be broken down into some elements that give it content, all of them unfolded in the constitutional text. It assumes, in the first place, **the existence of private property**, that is, of particular appropriation of goods and means of production (CF, arts. 5, XXII and 170 II). This part of it also includes the core of the idea of free enterprise **freedom of enterprise**, a concept materialized in the sole paragraph of art. 170, which ensures everyone the free exercise of any economic activity, regardless of authorization, except in cases provided for by law. In third, there is **free competition**, ballast to the right of entrepreneurs to set their prices, which shall be determined by the market, in a competitive environment (CF, art. 170, IV). Finally, **the freedom to contract** is the essence of the free enterprise regime, a logical consequence of the principle of legality, the foundation of other freedoms, whereby no one will be obliged to do or fail to do anything except under the law (CF, art. 5, II). (emphasis added)

It is emphasized that the principle of free competition is, in the above perspective, one of the four facets of freedom of initiative, which consists in the ability of owners of the means of production to set their own prices, according to a competitive market.

On the other hand, it is also necessary to remember that the appreciation of work is also the foundation of the economic order. Regarding the appreciation of work, Barroso (2001) declares that the 1998 Constitution tried to materialize it, assuring workers a list of rights, provided for in art. 7. Among these rights, it is valid to reinforce that provided for in item XXXIII,

which guarantees a reasonable minimum age for adolescents to enter the labor market.

It is noted, therefore, that the prohibition on child labor, established in art. 227 of CF/88, by mentioning the appreciation of work as the foundation of the economic order, is a limit to the principle of free competition. This principle allows the owner of the means of production to establish the best strategies to fix the price of goods or services, as long as he or she does not exploit the early labor of children and adolescents, or in any other way disrespects the dignity of the human person (art. 1, III, CF/88).

It is also worth noting that “no principle is absolute. The principle of free enterprise, therefore, as well as the others, must be weighed against other values and public purposes provided for in the Constitution itself” (BARROSO, 2001, p. 191). Therefore, it is necessary to emphasize that respect for national legislation, including with regard to the non-exploitation of child labor, is a *sine qua non* of a real scenario of free competition. That is the reason why art. 173, § 4, CF/88, informs that “the law will repress the abuse of economic power aimed at [...] **the elimination of competition** [...]”, showing, therefore, that the existence of free competition implies some degree of State control over economic power. It is not possible, therefore, that the principle of free competition is effective in a context in which part of the owners of the means of production respects the prohibition of child labor, while another part uses this labor to lower its costs, thus generating consequence, a scenario of unfair competition.

4.3 Reduction of social and regional inequalities

The Federal Constitution informs, in art. 170, that the reduction of social and regional inequalities is a principle that guides the Brazilian economic order, in addition to being one of the objectives of the Federative Republic of Brazil (art. 3). Based on this, Alves (ALVES, 2008, p. 5) states that, according to Bagnoli, “the principle of reducing regional and social inequalities must ensure the dignified existence of individuals. For that, the public power must work hard in the implementation of public policies in order to transform formal equality into material equality.” In the same sense, there is the statement by Alves (ALVES, 2008, p. 5), according to which

“the idea of reducing regional and social inequalities is associated with the materialization of the principle of material equality (de facto equality)”.

It is found, therefore, that there is a frequent association between the principle of the reduction of social and regional inequalities and the search for a “free, fair, and solidary society (art. 3, I, CF/88, since, in the words of Grau (2018), Brazilian society is characterized by three marks: “Poverty, marginalization, and inequalities” (GRAU, 2018, p. 213).

In this scenario, it seems inevitable the recognition that actions that result in the increase of social and regional inequalities characterize an affront to the Brazilian economic order, which must seek to guarantee a more egalitarian country. From this perspective, the prohibition of child labor and the use of all possible state forms to combat its exploitation would be initiatives adopted to ensure the constitutionally provided for economic order.

According to the introductory text to the III National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers, the low income of families is one of the causes that leads to child labor. When analyzing the data, the Plan records that:

Regarding the economic profile of families in which children and adolescents from 5 to 17 years old in child labor are found, 49.83% have a per capita monthly income less than half the minimum wage, being, therefore, considered low-income families. Additionally, 27.80% are in families with per capita income below one minimum wage. From this, it is concluded that 77.63% of children and adolescents in child labor are in families that earn per capita income below a minimum wage.

In the same vein, the International Labor Organization (ILO) relates early work by children and adolescents with poverty in their families and states that:

Families must support children and not the other way around. When a family becomes unable to fulfill this obligation, it is up to the State to support it, not children. The cost of raising a child to the role of “breadwinner” is to expose him to physical, intellectual, and emotional damage. It is a very high price, not only for children but for society as a whole when depriving them of a childhood (ILO, [20--]).

Therefore, it is necessary to recognize that child labor occurs due to social inequalities, which cause some to be subjected to early labor exploitation to guarantee the enjoyment of fundamental rights, such as health and food.

According to data from the Human Development Report (2019), from the United Nations (UN),

[...] in Brazil, household surveys show that the richest 10 percent earned just over 40 percent of total income in 2015, but when all forms of income are taken into account – not just the income reported in the surveys – the revised estimates suggest that the top 10 percent actually accounted for more than 55 percent of the total income (UN, [2019]).

Thus, it can be seen that the low-income distribution subjects a significant portion of the Brazilian population to very poor living conditions, making them vulnerable to child labor. It is not without reason that the presence of the exploitation of the work of children and adolescents is one of the labor indicators, considered by the UN in the aforementioned report, to measure the risks to human development.

However, it is worth stressing that social inequalities are not only the cause of child labor but are also one of its consequences. That is, child labor is not only due to poverty and social inequality, but also intensifies them. According to Mendelievich (1980, p. 52),

Children who study and work simultaneously face many problems. In rural areas, school absences are common, especially in the months of planting and harvesting, a period in which child and youth labor is most requested, causing periodic absences. Such absences create difficulties for school reintegration and, many times, turn into permanent dropouts.

This statement is confirmed by data from the III National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers. According to the document, 24.33% of adolescents aged 16 and 17 who work said they do not know how to read or write, although they were in the last years of compulsory education.

As a consequence of the evident damage to education, a cycle of social exclusion is maintained, which, in the words of Goulart (2005, p. 24), happens in the following terms:

In contemporary society, marked by the technological revolution, the world of labor is demanding in terms of qualification. Therefore, professional training appropriate to this new reality is a prerequisite for exercising citizenship. Insufficient and inadequate school and vocational training today implies exclusion from the market, therefore, social exclusion. Employers are demanding minimal high school training even for the simplest activities. Work of a purely manual nature is disappearing due to the replacement

of people by mechanical (mechanization) and electronic (automation) instruments.

It seems, therefore, that the ban on child labor also consists of a tool to guarantee the country's economic order, which is guided by the search for the reduction of social inequalities. If combating child labor is an instrument to guarantee the reduction of inequality in Brazilian society, it can therefore be said with conviction that the non-exploitation of child labor is an instrument that ensures the economic order provided for in the Federal Constitution.

5 CONCLUSION

In view of the above, it is inevitable to conclude that the prohibition on child labor is based on legal arguments, which go beyond the simple protection of children and adolescents. It is noted that the principles that govern the economic and financial order of Brazil guide the functioning of the economy that presupposes the non-exploitation of the early work of children and adolescents. Therefore, the principles of the “social function of property”, “free competition” and “reduction of social and regional inequalities”, when associated, undoubtedly lead to the understanding that the Brazilian economic and financial order still requires the prohibition on child labor.

Macroeconomic policies that are not committed to social and human development are autophagic. The free market orthodoxy, based on macroeconomic policies of austerity, concerned only with preserving stability – such as monetary and fiscal policies aimed at controlling inflation and the foreign exchange market, to free global trade and financial markets – is largely restricted to the capacity of developing countries to promote the so-called “human capital”, understood under the terms of the UN Declaration on the Right to Development and the principles that govern the national “economic constitution.” Countries like those of East Asia that have experienced high rates of economic and social development have adopted complex economic policies with a focus on social policies – education and equality, alongside a steady liberalization of the economy and investments in infrastructure and technology. These countries revealed that inequality is not necessary for growth and for generating savings rates that drive growth. The balanced

intervention of the state through a multifaceted economic agenda is essential to the integral development of a society.

Child labor prevents the formation of “human and social capital”, indispensable for development, constituting itself as one of the elements of economic stagnation in developing countries due to the collateral economic and social effects, in addition to constituting a competing factor for the continuous worsening of the concentration of wealth and social exclusion.

ENDNOTES

- 1 At the international level, due to art. 1 of the Convention on the Rights of Children and Adolescents, ratified by 196 countries, a child is every human being under 18 years of age. Unlike what occurs in Brazilian legislation, therefore, there is no need to mention the term “adolescent.”
- 2 BRAZIL. III National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers (2019-2022). Brasília: Ministry of Labor, 2019, p. 09.
- 3 BRAZIL. III National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers (2019-2022). Brasília: Ministry of Labor, 2019, p. 09.
- 4 As an example, it is worth quoting, chronologically, the Declaration of Children’s Rights (1959), the Convention of Children’s Rights (1989), ILO Convention no. 138, the title “Of the protection of the Work of Minors”, provided for in the Consolidation of Labor Laws (1967), the Federal Constitution (1988), the Statute of Children and Adolescents (1990), ILO Convention no. 182 (1999) and Decree no. 6481 (2008).
- 5 In this work, the expression “early work” will be used as a synonym of “child Labor”.

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WHERE WE LEAVE IN DAYS OF GRAY CLOUDS AND UNCERTAIN RAINS: INITIATIVES AND CHALLENGES AFFECTING THE COMBAT AGAINST THE EXPLOITATION OF CHILD LABOR IN THE BRAZILIAN AMAZON

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“Bloom wherever you are planted on.”

(Ella Grasso)

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Abstract. The article examines the adversities and potential of combating child labor in the Brazilian Amazon. Under the prisms of International Labor Law, Constitutional Labor Law and ordinary law, in addition to elements of Sociology and Labor Economics, together with inter-institutional initiatives, ways of optimizing the incidence of the institute in the 21st century and the notion of lively work are pointed out, also considering the repercussions brought by the current pandemic generated by COVID-19.

Keywords: Child labor. Amazon. Labor Law. Lively work. Human dignity.

1 INTRODUCTION

There are many issues permeated by multidisciplinary when it comes to addressing the challenges that involve the Amazon.

The quadrant is maximized when the analysis magnifier specifically addresses the intersection in the world of workforce labor by both children and adolescents under the age prescribed by law, in a serious scenario that

affects the existence of human beings from the most diverse starting points and roadmaps.

In this brief study, various nuances related to challenging walking and invigorating daily action, in latitude and longitude, will be examined in terms of combating child labor in the Brazilian Amazon, with nuances of International Labor Law, Constitutional Labor Law, and ordinary legislation, in addition to elements of Sociology and Labor Economics, in line with interesting inter-institutional contributions.

2 CHILD LABOR RADIOGRAPHY: SELECTION IN THE BRAZILIAN AMAZON, NATIONAL, AND INTERNATIONAL NORMATIVE AREA

In its current configuration (whose legislative birth dates back to the 60s and 70s, via Laws 1,806, of 1/6/1953, and 5,173, of 10/27/1966), the Brazilian Legal Amazon is composed of nine states of the Federation, in an area of about 5 million square kilometers, which reaches approximately 61% of the territory of Brazil.

It covers the states of Acre, Amapá, Amazonas, Pará, Rondônia, Roraima, and Tocantins (seven states in the North Region) and Mato Grosso, in an integral way, in addition to part of the state of Maranhão (west of the 44° meridian). Internationally, the Amazon rainforest is present in the territory of eight other countries, in addition to Brazil.

As registered by the United Nations Children's Fund (UNICEF), in addition to being widely disseminated by the precious natural biodiversity, the Brazilian Amazon is also home to 9.1 million children and adolescents, making up 32.9% of the 27.7 million of its inhabitants. Therefore, the youngest population in Brazil is on Amazonian soil (UNICEF, 2019).

A study carried out by UNICEF, released in September 2019, based on social indicators, however, reveals that children born in the Amazon face additional challenges as compared to other parts of the national territory, with a higher risk of death before reaching one year of age, and even more likely to fail elementary school.

The panorama of multiple deprivations is enhanced by the non-accessibility and diffusion, in a wide range of the Amazon territory, of medical assistance, education, food security, and sanitation, given the contours of regional demographic density and urban repertoire, which is even more difficult in some areas due to the difficulties of geographic access for those who live in the regions.

In addition, according to the same analysis, there is a high percentage of teenage pregnancies, as well as high vulnerability in the region of boys and girls to the most diverse types of violence, including sexual abuse and exploitation, homicide, and child labor.

And how does child labor impact children and adolescents in the Brazilian Amazon?

The analysis based on the National Household Sample Survey (PNAD) 2015 shows that, in Brazil, 6.2% of children and adolescents aged 5 to 17 years were subjected to domestic and/or paid work, in disagreement with current legislation. Of these, 64.1% were black.

UNICEF adds that “among the Amazon states, the situation is even worse. Among the five major Brazilian regions, the North is the one with the highest percentage of working children and adolescents (7.7%). Following the same trend, all the states of the Legal Amazon, without exception, are above the national average” (UNICEF, 2019).

UNICEF also affirms that “when all these variables are assessed from a race and ethnicity perspective, it is clear that among minority groups, such as indigenous and quilombolas, the situation is even more serious” (UNICEF, 2009).

In this regard, in a report published in February/2020, commemorating the 30th anniversary of the important ILO Convention 169 on Indigenous and Tribal Peoples, in 1989, the International Labor Organization claims that it is inexorable to provide solutions for the high level of poverty and inequalities to which indigenous peoples are exposed.

The ILO notes that indigenous peoples are almost three times more likely to be living in extreme poverty, regardless of whether they live in urban or rural areas, compared to non-indigenous inhabitants.

This document, called *Aplicación del Convenio sobre pueblos indígenas y tribales núm. 169 de la OIT: Hacia un futuro inclusivo, sostenible y justo*, points out that indigenous people worldwide are equivalent to 476 million people, approximately 6% of the world population. Despite this, indigenous people account for 30% of all people in the world living in extreme poverty.

It also shows that 86% of the indigenous peoples of the globe are active in informal work, unlike what happens with non-indigenous peoples (in which the percentage is 66%), with unfavorable working conditions and the absence of a social protection system.

In fact, despite the advanced normative predictions, and especially in the Brazilian Legal Amazon, both in relation to indigenous and non-indigenous people, the configuration of illegal precocious work in agriculture, in livestock, in domestic work, in garbage dumps, fairs, mines, street vending and other vulnerable work activities on the streets (e.g. shoe shines), planting and trafficking of narcotics, in addition to the ill-fated sexual and commercial exploitation and child and youth neo-slavery, among other focuses of incidence.

Additionally, as far as intersections with global value chains are concerned, child labor shows itself, acutely, among others, in the production of nuts, cocoa, cotton, and livestock. Now under the prism of productive chains with a greater focus at the national level, there is also the illegal early work of children and adolescents in the harvest and production of *açaí*.

If it was not enough, according to the 2017 Agricultural, Forestry and Aquaculture Census, carried out by the Brazilian Institute of Geography and Statistics (IBGE), 580,052 children and adolescents up to 13 years of age worked in agriculture. Consistent quantity of these children and adolescents (more than 194 thousand) working in agriculture in the Brazilian Legal Amazon (FNPETI, 2020b, p. 20).

As noted, the challenges and gaps in social protection that underlie child labor in the Amazon are extensive.

It should be remembered that the fight against child labor emerges as a strategic, transversal, and multifaceted measure, and that illegal early work consists of an incisive violation of human rights and fundamental rights,

revealing itself as a feedback source and consequence of socioeconomic vulnerability.

In addition to the multidimensional nature of poverty, child labor is driven by culture in some regions that see it naturally, the employer's interest in reducing labor costs (in the face of the stripping of rights) and the lack of access to education, among other aspects.

It is a loss of opportunities and inequality that is effective, to use the happy expression of Herrera Flores (2008, p. 154), "both in the starting point and in the vital path", causing reflexes that extend beyond the individual, causing tension and loss of potential in the social environment.

Studies point out the visceral link between child labor and the conditions that generate intercourse, both at the time of its occurrence and at other stages of the life of the working subject, with the risks of greater exposure to submission to work in conditions similar to those of slavery (neo-slavery or contemporary slave labor), human trafficking, job insecurity in general, deleterious flexibility, underemployment, discrimination, etc. In other words: the situations referred to have a stronger impact on workers who, in the early stages of life, were subject to illegal early work (ILO; OECD; IOM; UNICEF, 2019).

Therefore, waking up to the phenomena that reverberate in the field of child labor and in the respective fight says a lot about how to build in the world of work, from the bottom, relationships that can henceforth maximize human dignity in the trajectory of the subject who works and respect to the norms established for this purpose, as we have already had the opportunity to approach more slowly in another area (OLIVEIRA, 2010, p. 74-96).

Additionally, understanding the faces of the world of work from the perspective of adolescence and youth, including the institute of professional apprenticeship (one of the mechanisms to fight child labor), can contribute to the holistic understanding of the labor phenomenon, to search solutions aimed at strengthening a culture of raising decent work as a fundamental right, as well as for the lasting implementation of a decent work agenda.

According to the ILO and UNICEF, after 20 years of progressive reductions in early labor indicators, this course can potentially be broken as a result of the bleak situation caused by COVID-19, if intersectoral public

policies and urgent measures are not adopted, in order to guarantee the return of children and adolescents to school after the pandemic (including active school search), provide technical and professional training at the appropriate age and an income option for families (ILO and UNICEF, 2020; ILO and ECLAC, 2020).

As a consequence, in the absence of measures being implemented: not only adding thousands more children and adolescents subject to child labor but also increasing the workload and worse conditions for those who already worked irregularly (UN, 2020a).

The International Labor Organization (ILO) rightly points out that the virus that causes COVID-19 has the potential to reach everyone, making no distinction between rich and poor, but, of course, its effects are extremely unequal for the poorest and most vulnerable, without access to basic services (ILO, 2020, p. 2).

In a congruent line, there are Saggese's sharp observations (2009, p. 242):

[...] in a society whose economic organization of resources has extraordinary potential, and whose commercial economic balance sheets – moreover – reach surplus results, there are people who literally die of hunger, it is an aberrant, unforgivable, and absolutely unfair fact from a political and moral perspective.

The horizon seems dull in a huge flow of gray contour phenomena.

As mentioned, the stormy universe and its harmful effects affect children and adolescents from vulnerable families. In the Brazilian Amazon, the phenomenon is occurring on an overwhelming scale in relation to girls and boys, adolescents, and young indigenous, black, poor people.

In the world before COVID-19, there were about 152 million girls and boys subjected to child labor, approximately one in ten of these small human beings (ILO, 2017, p. 5). In the national territory before the pandemic, the worrying scene of more than 2.4 million children and adolescents from 5 to 17 years of age subject to illegal early work was emerging¹.

Depending on the last PNAD with annual periodicity, 2015, the most comprehensive concentration of illegal precocious work in the country was in the range of 14 to 17 years old (83.7%), showing a quantitative exponential

of the public that, although able to benefit from the institute of professional apprenticeship, was subject to that serious violation of human rights.

Paradoxically, the treatment and analysis of consolidated data within the scope of the SMARTLAB Initiative – Promotion of Decent Work Guided by Data – regarding the Observatory for the Prevention and Eradication of Child Labor (joint technology solution of the ILO and the MPPT), reveals that, in February 2019, the potential quotas for hiring apprentices corresponded to 962.8 thousand vacancies.

Additionally, recent data released by the National Forum for the Prevention and Eradication of Child Labor, with a parameter in the Information System for Notifiable Diseases (Sinan) – Ministry of Health, point out that, in the period from 2007 to 2019, 46,507 occupational accidents affected children and adolescents aged 5 to 17 years. Of these, 27,924 constituted serious occupational accidents and 279 caused the death of children and adolescents (FNPEPI, 2020a).

With regard to Brazil, the disparity between the serious fact presented and the circumstance that the country ratified, a long time ago, the Convention on the Rights of the Child, adopted by the United Nations (UN) on 11/20/1989, is clear; Convention no. 138 of the International Labor Organization (ILO), on the Minimum Age for Admission to Employment (1973), and Convention no. 182 of the ILO, regarding the Prohibition of the Worst Forms of Child Labor and Immediate Action for its Elimination (1999); to which are combined Recommendation n. 190 of the ILO, which deals with the worst forms of child labor (1999), and the ILO Declaration on Fundamental Principles and Rights at Work (1998); the vehement prohibition of precocious work in the national order due to the principle of comprehensive protection in the care of children and adolescents, in addition to the content of the Federal Constitution.

In the same sense, Brazil is subject to other international norms that are equally important and of a more general nature regarding the matter, among which the Universal Declaration of Human Rights, of 1948; the 1966 International Covenant on Economic, Social and Cultural Rights; and the 1966 International Covenant on Civil and Political Rights; all from the UN.

As it can be inferred, regarding the theme of childhood, adolescence, and youth under the bias of the world of work, the norms in focus reinforce the constitutionality bloc (OLIVEIRA, 2010).

It should be emphasized that the constitutionality bloc is made up of elements and normative diplomas endowed with a *constitutional feature*, which are aimed at protecting the dignity of the human person as well as constituting a confrontation parameter in relation to which the vertical compatibility check of the inferior norms and of the judicial and of the executive acts, that is, the set or plexus of norms that is considered as a *constitutional model* for such confrontation must be carried out.

The figure of the constitutionality bloc has an outstanding importance in the daily performance of those who deal with the Law, be they lawyers, judges, auditors, members of the Prosecution Service, and unions, because it allows the optimization of the parameters to be used in the execution of fundamental rights in relations of labor and in the realization of the dignity of the human person.

It is worth saying that the observance of the constitutionality bloc also logically imposes itself on social actors, as a paradigm to be observed for the purposes of incidence of private and collective autonomy, especially in the scope of labor relations, whether in the formation of individual contracts or in the stipulations collectively.

In Brazil, art. 7, item XXXIII, of the 1988 Constitution, establishes the level of 16 (sixteen) years old as the minimum age for the beginning of the employment and employment relationship, except on an apprenticeship basis, from the age of 14 (fourteen). If the work is nocturnal, dangerous, or unhealthy, the Major Law provides for its prohibition for people under 18 (eighteen) years old (arts. 7, item XXXIII, final part, and 227, §3, item I).

It is worth noting the existence of a doctrinal position in the sense that, as of the effective date in Brazil of ILO Convention no. 138, on 6/28/2002, the minimum general age for admission to employment was 17 years, and not more than 16 years. Therefore, the allied interpretation of art. 208, I, of the Constitution CF (which establishes compulsory basic education from 4 to 17 years old) – the content of which is replicated in art. 4, I, of Law 9,394/1996 (Law of Guidelines and Bases of National Education) – and of art. 2, item

3, of ILO Convention no. 138 (which stipulates that the minimum age for admission to employment must not be less than the age at which school obligation ceases).

Additionally, ordinary national legislation prohibits people under the age of 18 from activities that are detrimental to their formation and physical, psychological, moral, and social development, as well as preventing their attendance at school, according to arts. 403, sole paragraph, 405, item II and §§2 to 4, as well as arts. 406 to 408 of the CLT. In the same sense, art. 67, items III and IV, of the ECA.

The arts. 3, paragraph “d”, and 4, of the aforementioned ILO Convention no. 182, provide that workers under the age of 18 (eighteen) years may not yet engage in the so-called worst forms of child labor (IIP List), and the content of such articles was made explicit in the Brazilian system through Decree no. 6,481, of 6/12/2008, which came into force on 9/13/2008.

In Brazil, at the normative level, the principle of comprehensive protection of children, adolescents, and young people prevails, with a level of a fundamental right protected in the Constitution itself (arts. 6, *caput*; 24, item XV; 203, items I and II; 227 and paragraphs; all of the 1988 Federal Constitution).

According to Oliva (2006, p. 110-121), with theoretical support in Fonseca, the doctrine of comprehensive protection contains six developments: a) principle of citizenship; b) principle of the common good; c) peculiar condition of a person in development; d) priority service; e) joint action, and f) special protection for the work and education of disabled adolescents.

The principle of comprehensive protection of children, adolescents, and young people is supported by the fact that childhood is a period intended in particular to recreational and cultural activities, the practice of sports, family and community coexistence, and education.

This vector is also connected to the conception of adolescence and youth as periods aimed at academic learning and professionalization, including via professional apprenticeship, as provided for in arts. 428 et seq. of the CLT, art. 53 of Decree no. 9,579, of 11/22/2018; and art. 15 of Law no. 13,840, of 6/5/2019, among others.

In this regard, the premise that a country's intellectual resource runs through education, which is a mechanism for the exercise of citizenship, without which the State's sphere as a less favored nation is reproduced and immortalized is clear.

It is conceived, in this way, that the collaboration of the adolescent is only possible in assuming the responsibility of supporting himself/herself and the family group in the hypotheses expressly provided for in constitutional and legal terms, observing the parameters set.

In spite of this, the numbers previously indicated reveal that there remains a sharp perception of the unemployment crisis regarding the age group that includes adolescents and young people, whether from a quantitative aspect or from a qualitative perspective (informality, precarious remuneration, and working conditions, etc.)

The more difficult insertion in the formalized labor market is also intensified in a scenario of globalized economic instability (which has persisted for some years and was really aggravated by the pandemic), to which there is often a shortage of skills and a stigmatized motto that the lack of previous professional experience in adolescence and/or youth would be equivalent to the absence of responsibility and commitment.

As an additional layer, the equation arises on how to promote the best preparation of skills and the inclusion of adolescents and young people regarding the so-called "jobs of the future", which require professionals that are permeable to incessant and exponential technological evolution, in a scenario of a 4th Industrial Revolution, given the replacement of a large number of jobs by automation and artificial intelligence, with the generation, on the other hand, of wide and new other opportunities for job formats that are not yet thought of today.

After outlining this scenario and taking a more vertical look at the subject matter of the study, is it possible to validate the claim that, as regards child labor in the Amazon, the panorama looms only under the perspective of gray clouds, in endless gradients, inevitably?

In other words, in the face of dismay and despite the recurring and enigmatic gray clouds, it is worth examining how to contribute to the potentiation of clear rain, welcoming and relief – metaphorically representative

of empathy and compassion, sensitivity to the suffering of others and acting committed –, regarding children and adolescents exposed to the infamous exploitation of child labor in the Brazilian Amazon.

Are there effective measures in counterpoint to the challenges of aridity that permeates hearts, shatters hopes, “plutonizes”² mobilizations regarding the fight against child labor, especially in the Amazon, and the harmful effects of that same precocious work, including the reproduction of undignified work relationships in adult life?

Difficulties cannot be paralyzing.

In the next topic, in a purposeful line and in a non-exhaustive role, mechanisms will be exposed to contribute to the optimization of the environments for debate and of effectively acting against the wound of early work in the Amazon, addressing initiatives that, in addition to rain for relief, intended to give rise to the hope of clarity, through tools designed to multiply lasting spaces of human autonomy and wholeness of the human being, in order to deconstruct the cycle of social poverty and improving the capacities/skills of those involved, with a focus on work relationships permeated by dignity, at an opportune age, and in a protected way.

3 GOOD PRACTICES AIMED AT COMBATING CHILD LABOR AND ENCOURAGING THE PROFESSIONALIZATION OF ADOLESCENT WORKERS, WITH DEVELOPMENTS IN THE AMAZON REGION

Facing the intricacies that underlie both the present and the so-called future of work, to shape the exponential wave of stimuli and the serious empirical panorama that urge us every day to sincerely face the irises of millions of children and adolescents subjected to serious violation of human rights consistent with illegal early labor in Brazil, especially in the Brazilian Amazon, requires compliance with the principle of participation, through constant awareness and protagonism of society, institutions, enterprises, and governments.

This intent goes through the analysis of the phenomenon of child labor and the dynamics of professional apprenticeship, in addition to the

adaptation of the last institute to the changes caused by the new modes of production.

As for professional apprenticeship, it reveals that work has been increasingly changing (improvement of productive skills and technical skills), which is why it is essential to integrate content that improves the perception of the globally considered human being for the apprentice (socio-emotional and cognitive skills, protagonism, autonomy, strengthening the dimension of citizenship, incorporation into the life project also of the professional dimension)³, ensuring the search for a higher quality professional apprenticeship with beneficial programs for both apprentices and employers.

The Labor Prosecution Service, through the National Committee to Combating the Exploitation of Child and Adolescent Labor (COORDINFÂNCIA) – which, in this year of 2020, celebrates two decades – and the local performance of Labor Prosecutors, has developed paradigmatic measures aimed at implementing protective public policies for children and adolescents, as well as encouraging the professionalization of adolescent workers.

MPT also plays an important role in raising awareness through the “MPT na Escola” (“MPT at School”) Program, addressing the theme of combating child labor and stimulating learning, in addition to the consecrated annual award of the same name, which reaches hundreds of children and adolescents in the country, including benefits for residents in the Brazilian Amazon.

Additionally, projects involving professional apprenticeship with a focus on adolescents and young people in compliance with a socio-educational measure and in a situation of institutional care can be highlighted, in a perspective that converts opportunities into the initial scenario of idleness and hopelessness in relation to the future, prioritizing the most vulnerable public.

By the way, in the Amazon region, the *Se a Vida Ensina, Eu sou Aprendiz* Program (*If life teaches, I am an apprentice* Program), which arises from joint action between the Prosecution Service of the State of Rondônia, the MPT (PRT of the 14th Region), the Court of Justice of the State of Rondônia, among other institutions, since 2014.

The program served more than 800 socio-educational students from Rondônia in the last two years, and in 2019 it was awarded by the National Council of the Prosecution Service (CNMP), in 1st place, in the “Induction of Public Policies” Category.

Labor Justice has also contributed significantly to the panorama in Brazil, both in the jurisdictional act and under the bias of strategic planning and social responsibility, including before the institutional duty to act in the implementation of public policies related to the eradication of child labor and protection of decent work in adolescence and youth.

In this regard, since 2012, the initiatives that led to the performance of Commissions and the creation of the National Program to Combat Child Labor and Encourage Apprenticeship, currently coordinated by Minister Kátia Magalhães Arruda, within the scope of the Superior Labor Court (TST) and Supreme Council for Labor Justice (CSJT).

Additionally, the Internal Affairs Department of Labor Justice added an important contribution to the field, by editing Recommendation no. 4/CGJT, of 11/18/2019, subscribed by the Minister of TST Lelio Bentes Corrêa and then General Inspector. The Recommendation stipulates that Judges and Labor Judges must guarantee “priority in the processing and judgment of individual and collective processes, subject to their competence, involving *the themes of professional apprenticeship, slave labor, and child labor*, both in the knowledge phase and the within the scope of compliance with the decision” (emphasis added).

Additionally, although it is not mandatory to hire apprentices in the scope of the direct Public Administration of any of the Powers of the Government, the Superior Labor Court (TST) implemented a central measure in the promotion of effective public policy in the area of adolescence, in 2013, adopting historic step in implementing the *Adolescent Apprenticeship Program* at TST.

In the Amazon region, in a similar sense, the *Adolescent Apprenticeship Program* was created in TRT14, in August/2019, on the initiative of the Regional Commission to Combat Child Labor and Encourage Apprenticeship from the Regional Labor Court of the 14th Region (AC and RO), with the

support of the Regional Presidency, by means of a contract with *Centro de Integração Empresa Escola – CIEE*.

The Program seeks to promote the qualified and protected insertion in the labor market of adolescents between 14 and 18 years of age, an age group in which job opportunities are scarce, there is statistically greater exposure to illegal early work, and in which the permanence in school (a premise to join the program) is decisive for a promising future. The program even includes places reserved for the public in a situation of greater social vulnerability and in compliance with socio-educational measures.

Within the scope of TRT 14, adolescents selected and benefited by the Program reside in places with multiple geographical realities, in Labor Justice units located both in the capitals and in several municipalities in the interior of the states of Acre and Rondônia, in which there are Labor Courts who have expressed interest in participating in the program, providing opportunities for professional apprenticeship in remote locations in the Amazon, where there are no physical headquarters of CIEE, with methodical technical and professional training via distance learning.

As can be seen, as for the Direct Public Administration of the different Powers, there is a regulatory gap that could amplify professional apprenticeship opportunities in Brazil. As for the Legislative Branch, with regard to the promotion of employment for adolescents and youth in the appropriate age group, a solid opportunity emerges for the consolidation of the legal framework of mandatory professional apprenticeship also within the scope of the Direct Public Administration of Powers, as is already happening for some time in some cities in the national territory, in order to promote the respective expansion and re-foundation of this aspect of the institute.

Additionally, also in the Amazon region, a pilot initiative was implemented by the Labor Court of Plácido de Castro, in Acre, a city located on the border between Brazil and Bolivia, in the first half of 2019, consisting of the *Training Course and Multipliers for the Education in the World of Work: Combating Child Labor and Encouraging Apprenticeship*.

The course is certified by the International Labor Organization (ILO), through the Coordination of the Fundamental Principles and Rights at Work

Program, and by TRT 14, with institutional support from the Regional Commission to Combat Child Labor and Encourage Apprenticeship.

The initiative has had two editions, in May/June and in November/2019, having as its target audience: teachers from public municipal and state education networks, pedagogical coordinators, school managers, managers from the Municipal and State Secretariats of Education, Labor Justice servers and interns, Municipal Prosecution Office, community health agents, members of the Social Assistance Reference Center (CRAS), members of the Specialized Social Assistance Reference Center (CREAS) and Guardianship Counselors.

The course is intended for members of the protection network and the System for the Guarantee of the Rights of Children and Adolescents, considered in their interrelationships, in order to deepen the practice of joint and horizontal work, disseminate knowledge, organize flows, articulate the network and improve service protocols in the local context, under the bias of the world of work.

The *Training Course and Multipliers for the Education in the World of Work: Combating Child Labor and Encouraging Apprenticeship* contributes to public policies related to Combating the Exploitation of Child Labor, in close and inseparable harmony with the Encouragement to Apprenticeship, revealing concrete densification of the work of the Labor Judiciary Branch in actions that focus on the matter, fully compatible with the 2030 Agenda for Sustainable Development and Goal 8.7 of the United Nations (UN) Sustainable Development Goals (SDGs).

Additionally, in 2019, also in Acre, the Labor Court implemented the *Labor Law Olympics*.

In a pilot initiative developed and implemented also by the Labor Court of Plácido de Castro – AC, the 1st edition of the *Labor Law Olympics* took place from 11/29 to 12/18/2019, with the theme “Combating Child Labor and Incentive to Apprenticeship”, under the slogan “Labor Justice close to me!”.

The *Labor Law Olympics* consist of a tournament of knowledge about rights and duties in labor relations, involving the theme of the edition, with content compatible with the Common National Curricular Base – BNCC

(Contemporary Cross-Cutting Themes at BNCC: Human Rights Education; Rights of Children and Adolescents; Economics; Work).

Male and female students received information about the topic in advance, through their teachers and the pedagogical material made available, with the dissemination and fixation of knowledge before the student community and society in general. Both the winning students and the multiplier teachers were awarded laptops, trophies, and medals of honor.

More than two hundred public school students from municipal and state schools (5th to 9th grades of Elementary Education) enrolled in the institutional realization operated by the Labor Court that is part of TRT 14. The initiative had institutional support from the International Labor Organization (ILO) and the Regional Commission to Combat Child Labor.

Additionally, in the most diverse locations in Brazil and also in different Amazonian spaces, the Labor Court has reaffirmed its visceral commitment to decent work and human dignity, in the field of combating child labor and stimulating apprenticeship, through the corresponding Regional Commissions.

Representatives of this phenomenon are the wide and articulated popular mobilizations that took place in the states of Pará and Amapá, under the leadership of the Regional TRT Commission of the 8th Region, and with growing and solid partnerships.

They illustrate the various actions developed in TRT 8, both those developed during the Campaign against Child Labor at Círio de Nazaré (one of the largest religious festivals in Brazil), several years ago and during the Marches of Belém Against Child Labor. Thousands and thousands of people have adhered to the initiatives, in a virtuous upward current, the topic being widely debated and reverberated by society (PETECA NETWORK, 2020).

In the state of Amazonas, the “*Gente Grande*” project stands out as another noteworthy initiative. It acts in the prevention of child labor and in the avoidance of begging, removing children, adolescents, and young people from homelessness and informal jobs, in addition to promoting the training of those who are already of adequate age to enter the labor market. The initiative is developed by Associação Beneficente O Pequeno Nazareno

(OPN), with support from the Labor Prosecution Service, Labor Justice (TRT of the 11th Region, Amazonas, and Roraima) and other agencies.

Additionally, in the Amazon and in Brazil, the work of the Labor Judiciary also occurs in awareness programs in lectures in the programs *Justiça do Trabalho vai à Escola*, *Justiça do Trabalho de Portas Abertas* and *Justiça do Trabalho Vai à Empresa*; or through Associação Nacional dos Magistrados da Justiça do Trabalho (ANAMATRA), in the solid *Trabalho, Justiça e Cidadania* program.

All measures reveal a proactive and strategic alignment of public entities and society with transversal global and national commitments to protect children, adolescents, and young people.

In turn, in the line of contribution to the solution of disastrous panoramas that compromise human dignity, including in the area of combating child labor, with repercussions in the Brazilian Amazon, the United Nations (UN) has carried out specific measures aimed at maximizing the implementation of the rights enshrined in the 1948 Universal Declaration of Human Rights.

By the way, the 2030 Agenda for Sustainable Development, adopted at the UN, through which countries committed themselves to meet 17 Sustainable Development Goals (SDGs) and 169 Goals to transform the world by the year 2030. It is an action plan for people, for the planet, and for prosperity, under the slogan: “Do not leave anyone behind”.

As for labor relations, Goal 8 stands out: “To promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”.

Goal 8.6 of the UN Sustainable Development Goals provides for the youth: “By 2020, substantially reduce the proportion of young people without jobs, education or training”. Goal 8.7 of the Sustainable Development Goals provides for the adoption of immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labor and to end child labor in all its forms by 2025, a space in which professional apprenticeship presents itself as an important vector.

Regarding the prevention of early work, the role of the International Labor Organization (ILO) deserves to be highlighted, through campaigns,

publications, and technical assistance, especially through the International Program on the Eradication of Child Labor (IPEC), whose actions were strengthened in 2019, the year in which the ILO Centenary was celebrated.

Additionally, through the Decent Employment for Youth initiative, including in the rural area, the ILO and UNESCO have compiled initiatives and partners aimed at strengthening so-called quality apprenticeship programs, which aim to be mutually beneficial to companies and young people (ILO, UNESCO, 2019).

Furthermore, in 2015, UNICEF signed a pact with the nine governors of the states that comprise the Brazilian Legal Amazon regarding the *Child Amazon Agenda*, aiming at the promotion, protection, and guarantee of rights in favor of children and adolescents living in the region, for through the articulation of social assistance, health, and education policies at municipal, state and federal government levels. To drive the Agenda forward, strategic instruments relating to the UNICEF Seal and the Urban Centers Platform (PCU) are used (UNICEF, 2019).

Another contributory route consists of the social certification system (seal) of enterprises, such as the *Empresa Amiga da Criança* Seal, granted by Fundação Abrinq to companies that: 1. do not use child labor; 2. encourage the professionalization of adolescents and young people and the entry into the labor market in a protected manner, respecting the Law of Apprenticeship; 3. contribute to the improvement of the living conditions of children and adolescents in the national territory.

Social seals consist of an additional mechanism of access to information by citizens, and it is also necessary for other institutions to emphatically strengthen the system of attributing seals, both to enterprises that do not benefit from illegal precocious work and comply with professional apprenticeship quotas, as well as those which (although not legally required), voluntarily incorporate the apprenticeship institute into their complex.

The measure proves to be strategic and in line with the vision of the contemporary entrepreneur, surpassing the aspect of corporate social responsibility and a framework of corporate conduct that is appropriate to the standards, responsible, and preventive (compliance).

Strictly speaking, the solid incorporation of a professional apprenticeship program has an impact on the positive marketing itself and on the competitive increase to be added to the ventures, especially those that include a professional apprenticeship in their reality and business model despite not being subject to compliance with apprenticeship quotas.

It also correlates with the matter to the strengthening of the due diligence system by the undertakings, including regarding risk management and decision making, as well as transparency in business conduct, regarding the prevention of serious consequences in their operations, in the work environment and in relation to human rights due to the exploitation of vulnerable populations in the respective productive chain (which only occurs in the Amazon region, including to the detriment of riverine and indigenous people, children and adolescents, in the production of chestnuts, cocoa, cotton, etc.), encompassing both the fight against child labor and the adequate formalization of professional apprenticeship ties in situations where the measure would be pertinent.

In this regard, both the UN Guiding Principles on Business and Human Rights (POs) of 2011, among which the number 15 stands out, as well as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the ILO in 1977 and most recently amended in March 2017.

These instruments bring together very interesting guidelines not only for the private sector on the matter but also directed at Governments, in order to stimulate social dialogue and good corporate behavior.

It should be noted that, in a scenario of a globalized economy, all participants who interact and benefit from global production chains (CPG) (including as business owners, credit and loan providers, and buyers of goods and services) have a duty and the responsibility to deal with the effects and act so that the deficits of decent work verified in the respective itinerary, on a daily basis, are solved, especially regarding the exploitation of child labor (as well as forced labor and human trafficking), including the lowest links of the chains and outsourced segments that operate in the informal market.

In this way, economically and socially responsible productive chains are ensured, in order to provide decent working conditions to all and Social

Justice, in a manner consistent with SDG No. 8, through coordinated actions by private and public segments, including alleviating unfair competition and degrading human dignity.

Additionally, it is necessary to strengthen public policies and multidimensional programs that affect childhood, adolescence, and youth in general and act in the fight against poverty, providing educational opportunities and employment at the right age, to be implemented by the Executive Power in federal, state and municipal level (principle of decentralization), with a non-assistentialist character, but rather a promoter of increased potential.

The focus should be directed towards rehabilitation, social insertion, and quality comprehensive dynamic education, encompassing the complementary concept of extended hours, which is not limited to formal school instruction, in addition to a professional approach for adolescents, under the guise of apprenticeship; all combined with legal and social mechanisms to enforce the rights already established, including the revitalization of the 3rd National Plan for the Prevention and Eradication of Child Labor, since childhood and adolescence are mainly the periods of life that should be directed to the physical and mental improvement.

Furthermore, as highlighted in a recent joint publication by the ILO and UNICEF, called *COVID-19 and Child Labour: A Time Of Crisis, A Time to Act*, aiming to contribute to the reduction of the risks of increasing child labor, in line with intersectoral public policies and urgent measures, unavoidable guaranteeing the return of children and adolescents to school in the post-pandemic context (including active school search), providing technical and professional training at the appropriate age, as well as concentrating efforts on “expanding social protection, facilitating credit for families in situations of poverty, promotion of decent work for adults [...] and expansion of enforcement of laws aimed at tackling child labor in each country” (ILO and UNICEF, 2020; UN, 2020b).

In view of the past data previously pointed out in this study, the measures are extremely urgent as regards the already weakened prism of the most vulnerable in the Amazon.

4 HORIZONS FOR CHILDHOOD AND ADOLESCENCE AND HUMAN DIGNITY IN THE WORLD OF WORK

By agreeing with Agathon, in *Nicomachean Ethics*, Book VI, Section 2, Aristotle (1991, p. 125) made it clear that the past is immutable. The philosopher concluded, however, that it is up to us to shape the future, which can be done by supporting our choices in reason:

Therefore, the choice is either desiderative reasoning or reasoning desire, and the origin of such an action is a man. It should be noted that no past thing is an object of choice; for example, no one chooses to have plundered Troy, because no one decides about the past, but only about what is about to happen and can be otherwise, while what is past cannot fail to have occurred.

In a more optimistic perspective, and in view of all the lessons brought by the complex period still in force imposed by the pandemic emergency, this world catalyst has the ability, under the prisms of rationality and evolutionary survival, to bring out a perfected vital project, based on more fraternity, collective solidarity, and social and ecological equity, with integral and sustainable human improvement also in labor relations.

In this sense, the good practices that have been carried out from the interior of the Brazilian Amazon region in combating child labor and encouraging professional apprenticeship, combined with the enriching experiences carried out in other spaces, can give good signs for expanding fronts and replication in multiple national and global realities, without prejudice to the additional vectors for overcoming the challenges in the same area that detailed reference has already been made in the previous topics.

Incidentally, the replication of good initiatives in other *loci* can have the virtue of maximizing the resurgence of decent work. As for this point, as Sen (2000, p. 288) stresses, “it is necessary to attach particular importance to the role of public discussion and interactions in the emergence of common values and commitments”.

In another way, the possible scenario of advancing a lethal project is also not ruled out, with worsening inequalities, through ultraliberalism of sacrifice or catastrophe, in a system and relationships that prioritize the economy over life, varying the densities in which they fit each of these components, paying attention to the concepts of “Shock Doctrine” and “Disaster Capitalism” explained by Klein (2008, p. 15-16).

At this point, it seems feasible to note that, if consistent measures are not adopted, severe questions that already involve childhood and adolescence in the world of work will be heightened.

Addressing the critical aspects of civilization that we encounter in the face of the world pandemic and the possibilities of confrontation, points out Satyarthi (2020), winner of the Nobel Peace Prize in 2014 (alongside Malala Yousafzai) and an Indian activist recognized for the worldwide struggle for children's rights that "challenges and uncertainties also pave the way for innovative solutions. The current scenario is no different [...] That is why I strongly advocate the globalization of compassion".

Francisco (2020), in a speech on June 10, in the vicinity of the World and National Day to Combat Child Labor, alluded that "children are the future of *the human family*: we all have the task of promoting their growth, health and serenity"(emphasis added).

The Federal Constitution establishes, in its art. 1, item III, that the dignity of the human person is the foundation of the Federative Republic of Brazil, standing out its quality as an axiological-normative axis and a founding pillar of the Democratic State of Law, in addition to several other constitutional provisions, such as art. 170, *caput*, of the Federal Constitution.

This idea of the impossibility of violating dignity, preventing the person (especially a child or adolescent) is used as an instrument of the will of others deleteriously to its own human condition, it especially affects the area of labor relations, since the human being cannot be treated as a thing and work is not a commodity⁴.

The relevance of the primacy of work is, therefore, evident, which is not confined to the purely individual field, slipping into the sphere of interest of public order, before the aforementioned estuary. But this is not just any work. Decent, dignified, healthy work, at the right age, full, lively.

Under the constitutional aspect, the fundamental right to decent work is revealed as a central category (DELGADO, 2006, p. 241-242), with indispensable institutional tools that promote it, to enable the solidification of democracy today.

For ILO, decent work can be conceived as productive and adequately remunerated work, carried out under conditions of freedom, equity, and security, in which fundamental rights are respected and that guarantee a dignified life for all people who live from work and their families, as well as social protection when it cannot be exercised (unemployment, illness, accidents, among others), allowing them to satisfy the personal and family needs of food, education, housing, health, and safety, including the right to representation and participation in social dialogue (ECLAC/UNDP/ILO, 2008, p. 7).

Compatible ideas are included in art. XXIII of the Universal Declaration of Human Rights.

From a perspective that originally considers the notion of living work, Ferreira, Martines and Oliveira Vieira (2016, p. 31, 32 and 41) clarify: “[...] living work yields to dead work, strange to the worker, contained in goods, whose main objective is the creation of added value, the appreciation of value, the reproduction and self-appreciation of capital”.

The re-reading of these guidelines makes it possible to extract the notion of *lively work*.

Lively work thus considered as labor with meaning and purpose, which contributes to the improvement of subjectivity and fullness of the human being, at the same time that it transforms the surroundings, contributes to human dignity, and produces economic value and sustainable use of natural resources.

At this point, the fight against child labor is highly relevant.

Do not forget that the sustainable use of natural resources (widely known as sustainable development), as a systemic concept, encompasses the inseparable aspect of promoting decent work and human relations, with no social justice to be achieved in the context of the existence of child labor, a condition of exploitation that reproduces intergenerational cycles of extreme social vulnerability, which is aggravated by the low concrete incidence of professional apprenticeship.

It is worth mentioning that several post-developmental studies in recent years, in contrast to the idea of development (even called sustainable),

have made reference to the theory of “degrowth”, as in the case of contributions by Serge Latouche, as well as the conception related to Buen Vivir, as Leonardo Boff and Alberto Acosta allude (the latter of which is interrelated with the idea of *sumak kawsay*, an expression of Quechua origin).

For Latouche, because the planet’s resources are obviously finite, infinite growth/development is not feasible. Therefore, it is essential to solidify a society that produces less and consumes less, in an attentive manner to social and ecological equity.

At the opening of the Synod of Bishops for the Pan-Amazon Region or Synod for the Amazon, which took place from October 6 to 27, 2019, in the Vatican, it was recorded that “the cry of the Amazon came from the darkness of the forest to reach the light of the world. The cry of the discarded, trapped in the ropes of precarious life, under constant threat from predators without respect for their rights and for Creation” (SYNOD OF BISHOPS FOR THE PAN-AMAZON REGION, 2019b).

In the Final Document of the Synod, entitled “Amazon: new paths for the Church and for an Integral Ecology”, they focused on, among other points, “the voice and singing of the Amazon as a message of life”, in addition to the “cry of the earth and the cry of the poor”, even considering, from the perspective of the Common House, the faces of the Amazonian peoples under an indigenous, peasant, Afro-descendant, migrant and young bias, preserving their cultural values and peoples’ rights, towards an integral ecology from the encyclical *Laudato Sí*, on the care of the common house (2015), by Pope Francis (SYNOD OF BISHOPS FOR THE PAN-AMAZON REGION, 2019a).

In turn, in the Post-Synod Apostolic Exhortation “Querida Amazônia”, Pope Francis (2020) directly addresses the concepts of “Good Living” and “Justice”, still addressing the young population, and alluding to the concept of Social Ecology.

Regardless of the doctrinal line to be profiled (be it sustainable development or post-developmental theories), it is inexorable to rethink the modes of accumulation and social and ecological devastation brought about by ultraliberalism, in order to provide the filling of social protection gaps, with expanded horizons of dignity for children and adolescents, including under the bias of the world of work.

5 FINAL CONSIDERATIONS

Every child matters. Every adolescent matters.

The transformation of a person's life and reality is already worth it.

In the midst of the chiaroscuro that has involved the fight against child labor (and the related stimulus to professional apprenticeship/professionalization of the adolescent worker), revisiting the ways of applying and stimulating the various aspects previously discussed can promote a renewed glow to the matter either in the Amazonian space or in national and international ranges.

A different procedure corroborates Saramago's ironic assertion (2006, p. 39-40), in his work *The Double*, for which "the best way to achieve a universal *exoneration* is to conclude that since everyone is to blame, no one is guilty"(emphasis added).

May the gray clouds that play to bring rain in the Amazon reveal in the firmament a radiant sun whose luminous rays of Social Justice, in an environment of a Democratic State of Law, warm-up concrete actions aimed at wholeness, equity, fullness, and dignity of the human being impact, not only all our boys and girls but girls and boys of all and everyone.

ENDNOTES

- 1 Despite the dissent resulting from the alteration by the IBGE of the PNAD methodology, in 2016, it remains considered by a wide range of researchers and other institutions, in a majority way, for the purpose of eradicating child labor, the sum also of the number of children and adolescents from 5 to 17 years old workers who also refer to "activities in production for own consumption or in construction for personal use".
- 2 The "plutonize" neologism has been adopted to indicate the circumstance of lowering the level or devaluing something or someone, in a clear reference to Pluto, the former planet of the solar system, which became a *dwarf planet*.
- 3 The presentation text of the interesting State Program "Aprendiz na Escola", developed by the Government of the State of Ceará (State Secretariat of Education) and by the Aliança Institute, expressly mentions these skills and competences.
- 4 According to a guideline inserted in the Annex to the ILO Constitution (Philadelphia Declaration of 1944), whose relevance still occurs today, in the sense that the policy of ILO Members must be inspired, among others, by the principles that "the work is not a commodity" (I, item "a") and "poverty, wherever it is, constitutes a danger to general prosperity"(I, item "c").

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THE ROLE OF SOCIAL PROTECTION IN PROMOTING THE ERADICATION OF CHILD LABOR¹

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Abstract. The purpose of this article is to clarify the role played by the social assistance policy, as part of the social security system, with a view to ensuring non-contributory social protection for children and adolescents in child labor and their families, and to foster structuring an intersectoral and interinstitutional network to eradicate this practice in Brazil. It is subdivided in the approach of three emphases: the social protection offered by the Unified System of Social Assistance – SUAS – in face of the theme; the constitution and reorganization process of the Child Labor Eradication Program – PE’TI –, as a national strategy for integrated and intersectoral intervention, characterizing it as a state public policy and; the main challenges and the list of possibilities envisioned in the current scenario of dismantling social rights and the social protection system, notably SUAS.

Keywords: Social Protection. Unified System of Social Assistance. Child Labor Eradication Program.

1 THE CONTRIBUTION OF SOCIAL PROTECTION OF THE UNIFIED SYSTEM OF SOCIAL ASSISTANCE (SUAS) IN THE PROCESS OF REDUCING CHILD LABOR

1.1 Contextualization of the Brazilian social protection system and social assistance policy after the 1988 Federal Constitution

The Brazilian social protection system can be understood as the set of public initiatives, offered directly or regulated by the State, to enable

the provision of social goods, services, and benefits, with the objective of promoting the coverage of social risks or deprivations, equalizing opportunities and guaranteeing access and enjoyment of social rights (JACCOUD, 2009).

Its main characteristic bears the indelible mark of a public policy that, by assuming as its primary function the care of situations of vulnerability and personal and social risk for violation of rights, it requires the establishment of a corporate consensus around a level of civility recognized as inherent to the condition of human dignity, therefore, based on values and principles of equity and social justice, as incorporated in the constitutional text.

It should be noted that social protection has manifested itself in different forms of action throughout human history, passing from the exclusive responsibility of the nuclear family, through charity and philanthropy influenced by Judeo-Christian doctrine and, in modern society, in the face of the hegemony of the capitalist development model, it gained public policy shape resulting from the contradictory struggle between social classes in the process of social reproduction and work, as a State response in two aspects: i. in meeting the demands of the working class originating from inequality (POULANTZAS, 2000); ii. in supporting collective production and capital, with private appropriation of work, the conditions for its performance and its results (MARX, 1978).

However, in Brazil, the State was only present in the sphere of public policies after the 1930s, and despite the Federal Constitution of 1988 deliberating for the Democratic State of Law, it adopted differentiated biases of intervention (liberal and social), which are in permanent dispute depending on the pressures, interests, and correlations of forces in question. Such a position has a direct impact on organizational management arrangements (bureaucratic, managerial, democratic), and is subject to the consequences of new versions of contemporary society (globalized, “financialized”, individualized, with constant technological innovations) and the cyclical crises of the capitalist system.

In the case of the social assistance policy, this evidence is intrinsically linked to social risks generated by the capital crisis and by the way of production and distribution of wealth in contemporary times, causing erosion in the non-contributory social protection system, under the universal perspective, which has demanded the presence of a strong Social State in the

reduction of social, economic, political and cultural inequalities, mediated by disparities in gender, ethnic-racial and territorial relations, in order to face social insecurities (CASTEL, 1998; SPOSATI, 2009) and the lack of rights (OLIVEIRA, 1994).

Thus, the social protection of the social assistance policy is ensured through the provision of services, programs, projects, and socio-assistance benefits, including the transfer of income, based on the offer of material goods, which enable survival, and immaterial, cultural, and symbolic goods, which promote insertion in social life, with the central axis of intervention being the relational and protective dimension of individuals and families, community coexistence and political influence in the territory, focusing on the primacy of state responsibility with participation and social control.

Assumed as objectives, according to art. 2 of Federal Law no. 8.742/93 – Organic Law of Social Assistance/LOAS –, to ensure social protection, in guaranteeing life, reducing damage and preventing the incidence of risks; the defense of rights, aiming at full access to rights in all social assistance provisions; and socio-assistance surveillance, by territorial analysis of the protective capacity of families and the occurrence of vulnerabilities, threats, victimization, and damage.

To give concreteness, it was organized as a unified and public system, decentralized and participatory, by levels of social protection², with all the constituent elements of a public policy:

- i. establishment of its own regulatory and normative framework; ii. delimitation of specific responsibilities and attributions in the basic and special social protection modalities, of medium and high complexity; iii. structuring of public facilities, aimed at providing a set of continuous and nationally typified services, with complementary programs and projects, and benefits (ongoing, occasional, and income transfer); iv. formatting of a qualified reference team; v. regular and automatic transfer of funds from fund to fund; vi. establishment of a network, through articulation with other sectoral policies and the defense of rights, with the bodies of the Justice System, with civil society organizations, and with social movements.

It currently has capillarity throughout the national territory, present in the 5,570 Brazilian municipalities, 26 states, and the Federal District, being integrated by a social assistance network that has 11 thousand public facilities, 17 thousand social assistance entities, 600 thousand SUAS workers, 93 thousand social assistance counselors, 4.5 million beneficiaries of the

Continuing Benefit Conveyance, 13 million families benefiting from the *Bolsa Família* Program, 60 million people directly or indirectly served by social assistance services and benefits.

It is based on the assumption that vulnerabilities, risks, and violations of law appear in an interlinked way and are subject to macro-structural and cyclical determinants, linked to complex and multifaceted issues, whose approach always requires an accurate analysis of multi causality and demand a set of offers that can qualitatively correspond to the human needs presented, that is, it is necessary to consider the origins of the lack of protection, in its political, economic, social, historical and cultural, gender, ethnic-racial aspects, in addition to the impacts of the damages suffered, in its relational, institutional, and social dimensions. In this sense, be alert to personal particularities, life trajectories, desires, and perspectives of the subjects involved, in the search to collectively build alternatives to overcome these situations and to redefine their life projects, with the clarity that they constitute historical subjects.

In this context, exposure to child labor gains coverage in the attention to social security assistance for income, autonomy, socializing, shelter, both for children and adolescents and for their respective families, whose conception, foreseen in the National Social Assistance Policy and in the Basic Operational Norm to SUAS 2005, it extends beyond consanguineous and kinship ties and extends to the recognition of an affective core, with bonds established by reciprocal and mutual obligations, and of alliances and affinities organized around intergenerational and gender relations. Social protection, therefore, implies the incidence of social policies that contribute to reducing the number of determinants that demarcate the naked reality of child labor in Brazil.

1.2 The contextualization of child labor in Brazil

A new configuration of child labor can be identified from surveys based on CENSO 2010 and PNAD/2012/2014/2016 (National Household Sample Survey), demarcating profound changes in its genesis and form of expression. The time frame is justified because it guided the entire process of reviewing public actions, driven by the federal government at the time, and aimed at reducing child labor nationwide.

A comparative study between 1992 and 2015 (MONTAGNER, 2017) confirms the 68% decrease in the number of employed persons from 5 to 17 years old, from 8.4 million to 2.7 million children and adolescents, and, if apprentices are excluded, the amount drops to 80%. Even adopting the single group rule, the sum of typical situations of child labor up to 15 years old and of adolescents in irregular work aged 16 and 17 years shows a fall of 70.65% in this period.

It was evidenced that if, on the one hand, there was a decrease in work in industry and in extensive rural properties, in addition to the disconnection with the need to support family maintenance, on the other hand, there was a change for activities in the family and for informal enterprises, notably in metropolitan regions and large urban centers, that is, children aged 5 to 13, who help with household chores or subsistence agriculture, and adolescents in small businesses, services, and repair activities.

Another substantive change fell in the insertion of children and adolescents in school, marked by regular attendance until elementary school, highlighting a widespread concern with the dropout level in high school, even though the legislation conditions the authorization for work activity after 16 years old and the possibility of learning between 14 and 16 years old, always with articulation between training at work and in the educational field.

The profile of the population in a situation of child labor was concentrated in males (66% in 2015), black, mixed-race, or indigenous, aged between 14 and 17 years old, mostly from urban areas, who attended school, and obtained remuneration for the activities performed, with an average of 25 to 30 hours per week. There was also an inversion in the age of the population in child labor, with a high decline in the case of children up to 13 years old (from 40% to less than 20%), while for adolescents aged 14 to 17 years old, an increase from 60% to 82%.

There are children and adolescents in work situations in all income groups, although they are concentrated in families that receive up to a minimum wage (81.22%). Regarding the profile of the head of the family in which the children are occupied, it can be said that they are mostly men, aged between 31 and 50 years old, occupied and with incomplete elementary education.

When occupational activities are observed, the specificities of each area appear. In rural areas, the concentration occurs in small municipalities I (up to 20,000 inhabitants), in family enterprises and non-specialized activities, and in the age group up to 15 years. Domestic activities are limited to females, aged between 14 and 17 years. Participation in trade and repair shops, on the other hand, was absorbed by the teenagers, usually in family businesses or those close to them, but informally and with longer hours.

It is worth mentioning the existence of a statistical information system, coordinated by the National Institute of Geography and Statistics – IBGE, since 1990, with a regular approach to the theme. In 2016, the IBGE promoted a methodological change in the Continuous PNAD, adopting new concepts, nomenclatures, and measurements, including to adapt to the ILO recommendations, emanating from the 19th International Conference of Labor Statistics, held in Geneva (Oct/2013). However, this procedure has made it difficult to make certain comparisons with the previous historical series, because it separated the calculation of the insertion in work for subsistence and also the age range for the activities legally permitted, causing even manifestations to the contrary by representatives of the National Forum for the Eradication of Child Labor.

In view of the above framework, a more in-depth analysis of the conditions presented in the adolescence phase is necessary, with the increase in informality, dropout rates, and the weakness in professional training and learning. This aspect deserves to be highlighted because the literature (SAGI, 2012 and 2015; MONTAGNER, 2016) has already proven that the cycles of poverty and inequality are also fed by the distortion of age, years of study, professional qualification, and continuing education, which leads to the conclusion that they will be subject to reduced opportunities for integral development and satisfying their needs in different dimensions.

And there were several conditions identified as justification for an engagement at work: i. the attraction for the financial income provided by the work, mainly for the consumption capacity that it provides; ii. autonomy in relation to adults and other family members; iii. the intention to contribute to the maintenance of household expenses promoted by mothers, especially in the case of single-parent families; iv. the social recognition of insertion in economic and productive activity, albeit to the detriment of studies; v. engaging in ventures, even if informal, but which arouse the interest of

adolescents, such as in small mechanical, computer or open-air workshops that give them a sense of freedom.

Part of the observed changes can be attributed to the effort initiated since the 1990s, with the insertion of the proposal to eradicate child labor in the public agenda, notably with the structuring of inspection, the expansion of services provided by the social protection network, and the introduction of transferring income to families, in order to delay entry into the world of work and/or decrease the hours dedicated to it. From which it is concluded that the concrete conditions of quality of life and access to rights are greatly improved when there is an integrated public performance, with effective social and economic policies that address all aspects that affect the determinants of situations and involving a greater number of Brazilian citizens.

In this sense, the persistence of the phenomenon pointed to the need to adopt innovative partnerships between civil society and the government, such as, for example, articulated actions aimed at labor inspection and accountability, reducing poverty levels, expanding work opportunities for young people, and adults, the dissemination of information, the fight against the “naturalization of child labor”, the strengthening of the culture of protection for children, adolescents, and their families, always with a view to expanding access to rights and social policies, such as health, education, social assistance, work, culture, sports, housing, in alliance with economic development policies, which resulted in the joint reorganization of programs aimed at the theme.

2 CHILD LABOR AS AN ISSUE OF THE BRAZILIAN STATE

2.1 The process of reorganizing the Child Labor Eradication Program/PETI

The fight against child labor was contemplated in the Federal Constitution of 1988 but gained greater scope and state commitment due to the demeaning news of inserting children in dangerous and extremely exploited occupations, such as in charcoal production in the Três Lagoas region, in Mato Grosso do Sul, and in agricultural production chains (cotton, cocoa, sisal) in the southeast and northeast regions of the country.

Inspections by the Ministry of Labor and the Labor Prosecution Service were intensified, with specific regulations issued and considering the peculiar condition of development of children and adolescents with demands for social policies, which had an impact on the structuring of the Child Labor Eradication Program – PETI – in 1996, in cooperation between the federal government and union centrals, employers’ confederations, non-governmental organizations, among others, and which promptly expanded to the other federal states.

The initial model of PETI was regulated by Ordinance no. 458/2001/MPS and consisted of:

- i. implement complementary activities to the school, through extended hours;
- ii. grant a monthly supplement of income to families, through the *Bolsa Criança Cidadã*;
- iii. provide support and guidance to beneficiary families;
- iv. promote programs and projects for professional qualification and job generation with families.

In order to give organicity to the intervention, through Ordinance no. 365/2002, the National Commission for the Eradication of Child Labor – CONAETI – was created, which played its role with great propriety until its dissolution in 2019.

The creation of the Unified System of Social Assistance in 2005 boosted the integration of PETI with the *Bolsa Família* Program, with the aim of rationalizing registration and improving the management of income transfer programs in Brazil (Ordinance GM/MDS no. 666/2005). The commitment assimilated by the Brazilian government was inscribed in the National Agenda for Decent Work/2006 (ANTD) and in the National Plan for Decent Work/2010 (PNID), by highlighting the priority of eradicating slave labor and eliminating child labor, especially in its worst forms, and by setting the goal of increasing the inclusion of children and adolescents in child labor in PETI.

In order to ensure greater transparency and efficiency in the budget execution of the Program, the National Council of Social Assistance – CNAS –, through Resolution no. 81/2008, incorporated co-financing to the regular and automatic transfer of funds through the Medium Complex Variable Floor of SUAS. With the edition of the National Typification of Social Assistance Services and the Protocol for Integrated Management of Services, Benefits, and Income Transfers, in 2009, the responsibility of

public facilities was laid down – Social Assistance Reference Centers/CRAS and Specialized Social Assistance Reference Centers/CREAS –, with their respective services, in preferential care for families with child labor, since that year the list of occupations that brought physical, mental, or moral danger to the children and adolescents were also regulated.

With the intention of qualifying the social assistance social work offers with families, income transfer, and socio-educational care for children and adolescents, PETI was assimilated to the Service of Coexistence and Strengthening of Links – SCFV –, establishing child labor as one of the priority situations for care, according to CNAS Resolution No. 01/2013. The indications for PETI's redesign were about:

- i. intersectoral mobilization and definition of joint strategies; ii. intensifying the identification of the phenomenon and conducting public hearings for a diagnostic approach; iii. co-financing to municipalities and states with the incidence of child labor; iv. establishment of goals for monitoring in the social assistance network; v. institution of parameters for coverage and qualification of the safety net; vi. improvement of management processes, with the definition of own methodologies, according to the local reality and the age group.

Adopting as a reference the National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers and the Charter of Constitution of Strategies in Defense of the Comprehensive Protection of the Rights of Children and Adolescents, five axes of intersectoral coordination were agreed, involving numerous government agencies³ and CONAETI, that is, information and mobilization; identification; protection; defense and accountability; monitoring. As a result of the convergence of the axes, it can be registered:

- Information and Mobilization Axis:** i. the strengthening of the National and State Forums for the Prevention and Eradication of Child Labor; ii. the organization of campaigns and dissemination of the main occupations identified in the territory; iii. the mobilization of public agents, social movements, and organized civil society; iv. structuring and participating in public hearings; v. the construction of a PETI intersectoral agenda for the definition and planning of strategic actions at the federal, state, and municipal levels; vi. the creation of the National Coordination of the Integrated Agenda of PETI composed of the Ministry of Social Development and Fight against Hunger – MDS, Ministry of Health – MS, Ministry of Education – MEC, Ministry of Labor and Employment – MTE and Special Unit for Human Rights – SDH, and subcommittees in CONAETI; vii. the holding of a national meeting, 6 regional meetings, and

26 state meetings from PETI; viii. the establishment of technical cooperation with the International Labor Organization/ILO – Office in Brazil – for the preparation of the diagnosis of the indicators and the protection network, as well as of the analytical methodology by the Child Labor Risk Identification Model.

Identification Axis: i. the increase in active search, by means of mobile teams and a social approach, and the corresponding inclusion in the Single Registry; ii. conducting and publicizing the diagnosis of child labor in 5,570 municipalities, with verification of regional specificities, occupational activities, age group, and benefits provided, as a way to guide PETI's Strategic Actions (AEPETI); iii. the mapping and compilation of existing and necessary policies, services, programs, benefits, equipment, and resources.

Protection Axis: i. the adequacy of offers to the new incidences of child labor, including avoiding the stigmatization of the population; ii. expanding coverage and broadening the public, strengthening prevention, as well as monitoring children, adolescents, and their families in 1,913 municipalities, which accounted for 80% of child labor in Brazil; iii. the integration between income security and access to complementary services and programs; iv. the expansion of federal financing, subsidizing the management and maintenance of services of coexistence and strengthening of links to 5,039 municipalities and the participation of other entities in co-financing; v. the strengthening of the management and structuring of the Municipal and State Units with a reference team or technician for PETI; vi. the establishment of workflows and processes between the various policies and actors involved; vii. articulation and referral for assistance by other sectoral policies that make up the protection network; viii. strengthening of learning and narrowing with the *Mais Educação* Program.

Defense and Accountability Axis: i. the intervention of the Superintendencies, Managements and Regional Labor and Employment Agencies in promoting inspection actions; ii. the effective action of the Labor Prosecution Service and the State Public Ministries to trigger prevention, defense, and accountability actions; iii. the articulation of the Judiciary and the Labor Prosecution Service to ensure the proper application of protective measures for children and adolescents in child labor situations; iv. the engagement of Guardianship Councils.

Monitoring Axis: i. the definition of clear, tangible, and verifiable objectives for monitoring child labor situations, possible injuries, and assistance provided; ii. the registration of children and adolescents and their families in the SUAS information systems and other policies; iii. the monitoring and follow-up of the strategic actions that make up the Intersectoral Agenda; iv. integration with several official databases (CENSO 2010, PNAD, CadÚnico, Censo SUAS, RAIS, and CAGED, databases from the Ministry of Health, the Ministry of Education, among others).

2.2 The III Global Conference on Child Labor⁴

Brazil is a signatory to international treaties that reaffirm its commitment to human rights, the guarantee of life, and a certain level of

dignity under conditions of equity and social justice. In this spectrum, ILO Conventions no. 138 and 182, accompanied by the great challenge of, in the face of an absolutely adverse socioeconomic situation in contemporary society of the 21st century, of high inequality, the flexibility of labor relations, globalized production, and financialization of capital, to unleash mutual cooperation to enable the proposal indicated in the Hague Roadmap, during the II Global Conference, to reduce child labor, with the setting of goals for the elimination of the worst forms by 2016 and in all ways by 2020.

In 2013, as it was recognized as a successful case in the interinstitutional articulation to face child labor and in the implementation of a social protection network, Brazil hosted the III Global Conference on Child Labor, held in Brasília in October 2013, under the coordination of the Ministry of Social Development, Ministry of Labor and Employment and Ministry of Foreign Affairs, with the intention of evaluating the efforts made by the international community, promoting a balance of the results achieved, sharing the 84 successful experiences listed in the areas of education and school-labor transition, legislation, domestic child labor, social protection, mobilization and awareness, insertion in the labor market and inspection/monitoring and deepen the debate on the themes: agricultural and urban child labor; production chains; the role of the justice system; production of statistics; violation of rights; migration, among others.

It had the participation of about 1,700 people, coming from 155 nations, 36 representatives of ministerial level, 78 non-governmental leaders, 93 representatives of workers' organizations and 64 of employers, 15 of regional and international organizations, as well as specialists, parliamentarians, justice system operators, teenagers, and national and foreign journalists. An international base document was created for consultation and validation of the dynamics, contemplating analysis of the evolution of the phenomenon, of the practices adopted, and of possible suggestions in an informational platform, whose content was discussed in virtual rooms over 2 months and presented in the face-to-face event. Internally there were regional preparatory meetings and the exhibition of a memorial with the main actions and partnerships developed.

As a final product, the Brasília Charter was approved, which outlined the imperative of implementing integrated public policies, with a focus on ensuring education for children and adolescents and generating jobs and

income for young people and adults. In addition, it proposed the continuity of the Conferences, choosing Argentina as the headquarters in November 2017, where the commitment to the promotion of integrated public policies (work, justice, education, agriculture, health, professional training, and social protection) was again endorsed; strengthening the participation of public managers, civil society, local communities, and companies in the implementation of strategies and action plans; and the promotion of prevention, identification, and elimination of child and forced labor. These deliberations were consolidated into the Sustainable Development Goals/SDGs, starting in 2015, and became part of Agenda 2030, in SDG 8⁵ and Goal 8.7⁶.

3 FINAL CONSIDERATIONS

The phenomenon of child labor has been configured, in contemporary society and in the globalized world centered on the capital, as one of the main challenges to be overcome. Paradoxically, there is a demand for greater qualification in the field of work, which implies expanded training in the educational, cultural, technological, political spheres, accompanied by a model that aligns the three dimensions of economic, social, and environmental development, while there is an elimination of a large portion of the population by the denying the rights, the worsening of inequalities and unviable access to consumption, in spite of these conditions being recognized as fundamental to sustain the market and to increase sociability.

Calls for attention to the narrowing of schooling with the capacity for productive insertion, the improvement of the quality of life, the political and community impact, and the exercise of citizenship, since this is a recurring demand in many countries and in the lives of many children and adolescents and their families. On the other hand, the diagnosis showed a high dropout rate, especially for young people in high school, signaling the importance of expanding coverage in the most vulnerable territories and the establishment of formats and methodologies more adherent to the interests and needs of the population involved.

Still, as a warning sign, it was pointed out as a great challenge, especially during State Meetings, the low effectiveness in preventing and eradicating the involvement of children and especially adolescents in drug trafficking.

Many of these carry out socio-educational measures in an open or closed environment for committing offenses; however, the exploitation of these adolescents as a child labor situation is little recognized and problematized. It is necessary to design exit strategies with social protection from the State. The difficulties of precise diagnosis regarding the quantity in the different territories are evidenced, as well as the common sense of criminalization of the facts to the detriment of the understanding of the causes and the level of dependence on psychoactive substances, as well as the development of integrated policies, since the combat, prevention and care for users of psychoactive substances.

As can be seen, one of the requirements that proved to be essential in several contexts dates back to the strong presence of the State as a provider of services and benefits and a mediating agent before society and the market, as a strategy to promote the production and reproduction of life, work, and social relations. Particularly in cases that refer to situations of vulnerability and risk, the main purpose is to ensure social protection through public offers that lead to access to goods, services, and wealth, plus the perspective of the distribution and redistribution of socially produced income, even if individually accumulated.

Thus, it is essential to establish intersectoral protection networks, composed of a set of public social policies and the defense of rights, capable of improving the development of opportunities for individuals and families, adding values and potentialities, in order to break away meritocratic culture, which ends up blaming people for the difficulties experienced, stigmatizing them as “unstructured families” and even for trivializing poverty.

In turn, at no time can one neglect the determinants that condition exploitation and deprotection, particularly in Brazil, which was shaped by a slave, patriarchal, colonial, patrimonialistic, and segregating trajectory, which greatly drives the worsening of the situation of child labor. There is an urgent need for systematic consolidation of historical-critical analysis, which reveals the different realities, shows the causalities, and monitors the effectiveness of the implemented policies, in addition to the continuous improvement and reorganization of actions.

In the current national situation, the annihilation of rights, and the accelerated dismantling of public and universal social protection systems,

an organized mobilization must be carried out to regain constitutional principles, aiming at equity, citizen participation, and social justice. Therefore, as an imposing attitude, the immediate revocation of EC no. 95/2016, which establishes the spending ceiling for social policies of social assistance, education, and health, weakening the federal co-financing for the provision of services and concession of benefits; pressure to resume the regular and automatic transfer from fund to fund; the return of public policy discussions with the bodies of agreement, deliberation, and social control; the expansion of coverage of services; the implementation of Decennial Plans and Continuing Training, among many other issues.

ENDNOTES

- 1 The article had the technical collaboration of Telma Maranhão Gomes, who was director of the Department of Special Social Protection of the National Secretariat of Social Assistance/MDS from 2011 to 2016. Social worker at Maringá State University. Director of Community Affairs PRH-UEM. Master in social work at PUC/SP.
- 2 Basic Social Protection has the following services: Service for Protection and Comprehensive Family Assistance (PAIF); Service of Coexistence and Strengthening of Links; Basic Social Protection Service at home for people with disabilities and the elderly. Special Social Protection of Medium Complexity provides: Protection and Specialized Service to Families and Individuals (PAEFI); Specialized Service in Social Approach; Social Protection Service for Adolescents in Compliance with the Socio-Educational Measure of LA and PSC; Special Social Protection Service for People with Disabilities, the Elderly and their Families; Specialized Service for Homeless People. High Complexity Special Social Protection offers: Reception Services in the modalities (Institutional; Shared Housing; Host Family); Protection Service in Situations of Public Disasters and Emergencies.
- 3 Ministry of Social Development and Fight against Hunger/MDS; Ministry of Labor and Employment/MTE; Ministry of Health/MS; Ministry of Education and Culture/MEC; National Human Rights Secretariat/SDH; Ministry of Justice/MJ; Ministry of Tourism/MTur; Ministry of Agrarian Development/MDA; Ministry of Finance/MF; Labor Prosecution Service/MPT; State Public Ministries/MPEs; National Council for the Rights of Children and Adolescents/CONANDA; National Council of Social Assistance/CNAS.
- 4 The information was obtained from the Organizing Committee and from the ILO Final Technical Report, in the ILO/Brazil Partnership Program to promote south-south cooperation, from the Strategies to Accelerate the Rhythm of Eradication of the Worst Forms of Child Labor Project, from 2012 to 2018.
- 5 Promoting sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all people.
- 6 Taking immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking and ensure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end labor child in all its forms.

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THINKING DIFFERENTLY ABOUT THE PROFESSIONALIZATION OF ADOLESCENTS FROM THE CRITICAL THEORY OF HUMAN RIGHTS

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Abstract. This paper analyzes the right to professionalization as an instrument for adolescents to access protected work. Based on the critical theory of human rights, it examines the apprenticeship contract as an instrument capable of providing minimum remuneration to low-income adolescents, historically marginalized. Professional training must be based on the fulfillment of the human being, becoming an instrument of emancipation that converts him or her into a social agent of change. Due to the transformations in the world of labor, a broader qualification must be provided, which includes the development of socio-emotional skills, to be promoted by the Prosecution Service.

Keywords: Critical Theory of Human Rights. Adolescent. Professionalization. Apprenticeship. Prosecution Service.

1 DEFINITION OF HUMAN RIGHTS BASED ON THE CRITICAL THEORY

The bill that resulted in the Apprenticeship Law – Law no. 10,097/2000 – was justified on the grounds that

the proposed change will translate into a benefit for about seven million young people between 14 and 16 years old, who need income, education, and training to enter the job market, which is increasingly demanding in terms of professional and personal qualification. Professionalization is a fundamental right of adolescents and is the possible alternative for these young people¹.

The justification of the referred bill is the starting point for the present work, which will deal with professional training as an alternative to low-income adolescents, with little – or almost no – possibility of obtaining work, a situation that ends up increasing the very intense inequality and social exclusion in contemporary Brazil. To that end, we propose to abandon negativism, to break with the idea that “nothing can be done”, and to affirm our political, social, and cultural differences in order to build an alternative. The focus is on the teenager, who has the right to study, to not work until the age of sixteen, to access professional apprenticeship from the age of fourteen, to live with people his or her age, to have leisure, etc.

Under the proposed perspective, human rights are a cultural product, born in a certain context and historical moment (every concept created can be modified in the course of history precisely because it arises from a context and not the other way around). They emerged in the West, where a hypothetical universalization of human rights is preached, related to the dominant culture and power, being, therefore, a hegemonic Western cultural expression of the struggle for human dignity, since each society constructs, culturally and historically, its paths to dignity.

In proposing a “reinvention” of human rights, Herrera Flores² writes about the complexity of defining these as cultural products, rather than natural. For this reason, they result from a set of guidelines (every social formation contains its own cultural guidelines), rules and proposals for human actions, and ways of articulating these actions. And living with other paths of dignity implies, necessarily, a strong degree of commitment in view of the multiplicity and diversity of sufferings that human beings go through in their daily lives (HERRERA FLORES, 2005, p. 32). The complexity of the definition of human rights must be clarified so that we can understand where we started from, in order to create a new culture of human rights. According to the author, we must build emancipatory criteria that allow us to address crisis situations, being aware that we are in unequal positions in relation to access to goods.

By the “criterion of human wealth”, which starts from an integral conception of the human being, all points of view are valid, allowing us to establish a dialogue between all cultures. It is demonstrated as follows: a) development of capacities, and b) construction of conditions that allow the real appropriation and development of these capacities on the part of

individuals, groups, cultures, and any form of life that lives in our world (HERRERA FLORES, 2007, p. 121). Using this criterion warns us that rights are something prior to the construction of social, economic, political, and cultural conditions. In other words, instead of universalizing a conception of rights, the universalism that defends itself through this criterion is not a universalism of departure, but a universalism of arrival, where all cultures can offer their options, discussing on an equal plane.

Being open to a critical proposal within the law means breaking the traditional legal knowledge and discourse, reflecting and questioning the “mythicized traditional legality”, in the words of Wolkmer (2002, p. 79). This becomes imperative if we consider that the constant evolution of the world means that each period or historical moment has a set of truths that are built, structured, and extinguished. Searching for critical thinking, according to the author (WOLKMER, 2002, p. 78), means

to look for another direction or another epistemological reference that attends the present modernity, since the paradigms of the foundation do not follow the profound social and economic transformations that the modern industrial and post-industrial political societies undergo.

The construction of a critical theory requires great effort and needs new theoretical frameworks. As basic conditions, we have to adopt a value criterion, carry out an analysis of the context and act interactively in our surroundings, which are represented by others, by ourselves, and by nature. After becoming aware of the paradoxes and contradictions of traditional theory, and building a critical, affirmative, and contextualized theory of human rights, Herrera Flores suggests that we take a set of initial decisions, which will empower us³ in this process of struggle for dignity.

Based on a new critical theory of human rights, built from decisions such as “thinking differently”, “moving from dialectic negativity to ontological and axiological affirmation”, “problematizing reality”⁴, is that we can build a space of contention to seek the dignity of all adolescents⁵ in the job preparation process.

The apprenticeship institute aims to provide vocational training to adolescents and young people, being necessarily composed of three parts: apprentice, company, and training entity. This training entity will, as a rule, be a member of the National Apprenticeship System, known as the “S” System, which may be Industry, SENAI, Commerce, SENAC, Transport,

SENAT, and Rural, SENAR. It turns out that professional training through the traditional “S” System” channels is still restricted to a small number of adolescents, excluding those with low education levels, generally from families with precarious financial conditions. Working with an emancipatory critical conscience implies making visible, disrupting, and transforming this reality. And, since poor teenagers are the protagonist in this process, we must open up to them, listening to their stories, their needs, their interests, their expectations, and their narratives, within the contexts in which they are inserted. We must consider them not as sub-citizens, but as beings endowed with the capacity and power to act for themselves.

Access to a good, material or immaterial, is not a neutral process; it is conditioned to a set of values, positions, and a process of labor division. If the law says that we are all equal before it, it is because we are not. It is not enough to be guaranteed the right. Critical awareness is necessary to evolve in the effectiveness of those rights.

For a new culture of human rights, it is essential that we abandon the idea of naturalizing concepts and values. Values that arise from a consensus, are social preferences that are generalized. We value something from the environment of relationships we live in. In this line of reasoning, the main enemies of human rights are jusnaturalists (not positivists), as they maintain that everything is beyond, abstract, “natural.” If a phenomenon is “natural”, such as, for example, early work for poor children, there is nothing to be done but to accept it, because “it is how it is.” In that case, where is the human being’s capacity to constantly transform things? How to ignore the political and ideological influence in the construction of these phenomena? Let us be careful, then, with what traditional theory calls a natural phenomenon. Let us try to overcome the “culture of impotence” (SÁNCHEZ RUBIO, 2007, p. 12), excessively conformist, which adopts the attitude of leaving things as they are.

Another important aspect to understand the critical theory of human rights is to be aware of the difference between “goods” and “rights.” Rights are the means by which we seek to guarantee access to goods, material and immaterial, necessary for a dignified life. Goods, therefore, that meet needs, come before rights. From what is extracted that the goods (food, health, education, housing, basic sanitation, etc.) are at a level of higher importance than the rights, that is, the rights will come after the struggles that are imposed to access all of these goods.

We have to overcome the systems of legal guarantees that alone do not solve situations of inequality and injustice, and assume commitments and duties, before others, before ourselves, and before nature, to achieve equal access to goods for which we long.

From a critical point of view, human rights are a process, a result – always provisional – of social struggles for the search for spaces that make it possible for everyone to fight for their dignity, starting from material equality, which allows putting in practice positive freedom and an emancipatory fraternity, that is, through the contentions waged by people, individually or collectively, it is possible to access the goods, both material and immaterial, required to live with dignity. When considering human rights as a cultural product, against which one can react politically, socially, or legally, we let reality into the concept, abandoning natural, metaphysical, and transcendental phenomena.

According to the human capacity that we all have to transform the world, we must seek a universalism of dignity in which each and everyone has sufficient power to put into practice the human capacity to fight. In the specific case of our study, the proposal is to create conditions for the poor or low-income adolescent to be empowered in this process of struggle for access to an immaterial good – training for work – in order to, from then on, achieve a dignified life.

2 KNOWLEDGE AS AN INSTRUMENT OF EMANCIPATION AND SOCIAL TRANSFORMATION

The trajectory of education as a process of improving human existence in its different degrees of development and social formations has already undergone different conceptions, varying according to the needs and values prevalent in that historical context. It was already considered a privilege of the “idle class”, then, due to the need for specialized labor; it was extended to the less favored classes, being currently an economic investment, greater or lesser according to their return to the capitalist system that supports it (BARREIRO, 2000, p. 24-25). So, how to achieve education for citizenship within this dominant thought, with a strong tendency to individualism? How to face up to the set of political and economic forces that act at all levels to maintain this system, including commercializing education?

Rethinking the values of education in modern society, in which interests are clearly defined in order to perpetuate and reproduce the system, with multiple challenges in new economic and social demands, is to think about building a broad education that respects the different forms of knowledge and recovers the humanity of men or peoples (FREIRE, 2005, p. 34). Within this view, its utilitarian and instrumental character loses space so that its central objective is the realization of the human being.

The proposals of the International Commission on Education for the 21st Century, represented by the so-called four pillars of education, have a profound relationship with the professional training proposal that we have idealized for teenagers. “Learning to know”, starting from the mastery of general culture to then work specifically in a certain area. “Learning to do”, within the specific Brazilian context, in which the informal economy is wide, which is why the qualification should be more social than for a restricted professional area. “Learning to live together”, overcoming the climate of competitiveness and individualism established; developing the understanding of the other, after discovering oneself, in order to be able to respect them and make coexistence harmonious. “Learning to be” from the development of all of the individual’s potentialities, in an integral way, covering body and mind, using all possibilities of discovery and experimentation of imagination and creativity, especially through art.

To educate is to make one think, to think in another way (HERRERA FLORES, 2005, p. 43), and to seek alternatives for the situations of inequality that we witness today in all parts of the world. A transformative and emancipatory education proposal is bold, but the result can (and should) be positive. Educational actions need to be focused on issues such as, for example, the social imbalances brought about by the capital accumulation system, which has led 4/5 of the world population to a situation of poverty.

In the evolution of the learning process, we still need to overcome the current trend of specialization, which prevents us from seeing the global, from thinking about problems in their contexts, from positioning these problems in a universal scope. According to Morin, “essential problems are never installable, and global problems are increasingly essential” (MORIN, 2000, p. 14). Thus, it is necessary to review the teaching of the primary school, which separates subjects instead of recognizing their correlations, causing the minds of children to lose their natural aptitudes to contextualize

the knowledge and integrate it into their sets. The teaching problem should be thought of, according to the author, considering, on the one hand, the severity of the effects of the partition of knowledge and, on the other, that the human mind has full aptitude to contextualize if it is developed.

Also within a human conception of education, Paulo Freire's pedagogical ideas, for which the dehumanization of the oppressed is currently the central problem, the contention of which will come about with the recovery of their "stolen humanity" (FREIRE, 2005, p. 32). According to him, the humanist and historical task of the oppressed is to free themselves and the oppressors, since the ruling class seeks to maintain the situation of inequality and the maintenance of their privileges through intellectual inferiority. The proposal of the educator from Pernambuco is that the oppressed, recognizing their condition and identifying their oppressor, fight for their liberation, first of all, based on literacy, because with it begins a path of critical knowledge of reality and taking up positions towards the world. It is from a reflection that an action will take place, with the consequent critical insertion of the oppressed into the oppressive reality, enabling the transformation of this reality, that is, the overcoming of the oppressor-oppressed contradiction. It is not up to the oppressor to just recognize their role and show solidarity towards the oppressed, as this ends up achieving mere assistance, maintaining the submission of the oppressed, preventing them from organizing autonomously. This dependence, this domination practice, the only purpose of which is to minimize the guilt of the oppressor, must be broken with the transformation that occurs through the critical insertion of the oppressed (FREIRE, 2005, p. 42-43).

Let us fight, therefore, for the expansion of the access of all to professional education, with proposals that break the paradigm of individualism and privilege diverse knowledge. This new training should be based on a human development model to the detriment of the economic one, surpassing purely specialist training, carried out within a "robotization" process. Vocational courses that prepare young people to perform an "A" or "B" function within the company must be overcome. On the contrary, in addition to learning what is known as a "craft", we must develop a pedagogy that values work as a good that everyone must have access to without distinction.

We need to rethink the professional training carried out today by the elitist "S" System", which aims primarily to satisfy the economic

interests of companies. Therefore, the importance of strengthening the professionalization carried out by other qualified entities in methodical technical-professional training, whose objective is to assist adolescents and professional education⁷.

Our proposal is to strengthen this apprenticeship carried out by Technical Schools and other non-profit entities and thus expand professional training among low-income adolescents, those without a degree, in order to reduce inequality of access to the world of labor.

The development of professional education – by the “S” System, by the Technical Education Schools or by non-profit entities (such as NGOs, for example) must also conceive the principles defended by UNESCO⁸, without forgetting the criterion of human wealth. Such proposals must integrate the curricular programs of professional training courses, which need to be reformulated to cover these new educational principles.

The offer of vocational courses for these teenagers should be discussed with local communities, neighborhood associations, and other social agents committed to the fight for human dignity. The strength of these actions may create public policies aimed at guaranteeing a new professional training defended in this work.

3 PROFESSIONAL APPRENTICESHIP AS A WAY TO BREAK WITH THE INTERGENERATIONAL CYCLE OF POVERTY

The early inclusion in the world of work makes visible stories characterized by exclusion, lack of perspectives, the reiteration of the intergenerational cycle of poverty, lack of schooling, and access to education. Low performance and school dropout rates are often consequences of this early insertion. The reasons for discontinuing studies of poor or low-income adolescents are often related to negative views regarding the value of schools in the lives of their mothers and fathers. Family support and belief in the value of the study can be decisive for these adolescents to seek school achievements.

In order to break with the naturalization process of the intergenerational transmission of poverty and lack of schooling⁹, and to break with the reiteration and circularity of trajectories as something hereditary, it is essential

to introduce these adolescents to other sources of socialization outside of the family. The expansion of social bonds can encourage them to believe in the possibility of educational and economic emancipation, as well as to realize their potential and to see studies, and not early work, as a mechanism for social ascension.

Professional apprenticeship is a form of protected entry into the world of labor, which combines income opportunity with access to a professional training and qualification program, in addition to raising the level of schooling. This last aspect is obtained, since one of the validity requirements of this special contract is the enrollment and attendance of the apprentice to school if he or she has not completed high school. For this reason, this institute guarantees at the same time the right to professionalization and strengthens the right to education. If an apprenticeship is granted under the terms proposed in this article, it can be a way of breaking the intergenerational cycle of poverty and producing significant differences in tackling child labor.¹⁰

In the specific context of labor law, an apprenticeship contract is a special employment contract, adjusted in writing and for a specified period, in which the employer undertakes to ensure that the person is over 14 (fourteen) and under 24 (twenty-four) years old and enrolled in an apprenticeship program, methodical technical and professional training, compatible with their physical, moral, and psychological development. Such obligation is provided for in art. 429 of CLT for all medium and large establishments, and micro and small companies are allowed, as well as direct administration bodies based on the same legal assumptions.

About 80% of the people who are currently in child labor¹¹ are teenagers over the age of 14, who can therefore enter into professional apprenticeship contracts, by which protection at work is guaranteed and the peculiar condition of a person in development is respected. In response to this last aspect, in addition to technical and professional training, it is also important to invest in socio-emotional training and in the development of communication skills in order to awaken these adolescents' self-esteem, strengthening family bonds, and a new outlook on life¹².

With the constant changes in the increasingly demanding labor market, there has been an increasing demand for good schooling, technical knowledge, and socio-emotional skills. The latter is prestigious in the current context and

guarantees a high level of employability for a worker. The digital revolution requires teenagers to be prepared to follow some professions that do not yet exist. In the face of technological advances and the creation of artificial intelligence, the activities previously carried out on cognitive foundations began to require the ability to relate in groups, empathy, clear and assertive communication, creativity, ethics in decision-making, antifragility¹³ more than resilience, among other knowledge.

Professional apprenticeship formatted in this way would develop autonomy, critical sense, and decision making from an ethical point of view, improve skills, and competencies, prepare adolescents for the world of labor and for life. It would comply with the principle that the formative aspect must overlap with the productive, on which apprenticeship is based, as well as constituting a rich contribution in the struggle to end the economic and social inequality that has prevailed in Brazil since colonization, as well as preventing poor adolescents from being inserted in precarious, informal, unprotected activities and without expectations of a better future.

All of these propositions are in line with the Priorities and Lines of Action of the National Agenda of Decent Work for the Youth¹⁴, which dialogues with the National Plan for the Eradication of Child Labor and the Protection of Adolescent Workers, summarized as follows: Priority 1: More and better education; Priority 2: Conciliation of studies, work, and family life; Priority 3: Active and dignified insertion in the world of labor, with equal opportunities and treatment and Priority 4: Social Dialogue – Youth, Work, and Education.

Decent Work here is understood as productive and adequately remunerated work, performed under conditions of freedom, equity, and security, capable of guaranteeing a dignified life, being a fundamental condition for overcoming poverty and reducing social inequalities.

4 THE PROMOTION OF THE RIGHT TO PROFESSIONALIZATION BY THE PROSECUTION SERVICE

In the Brazilian scenario, the Constitution of the Republic establishes that the Prosecution Service is responsible for the defense of the legal-

democratic order and the promotion of fundamental rights, on an individual and collective dimension, in the varied and complex areas of essential interests of society.

In this perspective, the absolute priority to the adolescent's right to professionalization for adequate entry into the labor market (article 227 of the Constitution) can be guaranteed based on the joint action within the scope of the Brazilian Prosecution Service¹⁵.

On the other hand, the verification of compliance with the legal quota for apprentices by companies¹⁶ is one of the priority goals of the Labor Prosecution Service (MPJ), which occurs in an articulated manner by its National Committee to Combating the Exploitation of Child and Adolescent Labor – COORDINFÂNCIA, created through Ordinance no. 299, of November 10, 2000. The Committee aims to promote, supervise and coordinate actions against the various forms of exploitation of the work of children and adolescents, giving uniform and coordinated treatment to the theme.

The apprenticeship contract¹⁷ is an important instrument for adolescents to access the world of work, with guaranteed labor rights, in addition to the corresponding professional training. For its effectiveness, the teenager must also be attending their regular school, and the educational character must always prevail over the productive one.

The regulation of professional apprenticeship was unified by Federal Decree no. 9,579, of November 22, 2018 (articles 43 to 75), which expressly establishes the alternative means of meeting quota – also called social quota, prioritizing the inclusion of adolescents and young people in situations of vulnerability or social risk. The inspection of compliance with the rules related to professional apprenticeship is regulated by Normative Instruction SIT no. 146, of 07/07/2018.

In order to prioritize the hiring of apprentices in the social quota modality, as exemplified in § 5, of article 66, of Decree no. 9.579/2018, a study was carried out that resulted in the publication of the document “Professionalization and protected work: subsidies for the work of the Prosecution Service in promoting access for adolescents and young people in vulnerable conditions to apprenticeship programs and professional qualification courses”¹⁸.

The compilation recommends the inter-institutional performance of the branches of the Prosecution Service, based on the recognition of good inter-institutional cooperation practices that are being developed in some regions of the country, to inspire their multiplication, as well as bringing together the legal framework involving the theme, with examples of proposed actions aimed at their effectiveness.

With guaranteed constitutional instruments, members of the Prosecution Service are fully in a position to act to promote access for the group with priority protection – adolescents and young people in compliance with or discharged from socio-educational measures, in institutional care or in situations of child labor, to apprenticeship and professional qualification programs that consider their potentialities, away from harmful early work, which does not respect their peculiar condition as a person in development.

5 CONCLUSIONS

5.1 – We must depart from the idea that nothing can be done, that it is useless to strive, that each one remains what it is, that in the end, nothing changes. It is necessary to overcome the human tendency to stability, which makes us blind to the possibilities of transforming the world, due to the preponderance of the “will to truth” (dogmas) over the “will to power” (human power of change and transformation).

5.2 – It is imperative to break the traditional legal knowledge and discourse, affirming our difference and critically appropriating the legal struggle, using Law as an instrument for the materialization of social struggles, amplified from articulations to be made within the political, economic, and social contexts.

5.3 – Adolescents are fully capable of transforming themselves and their surroundings, which is why they must be empowered to be social agents in the struggle for emancipation and citizenship. For that, professional training must be based on a human development paradigm, be transformative and privilege diverse knowledge, overcome technical training, purely specialist, which robotizes the teenager and visualizes only the economic interests of companies.

5.4 – Professional education must be built on values that are based on the criterion of human wealth, which allows the development of capacities and the appropriation of such capacities. The central objective must be the fulfillment of the human being when considering the four pillars of education, “learn to know”, “learn to do”, “learn to live together”, and “learn to be”. The entities that carry out professionalization must review the curricular programs of professional training courses to cover these new educational principles.

5.5 – Our proposal to reduce inequality of access to the world of work and expand professional training among low-income adolescents is to strengthen the apprenticeship carried out by the Technical Education Schools and other non-profit entities, as these are the entities that as a rule, they welcome teenagers from the lower class.

5.6 – The apprenticeship courses must be revised in order to meet the transformations of the world of work that started to demand, in addition to good schooling and technical knowledge, also the socio-emotional competencies (ability to relate in groups, empathy, clear communication, and assertiveness, creativity, ethics in decision making, antifragility), which guarantee a high level of employability.

5.7 – Within the scope of the work of the Prosecution Service, a broad and permanent inter-institutional partnership should be promoted, based on legal instruments, in order to expand the offer of apprenticeship and professional qualification programs to vulnerable adolescents, especially those undergoing or that underwent socio-educational measures, in institutional care or in situations of exploitation of child labor, which are part of our priority protection group.

ENDNOTES

- 1 House Bill no. 74, of 2000. Federal Senate Gazette, Brasília, DF, p. 21.739-21.751, 2 Nov. 2000.
- 2 Joaquín Herrera Flores was the creator of the *Official Master/Doctorate Program in Human Rights, Interculturality and Development*, at the Pablo de Olavide University of Seville (Spain).
- 3 The constant use of the neologism “empowerment” in this work stems from the strength that the word, originally from the English language, whose definition, among others, is to empower people, represents. And this power means, within critical theory,

having the strength to fight for a dignified life (MERRIAM-WEBSTER ONLINE, 2020).

- 4 The six initial decisions proposed by Herrera Flores, which instigate critical work with human rights, are found in the first chapter of **Los derechos humano como productos culturales**, p. 43-66.
- 5 The Universal Declaration of the Rights of the Child, ratified by Brazil on September 24, 1990, mentions only the term “children” to include people aged up to 18 years. We use the term “adolescent”, however, following the concept defined in the Child and Adolescent Statute, which considers children to be people up to 12 incomplete years of age and adolescents to be those between 12 and 18 years of age (Article 2 of Law no. 8,069/90).
- 6 Many low-income teenagers do not meet the schooling requirements imposed by courses offered by the S System. For example, the Basic Industrial Apprenticeship course at SENAI, for which “young people must be attending regular school or have completed high school”. Available at: <http://www.fieb.org.br/senai/pagina/3308/aprendhecimento-industrial-basica.aspx>. Accessed on: Jun 28, 2020.
- 7 Article 430, II, of the Consolidation of Labor Laws.
- 8 The proposal appears in the report presented to UNESCO by the International Commission on Education for the 21st century, which resulted in the work coordinated by Jacques Delors, *Educação: um tesouro a descobrir*, 9th ed.
- 9 In order to map the relationship between the level of education of mothers and the early work of their children in Brazilian society, the education level of women responsible for households with children from 5 to 17 years old was investigated [...]. The survey results indicate that the occupation of children aged 5 to 17 years was more concentrated in the elementary levels of education of women. The education of the woman responsible for the household correlated with the children’s occupation situation, according to the Continuous National Household Sample Survey – Continuous PNAD 2016. Available at: https://biblioteca.ibge.gov.br/visualizacao/livros/liv101388_informativo.pdf. Accessed on: June 28, 2020.
- 10 Many can be the causes of child labor. They may be linked to poverty, which leads families to offer their children’s labor at an early age; a deficient educational system, which makes the school uninteresting for students and promotes high retention and dropout rates; the family structure; parents’ schooling; parents’ inability to assume household responsibilities; the place of residence; or even to the system of values and traditions of society, according to PNAD Contínua 2016. Available at: https://biblioteca.ibge.gov.br/visualizacao/livros/liv101388_informativo.pdf. Access on: Jun 28, 2020.
- 11 PNAD 2015, from the Brazilian Institute of Geography and Statistics (IBGE), points out that 2.7 million children and adolescents from 5 to 17 years old work throughout the national territory. In Brazil, work is prohibited for those who have not yet turned 16, as a general rule. When carried out on an apprenticeship basis, it is allowed from the age of 14. If it is night time, dangerous, unhealthy work or involving activities on the TIP list (worst forms of child labor), the ban extends to the incomplete 18 years.
- 12 As an example, the Young Professionals of the Future project, developed by the NGO *Rede Cidadã* of Belo Horizonte, considers this preparation more comprehensive for the world of work, which encompasses socio-emotional training that stimulates the interest of these young people in life and work and increases chances of hiring. In this proposal, life and work are one value and must go together to promote the professional and personal fulfillment of the human being, based on therapeutic and

- innovative pedagogical technologies. Available at: <http://www.redecidada.org.br/mundo-do-trabalho/jovens-profissionais-do-futuro/>. Access on: June 27, 2020.
- 13 Antifragility, a concept coined by Nassim Nicholas Taleb, can be understood as the notion that the more someone is exposed to stress conditions, the stronger that person becomes. While resilience would be something like receiving negative stimuli (pressure, mistakes, competition) and not being affected.
 - 14 Brazil launched the National Agenda of Decent Work in 2006. Three years later, a presidential decree instituted the Interministerial Executive Committee, responsible for its implementation, and created a subcommittee to promote a National Agenda of Decent Work specific to the youth, coordinated by the National Youth Secretariat and the Ministry of Labor and Employment, with ILO technical assistance. Available at: https://www.ilo.org/brasil/temas/emprego/WCMS_301824/lang-pt/index.htm. Accessed on: June 28, 2020.
 - 15 In this sense, Recommendation no. 70, of June 11, 2019, of the National Council of the Prosecution Service (CNMP). This recommendation emphasizes the importance of joint action between the Labor Prosecution Service and the Prosecution Services of the States and the Federal District, with a view to tackling child labor and the professionalization of adolescents and young people.
 - 16 According to article 429 of the Consolidation of Labor Laws, establishments of any nature are required to employ and enroll in the courses of the National Apprenticeship Services the number of apprentices equivalent to a minimum of five percent and a maximum of fifteen percent of the existing workers in each establishment, whose functions require professional training.
 - 17 CLT, art. 428.
 - 18 Available at: <https://www.cnmp.mp.br/portal/todas-as-noticias/12394-publicacao-do-cnmp-traz-orientacoes-para-promover-acesso-de-jovens-em-condicoes-de-vulnerabilidade-a-programas-de-aprendizagem-2>. Access on: June 27, 2020.

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DOMESTIC CHILD LABOR, ITS REALITY, COMBAT, AND PREVENTION

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Abstract. Domestic child labor is that performed continuously, with or without remuneration, by a person under the age of 18, in the home of a third party, or one's own home. It is a reality that is present in the country's culture, a remnant of slavery, and resulting from the poverty and fragility of families. It is one of the worst forms of child labor, whose elimination is a priority under the terms of Convention 182 of the International Labor Organization (ILO), ratified by the country. It is hidden, invisible work, exercised under adult control and exploitation, which gives rise to maltreatment and abuse, including sexual abuse. For its eradication, it is necessary to adopt specific public policies, addressing the needs of the children and adolescents involved in it and their families.

Keywords: Domestic child labor. Worst form of child labor. Hidden work.

1 INTRODUCTION

Child labor is a reality in Brazil, despite society's growing awareness of its harm and the need for comprehensive protection due to children and adolescents, as well as the constant performance of public and private entities that have the theme as their main objective. Over the years, especially since the 1990s, the fight to eliminate all forms of child labor has been continuous and, although with encouraging results in those years, it has moved at a slower pace in this early century, especially at the beginning of its second decade. Thus, there are still many children and adolescents involved in early and irregular work, more than two million and four hundred thousand

according to the latest data released by the Brazilian Institute of Geography and Statistics (IBGE)¹.

After years of evolution in actions to combat and prevent this problem, the country being a world reference in the actions developed and results obtained, it was not possible to adopt the public policies necessary for its prevention and eradication, and we have an impasse on the matter at this moment, given the extinction of the National Commission for the Prevention and Eradication of Child Labor – CONAETT², quadripartite body, linked, since its creation, to the then Ministry of Labor and Employment, with flagrant losses in the articulation and partnerships signed and in the actions provided for in the III National Plan for the Prevention and Eradication of Child Labor, approved in 2018³.

From the beginning of this century, the Commission, as well as public entities and private entities involved in the subject, especially the Labor Prosecution Service⁴ and the National Forum for the Prevention and Eradication of Child Labor (FNPETI)⁵ were attentive to the actions contained in the previous Plans, I and II, in their monitoring and updating, to make the elimination of all forms of child labor a reality, a goal established by the 2030 Agenda of the United Nations (UN), to be achieved until the year 2025⁶.

Despite this milestone, the difficulties in achieving the goal set are present. And, at that moment, when the world is dealing with the Covid-19 pandemic, there is the possibility of a resurgence of child labor, given the fragility of a large part of the country's population, especially of workers, affected by the loss of employment or with its precariousness.

More than ever, it is necessary to bring the issue to the agenda, with the mobilization of the whole society in its engagement, with special attention to the worst forms of child labor, whose eradication is a commitment assumed by the country before the International Labor Organization (ILO) and, therefore, before the international community, considering the ratification in 2000 of Convention no. 182⁷, which addresses the elimination of the worst forms of child labor, as well as in view of the aforementioned UN 2030 Agenda. The difficulties encountered refer primarily to the lack of specific public policies and the commitment of public authorities in this regard. And, in this context, domestic child labor stands out.

2 DOMESTIC CHILD LABOR, ITS REALITY, AND LOSSES IT CAUSED

Domestic work is a reality that is part of the country's culture, a remnant of slavery, which became naturalized in the context of work, but without the guarantees due to every worker, which has only recently occurred.

This stands out in the Consolidation of Labor Laws⁸, of 1943, from which it was excluded (art. 7) and, even in the Federal Constitution, whose art. 7, when listing the rights of the worker, also excluded it, dealing with the topic in its sole paragraph, in a selective, therefore discriminatory manner, given the designation provided for in its *caput*. However, it is certain that some rights hitherto ensured by Law no. 5,859, of 12/11/1972, have been significantly expanded, although, as stated, a significant difference remains concerning those provided for other workers.

Although named as a Citizen Constitution, due to the fundamentals and principles it establishes, the 1988 Charter did not give these workers, when it was promulgated, due recognition, with all the inherent rights arising from the work performed. Fortunately, this discrimination was corrected with the promulgation of Constitutional Amendment no. 72, of 03/02/2013, which made these workers equal to other workers, as having the same rights, and with the advent of Complementary Law no. 150, of 06/01/2015, which disciplines them.

Even with the legal correction, the cultural practice of devaluing domestic work, considering it a minor job, one of the consequences of the existing inequality in the country, remains in resistance to its legal recognition as a job like any other and with equal rights.

In this context, and in a more damaging way, we have the reality of domestic child labor, which is all continuous service provision, paid or unpaid, performed by a person under the age of 18, for third parties or their own family, and that has naturalized over the years.

To understand this naturalization, one must take into account the slave regime in our country. And, in this respect, the advent of the Free Womb Law, Law no. 2,040, of 9/28/1870, can be taken as a reference because it is exemplary in terms of the dubious treatment of freeing someone and, at the same time, maintaining the protection of children born of slaves.

That law said the children of slaves, born from that moment on, were free, but at the same time, it brought provisions that ended up keeping them linked to the master (art. 1)⁹. There are several texts that analyze it and refer to the controversies it generated at the time. Marília B. A. Ariza (2018, p. 174-175) writes about it, in an article from which the following excerpt is extracted:

The scenario of slave childhood is really bleak. Back to the starting point, the question remains: did anything change in the lives of these boys and girls with the approval of the Free Womb Law? In practice, despite signaling the inescapable end of slavery that permanently lost its means of reproduction, the law had the effect of extending it to the limit of possibilities. The masters of the mothers of “ingenuous” tried at all costs to defraud the mandatory birth records that proved their status as free people, omitting or falsifying dates. Furthermore, the promised freedom was, at the very least, doubtful: until they were eight years old, they should remain under the tutelage of their mothers’ owners; they could then choose to offer them to public asylums in exchange for indemnities of 600 mil-réis, or to keep them with them and enjoy their services until the age of 21. Rare were those who chose the indemnities and handed the little ones over to the State – most preferred to conserve the labor of children who in a few years would perform adult services. In the 1870s and 1880s, when the rates of manumission were increasing, the law created obstacles for the emancipation of the families of the “ingenuous”, especially for their mothers. Even though they could buy their letters of freedom, these women were forced to remain under the control of their masters if they wanted to remain close to their children.

After the abolition, in 1888, old masters eagerly tried to maintain control over the “ingenuous”, by engaging them, with the help of the judicial authorities, in labor contracts and guardianship bonds that always had the same false justification: watching over the poor children and their future, teaching them crafts and welcoming them into appropriate homes, protecting them from the harmful influences they would receive from their mothers, fathers or peers. It was necessary to instruct boys and girls in the discipline of work and to promote respect among them for the social hierarchies that replaced slavery, in order to preserve, as much as possible, the old inequalities. Strenuous work routines, varied violence, and family breakdowns continued to be part of these children’s lives for years on end in the post-abolition period.

Of course, there are other causes for this reality to appear, such as, for example, poverty, which also affects the majority of the black population in our country, certainly due to the long years of slavery and an abolition carried out without due assistance to free people, one of its most cruel consequences.

This context of poverty and deprivation gave rise to the emergence, in some regions of the country, especially the North and Northeast, of the

practice of families in need of handing their daughters over to other families who welcomed them as godchildren, in the hope of having education and care, therefore, another perspective on life. However, this was rarely accomplished, since the reality was the provision of unpaid services to the family as a reward for the welcome, often configuring their exposure to abuse and violence. This is a practice that still exists.

Art. 248 of the Statute of the Child and Adolescent (ECA), Law no. 8,069, of 1990, was a consequence of the common practice. And, despite being based on the doctrine of comprehensive protection, and aiming to regulate art. 227 of the Federal Constitution, instituting the system of guarantee of rights, this legislation (BRAZIL, 1990) brought the provision, inserted in its Chapter II, which deals with “Administrative Infractions”, *verbis*:

Art. 248. Failing to submit to the judicial authority of his/her domicile, within five days, in order to regularize custody, an adolescent brought from another county to provide the service, even if authorized by the parents or guardian:

Penalty – fine of three to twenty reference wages, double the amount in case of recidivism, regardless of the adolescent’s return expenses, if applicable.

The provision, although it aimed to discipline this reality, providing some protection to the adolescents involved in it, due to the planned custody, did not focus on the issue of work implicit in the condition, therefore, not facing the problem and, certainly, not bringing the intended protection, eventually consolidating a situation of denial of rights.

In relation to this article, Oris de Oliveira (2003, p. 106) wrote:

The wording of Article 248 was unfortunate, allowing an interpretation, in a hasty reading of the acceptance (if not a consecration) of the custom of, under the guise of custody, having the adolescent ‘to provide domestic service’, without limits and outside a work regime. Under the guise of this atypical guardian figure, there were and are numerous abuses occasionally detected, with the inhibition of the Guardianship Council, the Public Prosecutor’s Office, and the Childhood and Adolescence Court.

The provision was finally revoked in 2017, by Law no. 13,431, which establishes the system for guaranteeing the rights of children and adolescents who are victims or witnesses of violence and changes ECA provisions. It is true that since the enactment of Decree no. 6,481, of 6/12/2008, which approved the list of the worst forms of child labor as a result of the ratification of ILO Convention no. 182, the provision was considered derogated.

It can be seen, therefore, that, even in a moment of guaranteeing the rights of children and adolescents, ECA brought a norm that mirrored a usual procedure of society, to demonstrate its imaginary, that poor children and adolescents are liable to be under the tutelage, as provided for in the revoked Code of Minors¹⁰, not being seen, therefore, as subjects of all the rights listed in the mentioned art. 227, which are part of the comprehensive protection provided there.

This broader approach is important to understand the reality of domestic child labor and the harmful conditions that surround it, as an opening to abuse, including sexual abuse, mistreatment, and violence.

This is enhanced by the fact that it is performed in households, therefore having as a characteristic hidden, invisible work, sheltered from the knowledge of third parties, due to the inherent inviolability, as constitutionally provided (art. 5, X and XI, CF). The preservation of intimacy is, therefore, conducive to mistreatment and abuse, including sexual abuse, being this situation hidden from others, from society in general.

It is important to point out that the reality of domestic child labor as a work situation in harmful conditions and, even, of violence and mistreatment, began to gain space from studies developed in this regard, which brought to light this hidden, exploitative reality, exposing and weakening children and adolescents involved.

Including the Child Labor Eradication Program (PETI)¹¹, which, at first, turned to some situations of child labor considered more serious, among them, the work in charcoal works, quarries, and flour houses, in face of this reality, and from the claim of the entities involved in combating child labor, began to contemplate families that had children and adolescents in a situation of domestic work.

At the time, there was a difficulty in the performance of labor inspection, due to the constitutional principle of inviolability of one's home, which was being overcome, with procedures such as contact with the employer and listening to it to ascertain the reality of the work, going to the workplace with authorization and, in severe cases or denying access, obtaining a court order to access the workplace.

With studies and actions developed by a specific Commission, created within the scope of CONAETI, for the preparation of the List of the Worst Forms of Child Labor, referred to in Convention no. 182, domestic child labor was thus considered, coming to integrate the list approved by Decree no. 6,481/2008.

As mentioned in the list, the activity comprises item 76, which brings the occupational risks involved¹² and the likely health repercussions¹³. Occupational risks include intense physical efforts, isolation, physical, psychological and sexual abuse. Among the repercussions to health, bruises, fractures, injuries, burn, among others.

Housework has a routine of repetitive, painful activities, handling aggressive and toxic materials, being liable to cause accidents, especially when practiced by children and adolescents, leaving them at the mercy of adult control and exploitation, subjected to long working hours, in addition to being in confinement, away from social contact with other children and adolescents and the family. This reality is more frequent in the case of children and adolescents brought from other states and locations.

This is reported by Maurício Antunes Tavares (2002, p. 37):

The children and adolescent domestic workers who participated in this research reveal that early entry into the labor market, since the beginning, is configured as a relationship of exploitation, where adults take advantage of the vulnerability and inexperience of the youngest since the “negotiation” of the “employment contract!” [...]

The *age* factor is the basis for many discrimination and violence, such as the exploitation of child labor, sexual abuse, and exploitation, abandonment, and mistreatment of children and adolescents. This perverse “logic” of abusing and exploiting those that should be protected is also present in domestic child labor; the younger the child or (pre) adolescent, the easier it is to deceive and mistreat the child or adolescent, either by paying ridiculous wages, prohibiting outings, neglecting days off, holidays and other rights legally due to domestic workers or by verbally and physically assaulting – slapping, pinching, possibly even sexual abuse. Meanwhile, violators remain protected from the inviolability of the home and the omission of the State, society, and family.

It should be recalled in this context that Convention no. 182, for the purposes of its provisions, considers a child to be anyone under the age of 18, following the same concept adopted by the UN Convention on the Rights of the Child.

The Convention, when listing in its art. 3 the worst forms of child labor, brings the subparagraph “d” which considers as the worst form of work the one “that, due to its nature or the conditions in which it is performed, is likely to harm the health, safety, or the morale of children” (ILO, 2000).

On the other hand, Recommendation no. 190, which complements the Convention, serving as a parameter for its application, contains in its items I and II indicative of actions and working conditions to be considered in the treatment of the problem. Item I addresses the Action Programs that have among their objectives to give special attention, among others, to younger children, girls, and the problem of hidden work, in which girls are particularly exposed to risks. On the other hand, item II refers to dangerous work, listing a series of situations to locate the jobs in which the child is exposed to physical, psychological, or sexual abuse and to those who unjustifiably retain him or her in the employer’s locations (ILO, 1999).

The Convention and Recommendation, therefore, conceptualize harmful working conditions for the concept of the worst forms of child labor, in which domestic child labor is inserted.

A separate situation, but also important for actions to combat and prevent all forms of child labor, and which, therefore, should also be considered for the purposes of specific public policies and actions, is that of household chores, in which children and adolescents in the age group of 5 to 17 years are involved, and which has been focused, especially, in the 2016 Continuous PNAD (IBGE, 2017).

Household chores can have different classifications, with different goals and consequences. There is the performance of small household chores, which are effectively inserted in the characteristic of educational and training activities. They would be small and brief tasks given to children and adolescents, according to their age and condition, which are part of family life and reveal integration and socialization, participation in the family’s daily life, gradual assumption of responsibility and solidarity, integration into the family community.

These activities, especially when practiced by children, must be done in company and with the supervision of adults, and constitute true teaching to share and contribute. These tasks include, for example, making your own

bed, storing your own clothes, helping to wash and dry the dishes, etc. They are small moments of everyday life that do not interfere with school activities, leisure, rest, playing.

However, in many situations, these household chores occur during much of the day, involving children and adolescents in household and child care tasks, usually brothers and sisters, tasks that are proper to the adult, the parents, and their legal guardians. Under these conditions, they assume the condition of child labor, with the resulting consequences. When this reality is constant, this continuity constitutes work, with harmful repercussions, due to the resulting denial of rights.

In these cases, these children and adolescents are engaged in work tasks at home, because they are performing them in the place of their parents, assuming obligations inherent to adults. In this way, the logic of socializing, integrating, educational activity is inverted for the work activity, of carrying out family care and preservation activities.

This also has economic value, as it frees the adult to exercise other activities, in search of survival conditions, which is done at the cost of sacrificing the time necessary to these children and adolescents to acquire schooling, social interaction with other children and adolescents, leisure, essential in this stage of development, acquisition of knowledge for their maturity, thus prejudicing their regular and healthy development. As enshrined in the Constitution, they are people in development, subject to comprehensive protection.

Therefore, the data about it cannot be minimized and underestimated, under penalty of distortion of reality, with the consequence of not adopting public policies that address the issue and affect every child and adolescent in work situations, whatever it may be, by damaging their integrity as people.

3 DOMESTIC CHILD LABOR – PREVENTION AND COMBAT

IBGE data from 2013, analyzed by a study published by FNPETI (2015) reveal that children and adolescents aged 5 to 17 years involved in domestic child labor amounted to just over 213 thousand, out of a total of 3.2 million children and adolescents, in the same age group, at work. Of this

total, 124,682 in the 16 to 17 age group, with some states showing an increase in this work in the 10 to 13 age group. Girls were in the majority, about 96%, and 73.4% of them were black.

In 2011, there were 258 thousand children and adolescents in the same age group in the activity, according to data from the IBGE, with a similar percentage of girls and black girls previously mentioned.

For a brief comparison, there is the quote made by Tavares to Schwartzman in his analysis of the PNAD/IBGE, which points out that, in 1998, there were around 559 thousand children and adolescents, aged 10 to 17, “in the labor market of household services” (TAVARES, 2002, p. 24), although he clarifies that other studies bring other numbers, for example, from 375 to 400 thousand.

These data show a decrease in the number of children and adolescents involved in the activity, which, in fact, has been happening over time. However, this number is still significant, considering that it is one of the worst forms of child labor, in hidden work, in which minors are exposed to abuses of all types, in addition to other risks, such as accidents at work.

The data illustrate a pressing composition of children and adolescents from poor, fragile families. In this sense, as explained, girls are the most involved, in addition to being mostly black, which is consistent with what was discussed earlier, of being an activity with roots in the slave regime.

The data also point out that the majority is in the age group of 14 to 17 years old, although, when it is work done for the family itself, the age group of 9 to 13 years stands out.

The 2016 Continuous PNAD provides data on child labor separately from the data provided for the work carried out for consumption itself, which results in the distortion of the number of children and adolescents in early work situations since it indicates 1 million and 700 thousand children and adolescents in the age group of 5 to 17 years in the condition of child labor and just over 700 thousand children and adolescents in the same age group involved in work for their own consumption (IBGE, 2017).

This needs to be focused on, since the work carried out for own consumption brings the same consequences as the work carried out outside

this context, such as fragility, vulnerability, denial of rights, with negative consequences for the full development of these children and adolescents. On the other hand, it is an important fact that domestic work involves a large majority of black girls, showing a specific vulnerability, which requires attention and care in combating and preventing it. Tavares (2002, p. 30) writes about it:

If, as Thompson says, “for most people, the power and domination relations that affect them most directly are those characterized by the social contexts within which they live their daily lives: home, the workplace, the classroom, the companions” (1989:18), then we have to consider children and adolescents in domestic work, in addition to aspects related to the material conditions of life of workers, the dimensions experienced by children and adolescents at home, at school, and in the community.

It means to say that **the dimension of domestic workers is cleaved by the dimensions of being a child or adolescent, woman, black and mixed race**. They are elements that unite them and distinguish them from the universes of adult domestic workers and other child and adolescent workers. Thus, it is common to find poor girls being initiated into domestic work from the first years of life, usually beginning at seven, eight years of age in intrafamily work, then going to the paid domestic work market as a “natural” development of their condition as women, black and mixed-race, child or adolescent, and poor (emphasis added).

The prevention and elimination of domestic child labor must necessarily address this reality. Education, as always, is a fundamental factor to reduce the existing inequality in our country and, certainly, to remove children and adolescents from the work situation. As seen, the guarantee of their rights, as people in development, subject to comprehensive protection, will not be obtained without obtaining access to school at all levels.

Concomitantly, this must be accompanied by the guarantee of other rights, such as family life and coexistence with other children and adolescents, health, well-being, leisure, among others, in the manner defined in ECA, in short, the right to freedom, respect, and dignity like human people.

In order to better position the issue, the recommendations made by Maria Ignez Moreira and Márcia Stengel (2003, p. 59-60), organizers of the work *Narrativas Infanto-Juvenis sobre o Trabalho Doméstico*, are described:

[...] strengthening school education; family-oriented programs; programs aimed at training for the work of adolescents; leisure and culture programs; programs aimed at adolescents’ sexual-reproductive health; formation of reflection groups for adolescents who are attending specific programs;

implementation of the public service network; advertising campaigns, and conducting research on domestic services carried out by children and adolescents in Brazil.

The recommendations are legitimate, as a result of research with children and adolescents involved in domestic work; they reveal the reality they experience and their needs, being a reference for thinking about the issue. Thus, they are presented as a starting point to talk about prevention and eradication.

Conducting research on the topic, one of the recommendations made, draws attention because it is accompanied by reflection, in the sense that “families seem to see this activity as a socialization strategy for girls”, and that “the tasks seem naturalized, for being considered as an ‘obligation’ for women and in view of the exchange relations established inside the houses” (MOREIRA; STENGEL, 2003, p. 59-60). Although the reflection is located in 2003, it is still a reference today, given the inequality that remains and, unfortunately, it deepens, as well as the existing gender inequalities. The authors also draw attention to the fact that “the adolescents interviewed are domestic workers do not exempt them from the obligation of domestic service, which means exposure to a double shift” (MOREIRA; STENGEL, 2003, p. 59-60).

Hence the need for specific public policies to also provide assistance and support programs for families, as well as addressing gender and race issues, which make these children and adolescents more vulnerable. In this sense, the recommendation cited also stands out for programs aimed at the sexual-reproductive health of adolescents.

The strengthening of school education is something that permeates this and other realities of child labor. Although data from the 2016 Continuous PNAD of the IBGE show that part of the children and adolescents who work attend school, the problem is not solved by going to school, because, in addition to work bringing the school gap, it also brings school dropout.

School education does not only imply being in school but especially keeping it in learning conditions, bringing the quality of education and full-time education as inherent to it.

School education is a time of study and reflection, as well as support and guidance activities. And this, in itself, imposes the question of time, which should be available, which avoids simply being in school and, at the same time, working, whether for third parties or for own consumption, as well as the so-called “household chores”, which, as already exposed, are concealed in work, not setting up, as they should, occasions for socialization and integration into the family.

On the other hand, associated with obtaining schooling, there is the professional training of adolescents, from the age of 14, as provided for in the Constitution, which must occur in the form of the Consolidation of Labor Laws (CLT), of “methodical technical-professional training, compatible with their physical, moral and psychological development”, characterized by “theoretical and practical activities, methodically organized in tasks of progressive complexity, developed in the work environment” (BRAZIL, 1943, art. 428). Education and professional training form an essential binomial for the preparation of the adolescent for the acquisition of conditions of choice for the exercise of any activity.

Of utmost importance are references to social coexistence and leisure, because as human beings in development, contact with children and adolescents of the same age is essential to see and understand themselves as such, sharing desires, expectations, and fears that are typical of the age. Family life, giving them security and support in this growth. Leisure, as a time of relaxation and doing nothing or doing what you want, is also essential for healthy development.

All of this implies the exercise of freedom, respect, and the preservation of their dignity. That should be the goal and benefit of all children and adolescents, and it is up to the state, society, and the family to provide it.

ENDNOTES

- 1 See the 2016 Continuous PNAD (IBGE, 2017). Although the IBGE already has updated data on this, these data to date, June/2020, have not yet been released.
- 2 Created by Ordinance MTE no. 365, of 09/12/2002, amended by Ordinance MTE no. 952, of 07/08/2003, it was extinguished by Ordinance no. 972, of 08/21/19, of the Special Secretary of Social Security and Labor, from the Ministry of Economy. The Labor Prosecution Service was one of its components.

- 3 Said Plan foresees actions for the period 2019-2022. Its text was endorsed by the National Council for the Rights of Children and Adolescents (CONANDA), having been prepared based on the evaluation of the Plan planned for the period 2011-2015, which demonstrated the implementation of 60% of the actions provided for in it, as shown in specific publication of the National Forum for the Prevention and Eradication of Child Labor – FNPETI, available at www.fnpeti.org.br.
- 4 FNPETI was created in 1994.
- 5 One of the priorities of the Labor Prosecution Service is the eradication of child labor and the regularization of adolescent work. For a strategic action in this regard, in 2000 it created the National Committee to Combating the Exploitation of Child and Adolescent Labor (COORDINFÂNCIA).
- 6 UN 2030 Agenda. SDG 8 – Promoting sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all. Goal 8.7 – Taking immediate and effective measures to eradicate forced labor and end modern slavery and human trafficking. And ensuring the prohibition and elimination of the worst forms of child labor, including the recruitment and use of child soldiers, and by 2025 end child labor in all its forms.
- 7 ILO Convention no. 182 was approved by its General Assembly in June 1999, having been ratified by Brazil and promulgated by Decree no. 3,597, of 09/12/2000. It deals with the Worst Forms of Child Labor and Immediate Action for its Elimination, being complemented by Recommendation no. 190.
- 8 Approved by Decree-Law no. 5,452, of 5/1/1943.
- 9 Art. 1. Children of slave women, who are born in the Empire since the date of this law, will be considered free. § 1 – The said minor children will remain in the power or under the authority of the masters of their mothers, who will have the obligation to raise and treat them until the age of eight complete years. When the slave's child arrives at this age, the master of the mother will have the option, either to receive a compensation of 600,000 \$ from the State, or to use the services of the minor up to the age of 21 years. In the first case, the Government will receive the minor, and give him or her a destination, in accordance with current law. The monetary compensation set out above will be paid in income securities with an annual interest of 6%, which will be considered, extinguished after 30 years. The declaration of the master must be made within 30 days, counting from the one in which the minor reaches the age of eight years and, if he does not do so, it will be understood that he chooses to use the services of the same minor. § 2 – Any of these minors may redeem themselves from the burden of serving, by means of prior monetary compensation, which they, by themselves or by others, offer to the master of their mother, proceeding to the evaluation of the services for the time remaining to be fulfilled, if there is not an agreement on the quantum of the same indemnity. § 3 – It is also up to the masters to raise and treat the children that the daughters of their slaves may have when they are rendering services. Such obligation, however, will cease as soon as the provision of services by mothers ends. If they die within that period, their children may be made available to the Government. § 4 – If the slave woman obtains freedom, the children under the age of eight, who are in the possession of her master by virtue of § 1, will be delivered to her, unless she prefers to leave them, and the master accepts to stay with them. § 5 – In the case of selling of the slave woman, her free children, under 12 years old, will accompany her, the new master of the same slave being subrogated in the rights and obligations of the predecessor. § 6 – The provision of services by the children of slaves ceases before the term set out in § 1, if, by a sentence of the criminal judge, it is recognized that the masters of the mothers mistreat them,

inflicting excessive punishments on them. § 7 – The right granted to masters in § 1 is transferred in cases of necessary succession, with the slave's child providing services to the person to whom the same slave belongs in the shares (BRAZIL, 1871).

- 10 The Code of Minors, Law no. 6,667, of 11/10/1979, was revoked by the 1988 Constitution, thus removing the doctrine of the irregular situation from the scenario of legal treatment of issues concerning children and adolescents. Its art. 2 describes children and adolescents in an irregular situation, such as, for example, those deprived of essential subsistence conditions, victims of abuse, in moral danger, perpetrators of criminal offenses (BRAZIL, 1979).
- 11 Federal government program, created in 1996, aimed at combating the exploitation of the work of children and adolescents.
- 12 Intense physical efforts; isolation; physical, psychological and sexual abuse; long working hours; night work; heat; exposure to fire, anti-ergonomic positions and repetitive movements; traction of the spine; muscle overload and trip and fall accidents at ground level.
- 13 Musculoskeletal disorders (bursitis, tendonitis, back pain, synovitis, tenosynovitis); bruises; fractures; injuries; burns; anxiety; changes in family life; disorders of the sleep-wake cycle; WMSD/RSI; spinal deformities (low back pain, scoliosis, kyphosis, lordosis); professional burnout syndrome and professional neurosis; traumatism; dizziness and phobias.

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CHILD LABOR ON THE STREETS AND STRUCTURAL RACISM: CHALLENGES IN THE PERFORMANCE OF THE LABOR PROSECUTION SERVICE

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Abstract. Child labor on the streets in Brazil is linked to structural racism. It has its origins in post-abolition and persists to the present day, massively affecting black children. Such analyzes are the result of academic studies, as well as professional practice on the subject, which points to racism as structuring the social inequalities that produce and reproduce the work of children and adolescents. This article intends to bring to the debate the racial issue present in this type of child labor, as well as to indicate possible paths, based on policies to promote equality and fight racial discrimination, to advance in the actions to confront child labor on the streets.

Keywords: Child Labor on the Streets. Racism. Public Policies. Labor Prosecution Service.

1 INTRODUCTION

In the last decades, we had a significant reduction in child labor in Brazil, going from more than 9 million (1996) children in a work situation to a level of 2.5 million (2016). However, these data, extracted from PNAD/IBGE, do not accurately portray the different types of child labor, notably that which occurs on the streets and is directly linked to the history of social exclusion of the black population, experienced since the abolition of the slavery system in Brazil and which brings reflexes to the present day, reaching the black child population.

In this essay, based on studies carried out in academic research, as well as experience in acting in the Labor Prosecution Service, exchanges of knowledge with different social actors in spaces of debate such as the São Paulo Forum for the Prevention and Eradication of Child Labor, and others that work in protecting children and also in forums and commissions that promote racial equality, we intend to demonstrate the relationship between racism and child labor on the streets. And from that, to point out the need to analyze this issue as a structuring factor for child labor, in order to move forward in social actions and policies to face it.

2 CHILD LABOR ON THE STREETS IN THE POST-ABOLITION PERIOD

Child labor in the history of Brazil is usually associated with the industrial period, when children and adolescents worked on strenuous working days, dangerous, unhealthy conditions in the factories, together with women, in an overexploited regime, without guaranteed rights, which would come at the beginning of the 20th century to give rise to the first labor protection legislation. The workers' movement in the period, notably the General Strike of 1917, whose main agenda was the abolition of child labor, stands out the most. In the international scenario, the creation of the International Labor Organization - ILO, in 1919, and the first norms of international protection at work, aimed at the elimination of child labor in the industry.

On the other hand, prior to this situation, in the colonial period, black children, together with adults, brought from Africa, were subjected to slave labor, in domestic services, in agriculture, in degrading and servile conditions. Many did not even turn 10 (DEL PRIORE, 2013, p. 245 *apud* SANTOS, 2017)¹, as revealed by historical records, unknown or hidden on child labor analyzes. Black girls in addition to working in homes were victims of sexual violence² and teenage black boys had high domestic sales value³, due to their vitality (LIBERATI; DIAS, 2006, p. 19-20 *apud* SANTOS, 2017).

With the formal abolition of slavery in 1888, children were left to fend for themselves on the streets, fighting for survival, a scenario that does not clash with much of the reality we find in Brazil today.

Childhood in Brazil was brutally violated, thus, both by the exploitation of work in industries and by the criminalization of work on the streets, the latter carried out by black children, sons, and daughters of the freed enslaved. This reality marks the basis of support for Brazilian society, anchored in the non-access of the black population to basic rights, especially housing, work, and education. It penalizes and stigmatizes different generations of black families and children, who remain without access to these rights.

On the situation of black children in the post-abolition period, Nepomuceno (2016, *apud* SANTOS, 2017) states:

Freed blacks did not receive any support from public policies for this new phase of life. Then poverty increased and we started to find more children on the streets. At the beginning of the 20th century, we found mainly boys getting involved in petty crimes, and in that period we no longer see a response from the state, there were no policies for minors in this social condition of poverty. This happened throughout Brazil. The first response from the Brazilian state only came with the police, when we started to see the children being arrested. Incarceration institutions were created, with a coercive and not a protection perspective. Most of these institutions had an educational proposal for regular education, but together, there was a very strong discipline of work. They worked and engaged in some professional training to meet the needs of the market at ages that do not correspond to adult work. Children of 9, ten years old, were already prepared to work. [...] Work has always been present in the life of the poor Brazilian child.

Rizzini (2013, pp. 376-7) *apud* Santos (2017) mentions that the increase in marginality in urban spaces led to the thought that work would be a solution to the problem of abandonment and delinquency. In this sense, State initiatives were implemented with a view to discipline and correction of socially unacceptable behaviors. Children were displaced from the streets to work in agricultural colonies and industries, under a philanthropic justification, but as a social hygiene policy, therefore, markedly racist.

Such historical aspects bring us important elements for the understanding of the division of labor and exclusion of the black population from formal posts, perpetuating forms of enslavement under other guises, and the stigmatization of activities on the streets as non-work. Brazilian legislation itself criminalized the behavior that is called “vagrancy”, as well as the practice of “capoeira”, which aimed to marginalize the black population on the streets of Brazil, together with the whitening policy, especially with the arrival of immigrants to work in the industry.

It is important to analyze how the labor legislation itself excluded black children from its protection. The Consolidation of Labor Laws (1943) in the original wording of its article 403, paragraph 2 (still present in the legislative text), expressly allowed the work of children in the streets, squares, and public places, authorized by the then judges of “minors”, when verified the need for their subsistence or that of their family. Such a provision, which is absolutely incompatible with the 1988 constitutional text, has until recently been applied by law judges in order to justify the work of adolescents on economic need, in a way that is totally contrary to the constitutional provisions on the minimum age for work and comprehensive protection of children and adolescents, as provided for in articles 7, XXXIII, and 227 of the Constitution.

It is also important to emphasize that the Penal Code of 1890 established the minimum penal age at nine years (article 27, §1). Between nine and 14 years of age, the accountability was conditioned to the presence of discernment, determining the withdrawal of the offending children to industrial disciplinary establishments for as long as the judge deemed convenient, as long as they did not exceed 17 years old (article 27, § 2 in conjunction with article 30). Between 14 and 17 years of age, the Code provided for a lighter sentence (article 65), with those over 14 being able to be collected from industrial establishments up to the age of 21 (article 399, §2). This system made it possible, in practice, for a nine-year-old child to be interned (imprisoned) until he/she was 21 years old in an industrial establishment, therefore, for forced labor.

In this context, the issue pertaining to work in the reality of black children’s lives was covered up by the criminal issue. As a result, instead of legislative protection, they received punitive treatment. Without guaranteed rights, black children were not only subjected to street work but also punished for this conduct and imprisoned for carrying out forced labor for the State.

3 CURRENT DATA ON CHILD LABOR ON THE STREETS

To date, Brazil does not have a specific policy for tackling child labor on the streets, although the *World Report on Child Labor*, produced by the ILO in 2013, points out as a priority in tackling child labor, in its item 6, “Especially vulnerable groups of children”, aiming that social protection policies reach children at greater risk of child labor, in particular, in its worst forms.

From the analysis of data from PNAD/IBGE, which measures the work of children and adolescents in Brazil, we find gaps that reveal the inaccuracy and even the lack of data on street work, more specifically of children jugglers, as shown in the master's degree research defended in USP Brazilian Studies Institute, entitled *Child labor on the streets, poverty and discrimination: invisible children at the traffic lights of the city of São Paulo* (2017).

In that study, we found data on the profile of working children on the streets, based on two census surveys, specifically the National Census Survey on Street Children and Adolescents (2011) and the Street Children and Adolescents Census of the Municipality of São Paulo (2006-2007). In these surveys, carried out using the methodology of *in loco* verification, at points previously mapped as outbreaks of child labor, as well as on certain days and times, it is possible to identify the profile of children in work situations on the streets.

The aforementioned national census pointed out that: a) most children are out of school (8.8% have never studied and 56.3% were out of school); b) 70% are black boys; c) the main work activities are the sale of products (candies, chocolates, fruits, soft drinks, ice cream – 39.4%), vehicle washers, people who wash and clean vehicles at traffic lights (19.7%), separation of recyclable material (16.6%), juggling (6.1%), shoeshine (4.1%). It also pointed out an expressive category that performs begging (29.5%), which is not far from a concept of forced child labor, when imposed by an adult, a concept brought by the ILO on human trafficking and forced labor (2013)⁴.

In the same vein, in the Manual of the Labor Prosecution Service on the performance of Dial 100 (MPT, 2014), we consolidate the understanding that the situation of begging is a form of work on the streets:

Even though the complaint refers to begging exclusively, the situation it reports, found in large urban centers, is associated with the exploitation of children and adolescents by an adult (usually one of the parents or both), who takes advantage (and benefits) of this illicit conduct as a real remunerative activity and “occupation”. In this same condition of exploitation of work (*lato sensu*), there are children shoe shiners, “flanelinhas”, car keepers and washers, sellers of candies and other products, jugglers, distributors of pamphlets at traffic lights, garbage/cans collectors, and even child domestic work.

The census also pointed out that the vast majority work for their own livelihood and for that of their families, coming from very low social

classes, in situations of extreme or absolute poverty, or even misery. Another relevant data is related to government social programs, the vast majority is not reached by these programs. According to the Census, 88.5% said they did not receive any benefit from government agencies. Among the benefits received were retirement (3.2%), the *Bolsa Família* Program (2.3%), and the Continuous Payment Benefit – BPC (1.3%).

The aforementioned municipal census provides indicators in the same general line as the national census: black children and adolescents, male, from very low economic classes, out of school, and without access to social programs.

Therefore, these children are invisible as child workers and, as a result, families do not access social programs. This data reveals that the existing public policies do not reach the most vulnerable black population, marginalized in terms of income, housing, education, all the most basic rights, and as a result, citizenship.

4 CULTURE OR IDEOLOGY IN CHILD LABOR?

For a long time, we understood that the problem of child labor was linked to cultural issues, present in the collective unconscious, especially families, when they understood this work as beneficial, a way of learning, and a way of fighting crime, all based on myths, which disregard the structural causes that are hidden in this serious violation of the rights of children and adolescents.

In fact, this thinking predominates in part of society, which aims to justify the early work of poor – and black – children naturalizing this situation as if they were children with fewer rights or non-children or children without the right to a childhood.

Now, if we analyze the historical process of child labor in Brazil, we will find answers to this so-called culture of child labor, which is based, in reality, on the roots of slavery brought here for reflection. On the one hand, an ideology that justified and perpetuated the modern enslavement of children – and adults – in precarious jobs to the present day, in addition to that which defends work as something good for learning, to the detriment of the right to school education.

Furthermore, there is no evidence of effective early work culture in Brazil today, as the average age of entry into the labor market is 25 years, as shown by the IPEA study, in 2015, translating, in this perspective, a work culture for youth, and a discourse only selective in relation to the culture of child labor. It is thus evident that race, gender, and class markers are crucial for understanding the problem and for the necessary implementation of policies for the prevention, repair, and rescue of childhoods.

Based on the analysis of child labor legislation and our history of exploiting child labor in factories and street work in the post-abolition period, we can identify two ideas that are widespread and naturalized in society: (a) work as training and learning for the working class; (b) work as a form of character and honesty as opposed to vagrancy and marginal activities. These two ideas have been treated as myths of child labor – or cultural issues that justify the naturalization of this practice in society.

It is, in fact, an ideology that makes up the social, political, and economic system, perpetuating its acceptance not only by the privileged population in access to rights but also by the population victim of child labor and non-access to rights. Through ideology, discourses are constructed that hide the social conflict between classes and conceal domination, giving the appearance of generality and universality to myths, false, distorted ideas, or that do not face structural causes. A generalized idea is built, without deepening its causes, without basing itself on sources, in research, in science, building false truths, which nevertheless gain wide support.

Analyzing the ideology present in the speeches that defend or naturalize the work of children and adolescents, we can identify two camouflages: one that covers the historical domination of the working class, by incorporating work as a learning value since childhood at the expense of education; another that masks structural racism by justifying the work of black children as an alternative to criminality to the detriment of social policies. The dominant thinking makes these families (or the culture they reproduce) be understood as competing, main or determinant causes of child labor, while their structural causes are hidden.

This discourse does not deny the inequality between the social segments, but it does deny that this difference has historical-economic-racial factors as a vector. To explain social differences, in Brazil, this ideology has

used the naturalization of inequalities and the discourse of meritocracy. Naturalization is an attempt to justify social inequalities by attributing supposed natural causes to differences in class, gender, and race. The social group that holds power benefits from the use of naturalization because, through it, it is possible to establish and maintain a hierarchy, attributing social insertion to criteria of effort and merit and maintaining the privilege of hegemonic groups. And as a result, the work of poor and black children is understood as natural.

For Whitaker (2007, p. 125) *apud* SANTOS (2017), it is necessary to destroy this ideological component that mistakes work with education or as a value for honesty in an indiscriminate way. This ideology persists in the collective unconscious, naturalizing child labor and covering up structural racism.

5 RACISM STRUCTURES CHILD LABOR ON THE STREETS

The lack of opportunities for the black population to access rights, historically, also affecting children and adolescents is what we can understand as the effects of racism that structures Brazilian society. It is systemic. Regardless of whether we want it to exist or not, because it was the basis of support for Brazilian society, in the period of enslavement, with the dehumanization of black people, for forced, painful, cruel, inhumane, and unpaid work. In other words, black people built the country's wealth but had no guaranteed rights. This situation is reflected in this inequality in access to rights and until today it has not been repaired by the Brazilian State.

It is common when we talk about racism, the thought that it is an act, an individual expression of offense, of injury, of the inferiorization of a person taken individually. This is one of the ways in which racism manifests itself. In this case, through individual expression, but that affects the whole of society. Law no. 7,716/89 establishes crimes resulting from discrimination or prejudice of race, color, ethnicity, religion, or national origin, penalizing conduct such as refusing access to commercial establishments or social elevators in a building. The crime is non-bailable and imprescriptible, with a penalty of one to three years in prison, in addition to a fine.

It happens that regardless of individual manifestations, racism permeates all spaces and sectors of society, as a process that prevents an

ethnic-racial group from fully exercising its citizenship. Almeida (2018, p. 39) teaches us that

racism, as a historical and political process, creates the social conditions so that, directly or indirectly, racially identified groups are systematically discriminated against”. And he adds: “Even though individuals who commit racist acts are held accountable, the structural view of race relations leads us to conclude that legal responsibility is not enough for society to stop being a machine that produces racial inequality.

Racism ends up consolidating itself in institutions. If we look into the Judiciary, the Prosecution Service, in the positions of heads of companies, in the Legislative, in the positions of the Executive, we have an underrepresentation of the black population, which today represents 55.8% of the people who make up the nation, but that is not present in political, economic and social decision-making spaces.

In this black under-representation in the spaces of power in Brazilian society, highlighting the spaces of Brazilian media and television, we can see how racism is introjected in our country, in our daily lives, and in a naturalized way.

In the same logic, it is important to understand how racism is also revealed in the violations of the rights of children and adolescents, and specifically in child labor, so that we can address them in their structural causes, with a view to guaranteeing fundamental rights, giving effect to the protection of comprehensive and absolute priority of all children and adolescents.

6 CHALLENGES FOR THE WORK OF THE LABOR PROSECUTION SERVICE

The National Committee to Combating the Exploitation of Child and Adolescent Labor – COORDINFÂNCIA, over the years, has been acting firmly in the fight against child labor, with the implementation of the *Childhood Rescue* Project, which we had the opportunity to conceive in its current format, when in the exercise of National Head (2016), which contemplates three axes: a) public policies, b) professional apprenticeship, c) education.

Analyzes on racism, gender, and social class as structuring of child labor can indicate new ways and methods of acting, both in the specific bias

of combating child labor, through COORDINFÂNCIA, as well as in actions articulated with the National Committee for the Promotion of Equality of Opportunity – COORDIGUALDADE.

Within the scope of the work in the Office of Labor Circuit Prosecution of the 2nd Region, in view of the Municipality of São Paulo, in the implementation of public policies to face child labor on the streets, in Civil Inquiry no. 2916/2013, we recommend, among others, through a proposed TAC, under analysis, the implementation of the following actions:

- a) Child labor on the streets should be included in the LDO's goals and priorities, with actions aimed at strategic projects and goals for their identification, policies to protect children and adolescents, professionalization of adolescents, and generation of jobs and income for families;
- b) Conducting a municipal census of street children, with specific data on CHILD LABOR IN THE STREETS, considering the different types of activities (juggling, shoeshine, squeegee kid, hawker, others), age groups, gender, race/ethnicity, family composition, places of residence, workplaces, family income, income from child labor, enrollment in social programs, education, discrimination in public or private places, among other issues;
- c) The information obtained in the Census should guide the planning and execution of the policy to face child labor on the streets, which should include intersectoral actions covering EDUCATION, CULTURE, SPORT, HEALTH, PROFESSIONALIZATION, EMPLOYMENT AND INCOME GENERATION, SOCIAL INCLUSION PROGRAMS THAT TAKE INTO ACCOUNT INTERSECTIONALITIES OF GENDER, RACE/ETHNICITY, AND TERRITORIES;
- d) Campaigns to prevent child labor on the streets, alerting the population that they should not contribute financially to works such as artistic presentations, product sales, shoe shines, or other activities;
- e) Improvement of the registration system for child labor families, so that it is not re-victimized when passing through different sectors, seeking an integrated system, in which, in the first service, through the network, it can be inserted in the Single Registry, with access to social programs, prioritizing the insertion of adolescents in professional qualification programs or apprenticeship vacancies, as well as families in generation and income programs, solidary economy, training, and qualification courses;
- f) Inclusion in the pedagogical project of municipal schools, in compliance with Law no. 8,069/90, rights of children and adolescents, considering child labor and its losses among the topics to be discussed;
- g) Inclusion in the pedagogical project of municipal schools, in compliance with Law no. 10,639/03, Afro-Brazilian and African history and culture, paying special attention to strengthening the racial identity of black children, valuing black culture, and strengthening the self-esteem of black children, most vulnerable to child labor on the streets and domestic work;
- h) Prioritizing the insertion of families identified in child labor situations in job registration programs, training courses, qualification, income generation,

directly or through agreements, aiming at the professionalization of mothers and/or guardians of children.

We believe that it is necessary to think of action strategies, which, in addition to directly addressing the violations of the rights of children and adolescents, including child labor, promote actions that can modify unequal and unfair conditions in access (or lack of access) to rights by the black population. With regard to child labor in the streets, a diagnosis with more precise analyses by the municipalities by census methodologies proves to be crucial.

Additionally, social policies for housing, schools, daycare centers, formal insertion in the work of the black population, and especially of black women, are necessary policies for the transformation of historically unequal realities, which place most of the black population in precarious jobs and their children working on the streets. The Labor Prosecution Service must also act for the promotion and implementation of these policies, in conjunction with the other branches of the Prosecution Service, as provided by CNMP Resolution no. 70, on June 11, 2019.

Still, articulated action between the Public Ministries is shown to be necessary to implement Law no. 10,639/2003, which establishes the mandatory nature of Afro-Brazilian education in schools, which adds to the mandatory inclusion of the rights of adolescent children in the curricula and educational programs, provided for in Law no. 11,525/2007. These are provisions included in the Education Guidelines and Bases Law, which have not yet been fully implemented in most Brazilian municipalities and states.

In this sense, the “*Childhood Rescue*” Project can be an important action strategy to discuss the racial issue in schools, related to the vulnerabilities that permeate child labor, while contributing to the implementation of anti-racist, emancipatory, and libertarian education, from the perspective of awareness of rights and citizenship.

7 CONCLUSIONS

Based on data analysis, studies and research carried out, together with more than a decade of experience in combating child labor, in the Labor Prosecution Service, we seek to summarize in this article the reflections that

led us to conclude by the existence of a direct relationship between racism and child labor on the streets in Brazilian society. This situation also occurs in relation to other forms of child labor, such as domestic work.

This is due to the spread of the naturalization of black children's work in such activities over decades. Brazilian legislation itself gave different treatment to these situations, allowing, for example, work on the streets when authorized by the Judiciary or work in a family home, according to the provisions of the CLT and the Statute of Children and Adolescents.

Additionally, the inequality resulting from the process of non-inclusion of the black population in work, education, and housing, in the post-abolition period, has perverse consequences until today, also affecting black children, who are the majority of children in a work situation, in general, and massively at work on the streets.

Thus, we understand that inclusion policies for the black population at work, especially women, together with social policies for housing, health, education, which take into account gender and race inequalities are fundamental for tackling child labor in Brazilian society. And such analysis perspectives must also be considered in the strategies of action of the Labor Prosecution Service and of the whole network of protection of children and adolescents.

Such actions are fundamental for tackling child labor. To combat racism and the historical social inequalities it produces in Brazilian society is also to fight for a childhood free of work for all children.

ENDNOTES

- 1 Of the slaves landed at the Valongo market in Rio de Janeiro in the early 19th century, 4% were children. Of these, only 1/3 survived until the age of 10. From the age of 4, many of them already worked with their parents or alone, since losing their parents was common. By the age of 12, the market value of children had already doubled. And why? Its taming was considered to have been completed and the inventory lists already appear with their established designation: Chico "farmer", João "herder", Ana "maid", transformed into small and precocious work machines (DEL PRIORE, 2012).
- 2 The girls, in addition to domestic activities or farming, were the target of their sexual desires. Many were forced to surrender sexually to their bosses, their children were overseers, and when they resisted, they were savagely beaten. Children who were born from these sexual relations sometimes received some special attention from the lords,

but they could also be abandoned in charities or even on the streets (LIBERATI; DIAS, 2006, p. 20).

- 3 A healthy 14-year-old black man was considered an important and expensive commodity, as he had all the strength of youth to spend at work. For this reason, most young slaves were sent to heavy jobs. Those who stayed in domestic activities, such as the pages, for example, could consider themselves privileged, as they had the confidence or predilection of the bosses. Dourado and Fernandez. *apud* Liberati and Dias (2006, p. 19).
- 4 Forced labor includes workers who are in the kilns, trapped in a vicious circle of debts, children who are victims of trafficking for the purpose of forced begging and domestic workers who are deceived about their working conditions.

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POLITICAL AND SOCIAL PARTICIPATION OF CHILDREN AND ADOLESCENTS IN THE FIGHT AGAINST CHILD LABOR

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Abstract. Children and adolescents have always been regarded as an inferior, smaller, and even worthless and voiceless group, minimized by their age range. The very etymology of the word childhood means the inability to speak, that is, it imposes the human condition of children and adolescents as a form of incompleteness. Throughout history, children and adolescents were treated as objects and explored in different ways. However, they were also historical individuals, despite being often invisible. Thus, this research will focus on the social and political participation of children and adolescents in Brazil, and child labor as a direct result of the subjection of children and adolescents, articulated with the centuries of slavery in the country and the structuring of a capitalist economic system. This construction runs through the autoethnography and the research technique of the participating observer, understanding the researchers as part of the research, and the observed ones as the *subject of making-knowing*. This work is intended to demonstrate, through the intersecting narratives, possibilities for building effective participation that changes subjectivities and communities, facing social phenomena, such as child labor and adult-centeredness.

Keywords: Children. Adolescents. Participation. Child labor.

1 INTRODUCTION

Brazil has a population with more than 60 million inhabitants between 0 and 19 years old, which is equivalent to almost a third of its population.

Despite the large number, there is yet another alarming number, that of daily violations that these individuals suffer. Children and adolescents in Brazil are daily victims of intra-family and extra-family abuse, sexual exploitation, child pornography, child labor, hunger, lack of access to schooling, are labor for drug trafficking and militia, in addition to suffering police violence and excessive and disproportionate extermination of the black population.

In this article, we will deal with one of the greatest violations of these rights, a social wound that arose in colonial Brazil, survived the reign, ascended with the empire, became explicit with the republic, solidified in the dictatorship, and, unfortunately, still stands in our democracy: child labor that entered the history of our country together with its supposed “discovery” by Europeans. It is inhuman to allow part of the economy to be sustained on the fragile backs of children, to be perpetuated for generations, erased and silenced by this social wound. There are voices in every corner of the country that have been and are silenced. Despite being treated as numbers, it is people, more specifically childhoods, who go in exchange for cheap business logic.

Interwoven with the fight against child labor, we intend to address the participation of children and adolescents in Brazil, from the perspective of a historical rescue that highlights and delegitimizes discourses such as the inferiorization of the non-adult subject. The reflections and narratives of this article go directly through the logic of the leading role of children, adolescents, and young people in guaranteeing rights and combating violence.

Much more than writing a scientific article, we intend to seek a possible and necessary way to face children and adolescent’s rights violations and to think about public policies, from a democratic and civic formation from childhood and adolescence.

2 METHODOLOGY

It was inspired by the research and writing method of autoethnography and the technique of approaching the participant observation, which allows us to be close to the investigated theme and break the archaic academic conceptions of the researcher and the object, allowing researchers to interact with the research.

Santos (2017, p. 221) defines autoethnography as a method that allows researchers to use their personal experiences to describe and formulate criticisms, in addition to recognizing and valuing the human relationships between researcher and research subjects, and ponders “[...] the intersections between the personal and the political, the subject and the social, the micro and the macro”.

In addition to inspiration in the autoethnographic method, we used the technique of participant observation with a group of adolescents and young people, who represent 14 states of the federation and are involved in the themes of political and social participation of children and adolescents who, for reasons of ethics, will not have their names or states disclosed.

For Mónico, Alferes, Parreira, and Castro (2017), this technique allows the active participation of researchers in the social scenario that they observe and investigate, even becoming part of the research roles and habits, interacting directly with the research subjects. As a technique and method in the qualitative research field, it is crucial to follow a theoretical framework that enables the decoding of information obtained/reflected (ANDRÉ, 1992).

Thus, we will use the bibliographic review of articles and books that address the themes of child labor and political and social participation of children and adolescents.

Finally, it is emphasized that we do not intend to affirm in this article supposed neutrality, since its researchers come from political and social projects involving children and adolescents; the methodology allows us to permeate within research/writing, and the academy itself has been attesting to the absence of an absolute impersonality in scientific research (SANTOS, 2017).

3 “HISTORY GOT US HERE!” A BRIEF HISTORICAL REPORT ON THE PARTICIPATION OF CHILDREN AND ADOLESCENTS IN BRAZIL

Boghossian and Minayo (2009, p. 414-415) report that, until the mid-1980s, literature registered young people and adolescents as eminently dangerous, threatening, and delinquent, which resulted in several public attempts of rigid “adequacy” and “socialization”. As a result, we had the categorization of the “irregular situation” and the Code of Minors, which

proposed to “take care” in order to prevent, treat, and punish the “irregular conditions”.

In opposition to the minor-related policies of the time and as a consequence of the mobilization of social movements, national and international, the United Nations Convention on the Rights of the Child appears, which radically changes the way of thinking and formulating public policies for children and adolescents, removing the child and adolescent in the category of subjects to become subjects of law.

As subjects, children and adolescents would no longer be in a situation of hyper subordination, as defended in the past, becoming active subjects, with a voice and the exercise of their citizenship.

The Convention created mechanisms for the realization of this emancipation and paradigm change. There are five articles that guarantee freedom of expression and thoughts: those of nos. 12, 13, 14, 15, and 16, which, in a broad way, determine the freedoms inherent to the condition of the child and adolescent, which range from receiving information to organizing groups, distributing ideas, based on the understanding of their discursive potentialities.

In Brazil, the change in the legal paradigm demanded innumerable political manifestations on the part of the social movements of children and adolescents, together with other sectors that sought a social, legal, and political change in the peculiar condition of development of those subjects of law.

As an example, there is the National Movement of Boys and Girls in the Streets, which was essential in these articulations and took several children and adolescents to the streets to fight and defend the creation of new legislation in the country, promoting, with this act, a historic milestone in the political and social participation of children and adolescents, which at the time tore the veil of invisibility and opened the doors of children’s and adolescents’ democracy.

Another historic moment, according to Luiz Dias (2008, p. 1), was in 1989, when, for the first time, adolescents between 16 and 18 years old were able to participate decisively in the election process in Brazil, taking more than 50% of the adolescents’ electoral registries to obtain their voting cards.

The recognition of the participation of adolescents in the *impeachment* process of ex-president Collor (1990-1992) is also important, in which more than 200 thousand adolescents and young people occupied the streets of São Paulo in search of the president's departure. The act gained strength and incredible propulsion, spreading quickly to the other regions of the country, later being named the Movement of the Painted Faces, one of the most striking political and social movements in Brazilian democracy (DIAS, 2008).

More recently, in 2015, teenagers took to the streets and schools, a wave of demonstration that was entitled "The secondary school spring in Brazil." Started in the state of São Paulo, due to cuts in education that would result in a "school restructuring" project that would close approximately 94 units. The government's proposal would end in a process of removing the territorial connection: school-student-community. Dissatisfied with the government's project, the students occupied the schools, demonstrating their territorial belonging and the State's duty to provide a public, universal, quality education that is accessible to the school community.

With the support of social networks, the movement spread from north to south, coming to occupy numerous schools and universities, demarcating to the public authorities the youth dissatisfaction with the political education projects applied in the country. History allows us to perceive, thus, the creation of a myth, that "young people and adolescents naturally do not like politics", whose purpose is to devalue children, adolescents, and young people as political beings.

In the poetic rhymes of Charlie Brown Jr.:

I see on TV what they say about the young people is not serious
Young people in Brazil are never taken seriously
I see on TV what they say about young people, it's not serious, it's not serious [...].

4 "WHEN I RELEASE MY VOICE, YOU WILL HAVE TO LISTEN TO ME": WHAT IS PARTICIPATION?

In simple access to Google, when typing the word "participation", we can understand that it comes from the verb "participate", which means the action of "one does something", "something happens" or, in its less common use, "the act of informing or receiving information."

Starting this research through the meaning given to the word “participation” is essential since several authors in the field of social sciences have already attested to the power and role of language, the symbolic over the real and the material over the symbolic.

For Paulo Freire (2011, p. 33), “words are read and interpreted based on material reality.” Therefore, when looking for the sign given, we realize that participating is an act, a practice, which conducts something, and that goes through actions such as receiving information and informing.

From the perspective of understanding the practical meaning of what participation is, during an activity with a group of adolescents and young people, we asked about what would be the political and social participation of children and adolescents. Here are some answers.

It means having the opportunity to know that to be a child or adolescent is to be a subject of law. Being strengthened by receiving the knowledge and the power to talk about what you know. But it is important to allow us to train on different topics (Adolescent A, North Region).

For me, it is even at a young age, it can be the transformation of our reality, and the school does not talk about it, but it has a fundamental role (Young Person B, Northeast Region).

I understand it as an exercise space, which needs to be done daily because there is no point in having rights if there is no representation and voice (Adolescent C, Northeast Region).

I agree with everything the others have said, but there is one thing that is essential, ‘you know’, is to understand that we are not “the future” as many insist on saying, we are the present, the now, and we have things to contribute to society today! (Adolescent D, Northeast Region).

Thus, the political and social participation of children and adolescents is a continuous action of exchange, which has children and adolescents as active subjects, who receive information and communicate the data they have from their social and collective experiences, based on their maturity.

Understanding the age and understanding life stages is crucial, so that there is no underestimation, since, in the participation of children and adolescents, there is no room for adult-centeredness. See the following testimony:

I particularly started to participate very early, when I was 9 years old, that is, as a child, and I realize that we just have to know the appropriate language. Because children are very curious and are trying to understand the world and to understand themselves in it. In addition to that, they are the most

silenced, and therefore, the ones that have more things to talk about, we all just need to learn to listen (Adolescent A, North Region).

Children can also participate, you just have to think about the ways, like, you can put the child to think from the micro, their relationships with friends, family, community, school, their food, recycling, there are so many possible approaches, just can't use a repressive language approach (Adolescent G, North Region).

Adolescent "A" from the North Region provokes a reflection, by pointing out to everyone in the group, that children are the most silenced and that we are not preparing methodologically in an adequate way to listen to them, understand their speeches, and understand them as citizens in the development process. After all, participation has a political-social and subjective character, since participating is an activity that results in change and in the formation of the individual, through their interactions with others, providing instruments for the conception of what the world, politics, culture, and society are, collaborating in the perspective of building collective projects (NIRENBERG, 2006; STAMATO, 2009).

Language is, therefore, one of the most important elements for the effective participation and listening of children and adolescents. Democratizing language is also democratizing knowledge about your rights.

It is also necessary to emphasize that the child cannot simply arrive in space for discussion and deliberation of public policy and simply participate as if this act was simple and accessible because it is not.

As obvious as this statement may seem to us, in practice, it is not observed, what we perceive on a large scale is that the spaces of children and youth politics, due to their adult-centric historical stance, tend to think that participation is limited to having adolescents or children in the spaces to occupy a chair in their long meetings and record the presence in their minutes.

Participation is a break with the adult-centered logic, which tries to establish the adult as the center of human relationships, it means understanding that we all have something to say from our realities. And the law councils, forums, and networks will only move forward when they are willing to really listen (Young Person D, North Region).

The participation of children and adolescents presupposes their recognition as subjects, and not subjected by adults. Therefore, breaking with structures such as that of adult-centeredness is essential for the whole of society and fundamental for spaces for the protection, promotion, inspection,

and deliberation of the rights of children and adolescents, who will only be able to advance when they are willing to listen to the main subjects of the rights.

And listening presupposes the creation of means for this listening, since discussion spaces, especially those dealing with the rights of children and adolescents, cannot simply ask them to debate at the same level of technical training.

Boghossian and Minayo (2009) argue that child and youth participation presupposes the interaction of children, adolescents, and adults in a process of structuring autonomy and denying adult-centeredness, which results in the articulation of democratic, collective, and solidary values.

It is noted, through conceptual articulation, that the participation of children and adolescents is a mechanism for social and political interaction that presupposes autonomy, listening, sharing, and the transformation of fixed structures.

It is crucial to highlight the terms “right to speak and duty to listen”, organized by Paulo Freire (2011, p. 38) for the field of education, which is generally applied in human relationships, especially in adult and child relationships:

Their right to speak corresponds to our duty to listen to them. To listen to them correctly, with the conviction of those who fulfill a duty and not with the malice of those who do a favor to receive much more in return. [...] Listening in the aforementioned sense is basically talking to them, while simply saying to them would be a way of not listening to them.

Therefore, methodological attempts that do not respect adult-child-adolescent interaction, in order to recognize it as a relationship between subjects of law, critics, and thinkers, should not be called participation, as they are restricted to paternalistic and assistentialist conceptions, which have already been overcome since the repeal of the Code of Minors.

Participating is also allowing the creation of spaces for participation, and these spaces must have adolescents in the construction, you cannot think that adolescents and children are just an actor/actress who will follow their script (Young Person E, Southeast Region).

Young Person C exposes to the group a thought that is everyone's agreement and, at the same time, a noticeable discomfort arises, that everyone

in the circle had already gone through situations in which they felt used as actors/actress in the spaces of guarantee of rights, in which adults tried to impose what they should say or how to behave, including us.

In a meeting with an entity of great national and international reputation in my city, they called me to represent the teenagers, but they gave me a speech ready, and they wanted me to say exactly that (Young Person F, Midwest Region).

This has also happened to me a lot, at school meetings, I always participate, and several times in activities such as Class Council, I tried to speak, and it seemed that no one listened to me. Sometimes it was necessary for another adult to intervene to say that I was trying to speak. When the intervention was not to repeat the same things that I had already said, without giving me credit (Adolescent A, North Region).

Everything that you report touches me a lot because I have been there several times, I lived far from the capital, but I went to the State Council meetings with my own resources because I wanted to participate. There was a day when I went home all the way crying because I had spent money to go to the meeting and they didn't let me speak. The only time I tried to give my opinion on the methodology of the State Conference, I was totally silenced. As a result, at the Conference teenagers decided to withdraw from the plenary, because it had no accessible language for them, nor methodology that included them. They only did not withdraw because they were coerced by the responsible adults, with threats. But all of this could have been avoided if they had allowed me to actually participate in the meeting, I had several ideas, I had even researched a lot (our testimony).

Sirvent (2004) developed two categories of participation, which would result in the form and method used for the adult-child-adolescent interaction. The first, real participation, would be one in which the members of a collective or group interfere and participate actively in the social and political aspects, including in decision-making, dispensing with interference from third parties for the choices; the second, named symbolic participation, which would involve an action of great interference and management of others, and the members of that community would not exert influence or have little power for decision making, however, a representational myth of power is constructed.

Thus, we realize that the presence of children or adolescents in different spaces may not mean the existence of effective participation. We define as effective participation that which is done without coercion, fear, previous rehearsal or speech modeling, which genuinely belongs to the linguistic framework of the child/adolescent who utters it, and which does not have a guided intervention of practice or conduct so that it does

reverberate the feelings and the interpretation of the subject of children and adolescents.

Thus, symbolic participation (SIRVENT, 2004) or regulated participation (STAMATO, 2009) is merely a concession, in which adults allow limited involvement of children and adolescents.

Not infrequently, this pseudo-participation is accompanied by a unique representation to ensure that the action of children and adolescents is not real, it is guaranteed that only one adolescent or one child represents all the others, erasing the multiplicity of what it is to be a child and/or adolescent in Brazil.

With this, we try to limit the possible actions and reactions of the subject who participates.

At the conference, the representative of the State Unit said the teenagers who were at the conference were “performing” because we contested (Young Person E, Southeast Region).

Maria Stamato (2009) recognizes that critical participation is an essential function for social and political transformation, and that can only be accomplished by providing critical education (training) and sharing its reality (information).

In this perspective, the continued training of the Law Guarantee System must be extended to children and adolescents, with an appropriate methodology, understanding them as essential for public policies.

Training as a mean of guaranteeing children’s and young people’s political and social participation is even ensured in Article 13 of the Convention on the Rights of the Child:

Art. 13. Children **must have the right to express themselves freely**. This **right should include the freedom to seek, receive and disseminate information and ideas of all kinds, regardless of borders, whether verbally, in writing, or in print, through the arts, or by any other means chosen by the child.** (emphasis added)

This will empower children and adolescents and, based on knowledge and continuous training about rights, children and adolescents will be able to fully share their knowledge, including with adults, regarding the theme.

When passing in practice and effectively from the object of law to the subject of law, who will be able to multiply the knowledge the child has acquired to others, there is no doubt that peer education is the most effective form of the right to participation.

Finally, it is emphasized that the social and political participation of children and adolescents is fundamental in the prevention and eradication of social ills and the numerous violations of rights they suffer, which have already been mentioned in this research, in an exemplary way.

When the subject knows his or her rights, the channels of denunciation and assistance, given the slightest possibility of violating his or her rights or those of someone around him or her, he or she is able to react. We are not calling for outsourcing responsibility for the protection of children and adolescents, but rather affirming the emancipatory importance of self-protection, as an urgent and essential form, when there is alarming data showing that much of the violence is committed by those who would have a duty to protect.

5 “PRETENDING NOT TO SEE ME, BUT I’M HERE”: THE FIGHT AGAINST CHILD LABOR

It is very easy to talk about child labor from a theoretical perspective, as something we see on websites and magazines, or even with strange looks at the situation, we can see in the streets of our country. But what about a perception of experience? In this perspective, children and adolescents have a fundamental role.

Child labor is the son of slavery and the father of slave labor. We say this not only because of the legacy of our cultural heritage but also because of all the problems that arise from it. A survey carried out by the ILO in 2007 shows that 93% of the workers rescued from slave labor were discharged from child labor (BRAZIL, 2012).

They are people who, from the beginning of their understanding of the world, have always been neglected and completely exploited, a situation not unlike those that occurred in the 19th century. Mozambican writer Mia Couto, in his book “Confession of the Lioness”, brings a very important reflection on children in child labor: “Can a child be called a creature that

plows the land, cuts wood, carries water and, at the end of the day, no longer has a soul to play with?” (COUTO, 2016, p. 101).

This is exactly what happens. Child labor removes the most important and fundamental phase in human development from children or adolescents, leading to early maturity; soon they become exhausted and sick adults because they have not enjoyed life stages so elementary for imagination and discourse, having to work through the rest of their lives with countless physical and psychological problems.

Couto (2016) in his reflection explains child labor in agriculture, but this violation occurs in the most diverse corners and continents since the effects are the same: psychological, physical problems, loss or weakening of body parts, and death. In place of childhood, there is a void, a phase so important that was skipped in exchange for profit alone. How much is childhood or even a life worth?

For adolescents and young people subject to the know-how of this research, child labor is:

Deprivation of the rights of children and adolescents, you know. It is to prevent the experience of childhood. We could even say that it is a guarantee that only a few children are children, because many people do not want this for their children, but they do not care that it occurs with the children of others (Young Person H, North Region).

I understand it as a social problem, which disturbs and damages the lives of children and adolescents. And I see many people romanticizing this, saying that “work dignifies man” (Adolescent D, Northeast Region).

And that is when they do not use child labor as the only alternative against violence and crime (Adolescent G, Southeast Region).

Child labor is any and all child labor, and also of the adolescent who is not in accordance with the law. It is a problem that we need to solve (Adolescent J, South Region).

It can be seen that child labor is a social wound embedded in the core of our society and is even justified with individual experiences or as a pseudo-dichotomy between child labor and criminality, obscuring any other possibilities.

Discussions about child labor urgently need to include a new audience, who have always been present, but have never been seen, perhaps even heard, even when their pains screamed: children and adolescents.

I have been several times in spaces trying to speak, explain what we have been through in practice, and people did not seem to listen to me, this happens mainly in meetings (Young Person I, Northeast Region).

Always present, but “supposedly” not seen, as the *samba-enredo* of the EURECA block, 2016 said: *pretending not to see me, but I’m here*. In policies to combat child labor, many times we do not perceive the real presence of a subject of law, but of an object.

There are three essential pillars for effective participation of children and adolescents: language, training, and the dissemination of these rights among their peers and society. However, when we are talking about an individual who is in a situation of violation of their rights, we believe that it is important to add one more pillar so that in addition to a disseminator of rights, we have combatants of child labor and other social problems.

When we talk about participation within a violation of rights, we will have to include breaking the cycle of violations, as no child/adolescent will actually feel free and fully capable of talking about rights, participating, and interacting, while tied and gagged by the violation of their rights.

For this, emancipation (a term used in this article as an act of giving freedom) and the subject’s awareness as a victim of violence are necessary. This process is usually even more arduous in child labor and, on several occasions, never happens.

It is not for nothing that many adults (today) naturalize and defend child labor, based on their personal experiences, not recognizing this phenomenon as a violation. It is necessary to emancipate the victims of child labor in order to perceive the damage they suffer, because, unlike other forms of violation, this is considered by many to be natural and good, and for some of the actors in the Law Guarantee System as “the lesser of two evils”.

To emancipate children and adolescents is to understand that, as thinking and critical subjects, they can also be agents of combating child labor, reporting it, and being multipliers, through peer education.

We are not saying that they should guarantee their own rights, ever! This is the duty of adults, as we believe that where there are children’s rights, there is the duty of adults.

As an example of this change, we have the observed group, in which more than half had already been in child labor, understood the violence and today works to break the cycle of human rights violations.

Participation, listening, and empowerment, based on the perception of the group's own adolescents and young people, are the best way to eradicate social problems, break this cycle of child labor and exploitation.

If any country wants to eradicate violations of the human rights of children and adolescents, it must listen to the main subjects of the law. Only in this way will effective public policies that are part of its objectives and norms, such as the Statute of Children and Adolescents, the Convention on the Rights of the Child, and the rules of the International Labor Organization, materialize.

6 FINAL CONSIDERATIONS ON THIS LONG WALK

Children and adolescents have always been present in history, building narratives and changes essential for their time and space. However, they were always deliberately erased/invisible. To think about public policies for children and adolescents, it is essential to start from the point of tearing the veil of invisibility. It is not possible to think of the existence of someone who is purposely not seen.

In addition to seeing, it is necessary to listen, and here we speak of the act of being willing to understand what these subjects are talking about, in their most varied ways of expressing themselves. We understand that possible generational conflicts can hinder these dialogues, but we believe that the act of listening is able to overcome these divergences.

It is vital to understand that these mentioned elements can only be effective if there is an interest in transposing the adult-centric structure, because, as long as human and social relations are centered on adults, it will not be possible for exchanges between *children-adolescents-adults*.

To participate is to change, to transform something; participation that does not change the subject and its surroundings is probably not effective participation, but merely symbolic. Regulated participation is not what we

want and propose for spaces to guarantee rights, and especially for the fight against violence, especially child labor.

What drives the phases of childhood and adolescence is the desire to change, to transform. The subjects of law will only feel part when, through language and methodology, they know that they can be agents of transformation of their realities when they understand that their opinions, thoughts, and beliefs can and should be taken into consideration by adults and all their community.

We speak here of the power that we identify when these subjects perceive the importance of their voices, bodies, and characteristics, which, for a long time, were downgraded and minimized by all those around them, including those who should defend and monitor their rights. Power and knowledge can contribute to a better world for you and other people.

In fact, what drives this audience is the desire to change a reality that affects so many others like him/her. When a child knows the power of his/her voice, the world improves a little more, and examples are not lacking.

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THE PROHIBITION OF CHILD AND ADOLESCENT LABOR AND THE DOCTRINE OF COMPREHENSIVE PROTECTION IN THE BRAZILIAN LEGAL SYSTEM

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Abstract. This article proposes the analysis of the prohibition of early work as a way of materializing the international doctrine of the comprehensive protection of the child and youth community in the Brazilian legal system. It addresses its constitutive elements and constitutional principles, from the revision of the legislation and the bibliographic survey, with the objective of contributing, albeit briefly, to the dissemination and understanding of the doctrine.

Keywords: Early work. Doctrine of comprehensive protection. Elements. Brazilian Legal System. Principles.

1 INTRODUCTION

The Brazilian legal system guarantees children and adolescents¹ the fundamental right² to not work. And it does this by prohibiting early work³, understood as follows: (a) the provision of any work by a person under the age of sixteen, except as an apprentice, from the age of fourteen, as well as (b) the work of any person under the age of eighteen at night, in dangerous, unhealthy, painful places and/or activities, or that harm or threaten their health, safety, morals, training, and development, or the worst forms of child labor⁴.

Prohibitions that fall on the work of the child and youth community are based on the value of the dignity of the human person⁵ and they are, in fact, forms of materialization in the legal system of the United Nations' international doctrine of comprehensive protection of children and adolescents, which is the specific object of this essay, as will be expounded.

2 FORMATION AND CONSOLIDATION OF THE DOCTRINE OF COMPREHENSIVE PROTECTION

The international doctrine of comprehensive protection was established in the 20th century⁶, from the Universal Declaration of Human Rights (UDHR), proclaimed by the United Nations General Assembly in Paris, on December 10, 1948.

The industrial revolution of the 18th and 19th centuries accentuated and exposed the violence committed against children and adolescents, so as to no longer accept that it was simply ignored⁷. Additionally, at the beginning of the 20th century, other areas of human knowledge, such as medicine, pedagogy, and psychology, contributed to the emergence of a new mentality of child care. The normative support for this community began to form, then, in this historical period. Some international instruments regarded and even addressed the issue of childhood, such as Conventions nos. 5 and 6, of the ILO, both adopted at its first meeting in 1919 and which provide, respectively, on the "Minimum Age for Admission to Industrial Work" and "Night Work for Minors in Industry", and the 1924 Geneva Declaration on children's rights⁸.

However, it is the UDHR that ensures that every human person is worthy and has rights, as he or she has this condition (the human condition). In its first "recital", it affirms the "dignity inherent to all members of the human family and their equal and inalienable rights as the foundation of freedom, justice, and peace in the world"⁹. It is, therefore, the basic document for the international recognition of human rights. Specifically, in relation to childhood, the Declaration provides that, together with motherhood, it "is entitled to special care and assistance. All children, born in or out of wedlock, enjoy the same social protection", as expressed in art. 25, II.

Influenced by the provision in question – which entails various international human rights instruments – for the benefit of the guarantee of youth rights, was adopted the Universal Declaration of the Rights of the Child by the United Nations on November 20, 1959. Considering the definition frame of the doctrine of comprehensive protection, it sets out ten principles, highlighting the need for social protection and observance of the best interests of the child, which refers to principle 2.

The Declaration also recognizes all children as the creditors of the various rights it lists. They are equality, (physical, mental, moral, spiritual, and social) development, freedom, dignity, name, nationality, social security, health, food, recreation, health care, special care, treatment and education for the disabled, love, understanding, staying with parents, especially with the mother, special care by society and the authorities when they have no family or lack adequate means of subsistence, education, playing, having fun, protection and help in the first place, protection against neglect, cruelty and exploitation, not being trafficked, not being employed before the appropriate minimum age, not performing an occupation or job that harms their health, education and development, non-discrimination, to be raised in an environment of understanding, tolerance, the friendship between peoples, of peace and universal brotherhood.

The consolidation of the doctrine occurs with the adoption of the Convention on the Rights of the Child by the United Nations on November 20, 1989¹⁰. In addition to ratifying international instruments that preceded it, including the two mentioned above, the Convention lists rights that children hold – with registration to guarantee respect for their opinion (Article 12)¹¹, as well as their protection against economic exploitation and the performance of any dangerous work, or that interferes with their education, or that is harmful to their health and development (article 32) –. It also provides for the duty of States to disseminate it to children and adults, and rules related to its compliance and analysis of the progress resulting from it.

2.1 Characterizing elements

Therefore, having as a superset the Universal Declaration of Human Rights (1948), the Universal Declaration of the Rights of the Child (1959), and the Convention on the Rights of the Child (1989)¹², the United Nations

international doctrine of comprehensive protection has as its characterizing elements the recognition of children and adolescents as subjects of rights and people in a special stage of development¹³.

The first element informs that members of the child and youth community are entitled to rights and have the capacity to enjoy them. In addition to the rights attributed to all people, including adults, they have specific rights, specific to childhood and adolescence, which are attributed to them precisely so that they can enjoy a dignified life.

The condition of subject rejects, still, the ideas derived from common sense that children and adolescents are merely objects of state intervention or assistance, or are things – possessed by others (as a rule, by parents), who can use and/or abuse them –. For this reason, several rights also consist of guaranteeing the protection of children and adolescents against violence.

The second element recognizes that these subjects are in a process of maturation (physical, psychological, moral, sexual, and social), which is why they must be guaranteed all the means necessary for their full and harmonious development, and which aims at exercising citizenship and emancipation¹⁴. Despite containing a perspective of the future, this element recognizes the children and youth community in its present moment – and not as a future.

Precisely because they are in a special stage of development, people under eighteen are vulnerable¹⁵ and, therefore, they do not have a complete aptitude for the full attainment and protection, by themselves, of the rights that they hold (subjects). Hence the need for other people – adults – to act on their behalf, to realize their rights, protecting them, and providing for their needs.

2.2 Incorporation into the national legal system

The doctrine of comprehensive protection was incorporated into the *caput* of art. 227 of the Brazilian Magna Carta, “through a non-literal interpretation, but without objections” (SANTOS and VERONESE, 2018, p. 113). It is transcribed below:

Art. 227. It is the duty of the family, society, and the State to guarantee the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, and family and community coexistence for

children, adolescents, and young people, with absolute priority, in addition to putting them safe from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression (BRAZIL, 1988)¹⁶.

It was expressly adopted in Law no. 8,069, of July 13, 1990, which “provides for the Statute of Children and Adolescents”, as announced in its art. 1 – “This Law provides for the comprehensive protection of children and adolescents” –. It was incumbent upon it not only to consolidate the doctrine in the national legal system but also to scrutinize it and institute the system of guarantee of rights.

In addition to meeting the international normative trend, the article in the Constitution of the Republic¹⁷ and ECA are the result of the country’s re-democratization process experienced in the 1970s and 1980s. In particular, social mobilization for the benefit of the poor and extremely poor children – known as ‘street boys and girls’, seen as a problem or even a social threat – called for the adoption of a new policy to assist children and adolescents.

In fact, they represented the overcoming of the peculiarities of the doctrine of the irregular situation prevailing in Brazil until then, through the 1979 Code of Minors¹⁸, and even the special legislation that preceded it, namely the 1927 Code of Minors¹⁹. Roughly speaking, this doctrine criminalized poverty and institutionalized its victims, since it was aimed at minors²⁰ abandoned and/or offenders²¹, and based on an assistentialist, segregating, authoritarian and punitive model²².

Leoberto Narciso Brancher (2000, p. 126) summarized the conceptual and organizational (or management) differences between the two doctrines in the following table:

ASPECT	PREVIOUS	CURRENT
Doctrinal	Irregular Situation	Comprehensive Protection
Character	Philanthropic	Public Policy
Foundation	Assistance	Subjective Law
Local Centrality	Judiciary	Municipality
Executive Powers	Union/States	Municipality
Decision Procedure	Centralizer	Participative

Institutional	State-owned	Civil Society Co-Management
Organization	Hierarchical Pyramid	Network
Management	Monocratic	Democratic

To enable the implementation of the changes resulting from this new paradigm adopted, in addition to the principle of best interest (expressly provided for in international standards), CR/1988 housed the principles of shared responsibility, absolute priority, political-administrative decentralization, and popular participation. They were provided for in article 227: the first two, expressly, in the *caput*, and the last two by reference, contained in paragraph 7, article 204, of CR/1988, which deals with the guidelines of governmental actions in the area of social assistance. They were also predicted and, in some cases, detailed in the ECA, and will be indicated in the sequence.

2.3 Principles

The principle of the best interest informs that, in any factual or legal situation, with more than one solution resulting from the application of the rules on the matter, it is imperative to choose the existing alternative that, analyzed objectively, better safeguards the interests of children and adolescents, in order to realize their fundamental rights. It also imposes the preponderance of the interests of these subjects over the interests of any other people possibly involved in the same situation or with whom they are relating.

The ECA literally provides for the observance of the principle under analysis when dealing with the length of stay of children and adolescents in institutional care programs (art. 19, § 2), the application of specific protection measures (art. 100, Sole paragraph, IV), the non-observance of the chronological order of the qualifications for adoption purposes (art. 197-E, § 1), among other situations. In fact, its observance is necessary to solve a wide range of situations. For example: in case of separation from the parents, is it better than the child to be kept with the mother, with the father, or that they share custody (even if this is not the parents' will)? Is it better to allow a

child to be on the street with his/her natural family, institutionally host him/her or send him/her to a replacement family?

The answer for each particular case, which will not be easily obtained, will depend on a critical examination of all the elements in it – financial, emotional, violence prevention, social context, etc. It should also respect the opinion of the child or adolescent involved, observing standards of reasonability (such as their age, ability to discern, maturity to understand the situation, etc.). Therefore, in the specific case, one should always objectively assess what is best for the child or adolescent in question.

The principle of shared responsibility – also identified as tripartite responsibility – derives from the prediction that the child and youth community must enjoy special protection from the family, society, and the State. These three institutions have their own and solidary responsibilities in relation to the duty to provide and protect them, which consists, after all, in the obligation to give concrete effect to the rights guaranteed to them.

To the family – primarily the natural²³, but also the extended or replacement²⁴ – the primary responsibility for creating, educating, and guaranteeing family and community coexistence²⁵. Parents are specifically responsible for the exercise of family power and the duty of support, care, and education. When the family does not have sufficient material resources to do so, the State must include it in official protection, support, and promotion services, and programs, in order to overcome the condition of poverty and maintain family bonds, strengthening them when they become weak. Thus, the family's condition of poverty, per se, is not able to characterize that the child or adolescent is being neglected and, consequently, is not a reason for the loss or suspension of family power²⁶.

The responsibility of society and the community (the latter specified in the *caput* of article 4 of the ECA) assumes an ethical-political and a legal perspective, as pointed out by Danielle M. Espezim dos Santos (2017, p. 33-34). The first indicates the existence of a duty (ethical and political) for all citizens to assume the comprehensive protection of children and adolescents. The second informs the duty, in addition to not being silent in the face of violations of law – and incurring a crime of failure to help (art. 135, CPB) –, to carry out the principle of popular participation in the formulation and

control of policies aimed at promoting, protecting and defending the rights of this public.

The State, in turn, is responsible for exercising its typical functions – legislative, judicial, and executive – for the benefit of children and adolescents. To this end, the legislator must maintain and improve the guarantor normative system. The judge must, in specific cases of conflicts of interest brought to his or her knowledge, decide according to the rules, which means, among others, to promote the best interest of the subject in question. And the administrator must design and execute emancipatory and inclusive public social policies – education, health, social assistance, etc. –, and provide services in favor of the children and youth community. It is incumbent upon it, obligatorily, to offer basic policies, protective assistance programs, and socio-educational assistance programs, as provided in art. 90, from ECA.

The Constitutional Charter also attributes it to the rights of children, adolescents and, since 2000, young people, an absolute priority in relation to the rights of adults and the elderly, even those who form special groups – such as disabled people, for example –. This comprises, under the terms of the sole paragraph, of article 4, of the ECA, in a non-exhaustive manner²⁷:

- a) primacy of receiving protection and help in any circumstances;
- b) precedence of service in public services or of public relevance;
- c) preference in the formulation and execution of public social policies;
- d) privileged allocation of public resources in areas related to the protection of children and young people.

The constitutional principle in question, provided exclusively in favor of children's rights, must be observed – as a criterion of validity – when drafting, interpreting, and applying the rules, notably those that are embodied in public policies²⁸. It is that it imposes the realization of the rights guaranteed to children, adolescents, and young people, is a priority and absolute way in relation to the rights of other age groups. Its relevance stands out in the context of scarcity of public resources, which imposes a hierarchy of priorities.

The principle of political-administrative decentralization, on the other hand, states that the coordination and establishment of general norms related to the public now focused on are tasks of the federal sphere; while it is up to “the coordination and execution of the respective programs at the

state and municipal levels, as well as charities and social assistance entities” (art. 204, I, CR/1988). In the same sense, art. 88, III, of the ECA.

The Statute also provides, in a more specific way, as a guideline for the assistance policy, its municipalization (art. 88, I). The municipality, therefore, takes a leading role in materializing rights and offering programs and services to children and adolescents, and must adapt to provide them. Decentralization takes place, even, “horizontally, with regard to the role of the actors of care at the local level, where the model was monolithically concentrated on judicial authority” (BRANCHER, 2000, p. 125).

Finally, there is the principle of popular participation, which translates into the direct participation of society in the formulation of policies and in the control of actions, through representative organizations (as provided for in art. 204, II, of CR/1988). Participation in these organizations is equal (between civil society and the State), and includes the “creation of municipal, state and national councils for the rights of children and adolescents, deliberative agencies and controllers of actions at all levels”, according to art. 88, II, of the ECA.

Therefore, it is incumbent upon members of society to compose representative organizations, such as the Councils of Law and the Guardianship Council, and occupy other non-state public spaces for dialogue and negotiation, such as Forums and Conferences. This principle is closely linked to the realization of the principle of joint and several liabilities, concerning the duties attributed to society, already discussed.

3 CONCLUSION

As discussed above, the eradication of precocious work is a goal established in constitutional, international (ratified by the country), and legal guarantor rules, and is based on principles that seek, with priority, to achieve dignity and other fundamental rights of children and adolescents. However, in the Brazilian social dynamics, the factual and unrestricted implementation of the comprehensive protection doctrine is not yet experienced. Indeed,

[...] the reality is still quite uncomfortable. Under the aegis of a new rule and a new legal doctrine, children and adolescents in Brazil continue to be instrumentalized. The turn of the 20th century to the 21st has its specificities: the exploration of early consumerism leading to “[...] childhood obesity,

early erotization, stress and family conflicts, trivialization of aggression and violence, among other risks” (LIMA; VERONESE, 2015, p. 232); color barriers in the school environment, where relations are unequal to the detriment of blacks against whites (LIMA; MATTEI, 2015, p. 318). Also, figures related to [sic] exploitation of domestic child labor [sic] (CUSTÓDIO; VERONESE, 2009, p. 173), the [sic] street situation, and the [sic] family life of children and adolescents in Brazil (RÉ, 2015, p. 443-444) are not negligible in Brazil after the Statute and its Comprehensive Protection. On the contrary, it is clear from these and other violating phenomena, that the intricacies of the pattern of functioning of Brazilian society require strategic sophistication in the interpretation and application of the norms related to the doctrine now under consideration. Invisibility, [...] goes hand in hand with the previous aspect – “reification” – both reducing the degree of effective recognition of the condition of the subject of children and adolescents. We think here of those who do not appear in the statistics, [...] who are violated in the private space preconceived as safe. The fact is that violations such as those explained above [sic] have a high degree of probability of occurring in greater numbers than can be accurately measured, also in more economically wealthy classes, who practice the habit of silence and conceal their problems in their vulnerable (SANTOS, 2017, p. 40-41).

In addition to social and economic issues, it can be pointed out as barriers to the implementation of comprehensive protection, not exhaustively, the lack of knowledge about its rules and applicability; sometimes the overlap, sometimes the lack of action by the actors in the safety network, due to the misunderstanding of each one’s role; the repetition of practices and the permanence of authoritarian, hierarchical and obsolete structures; the need for interdisciplinarity and systemic network performance. Finally, the lack of understanding of the complexity of the model adopted and the failure to establish a new social dynamic²⁹.

Therefore, for children and adolescents to be in fact beneficiaries of comprehensive protection, it is necessary to disseminate the doctrine and knowledge about its form of implementation – via the rights guarantee system –, the proper functioning of this system – in a network –, operational integration between the various actors and policies that comprise it, effective selection and efficient implementation of public policies to confront and eradicate early work, political will, and articulation, social mobilization, among others.

This text sought to contribute, albeit succinctly, to the dissemination and understanding of the doctrine of comprehensive protection, aiming at the effective confrontation of early work and, as a consequence, the realization

of protection of children and adolescents. Is that the existence of laws guaranteeing the fundamental rights of Brazilian children and adolescents, and even the assumption of international commitments by Brazil, are not sufficient to materialize the children's right to non-work, in the face of social unprotection, to the conscience spread in common sense which favors early work, and even the connivance of the family, society and the State that accept this type of unworthy work.

ENDNOTES

- 1 At the international level, everyone under the age of eighteen is considered a child (art. 1 of the 1989 Convention on the Rights of the Child, which will be the subject of greater digression later in this text). In Brazil, the age distinction between children and adolescents is found in art. 2 of the ECA and will be observed in the present study for allowing a better approximation of the phenomenon of early work.
- 2 From the perspective of Robert Alexy (2008. p. 85-144), fundamental rights are understood to mean the values and ends considered of such relevance for a given society, provided for in norms established directly by the Constitution or in assigned norms (endorsed in fundamental rights), and that, therefore, must be pursued by the respective State, organizations and individuals.
- 3 The use of the term 'early work' will be privileged instead of the term 'child labor'. The meaning of the adjective "Child" (MICHAELIS, 2019) is "relative or appropriate to childhood". It is believed that, due to the condition of a person in a special stage of development, no work is appropriate for children or adolescents before the age of sixteen, except as an apprentice, from the age of fourteen, and provided that the appropriate conditions are observed for its realization. This avoids the use of an expression with a naturally positive connotation to indicate a harmful practice.
- 4 The prohibitions are expressed in art. 7, item XXXIII and art. 227, § 3, III, of the Constitution of the Republic in force (CR/1988), in arts. 403, 404 and 405 of the Consolidation of Labor Laws (CLT), in art. 67 of the Statute of Children and Adolescents (ECA), in ILO Convention no. 182 ("on the prohibition of the worst forms of child labor and immediate action for their elimination"), approved in Brazil by Legislative Decree no. 246, of June 28, 2001, as consolidated in art. 2, LXVIII, of Decree 10,088, of November 5, 2019), and regulated by Decree 6,481, of June 12, 2008, which approves the list of the worst forms of child labor (TIP List) and lists situations that integrate these worst forms.
- 5 "[...] the dignity of the human person has the intrinsic and distinctive quality recognized in each human being that makes it worthy of the same respect and consideration on the part of the State and the community, implying, in this sense, a complex of fundamental rights and duties that secure the person both against any and all acts of degrading and inhumane nature, as they will guarantee the minimum existential conditions for a healthy life [criterion of the World Health Organization – WHO], in addition to providing and promoting their active and co-responsible participation in the destinations of the existence and life in communion with other human beings" (SARLET, 2009, p. 37). "[...] whether at the international level or at the domestic level (in the light of Western constitutional law), the dignity of the human person is a principle that unifies and centralizes the entire normative system, assuming special

priority. Human dignity thus symbolizes a true constitutional super principle, the major norm to guide contemporary constitutionalism, in the local and global spheres, endowing it with special rationality, unity and meaning” (PIOVESAN, 2013, p. 89).

- 6 According to Sofia Vilela de Moraes e Silva (2017, p. 254), “[...] it appears that the notion of child and adolescent as a subject of protection is not contemplated in Antiquity, the Middle Ages and not even in the Modern Age – even in that last period there was no full awareness of the childhood peculiarity. Nor did the 1789 Declaration of the Rights of Man and Citizen innovate in bringing a specific provision on children, although it proclaimed equality”. In turn, Fábio Konder Comparato (2006, p. 54) states that “the first phase of the internationalization of Human Rights [...] started in the second half of the 19th century and ended with World War II, manifesting itself basically in three sectors: humanitarian law, the fight against slavery and the regulation of the rights of salaried workers”.
- 7 “[...] in such a period there was a proliferation of exploitation of child labor, as well as female labor, since they were paid unequally in relation to adult males, a fact that made this type of hiring a great attractive to factory owners”. (PAPPENMAURIN; REIS, 2016, p. 71). “The exploitation of large industrialists by small workers had no limits, because there was no violation of the legal norm, or even, the moral precept. At the time, the political current of classical liberalism was in force, which fought state intervention. Thus, the abuse of the bosses was justified by the axiological dictates rooted in European society. The lack of regulation, coupled with the mad search for profit, caused physical and mental degradation of those children” (SILVA, 2017, p. 255).
- 8 “[...] in 1924, under the auspices of the League of Nations, the Geneva Declaration on the Rights of the Child is published; it was intended to encompass protection and recognition regarding food, education, care in situations of danger, however, this receives criticism, as it does not make many considerations to the family, does not list the responsibility of States, only lists rights” (VERONESE and FALCÃO, 2017, p. 15).
- 9 It is important to note, as pointed out by Danielle M. Espezim dos Santos and Josiane Rose Petry Veronese (2018, p. 129), that “The values and rights internationally recognized and agreed in the UDHR – Universal Declaration of Human Rights – in 1948 are representative of a historical-political process that has its own address and protagonists: it is the hallmark of the French Revolution that directly influences the text of the 20th century. It is then Europe and bourgeois discourse that define what human rights are in the 20th century. The option for a declaration with a pretense of universality has direct influences: the Jewish holocaust by German legal Nazism and the atomic bombs dropped on Hiroshima and Nagasaki by the United States of America in World War II, created great humanitarian discomfort”.
- 10 In 1979, 20 years after the adoption of the Universal Declaration of the Rights of the Child, work began that culminated in the preparation of the Convention. For criticisms about the process of its elaboration and its result, see, for all, Flávia Rosemberg and Carmem Lúcia Sussel (2010).
- 11 On this issue, we read the text by Esther Maria de Magalhães Arantes (2012), who approaches it critically.
- 12 All of them were ratified by Brazil.
- 13 There are other important international documents dealing with children and adolescents, such as the American Convention on Human Rights (Pact of San José of Costa Rica), adopted by the Organization of American States, on November 22, 1969, providing that “All children will be entitled to the protection measures that their

condition as a minor requires, on the part of their family, society and the State” (art. 19); the United Nations Minimum Rules for the Administration of Child and Youth Justice – Beijing Minimum Rules (UN General Assembly Resolution 40.33, November 29, 1985); the United Nations Minimum Rules for the Preparation of Non-custodial Measures – Tokyo Rules (UN General Assembly Resolution 45,110, of December 14, 1990). However, due to the theoretical approach made in this text, they will not be analyzed.

- 14 Word used in this text in its literal sense, indicative of “liberation movement; freedom, independence” (MICHAELIS, 2019).
- 15 Vulnerability classified as intrinsic by Danielle M. Espezim dos Santos and Josiane Rose Petry Veronese (2018, p. 110; 143 to 145), and that in societies that live with structural poverty and inequality, such as the Brazilian one, is added to the social and economic vulnerability, among others, such as “color, gender barriers” (p. 112; 146 to 148).
- 16 The mention of the young man derives from the wording given by constitutional amendment no. 65, of 2010. The original constitutional text only referred to children and adolescents. As provided for in paragraph 3 of article 227, now under comment, “The right to special protection will cover the following aspects: I – minimum age of fourteen years for admission to work, subject to the provisions of art. 7, XXXIII; II – guarantee of social security and labor rights; III – guarantee of access of the adolescent and young worker to school; IV to VII – Omissis”.
- 17 It should be noted that the Constitution of the Republic was promulgated in 1988, one year before the adoption of the Convention on the Rights of the Child, by the UN – which took place, as already indicated, in 1989. There is no doubt, however, that the constituent legislator was also influenced by the work in progress, which led to the adoption of the said Convention.
- 18 Federal Law no. 6,697, of October 10, 1979.
- 19 Decree no. 17,943-A, of October 12, 1929. It is related to the Minor’s Criminal Law doctrine, which stemmed from the 1890 Penal Code.
- 20 “For the purpose of demarcating between one doctrinal moment and another, under Brazilian law, it is necessary to link the terminology ‘minor’ and ‘minorism’ to the validity, interpretation and application of rules related to the Codes of Minors, both from 1927 and 1979, regarding those situations or conclusions related to the pre-statutory period in general” (SANTOS, 2017, p. 30).
- 21 As provided for in art. 1, of the Code, it turned to minors (people up to eighteen years old) in an irregular situation. Art. 2 considered to be in an irregular situation the minor “I – deprived of essential conditions for his/her subsistence, health and compulsory education even if possibly due to: a) absence, action or omission of the parent or guardian; b) it is impossible for the parents or guardian to provide them; II – victim of ill-treatment or immoderate punishment imposed by the parent or guardian; III – in moral danger, due to: a) being, in a habitual way, in an environment contrary to good habits; b) exploitation in an activity contrary to good habits; IV – deprived of legal representation or assistance, due to the eventual absence of the parents or guardian; V – With misconduct, due to serious family or community inadequacy; VI – author of a criminal offense”.
- 22 The history of legislative developments affecting children and adolescents in Brazil can be consulted in several works, among which are suggested the ones by Sueli Teixeira Bessa (2019), Thalissa Corrêa de Oliveira (2017), Sofia Vilela de Moraes e Silva (2009) and Viviane Matos González Perez (2006).

- 23 Priority provided for in §1 of art. 1 of Law no. 12,010, of August 3, 2009, which, among others, “provides for adoption”.
- 24 Provided, respectively, in art. 25, *caput* and sole paragraph, and in art. 28 of the ECA.
- 25 By the way, see art. 19, ECA.
- 26 As provided for in articles 21, 22 and 23 of the ECA.
- 27 “This enumeration is not intended to be exhaustive, as the Law could not specify all situations in which preference should be given to childhood and adolescence, nor all ways of guaranteeing it” (VERONESE, 2017, p. 6).
- 28 “The commandment of absolute priority must permeate the actions of all those that must guarantee fundamental rights and should serve as a criterion for judgments of the validity of infra-constitutional laws – such as budgetary ones –, of the acts of public managers and of judicial sentences” (SANTOS, 2017, p. 42).
- 29 By the way, the reading of chapter VI of the work of Fernanda da Silva Lima and Josiane Rose Petry Veronese (2012, p. 111 – 141) is indicated.

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BRAZILIAN CHILDHOODS IN COLLAPSE: WE NEED TO RESCUE THE ETHICS OF LOVE

GABRIELA LENZ DE LACERDA

“At the end of the day, these children are totally paying a heavy price for our conflicts, our wars and our systems, and our stupid decisions and governments. I felt the need to talk about a problem, and I was thinking: ‘if these children could talk or express themselves, what would they say?’ What would they say to this society that ignores them?”

Nadine Labaki

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Abstract. The article aims to share some reflections on the problems of childhood, from the sociology of childhood, which analyzes the subjects occupying the child status from a structural perspective, to be considered when making political choices. The focus of the study is precisely child labor – paid or unpaid – representing the loss of child status. In the end, the proposal to rescue the ethics of love is presented as one of the ways to transform the social reality of today.

Keywords: Child labor. Sociology of childhood. Social structure. Ethics of love.

1 INTRODUCTION

Capernaum is an impactful film. From the perspective of Zain, a Syrian boy of just 12, the film presents the story of refugees living in Lebanon. Immigration is shown as a global problem, the result of the political choices we have made and with a direct impact on people’s lives, including those that

are in development. The sad circumstance that makes the film even more real is that Zain stages a script inspired by his own life story. Outside the cinema, the boy is a Syrian refugee who lives in Lebanon, putting us in the dock, in a necessary partnership with his parents, for letting him come to this world full of social injustices.

Zain teaches a lesson I learned from countless children who, for one reason or another, crossed my path: childhood is a noun that does not have a singular meaning. Faced with the most different social realities, there are several ways to live childhood. In our modern society, however, the possibility of experiencing this important phase of human development in a healthy and protected way is increasingly rare. The social structure we live in, our wars, and our political decisions affect members of the generational category of childhood.

The idea of this article is to precisely show some of the problems faced by Brazilian children in the most diverse realities, victims of child labor – paid or unpaid – necessary to maintain the capitalist system.

2 CHILDHOOD FROM THE PERSPECTIVE OF THE CHILDHOOD SOCIOLOGY

In the 17th century, the French priest Pierre de Bérulle classified childhood as “the vilest and abject state of human nature after death”. In the Victorian era, on the other hand, childhood was linked to feelings of purity and innocence, typical of romanticism. These extremes show that there is no universal concept or unique biological framework for defining who is and who is not a child. On the other hand, history proves that the concept of childhood has already changed numerous times, depending on the historical and social context (HEYWOOD, 2001, p. 9-10).

Faced with the perception that the idea of childhood is a social construction, the Danish sociologist Jens Qvortrup, in the early 1980s, dedicated to studying the status of childhood within sociology – a line of research that, at the time, was virtually nonexistent (BREDA; GOMES, 2012, p. 499).

From the international project “Childhood as a Social Phenomenon – Implications for Future Social Policies (Childhood Project)”, carried out

between 1987 and 1992, Qvortrup elaborates its nine theses on “childhood as a social phenomenon”, presenting childhood as a category in the social structure. Therefore, it places the generational category alongside and in a complementary way to other classic categories in the field of analysis of the social sciences, such as class, gender, and race. His theses remain current and serve as a foundation to analyze childhood from another angle, which is still little explored today. These are the theses presented by him (QVORTRUP, 2011, p. 199-211):

Thesis 1: Childhood is a particular and distinct form in any social structure of society: childhood is not defined in society by the individual characteristics of the child, not even by his/her age – even though he/she may appear as a descriptive reference. Childhood is a particular structural form of organization for a social group that has its own and distinct characteristics from other social groups. [emphasis added]

Qvortrup (2011, p. 205-206; 210) mentions the schooling of children as an example of defining characteristics in modern society (their confinement in educational institutions until the end of childhood, that is, until the end of compulsory schooling); and determining the child’s place as a minor (place established by the dominant adult group). They are, therefore, abstract characteristics that allow verifying the place where children have been placed by adults and can be located in social architecture, enabling the comparison of children from different societies and cultures and, within the same social context, allowing comparison with other groups in society.

Thesis 2: Childhood is not a transition phase, but a permanent social category, from a sociological point of view: the social category of childhood continues to exist as a structural form regardless of how many children enter and leave it. Qualitative and quantitative changes cannot be explained by individual provisions, but by changes in the social parameters themselves. It is not, therefore, a simple preparatory phase for adult life.

Thesis 3: The idea of a child, in itself, is problematic, while childhood is a variable historical and intercultural category: many types of research treat children as a “supra historical” being. However, there is no way to separate the child from the society in which he/she lives. There are several conceptions of childhood, built over time, reflecting changes in attitude towards members of this category.

Thesis 4: Childhood is an integral part of society and its division of labor: children are active participants in society not only because they influence and are influenced by other social groups (parents, teachers, etc.), but also because (i) they occupy space in the division of labor (especially with regard to school work, in activities linked to the rest of society’s work and the labor market); and (ii) influence the plans and projects of parents and

the social and economic world. Childhood, therefore, interacts structurally with other sectors of society.

Thesis 5: Children are co-builders of childhood and society: children are not merely useless recipients. They build not only school activities, but also from their relationships – with adults and other children – and with nature, contributing to the formation of childhood and society. Children are participants in the construction of the world and, although society often denies this potential, they present purposeful, creative, and innovative actions – not limited to reproducing what they are taught.

Thesis 6: Childhood is, in principle, exposed (economically and institutionally) to the same social forces as adults, albeit in a particular way: all members of age groups in society, including children, are influenced by broad events, by macro forces. The inclusion of women in the labor market, unemployment, retraction, and expansion of the labor market, for example, have a direct impact on children's lives. The problem is that, as social forces reach indirectly or mediated by the family, this influence ends up being disregarded.

Thesis 7: Conventional dependence on children has consequences for their invisibility in historical and social descriptions, as well as for their authorization to welfare provisions: historically, children are not portrayed in common statistics, they are not considered as an observation unit distinct from their own family. This prevents the child's situation from being analyzed compared to other groups in society. Relating the dependence on parents to the status of children opposes the idea of "the child's best interest."

Thesis 8: Not the parents, but the family ideology constitutes a barrier against the interests and welfare of children: despite the lack of information, sufficient evidence was collected to indicate that children, as a group, more often than other groups, belong to the lowest levels of per capita income available. The problem is that we inherit the family's ideology, considering that children are a kind of property of the parents – and, consequently, are the sole responsibility of their parents. Society is only interested in interfering in exceptional cases when the child is in a dangerous situation but does not accept the general responsibility for childhood.

Thesis 9: Childhood is a classic minority category, the object of both marginalizing and paternalizing tendencies: a child is a minority group, defined in relation to the dominant group of adults, who have higher social status and more privileges. Due to their characteristics, they are excluded from the possibility of full participation in life in society; and they are objects of a paternalistic attitude, which is characterized by a "strange combination of love, sentimentality, being superior in relation to the misunderstanding of children's abilities and marginalization." (emphasis added)

It is not by chance that the theses on childhood were published in the 1990s, a period of advancement of neoliberal policies, with measures aimed at the deregulation of rights, the liberalization of the market, and the privatization of public goods. The theory presented by Qvortrup (2011) is not a mere abstract conceptual distinction. It is extremely important because

it breaks with a rationality that restricts the analysis of childhood to a mere internal issue of the family – blaming parents for the difficulties faced by their children. A macro parameter is added that accentuates the impacts of public policies and economic decisions on children’s living conditions. Thus, it seeks to overcome the “structural indifference” that our societies have with regard to childhood, by considering, as a priority, innumerable other factors of life than childhood. Qvortrup (2011, p. 201) points out that:

Such lessons are important since it is not common to include children, scientifically or politically, at the level of the world or national policies. Is there anyone, under any circumstances, thinking about the consequences for children, for example, of the Maastricht Treaty or the exchange rate mechanism or the crisis in financial markets, etc.? Immediately after such agreements, what is discussed and written in the first place are political and economic analyzes, which assess the consequences for Europe; second, analyzes of the effects on the country itself; third, organizations and their professional analysts exploit them intensively in order to predict the repercussions for trade, industry, agriculture, the labor movement, etc. No one wonders, however, what it all means for children – for their daily lives, for their economic, social, and cultural welfare.

More than 20 years later, despite the innumerable norms for the protection of children – nationally and internationally – the considerations raised by Qvortrup (2011) are still current. Childhood is still disregarded as a category that is part of the social structure. Political and economic decisions made by adults remain unaware of the specific impacts on children – treated as a mere extension of the parents and, therefore, their exclusive responsibility.

The founding precept of childhood sociology has precise that children are part of society and the world and, therefore, childhood must be connected to the social macrostructure, including – and, perhaps, mainly – when we analyze the global economy. As will be explained below, the different factual circumstances faced by the members of the childhood category indicate that the levels of oppression are increasingly increasing, which leads us to reflect on whether the phase of capitalism that is presented today is compatible with the maintenance of the child status.

3 BRAZILIAN CHILDHOODS IN COLLAPSE: IS CAPITALISM COMPATIBLE WITH BEING A CHILD?

The many childhood possibilities that are being offered to the new generations in the world do not seem to be taking into account a real interest in the development of children. In a capitalist society, centered on alienated human labor, children have not been spared from exploitation by work – paid or unpaid, depending on their socio-cultural context. More and more we see a real deviation from the purpose, making childhood a mere instrument of integration in adulthood in order to better satisfy the interests of the market.

It is up to us, therefore, the radical reflection¹ on the oppressions that fall – increasingly with greater violence – on the members of the generational category of childhood, as an effect of social forces, especially neoliberal ones, putting at risk the very existence of this group as a differentiated social category.

3.1 The end of childhood through paid child labor: impacts of hunger, unemployment and precarious working relationships on childhood

Going through the history of this country of continental proportions called Brazil, we can see that none of the childhoods we found in our vast territory, in different times and spaces have been sufficient to allow the full physical, mental, moral, spiritual, and social development of the human being. There is an urgent need to reflect on the impacts of social pressures on the reality of childhood in recent decades, leading to the appreciation or devaluation of child status according to the political choices made by those who belong to the generational category of adults.

In 1988, the legislator established, in Article 227 of the Federal Constitution, the duty of the State, society, and the family to guarantee the absolute priority of the rights of children and adolescents, with their “full protection”. In the same sense and shortly thereafter, the 1990 Statute for Children and Adolescents, and a broad international normative apparatus, such as the 1989 United Nations Convention on the Rights of the Child. Apart from legal texts, however, we have barely questioned the effects of our political choices and way of life on childhood.

A few years after the promulgation of the Constitution, in the 1990s, neoliberal policies involving the deregulation of rights, the privatization of public goods, and the liberalization of markets resulted in economic development as measured by the Gross Domestic Product (GDP)², but did not remove the country from the hunger map.

As Fernando Horta (2017) recently recalled, in June 2001, in the midst of a “neoliberal miracle”, *Jornal Nacional* ran a series of stories that revealed that a child died of hunger in Brazil every five minutes. Hunger has an impact on the whole of society, but, as childhood sociology reminds us, those who belong to the generational category of childhood suffer their impact in a particular way. The particular effects of diseases related to child malnutrition resulted in the multiplication of “angel cemeteries” in the country’s backlands, with lives interrupted long before the expectation. Deaths were as predictable as they were unjustifiable side effects of a State unable to guarantee the minimum necessary for a life with dignity (JORNAL NACIONAL, 2001).

In 2004, in the early years of the Luiz Inácio Lula da Silva government, the then Ministry of Social Development and Fight against Hunger released the National Social Assistance Policy – PNAS/2004 –, assuming the responsibility of eradicating hunger in Brazil, through the implementation of income transfer programs, such as *Fome Zero* (to which *Bolsa Família* was linked), in addition to public policies aimed at guaranteeing access to basic goods such as water, energy and income generation.

A decade later, Brazil would finally get off the hunger map, according to United Nations Food and Agriculture (FAO) data, released in September 2014. According to FAO, some main factors were decisive for the results: increased food supply; increase in the income of the poorest with real growth of 71.5% of the minimum wage and generation of 21 million jobs; Federal Government Access to Income Program; 43 million children and young people with meals; and Governance, transparency, and participation of society, with the recreation of the National Council for Food and Nutritional Security (Consea) (FAO, 2014).

With the improvement in the quality of life of the poorest segment of the population, it was not only infant mortality that reduced. Another serious problem that historically falls on Brazilian childhood, child labor, also showed an improvement in their numbers, to the same extent that parents’

income improved and public policies to encourage them to stay in school multiplied. According to data from the Brazilian Institute of Geography and Statistics (IBGE) – National Household Sample Survey (PNAD), in 2000 we had 6,492,745 children and adolescents, between 5 and 17 years old, employed. In 2011, ten years later, the number of employed children and adolescents fell by almost half – to 3,673,000.

Despite the commitments made by the Brazilian government to the International Labor Organization (ILO) to eradicate child labor, today there are still more than 2.5 million children and adolescents entering the labor market before the age of 18, according to IBGE/PNAD data. Many of them in activities framed among the worst forms of child labor, facing realities such as the girls of Marajó/PA, victims of sexual exploitation in the north of the country, which, as portrayed in a text by Judge Elinay Ferreira (2019), in February 2015:

[...] several “canoes” were caught moored to the vessel – mainly for the transport of goods – and several minors circulating on the site, unaccompanied by their parents. However, before the police officers entered the vessel, the crew, noticing the approach of the civil police boat, began to unhitch the canoes, but even so, at the moment of the approach, two girls were found hiding under one of the transported trucks, one of them was 11 (eleven) years old.

It remained configured that the presence of the child on the vessel was not limited to child labor to sell extractive products in the region but to obtain money and goods in general (such as diesel oil), through sexual exploitation. At the site, in addition to the crew, dozens of truck drivers were found in their respective vehicles, which is prohibited by river transport rules, also generating several reports at the time.

I mention the child labor situation of girls from the riverside communities of Furo do Rio Tajapurú, in the municipality of Melgaço/Marajó, because it provides important indications about the impacts of the absence of income generation policies on children. The Municipality of Melgaço became known some years ago as the municipality with the worst HDI (Human Development Index) in Brazil. The girls who are victims of sexual exploitation venture on the rafts that break the calm of the Tajapurú River, where more than half of the electronics we consume across the country go through. The closure of logging companies that illegally operated in the region had an impact on the income of the riverside communities, which, added to the most complete state omission, left no alternative but the inclusion of children in the labor market. Extraction of açaí, sale of products

on the rafts, and, not infrequently, cases like the one caught in the inspection, involving the sexual exploitation of children in exchange for a roasted chicken or oil to guarantee the electric power. Access to the minimum Human Rights provided for in the Constitution is expensive – and the children of Marajó have paid an even higher price to guarantee it.

This and many other realities show that child labor in Brazil, from north to south of Brazil, includes numerous factors, but the main ones are related to poverty and the need to supplement family income to guarantee subsistence. They are, therefore, a direct reflection of unemployment and the precariousness of labor relations that affect black and peripheral people even more brutally³.

And, in view of the already alarming rates of child labor in Brazil, the approval of Law no. 13,467/17 highlights the political neglect with the occupants of the generational childhood category. Figures such as unrestricted outsourcing, intermittent and exclusive self-employment contracts represent a reduction in the remuneration level paid precisely to those workers who already receive lower wages. They, therefore, impact precisely on low-income families who have historically been forced to place their sons and daughters in the labor market before the minimum age allowed. The lack of commitment to childhood – manifested not only by the Labor Reform but also by countless other measures that tend to reduce or invalidate social rights, such as the PEC (Constitutional Amendment) on the Ceiling of Public Spending and the extinction of the Labor Prosecution Service and Employment and the Ministry of Social Development, implemented by the current government – clashes head-on with the provisions of article 227 of the Federal Constitution⁴.

The Brazilian reality is unfortunately not different from the reality of countless other countries. Not by chance, Qvortrup (2011), when starting the nine theses of childhood sociology, brings as a founding idea a text published in 1993 by Bradshaw (*et al.*, 1993, [sp] apud QVORTRUP, 2011), in which the reflection focuses precisely on the effects of financial capitalism on “third world” children:

In an article on the international debt crisis and its influence on Third World children, the authors demonstrate that what the International Monetary Fund (IMF) calls “structural adjustments” has, directly or indirectly, prevented the child’s survival, childhood freedom, economic growth, the

predominance of health care, adequate nutrition and balanced urbanization. They conclude that “investment in children’s lives seems to be incompatible with the conditionality imposed by international financial capital.”

We live in an adult-centric society, in which we have barely analyzed the impacts that the economic policies adopted affect childhood. The child status is clearly devaluing, especially in Brazil, as the country’s social inequality grows⁵ which is already the most unequal in all of Latin America. The potentiation of the oppression of the generational category already in conditions of vulnerability, which reaches its peak with the entry into the labor market before the appropriate age, breaks with the criteria of differentiation of the adult category and leads to the early end of childhood itself.

3.2 The end of childhood due to unpaid child labor: school activity as a way of preparing for the labor market

In the socio-cultural contexts in which children are no longer useful with their manual work due to the increase in adult income, the situation of the childhood category has changed. Emphasis started to be put on knowledge and information, with childhood becoming a stage in life intended to prepare people to enter the labor market.

It is not a change in the sense that they no longer work, on the contrary, children continue to work, but the change is in the nature of work and the idea of compulsory child labor, which is linked to the mode of production, that is, they must also carry out the production of knowledge. In other words, children do it based on their work at school (BREDA; GOMES, 2012).

Families with class privileges – usually accompanied by race privileges – offer, with their economic conditions, the best that money can buy: schools with “good” training so that, at the end of adolescence, approval in an entrance exam and admission to a college are possible. In order for the plan drawn up by the parents to be realized, from a very early age, time allowances are necessary. The school curriculum is increasingly broad and each child’s time is less and less respected. “All children in the class must be literate by September,” announced the first-year teacher, in one of the largest schools in Porto Alegre/RS, ignoring that children aged 6 or 7 naturally have different development times.

The flow of children's time has been denaturalized as an effect of subordinating children's existence to a calendar or agenda. Being a "normal" child today means more than ever showing conformity and adjustment to the institutionally defined criteria. The normalization of children's experience is measured, therefore, from the interests of adults. The child ceases to be the subject of his/her experience – becoming a mere object (PASCUAL, 2007).

The "inadequacy" to the imposed time inaugurates a routine of reinforcement classes that, in addition to the already mandatory extracurricular activities – foreign language learning and sports practice – is creating a generation of anxious, tired, and, often, medicated boys and girls (RNPI, 2016).

The lack of voice of children in most decisions regarding the organization of their time and space is contrary to the idea of children as social actors, with the right to express and have their opinions heard. "School and schooling is something 'done for' children, legitimized by a discourse that prioritizes the needs and expectations oriented to the future adult overlapping the experience currently lived" (GAITAN, 2006, p. 162).

There is no doubt, therefore, that children's school activities are not, as a rule, aimed at allowing their full development. On the contrary, the institutionalization of childhood, with rigid and universal standards – disregarding the individuality of each child – has the clear objective of domesticating children's bodies for the future labor market.

We can talk about the institutionalization of childhood and, more specifically, about childhood schooling as a result of the demands arising from a changing economy and government system. These developments have dramatically changed the discussion about children's lives. Although there were agents who worked hard to promote school education for children, we wondered if this would have happened had it not been understood as an indispensable interest for commerce, for the development of industry and society in general, and so on (QVORTRUP, 2010, p. 640).

In a society still threatened by unemployment, such as the Brazilian one, guided by increasingly individualistic and competitive values, the damage to the physical and mental health of society in general and, with even greater gravity, of the members of the social category of childhood is undeniable. English epidemiologist physicians Richard Wilkinson and Kate Pickett, reflecting on how more egalitarian societies improve the collective welfare of the population, bring alarming data on the impact of social inequalities on the psychological health of young people. Based on 15-year-old English young

people, surveys indicate that 22% of adolescents already harm themselves and, of these, 43% practice it at least once a month. Data from studies involving young people in the USA and Canada indicate the percentage constancy between 13 and 24% of young people who are at school who are voluntarily injured. The research shows children as young as seven years old who self-harm, making cuts, scratches, burning themselves, pulling their hair out, and, in more serious cases, deliberately causing wounds and breaking bones (WILKINSON; PICKETT, 2019, p. 108-109).

In the absence of better words, I translate those of the researchers themselves – who, upon hearing the children themselves about the realities they experience around the world, vent:

It is hard to imagine that mental anguish can turn life into an experience so painful that physical pain is liberating and provides a sense of control, but there are many children, young people, and adults who claim to systematically harm themselves. Autolytic behaviors are more common among people with a feeling of shame and very demanding of themselves. Experiences of abuse, trauma, or abandonment at an early age, of course, influence, but the recent epidemic escalation of this type of conduct indicate that something has changed in our societies so that the problem gets worse in this way (WILKINSON; PICKETT, 2019, p. 102).

The pain practiced by children against themselves is a way of relieving, in physical pain, the social pain of exclusion. Brain imaging from research shows that the pain of feeling excluded by others activates the same parts of the brain as physical pain. The relationship between the two pains is so deep that doses of painkillers – such as paracetamol – reduce not only the malaise and physical pain of those who normally use them but also the emotional changes and anxiety derived, for example, from an experience of rejection (WILKINSON; PICKETT, 2019, p. 102-103).

We do not have enough data to establish self-harm rates in the Brazilian social context – which, it is worth mentioning, is even more unequal. News reports in the press indicate that the episodes have actually increased (MARQUES, 2019). As a reaction, Law no. 13,819, of April 26, 2019, was published, which “Institutes the National Policy for the Prevention of Self-mutilation and Suicide, to be implemented by the Union, in cooperation with the States, the Federal District, and the Municipalities” (BRAZIL, 2019). Among the legal requirements, there is the need for schools to notify tutelary counselors of cases of self-mutilation.

Unfortunately, however, there is little to face about the source of the problems, with the false hope that we will solve an epidemic problem with a law text. We do not question the political and economic system that makes people sick and excludes an increasing share of the population, reaching not only the generational category of childhood but the entire society. Just look at the rates of depression – already considered by the World Health Organization (WHO) as an equally epidemic problem (WHO, 2017) – to understand the impact of our way of life on the mental health of individuals.

The problems of childhood in Brazil, therefore, are not reduced to the need to guarantee full schooling, the reduction of child mortality, or the prohibition of child labor. The growing professionalization and institutionalization of this vital period, which is called childhood, becomes real exploitation of children. The provision of an increasingly organized and structurally hierarchical, curricularized, normalized, and instrumentally defined environment, close to the purposes of its socialization for adult work (PASCUAL, 2007, p. 95), indicates the loss of child status also for those who do not engage in paid activities.

Rich and poor. White and black. Boys and girls. What unites the category of childhood today is the fight against the oppression of a system that becomes more incompatible with being a child every day. So the question is, where to start to rebuild the status of a child in our society?

4 RESCUE OF THE ETHICS OF LOVE

*“[...] loving your neighbor as we love ourselves then means
respect the uniqueness of each one – the value of our
differences,
that enrich the world we inhabit together
and thus make it a more fascinating and enjoyable place”*

BAUMAN, Z. Liquid love.

Faced with the collapse scenarios that are presented, it is up to us adults to reflect on how we will reconstruct the status of the child in our society. How will we reduce the oppressions that have fallen, in an increasingly violent

way, on this social group so vulnerable and on which even the continuity of human life depends?

In a superficial analysis, we could make the serious mistake of assigning responsibility for the collapse of childhood to families. Childhood sociology, however, rescues an essential element to be considered: social forces act with great impact on both adults and children. Equally victims of this capitalist system aimed at the commodification of affection relations and the objectification and hierarchization of human beings, parents are doing the best they can with the little they receive. They were also created in this cultural reality that naturalizes, to a greater or lesser extent, social relations that are defined by bonds of domination and that lead to the serious situations faced by children.

The time has come, therefore, to realize that all of us, adults and children, are paying too high prices for our political choices. The capitalist system is sickening and oppressing everyone, including those with social privileges, who devote their lives to accumulating goods to satisfy empty happiness standards (FROMM, 2015, p. 67-68). We have to start thinking about alternatives, other ways of life, based on new values.

Following Bell Hooks' proposal, I believe that rescuing ethics of love is the only way to rebuild social bonds⁶, including child status, without the reproduction of domination systems (HOOKS, 2019).

Love – it is worth mentioning – not in the conception invented by modern society, supported by an idea of romantic love or property (FROMM, 2015, p. 11-12; 65). Love thus understood as an active concern with life and with the physical and psychological growth of the other. It is much more than a feeling, it is an attitude, a choice.

For a man to be able to love, he must be placed in his supreme place. The economic machine must serve it, instead of being served by him. He must be able to share the experience, to share the work, instead of, at best, sharing the profits. Society must be organized in such a way that man's social and loving nature is not separated from his social existence, but unified with it. If it is true, as I have been trying to show, that love is the only healthy and satisfactory answer to the problem of human existence, then any society that relatively excludes the development of love must, in the end, perish victimized by its own contradiction with the basic needs of human nature. In fact, talking about love is not "preaching a sermon", for the simple reason that it means talking about the last and real need of every human being. The

obscuring of this need does not mean that it does not exist. To analyze the nature of love is to discover its general absence today and to criticize the social conditions responsible for that absence. Having faith in the possibility of love as a social phenomenon, and not just as an exceptional individual is a rational faith based on penetrating the very nature of man.

The difficulty arises, therefore, in seeking love in a society that has unlearned to love. Love assumes the rescue of the importance of care, with the rethinking of a social structure that values productive aspects to the detriment of reproductive functions. It also requires that we have responsibility and respect for the needs of others, without relations of power or domination. We will need to relearn that love is, in essence, freedom. This freedom can only be achieved collectively because the systems of social oppression – not only of childhood, but also imperialism, sexism, racism, and classism – are all interconnected and are interdependent. Our concern must be expanded beyond individual limits, basing our political choices on an ethical standard that is also concerned with the oppression and exploitation of others. As Bell Hooks puts it, it is up to us to break with the hegemonic culture that taught us to base our social relations on a logic of domination.

A culture of domination is anti-love. It requires violence to support itself. Choosing love is going against the prevailing values of that culture. Many people feel unable to love themselves or others because they do not know what love is. Contemporary songs like “What’s Love Got To Do With It” by Tina Turner advocate a system of exchanges around desire, reflecting the economy of capitalism: the idea that love is important is mocked. In his essay “Love and Need: Is Love a Package or a Message?” Thomas Merton argues that we are taught, within the framework of competitive capitalist consumption, to see love as a business: “This concept of love assumes that the machinery for buying and selling needs is what makes everything happen. Consider life as a market and love as a variation on free enterprise.” Although many people recognize and criticize the commercialization of love, they see no alternative. Not knowing how to love, or even what love is, many people feel emotionally lost; others seek definitions, ways of sustaining an ethic of love in a culture that denies human values and appreciates material ones. Selling books that focus on recovery, books that look for ways to improve self-esteem, self-love, and our ability to be intimate in relationships, shows that there is a public awareness that something is lacking in most people’s lives (HOOKS, 2019).

As stated by Erich Fromm (2015), the rescue of the concept of love means to perceive it as an attitude, an active force, with enough power to break through the walls of separation and isolation, to restore our integrality. It presupposes the sum of care, responsibility, respect, and knowledge, as

interdependent elements that they are. Those who are seriously concerned with love as the only rational answer to the problem of human existence inevitably come to the “conclusion that important and radical changes in our social structure are necessary, for love to become a social phenomenon, not a highly individualistic and marginal phenomenon” (FROMM, 2015, p. 65-67).

The ethics of love is, therefore, a political commitment that must guide the core of all human interaction, of our social relations. It is from this commitment that it is possible to reconstruct the status of childhood so that the relationship between the generational categories of adults and children has the purpose of allowing the development of all human potentialities, free from oppression.

In addition to our family relationships, the ethical commitment to love is demanded and demandable from public office holders – including members of the Legislative, Executive and Judiciary branches – imposing an analysis of the impacts on the childhood of each of the decisions taken, so that the legal system is interpreted so as to give maximum effect to article 227 of the Federal Constitution.

As Martin Luther King taught us, love is a choice, a will, and an action. “I decided to love”, he said when he used to love as an ethical foundation for politics, seeking to transform society in order to improve collective welfare. Only then will we find

the joy, the freedom of spirit brought by an ethic of love [...] The moment we choose to love, we begin to move towards freedom, to act in ways that liberate ourselves and others. This action is the testimony of love as the practice of freedom (HOOKS, 2019).

I know that pleading for ethics of love, in these times of hatred, can seem somewhat utopian. In my defense, I say that love sometimes arises even in the midst of the crisis, amid a feeling of loneliness and hopelessness. It springs up when we least expect it. But it only stays if we remember that love is an attitude. It is to be careful, responsible, respectful, and seek mainly, (self) knowledge. It is first of all one to accept oneself. And trust that incredible human capacity – or perhaps divine, who knows – that we have to love.

ENDNOTES

- 1 Thus understood as the one that seeks the deepest root of problems that impact on the generational category, beyond individual aspects.
- 2 Criticism of the measurements of development based on GDP, which unfortunately still characterize the Brazilian imagination, will not be the object of this text. It is worth mentioning, however, that for decades the importance of including the factors “human” (SEN., 2000) and “sustainable” (Brundtland report, 1987) has been emphasized in the concept of development. As a matter of fact, the most current discussions – many returning to concepts of traditional populations – question the very idea of development. About the subject: TAIBO, Carlos. *El decrecimiento explicado con sencillez*. Madrid: Los libros de la catarata, 2016, p. 25-28.
- 3 It is not by chance that black children from the lower and peripheral classes are the main victims of child labor in Brazil. There is no way to understand the problem of child labor without considering the intersection of the different structural categories – age, race/color, class, gender, and disability – that mark Brazilian society.
- 4 It is also essential to note that the global production chains, which are part of the international division of labor and necessary to sustain our consumer society, are directly linked to child labor.
- 5 In this sense, research by FGV/IBRE indicating that Brazil has reached a record in income inequality. Available at: <https://blogdoibre.fgv.br/posts/levantamento-do-fgv-ibre-aponta-desigualdade-recorde-na-renda-do-trabalho>. Access on: Jun 15, 2020.
- 6 In the same sense, Bauman, when discussing the liquidity of bonds of affection, reminds us that the old man without qualities has matured and became the man without ties (BAUMAN, 2004, p. 42).

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THE TRAGIC TRENDS OF CHILD LABOR: “PROSTITUTION”¹ IN CHILDHOOD

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Abstract. A social phenomenon in which the awareness of the authorities and of a portion of civil society was more pronounced was the dynamics of child labor in the world, mainly in our country, in all its forms, especially the occurrence of cases of child “prostitution”, a historical reality, but that currently can no longer be accepted and allowed due to the tragedies that result from it, both from a social and family-related point of view as well as from a psychological point of view.

Keywords: Children. Child labor. “Prostitution” in childhood.

Certainly, the existence of the socio-psychological manifestations of child labor worldwide and, especially, in our country, is a harsh and illogical reality. Despite the continuous struggle of the Regional Labor Courts (TRTs) and the Labor Prosecution Service, of non-governmental organizations (NGOs), and the complaints of the most conscientious citizens, we have countless children on the streets, involved in the work that takes them away from home, school and the dignity with which they should be treated.

In the garbage dumps, in the traffic, in “prostitution”, in the approaches of passers-by and vehicles in the traffic lights, they are there, with ages varying between five and ten years, already differentiated from their older peers.

From these tragic descriptions of child labor, I highlight the issue of “prostitution”, perhaps the most dangerous and deadly slice of child labor, due to its more harmful consequences, such as early death, sexually

transmitted diseases, physical and psychological violence, and, the heaviest of tragedies, the loss of personal identity. According to an article by Ribeiro ([20--], np) for *Brasil-Escola*:

In general, child prostitution is the sexual exploitation of a child who, due to various factors, such as a situation of poverty or lack of social and psychological assistance, becomes fragile. Thus, they become victims of soliciting by adults who abuse minors, who sometimes seek cheap and easy sex and sometimes try to profit by corrupting minors and leading them to the prostitution market. The facilitating aspects of this condition in which childhood is destroyed disregard the rights and the need to protect children. In addition to the possible vulnerabilities arising from the socio-economic situation – if not the main cause, certainly one of the most important ones – there are other aspects such as the child's gender itself, a fact that would explain the greater vulnerability of girls, who are so exposed to violence against women even in the family environment. This suggests that they are important aspects for understanding violence against children and others in addition to those only related to issues of poverty. The gender issue would be intrinsic to a socio-cultural model that, sometimes, as in the Brazilian case, can reproduce naturalization of the discrimination against women (the result of sexist values), seen as objects devoid of value, conscience, and freedom.

Thus, considering the above, we are facing an extremely difficult cause to fight, which is the vulnerability of these children, boys and girls, of little age, from broken homes or, many times, from homes with problematic parents (drug addicts, alcoholics, unemployed, and without financial resources to support the family, without psychological and social conditions to take care of their children).

Many social causes are responsible for this type of occurrence. I will not take the time here to describe them. I already did so in my article for *Revista TST*, vol. 81, no. 1, Jan./Mar. 2015, entitled *Danos à saúde física e mental, prejuízo irreversível* [Damages to physical and mental health, an irrecoverable loss].

I would like to dwell on questions regarding the most internal damages that a child can suffer when he or she is subjected to the condition of a sexual life early, either by the immaturity of his or her physiological and anatomical aspects or by the immaturity of his or her psychic and personality development. The harms of early sexual life are associated with the issue of “prostitution”, interrupted freedom, the absence of school attendance, the absence of “playing” (an extremely important matter for the child, in his or

her identification with the external reality) and the greater stereotype of being called a “prostitute” in the social environment.

“Prostitute” children, when asked about what they feel and what they do, have no pleasure, neither sexual nor corporeal (CAPELATTO, 2015, n. p.):

In fact, most of them have a sort of anesthesia, paresthesia in the genital system – boys too. Some seven-, eight-, and nine-year-old boys use penile erection stimulants to be able to have relations with adults. But the pleasure is in being sought out by that man or woman that is forty-five, fifty years old. This gives them a sense of power (a unique moment when the EGO feels worthwhile, as an adulterated kind of self-esteem). So, it is not the work, it is not trafficking or prostitution that brings pleasure, but the connection with the other.

The most striking damages that appear from the sexual and psychological abuse of children are divided into physical damages, social damages, moral damages, emotional or psychological damages, damages that will interfere with their sexuality, and damages to the body (loss of ego identity): they cannot desire more than what the day can offer; they cannot have any kind of self-esteem; some children start to suffer from morbid self-pity, which, later, incites them to suicide or self-mutilation; they do not have enough imagination to create (in their minds, create escapes for themselves); they cannot feel affection, because they confuse affection with “pity” and thus are degraded more and more, as they expect to receive from the other the piety they generate, in the form of money, for example. They fail to reach adulthood, either by early death due to sexually transmitted diseases (STDs) or by a murder committed by the abuser or by colleagues; they are unable to return to their families (unless they receive professional help), because the bonds of affection were mixed with the concept of abandonment and the awareness that ‘it all started at home’, in most cases.

Some consequences of sexual abuse, mentioned by Blanchard (1996), are of special importance to understanding the great dimension of the physical, emotional, and psychosocial impacts caused by sexual abuse: ... Having experienced physical and psychological trauma makes the victim question his or her ability to defend him or herself... He or she learns to hate his or her body because it reminds him or her of bad experiences. He or she has dissociated responses, difficulty in intimacy, and is emotionally distant. He or she learns that he or she cannot control his or her body and that someone else can touch him or her without his or her consent. He or she does not trust his or her memory, thoughts, and sense of reality. These consequences

affect not only the victim but also society in general because a traumatized child eventually becomes an adult who can adopt aggressive or passive behaviors to resolve situations and stress (BLANCHARD, 1996).

According to a review by the Passei Web (2013) website, in which the work of journalist Gilberto Dimenstein called *Meninas da Noite* [Girls of the Night] is cited, one of the incentives for “prostitution” comes from their own families (DIMENSTEIN, [1997] apud PASSEI WEB, 2013):

The girl usually works as a seller of gum or candy. But she is forced to take a certain amount home, under threat of being hit. Without money, she sometimes surrenders to the men in order to return home with the required amount. Theft is another alternative, but it is riskier.

Thus, we realize that severe poverty, the absence of shelter in schools or daycare centers, the failure of the family’s mental health, the absence of care from society will certainly lead minors to a ‘survival trap’, based on unscrupulous people, true sociopaths, who will facilitate and enact these vulnerable children towards a cruel and irreversible fate, centered on the pedophilic pleasure of sick adults and on the economic issue that guarantees pimps a considerable financial income from child trafficking and large-scale “prostitution”.

Child “prostitution” is something that concerns all cities in the world. A worrisome and true reality. In the aforementioned work, Dimenstein [1997] puts this in a theory: “All girls reported in this work have problems with their families, some of them don’t even have parents or family members, and they don’t even have a place to live” (DIMENSTEIN, [1997] apud PASSEI WEB, 2013). The book also shows that there is slavery in this environment. The girls have a place to live and have to pay for everything they consume, from food to perfumes and clothes. They are always indebted, with no chance of leaving “prostitution”, often leaving due to fatal illness or murder.

There are also cases of virgin girls being auctioned. Virginity is something that men want as merit in these places. They hold auctions to see who gives more for virgin girls, and the buyer who gives the highest value takes the girl’s virginity (DIMENSTEIN, [1997] apud PASSEI WEB, 2013).

Excessive mistreatment in childhood, including sexual abuse, a worldwide phenomenon, raises a serious public health problem. Traumas affect minors, their families and constitute a dynamic in which horror and indifference are found, leading society to impotence without limits.

The child's first pleasant experience with the world is in breastfeeding. The baby's lips and tongue become an erogenous zone through which, when sucking the milk, the child feels pleasure in being fed and, therefore, the pleasurable sensation is associated with the need for food (COSTA; OLIVEIRA, 2011). Freud (2006, np) describes the presence of this pleasure:

Anyone who has seen a satiated child retreat from the breast and fall asleep, with flushed cheeks and a beatified smile, will tell him or herself that this image also persists as a norm for the expression of sexual satisfaction later in life.

When pleasure comes about, whether in the orality that makes breastfeeding something sublime or in sexuality, which, when understood and experienced, becomes pleasurable and necessary as a complement to the other pleasures of the body, this pleasure organizes an important instance in our development, which is the EGO, our body in contact with the external environment. The EGO is corporeal, and thus everything that happens to our body organizes or weakens our EGO.

Abuses perpetrated by others on the child's body, such as physical, sexual, isolation, or moral abuse (such as *bullying*, for example), bring, as often irreversible consequences, the loss of self-esteem, insensitivity (loss of empathy and the non-formation of compassion) and an increase in outward and self-directed aggressiveness; these abuses can, on the other hand, establish a catatonic relationship with the outside world, where the child has no reactions or words to defend him or herself or to express feelings and emotions.

The EGO, thus wounded, dismantles a notion of reality (conscience) of the victimized child, causing him or her, at times, to no longer have the concept of his or her real desires, true needs, or a concept what is pleasurable or painful: a confusion of bodily sensations that destroys his or her condition as a developing human being. Without being able to state his or her desires, this child is doomed to succumb to the demands of group life, without realizing that he or she might want another type of work, since "prostitution" has become a kind of "work" for him or her; without the notion and awareness of his or her real needs, he or she does not know how to distinguish hunger from feelings of cold or heat, does not know how to verbalize what is pain or what is pleasure, does not know how to say what he or she needs, at a certain moment, to feel belonging to something or someone.

Here we have what the action of the family (father, mother, uncle, aunt, grandmother, grandfather...) in the life of a child and in the making of his or her healthy EGO (relationship of the body with reality, with others and with external objects) truly means. The family's action is shown in what we call "care", that is, the concern with the child, with their physical health, with their mental health, with their interpersonal relationships (the importance of school, friends, the relationship with cousins and other relatives), in short, care is the certainty, for the child, that he or she is wanted and loved by the people around him or her.

In the children's book *A Estranha Madame Mizu* [The Strange Madam Mizu], by T. Lenain (1998), the loneliness of the girl Zoé, who spends her days in the apartment, because her parents are very busy, makes her fantasize about crazy things about the lady that lives upstairs. In the text by Danuza Leão (2001), the chronicler talks about her longing for that aunt who took care of everyone, comforting her in colic and sadness:

An aunt. Except I'm not talking about any aunt; I'm talking about that old aunt, who I don't even know if it still exists. She was like this: skinny, already born at about 75 years old and with hunched shoulders; she was so discreet that she never got sick and, if she did, she didn't say so (so as not to be a burden); being the oldest of a line-up of 12 or 13 brothers, it was agreed that she would never marry. At that time, it was like this: the older woman's destiny was to help raise the youngest and take care of her mother in old age.

These two contemporary writings have in common the loneliness we live in and the longing for a time when we had that family that, with all the fights and difficulties, also comforted us and made us feel like members of an affective group (CAPELATTO, 2001, n. p.).

Thus, as in literature, our current anxieties are also reflected in news reports, reports from medical and psychological offices, schools, and suicides recorded every day. Orphaned by father, mother, family, and society, we are experiencing the crisis of the extinction of values, ethics, and care, those who have kept us alive until now. Without them, how can we feel part of a whole, how to be whole? In the solitude of the apartment, like Zoé, we ended up fantasizing about life, but we need our parents and relatives to teach us to distinguish reality from imagination, otherwise, we come to believe, like today, that soap operas are real, that crimes are a game for children, that Madam Mizu is really a witch; we come to believe, too, that the affection that that uncle or aunt, or even father or mother, places upon our bodies, is loving care and not an invasion, a sort of abuse.

Without the sheltering and safe and affective guidance of relatives, a child will not be able, on their own account and responsibility, to constitute a good ego composition, because the foundation of a good EGO that protects us and gives us identity is organized by the speech and the care of others.

Without this consistency of sufficient EGO to face the challenges and demands of the outside world, a child will succumb to the apparent “seductive care” of psychopaths and sociopaths who perceive him or her as fragile, unprotected, and lonely. The body is the means through which we perceive the world, the reality and it is the psychic environment that makes us differentiate, through objective experience, reality from fantasy. A good EGO (a body that allows a good psychic constitution) will certainly be able to differentiate, in its social contacts, between the one that offers affection and the one that seduces or lies. A failed EGO, without a history of shelter, care and affection will certainly not have a chance to choose, to differentiate between good and evil, good and bad, affective and abusive, and thus we will have this legion of boys and girls kidnapped by evil for the greed of unscrupulous people and without the possibility of measuring the extent of the damage they will do in small human lives.

Sexual abuse makes most people uncomfortable. It is sad to think that adults cause physical and psychological pain in children to satisfy their own desires, especially when these adults are trusted friends and family members (WATSON, 1994, n. p.).

This statement by Watson shows how difficult it is for a mentally healthy human subject not to be bothered by the fact that there are “monsters” often within the very home where children live, causing them, for sure, the biggest and heaviest psychic loss that a human being can suffer, which is the abuse perpetrated by a relative. These desires that require anomalous sexual satisfaction, such as pedophilia, rape, or abuse, are symptoms and signs of an alarming picture, which multiplies in society at every moment: they are the signs and symptoms of perversion, psychic dynamics that are established also in human subjects whose family history is marked by the absence of a good first year of life and by the absence of care, affection, and limits from the second to the fifth year of life.

According to Winnicott (1982), a pediatrician and psychoanalyst from the 20th century, there is a need, for the human baby, for the first year of life with care and affections being offered, preferably by the maternal figure,

which includes breastfeeding, presence, care of all kinds, welcoming in times of crying or when any physical suffering occurs, being ideal that the maternal presence is continuous, in a kind of routine.

When a baby is separated from its mother at an early age, being outsourced or kept under the care of several people, there is an important loss which is the non-formation of the SELF, the single structure necessary for good psychic development and for us to build the feeling of belonging, that is, that feeling that we belong to something, someone or to a place. It is the feeling of belonging that will bring us a good relationship with our family, with others, with school, with our profession, with dating, with marriage, with children... without the feeling of belonging, our life becomes vague and we are subject to the choices of others, to the wishes of others and to very great difficulty in constituting our own desires.

In this context, the genesis of moral feeling, the basis for the subsequent emergence of moral values, is attributed to the updating of a spontaneous dynamism of nature. Thus, the ethical feeling is not the result of the introjection of values imposed by society but emerges primarily from the subject's own spontaneous movement, when such a process is favored by the attitude of the environment (the ambiance).

However, this introjection does not constitute the inaugural moment of the emergence of moral sentiment. In the absence of the spontaneous emergence of this feeling, when the unfavorable environment inhibits this process, these contents are deprived of a genuine basis in the subject, making a tendency towards subservience dominant. The spontaneous emergence of moral feeling requires an attitude of loving receptivity on the part of the "sufficiently good mother." The transmission of cultural codes is, in turn, an educating function. For Winnicott (2011), education, being essential, cannot replace love.

A good ambiance can be translated as an ability of the environment to apprehend and accept the uniqueness and difference of each subject. Creating the trust of the emerging subject in the environment, this attitude allows the expansion of spontaneous trends, allowing the creation of what Winnicott calls true SELF. This concept does not designate any metaphysical essence, but the product of the subject's self-creative activity.

The subject is considered to be true because it is the product of his or her spontaneity. Its opposite, which Winnicott calls false SELF, designates the result of a process of production of subjectivity marked by an intrusive environment that, instead of recognizing the subject's singularity, projects its own narcissism on him or her. Feeling unwelcome, the subject starts to develop responsively, in an anguished attempt to adapt to what is required. In that case, creativity is stifled. In Winnicott's words, the individual starts to develop from the shell, that is, adapting to the environment, instead of doing it from their 'core', that is, "updating the spontaneous tendencies that make them a singular being" (WINNICOTT, [19--] apud PLASTINO, 2006).

Returning to our children without SELF and with an EGO weakened by the absence of a good ambiance, we can deduce how many of them merge with wicked social movements due to the lack of a sense of belonging. They become true "crowd followers" and get lost in desires that are not their own, either because of a great psychic fragility or because of the money that will make a difference in family life. At that moment, the perverse adult or adolescent, who also did not structure him or herself in a good psychic way, uses and abuses these fragile children, who are often confused with themselves in their fragility as a person, as being sexually healthy (a large portion of these perverse adults and teenagers uses the sexual act as a way to attack society).

Still, according to Plastino (2009), clinically, the suffocation of the true SELF is found in the absence or weakness, in the subject, of the feeling of existing and of the feeling that life is worth living. The stifling of spontaneous tendencies causes the fusion between motility and eroticism to lose its power, leaving unfused motility exposed to a process in which aggressiveness, understood as a force that drives towards the other, turns into aggression, which adds to this movement the hatred generated by frustration. These cases, for Winnicott (1982; 2011), are characterized by disease as opposed to health. In them, the scenario described by psychoanalysis prevails, commanded by self-destructive and destructive impulses and by the strong presence of guilt. Such a state, however, does not express any unmodifiable essence of man, the unmodifiable drive of destruction, but it characterizes a historical and, therefore, contingent modality of production of human subjectivity. Thus, the absence of the true SELF, acquired in tender childhood in the arms of the mother, or the structuring of the EGO, formed during the anal phase

(from two to five years old), are sufficient psychic armor for the protection of the subject, for its realization as a human and for its consecration as a social being.

ACTIONS AND INTENTIONS

These children get involved in an easy way and become accomplices in this game that we are discussing here. A game that has been discussed since 1920, since then we discuss child labor. We begin to understand why our work is difficult, why it has to be centered, as you are seeing, on the child; and that child has to be connected to someone, to the family, to a shelter or some guardianship, where someone can make them feel cared for (CAPELATTO, 2015, n. p.).

Convention no. 182 (ILO, 1999), one of the Conventions signed by Brazil with the International Labor Organization, deals with the prohibition and immediate action to eliminate the worst forms of child labor, considering the importance of free basic education, the need to remove the child from all of these jobs and, at the same time, meet the needs of their families. In its article 3, it determines that the worst forms of child labor comprise:

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, bondage by debt and servitude, forced or compulsory labor, including forced or compulsory recruitment of children to be used in armed conflicts;
- b) use, demand, and supply of children for the purpose of prostitution, for the production of pornographic material or pornographic shows;
- c) the use, demand, and supply of children for illicit activities, particularly for the production and trafficking of drugs as defined in the relevant international treaties;
- d) work that, by its nature or the circumstances in which it is performed, is likely to harm the child's health, safety, and morale.

There cannot be a more terrible form, among the worst of them, than slavery and child “prostitution”, ways in which the body and the psyche are at the mercy of the offender, the psychopath, the pimp, whose greatest desire is to take advantage as much as they can of these children in a state of absolute vulnerability, to take from them what they can, then, in most cases, leave them to their own devices, without the possible empathy or compassion, absences that are typical of psychopathic conduct.

It is necessary to organize, through TRTs and TST, events in *favelas*, government schools, in villages, peripheral neighborhoods, where it can be

clarified, in a simple and clear way, the role of the family and the risks that children run when starting any type of work (mainly “prostitution”).

In the same way, schools and school principals should be supported so that they can pay attention to those children who start missing classes, who have difficulties with attention, concentration, writing, and reading; to call NGOs to these places, mainly those that work with education and teaching of minors; summon the work of the Prosecution Service and Guardianship Councils, as soon as a flaw or lack in the conduct of children and family members is noticed; organize events and meetings with the presidents of neighborhood associations; summon the church that belongs to that region, in the figure of the parishioners, the brothers from other churches, in short, mobilize society in its most worthy representatives to intervene in this serious and insistent situation. And, here, again, to stimulate the action of the Drug Resistance Educational Programs (PROERDs), with the military police of the states, with the assistance and participation of businessmen, commercial and industrial associations of the municipalities.

Finally, before such a serious problem, the public authorities, through the MPF, the TRTs, and civil society, must establish a priority in the care of our suffering children.

ENDNOTE

- 1 The term “prostitution” is used in quotation marks since it assumes a commercial relationship between equal adults. In the case of children and adolescents, there is sexual exploitation and not “prostitution”, since it involves people in a peculiar condition of development and the legitimacy of that choice or participation is not recognized.

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WHY FIGHT CHILD LABOR? A WALK THROUGH THE MYTHS AND TRUTHS IN SEARCH FOR THE ANSWERS

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Abstract. The intention of this work is to discuss the importance of combating child labor and the myths and lies that are created and enthroned in common sense to justify the existence of this type of work. The article deals with the relationship between poverty, educational deficit, and child labor and highlights that the elimination of early work, in addition to benefiting the lives of children and adolescents, undoubtedly contributes to the improvement of the whole society, be it in the economic aspect, or in the social aspect.

Keywords: Child labor. Myths. Poverty.

1 INTRODUCTION

I believe that those who fought for better living conditions for children at the time of the industrial revolution, in the 19th century, would find it hard to believe that, in the 21st century, the world would still have such an exorbitant number of children and adolescents in a similar situation, exploitation by work¹.

How to explain such abuse with the lives and future of these children? Lack of knowledge about the damage of child labor, political ignorance, contempt for life, express agreement with this type of exploitation? These questions are asked daily by everyone who works with this topic and, obviously, there is no single answer. However, there is no doubt that part of the society that turns a blind eye to the reality of child labor adopts an

attitude of *trivialization*, which is expressed in the most varied ways, whether by simple omission, either by denial or by acceptance!

An expressive form of trivialization is expressed in the perpetuation of catchphrases, malicious jokes, of the use or misrepresentation of popular affirmations, which are being transformed into *indisputable truths*, which we will call *myths* here. Some myths are told and reproduced as absolute truths, something that “has always been like this” and against which little or nothing can be done. We grew up hearing that there was always extreme poverty and child labor and we continue to absorb such content, even when several countries in the world already demonstrate that they have overcome these problems.

This article aims to address this type of trivialization, constructed and repeated in affirmations that, in turn, justify reprehensible behaviors. To do so, we intend to divide the work into four topics: initially, to discuss the meaning of the word “myth”, which will certainly help us in the perception of other conceptions, not restricted to child labor only. Then, we will proceed to the analysis of the intimate relationship between poverty, child labor, and low quality in education, so that, finally, we can talk about how the elimination of child labor can have an impact on the improvement of life for all people, since it will imply the realization of essential public policies, such as combating poverty, raising the level of education and improving all social indices in our country.

2 THE MEANING OF THE EXPRESSION “MYTH”

The word myth has as its synonym “chimera, absurdity, fabrication, fantasy, invention, madness and fiction”, therefore, it expresses a distorted view of reality or a view created as utopia. Perhaps, due to this symbology, it is used in a disguised way, impacting in a beautifying way some farces or lies.

Some myths are told to allegorically review concepts about ethics, courage, wisdom, as in Greek mythology, studied by psychoanalysis as a symbolic expression of the feelings, interests, and attitudes assumed by a community, consciously or unconsciously. When using the concept used by Roland Barthes (2000)², Giovanni Gurgel Aciole (2017) reaffirms that the myth can be “the means to an end; the imposition of an ideology, a class

view, a partial world view that is intended to be universalized. The myth is a communication system, a message”.

It comes close to the noun “lie” having a harder and more objective concept and has similarity to the expressions “deceit, fraud, scam”, although the myth can also present itself as a farce or as a distortion that almost always uses catchphrases, repeated and assimilated not only by its builders but, above all, by the simplest people who will spread it as irrefutable truths, reminding the character Chicó from the work “O Auto da Compadecida”, which whenever he was confronted or called to clarify something, he said repeatedly: “...I don’t know, I just know it was like this...”³.

Popular catchphrases or sayings also express opinions, advice or stimuli passed from generation to generation and which penetrate people’s unconscious, who, when repeating them continually, neglect a deeper reflection on their meaning and reach, gaining strength and perpetuating myths. This occurs with some affirmations that have become commonplace, but that are reconstructed or readjusted to the circumstances. Said and repeated, they become “truths”, although they are myths built with the aim of not thinking and, above all, not changing the reality that surrounds us.

Thus, the worn catchphrase “It is better to work than to steal”, together with others that we will try to examine, symbolize distortions of the real causes that involve the theme of child labor and superimpose early work as the only option to marginalized life, announced in the expression “to steal”. Note that the dilemma is summarized: only two options are given, *work or theft*, as perspectives in the lives of (poor) children and adolescents.

To what extent are these phrases used randomly?

Or it would be better to ask: to what extent are they used consciously as an element of domination? This is the meaning that we intend to unveil: the reproduction of these catchphrases expresses an idea that is conveniently spread, as explained by Aciole (2017, pp. 1,158-1,159):

The myth naturalizes history and plaster the world, in order to prevent transformation. It, therefore, lends itself to a conservative use of the *status quo*. That’s where it is essential: well-fed, sleek, expansive, talkative, continually invented. It takes over everything: justice, morals, aesthetics, diplomacy, domestic arts, literature, shows. Finally, myth and ideology are close relatives: they are intertwined, confused, and are essential categories to unmask the process of legitimizing bourgeois society. The myth is the product of a

dominant social class that ends up being incorporated by members of the dominated class, even when it goes against their own interests. Producing this acceptance – through naturalization – is its function. To naturalize history is to make individuals accept social facts as natural, in order to eclipse the role of history and its social implications. Phrases like “*it’s better to work than to steal*”;⁴ “*The sooner you work, the sooner you get rich*”; “*working early educates the character*” are unreal and contrary to all studies and research that show that the sooner the child starts to work, the greater the school dropout and the levels of accidents at work, the lower his/her standard of remuneration in the future and higher are the possibilities of getting involved in precarious work, that are harmful to health or even directly related to infractions⁵.

A research carried out in the socio-educational system of Rio de Janeiro, from August to December 2019, and which applied questionnaires to 100 interns from the three units of Degase (General Department of Socio-educational Actions), shows the links between child labor and trafficking, presenting important conclusions among the interviewees: almost 50% said they needed to contribute to the livelihood of the house; 86% did not complete elementary school; 85% had already worked in precarious and intermittent activities before going to trafficking, 41% started before the age of 14 and the return to trafficking by the majority (56%) occurred for economic reasons, lack of employment and family support (NAPOLIÃO; MENEZES; LIRA, 2020). The document also clarifies that the units do not have school vacancies for all inmates and there are few opportunities for professionalization.

Ana Lucia Kassouf (2020), from the University of São Paulo, based on official data collected by IBGE in the years 2001 to 2009 and 2011, also proves that the earlier one works, the lower the income. The comparison is made with the income of adult workers who have the same level of education but later entered the labor market. For workers who started working before the age of 9, even though they managed to complete their studies, compared to those who started work after the age of 23, there is an income reduction of 43.7% for men and 40 % for women.

In this respect, it is reaffirmed that the repetition of phrases that encourage child labor shows, at best, ignorance about the reality of the theme and, in the other hypothesis, an option to use them as ideological and political selection, in order to divert new options or choosing solutions that do not enforce rights or seek to overcome inequalities, despite the Brazilian constitutional text prohibiting child labor to people under 16 years of age,

except as an apprentice (which can be from the age of 14) and all kinds of dangerous, unhealthy work or in activities related to its worst forms, according to art. 7, XXXIII, of the Constitution.

3 THE RELATIONSHIP BETWEEN POVERTY, CHILD LABOR, AND LOW EDUCATION

An extremely serious issue about child labor is the intergenerational cycle, that is, the child of a person who was a child worker tends to repeat the same pattern, without breaking with the perpetuation of social exclusion. There are investigations on these determinants of early work in urban Brazil, concluding that child labor generates this persistent behavior, especially in Brazilian states with greater poverty and the degree of informality in regional markets.

Another important body of evidence concerns the intergenerational and temporal persistence of child labor. In the first case, the results found suggest that in the states where adults entered the labor market early, the rate of child workers must be higher. On the other hand, it is also well documented in the national literature the existence of an inverse relationship between the age of entry into the labor market and the current salary of the worker (Ilahi et al. 2000, Emerson & Portela Souza 2002, Pontili et al. 2008). Therefore, the findings of the present study reinforce the hypothesis of a “poverty trap” in Brazil, that is, adults who invest little in education tend to direct their children to work early. Regarding temporal persistence, the results of the dynamic models indicate that those states with a high rate of child labor in previous years preserve about 1/4 of this incidence in the following years; this data suggests possible lagged effects in the application of public policies to combat this phenomenon. (RAMALHO; MESQUITA, p. 219-220).

Undoubtedly, also, the intrinsic relationship between child labor and low educational performance, which certainly has an impact on the disqualification of the future workforce, since schooling and study time promote more qualified jobs, with the consequent increase in the level of income, *reducing the need to insert children into the labor market* (SOUZA; MESQUITA; FIGUEIREDO, 2020). To that end, mention is made of an important analysis by professors and economists at the University of Cartagena, Colombia, which deals with the main causes and consequences of child labor, including referencing previous studies.

There is a growing body of empirical evidence in the literature that tries to analyze the nature of the negative relationship between schooling and child labor, exclusive activities due to the fact that they compete for the child's time. In particular, studies in this regard have focused on the relationship between child labor and the following variables related to education: school attendance, academic performance, and hours devoted to studying. [...]

Regarding the empirical works that analyze the repercussions of child labor on the academic performance of minors, there is that of Psacharopoulos (1997) who argues that a child who works reduces his/her academic performance by about 2 years of education compared to the control group (children who do not work). Likewise, the repetition of courses, a common phenomenon in Latin America, is closely associated with child labor. Akabayashi & Psacharopoulos (1999) point out that children's occupation is negatively related to reading and math skills. Cervini (2005) finds evidence that the average mathematics performance of seventh-year students in urban areas in Argentina is 20% lower for children who work outside the home and for four or more hours in contrast to those who do not work. For Binder & Scrogin (1999), working hours do not affect school performance in Mexico. (ACEVEDO GONZALEZ; QUEJADA PEREZ; YANEZ CONTRERAS, 2011, p. 118).

Additionally, the low quality of education, whether due to school dropout or low performance at school, limits the opportunities for better jobs, restricting access to low-qualified jobs, in precarious conditions, keeping young people in the same cycle of poverty already experienced by their parents (KASSOUF, 2007), including repercussions on other vital aspects such as health, hygiene, and nutrition.

So, there is no way to deny, in every way, the harmful consequences of child labor.

4 THE ELIMINATION OF CHILD LABOR AND THE IMPROVEMENT OF SOCIAL INDICES

Much has been heard about the costs of eliminating child labor, embodied in another catchphrase "child labor has always existed and will always exist!", which reveals the unspoken thought: it is not worth spending money on this topic. As if it were possible to reconcile the valorization and prioritization of childhood, provided for in art. 277 of the Brazilian Constitution with the sore of child labor, which crushes, corrupts, and destroys the lives of these boys and girls.

In an impactful survey on the costs and economic benefits of eliminating child labor in Brazil, including the costs of providing public elementary schools, the cost of eliminating the value of child labor, including in activities that are dangerous and that may cause psychological and/or health problems in children and young people, and, comparing the benefits (calculating the economic gains resulting from a population with better health and education), the difference was clear: the costs totaled 7 billion dollars, while the benefits were 35 billion dollars, that is, the benefits exponentially outweigh the costs.

By analyzing the research and data above, as well as the graphs presented, the benefits of eliminating child labor and redirecting these children to education far outweigh the costs. The research authors add that the strength of the result was so great that any adjustment to the methodology is unlikely to be able to reverse this calculation. The main benefit presented is, not surprisingly, the economic boost that a country experiences if all children are educated through adequate primary and secondary education. Other benefits are also reported, such as the quality of health (although with underestimated results), since a significant part of child labor in Brazil occurs in unhealthy, dangerous situations or with physical and psychological impairment of young people (KASSOUF; DORMAN; ALMEIDA, 2005).

The public policy to combat child labor and stimulate the apprenticeship of young people, as seen, goes hand in hand with several other policies, such as improving education, reducing poverty, guaranteeing basic income, professionalization, combating unemployment among young adults, which confirms the thesis defended by Amartya Sen⁶ (2010) on the intrinsic relationship that exists between effective public policies and their impact on the country's development.

5 FINAL CONSIDERATIONS

Social and cultural barriers need to be broken so that the path to the elimination of child labor is made in a continuous and decisive way. This includes fighting catchphrases created and disseminated in order to legitimize the exploitation of children, crude phrases, and without any support in studies and research.

Conversely, the research carried out by serious institutions and national and international universities present the harms that child labor causes in the lives, health, physical and psychological development of children and adolescents, in addition to projections that disintegrate the entire adult life of these young people, reverberating in their families and in the social body in which they are inserted.

Furthermore: there are studies that present the negative repercussions that the exploitation of these children has on the economic aspect and how much the elimination of child labor can increase the quality of life for all people, making Brazil reach a new level of education, professionalization, and insertion of young people in a more inclusive world of work. As Beto Guedes sings, in “Sol de primavera”, “the lesson we know by heart, we can only learn...”.

ENDNOTES

- 1 In 2017, the ILO estimated that 152 million children were still subjected to child labor, which represents one in ten children, from 5 to 17 years old, and 73 million would be in the worst forms of labor, that is, in activities that put in risk the lives, health or morale of these children (MARTINS, 2020).
- 2 At first, it is already clear that, for Barthes (2001), although the myth is a message and expresses a speech, “it is not just any speech”, it brings meaning and motivation.
- 3 The aforementioned play was written by Ariano Suassuna, from Pernambuco, in 1955, later transformed into a miniseries in 1999 and a film in 2000.
- 4 There are studies that show that about 80% of the prisoners in Carandiru (a detention house in São Paulo) were child workers, as stated by Leiria (2020).
- 5 More than 90% of the workers rescued from forced labor and analogous to the condition of slavery are from child labor.
- 6 The interrelationship is also advocated in the sense of increasing economic growth, seen not only as an increase in income, but also in the expansion of social services such as health and education.

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ILO CONVENTION 182 ON THE WORST FORMS OF CHILD LABOR: A MEMORABLE AND CHALLENGING JOURNEY

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In June 1998, the Delegates from more than 170 countries attending the International Labor Conference in Geneva were surprised by the attendance of 500 children and adolescents at the Plenary Session. For the first time in history, the strong security apparatus of the Palace of Nations, headquarters of the UN, admitted the entry of visitors not submitted to the previous accreditation process. After all, the visitors were none other than the rights holders whose protection motivated that meeting. Coming from the most diverse parts of the world¹ (GLOBAL MARCH AGAINST CHILD LABOUR, [20--]), those children and adolescents gave voice to the longing of their entire childhood (especially the nearly 246 million victims of child labor) for effective actions to end inhuman exploitation, which stole dreams and compromised the future of girls and boys.

Speaking at the International Labor Conference, the activist for the rights of children and adolescents Kailash Satyarthi² urged the assembly to adopt an instrument that would fulfill the international community's commitment to protecting children against economic exploitation and asserting their rights, especially the right to education and the full development of their potential. *From exploration to education*, the motto was repeated to exhaustion, in order to mark the beginning of a new era, in which all children and adolescents would be entitled to benefit from free, quality public education, capable of ensuring the development of their full potential and the prospect of a happy future.

The Director-General of the International Labor Organization, Michel Hansenne³, in addressing his final comments to the Conference, noted:

[...] the world is changing, and this change can only be for the better. I must add: as long as we want it to be so.

Delegates witnessed a demonstration of this willingness to act when the Global March Against Child Labor erupted in this auditorium in a vibrant and colorful crowd. In their plenary speeches, many of you welcomed this initiative launched by non-governmental organizations in developing countries, along with those in the developed world. This shows that non-governmental organizations, trade unions, employers' organizations, and associations that defend the rights of the children can work together, regardless of national, cultural, religious, or other differences.

This should encourage us for the future. We must hope that this synergy can be sustained and extended to other practical activities. In an area such as child labor, and in a context of globalization of the economy, universal respect for a set of values increasingly requires a joint effort: within the scope of laws, by those with decision-making power; technical cooperation, and mobilization of public opinion.

More than a peaceful invasion of the Conference Room, the purpose of the March was to make itself heard, on behalf of tens of millions of children working in extreme conditions, by delegates to the Conference and by the members of the Committee installed to examine the conclusions concerning new instruments on the worst forms of child labor. I believe that they were heard (ILO, 1998).

The adoption, in the subsequent year (1999), of Convention no. 182 and Recommendation no. 190, by the unanimous vote of the delegates attending the International Labor Conference, confirmed the perception of the ILO Director-General: the voices of children and teenagers made themselves heard. As a result, the international community had taken a significant step towards affirming the rights of children, making a commitment to eliminate, as a matter of urgency, the worst forms of child labor.

Another observation by Hansenne for the future, today takes on the characteristics of prediction:

The adoption of these instruments, and especially the **universal ratification of the new Convention**, should bring new impetus to the activities of the International Program for the Elimination of Child Labor (ILO, 1998, emphasis added).

ILO Convention no. 182 was ratified at a pace never seen in that Organization. In the same year of its adoption, five countries deposited their respective instruments of ratification with the Office of the Director-

General of the ILO, including the United States of America⁴ – a country that, despite its economic and political importance, has a timid history in relation to the number of ratifications of international standards within the scope of the United Nations⁵.

During the first decade of the 21st century, 166 other countries ratified Convention no. 182, and, in 2020, the centenary ILO witnessed the first universal ratification of one of its instruments⁶.

This is especially noteworthy, considering that one of the reasons for adopting a new instrument on child labor was precisely the low number of ratifications achieved by Convention no. 138 of 1973. In 1994, 21 years after its adoption, only 46 countries had ratified the Convention (BELEKE; MEYERS, 1995). At the time, it was frequent, among representatives of governments of countries in conditions of lower economic development, the justification that Convention No. 138, while relevant, established ambitious goals, which could not be achieved immediately. They argued that ratification of the Convention could impose obligations that are difficult to implement, leading to a situation of non-compliance, which, in turn, could have a negative impact on its international image and on its commercial relations.

Abstracting the *political will* component, already highlighted by Michel Hansenne in the excerpt transcribed elsewhere, the fact is that the opportunity was auspicious for the ILO constituents, who decided to explain in the new instrument the *worst forms* of child labor, in relation to which countries that have ratified undertake to adopt *immediate and effective* measures to ensure their *prohibition and elimination*, as a matter of urgency.

The worst forms of child labor are defined in Article 3 of Convention no. 182, which divides them into four types:

- i) all forms of slavery or practices similar to slavery (including, among others, the sale and trafficking of children, debt bondage and forced or compulsory recruitment for use in armed conflicts);
- ii) use, demand, or offer of a child for the purpose of prostitution, production of pornography or pornographic performances;
- iii) using, recruiting and offering children for illicit activities, particularly drug production and trafficking;
- iv) jobs that, by their nature or the circumstances in which they are performed, are likely to harm the child's health, safety, and moral⁷.

It is important to note that Convention no. 182, in its preamble, reaffirms the centrality of Convention no. 138 in the ILO's normative system,

regarding child labor. The parameters and objectives of Convention no. 138 continue to guide the work of ILO on the subject. Convention no. 182 added a **priority** criterion, highlighting the need for effective and immediate action to promptly eliminate its worst forms. It follows that the Conventions of nos. 138 and 182 are not mutually exclusive; they complement each other.

Such complementarity was perfectly understood by the General Assembly of the United Nations, which, when adopting the 2030 Sustainable Development Agenda, included, in the Sustainable Development Goal 8 (Decent Work and Economic Growth), goal 8.7, of the following content:

Take **immediate and effective** measures to eradicate forced labor, end modern slavery and human trafficking, and **ensure the prohibition and elimination of the worst forms of child labor**, including recruitment and use of child soldiers, and **by 2025 end child labor in all its forms** (emphasis added).

In other words, the goal to be pursued by countries is the effective elimination of child labor **in all its forms**, through actions and programs with a fixed term⁸, national policies, and international cooperation, among other measures. As part of this effort, **immediate and effective** measures must be taken **to urgently ban and eliminate** the worst forms of child labor.

The correctness of the International Labor Conference's decision to adopt Convention no. 182 is evidenced not only by its universal ratification. It is observed that the number of ratifications of ILO Convention no. 138 has also grown exponentially, reaching currently 173⁹.

It is important to remember that, after the deposit of the instrument of ratification with the Office of the Director-General, the member country begins to submit to the mechanisms for regular monitoring of compliance with the obligations provided for in the respective instrument, being obliged to send periodic reports on the situation of the rights therein provided by law and in practice. This has allowed ILO to maintain a very fruitful exchange with the countries that have ratified the Conventions nos. 138 and 182, with important repercussions on the situation of child labor worldwide.

The estimated number of child labor victims in the world has dropped by almost **40%** on average since 2000. According to ILO data, in **2000** (ILO, 2013) there were 245.5 million children in the age group from 5 to 17 years

old, 170.5 million of them working under conditions of risk to their health, safety, and morale. In **2016** (ILO, 2017), there were 152 million children who were victims of child labor, 73 million of whom were at risk.

In the Americas, in 2016 the number of victims of child labor was 10,735,000, of which 6,553,000 were at risk – a drop of **24%** compared to 2008, when the numbers were, respectively, 14,125,000 and 9,436,000.

It is true that these advances did not result only from the adoption of the new Convention. The prioritization, in several countries, of **public policies** aimed at the universalization of basic education, health care, and food for school-age children and adolescents, in addition to income transfer programs conditioned to school attendance had a great impact on the global reduction of child labor.

Equally important was the implementation of **international technical cooperation** programs, led by the ILO and UNICEF, aimed at developing national capacity to develop and implement strategies to fight child labor, as well as monitor their progress¹⁰.

On the other hand, the requirement of observance and effective implementation of the fundamental ILO Conventions¹¹, established in several bilateral **international trade** agreements, including within the General System of Preferences¹², as a condition for access to special incentives, also positively impacted the picture, both from the perspective of the number of ratifications of ILO Convention no. 182, and the adoption of concrete measures to eliminate child labor, especially in countries in search of better placement of its products on the international market.

Although the favorable evolution of the situation gave rise to a certain optimism, in a Report released in **2018**, the ILO already warned of the fact that the challenge remained “formidable” in its proportions, and the pace of the decline of the indicators slowed down (ILO, 2018). Between 2012 and 2016, the number of child labor victims in the world fell by 1%, while the reduction in the period from 2008 to 2012 was 3%. The number of children aged up to 12 years remained practically stable. If such a pace were to be maintained, the outlook for 2025 (the date set in the UN Sustainable Development Goals, goal 8.7, for the elimination of child labor in all its

forms) would be **121 million** children and adolescents who are victims of child labor.

The situation was serious and required urgent action. According to the report mentioned, “even if the pace achieved between 2008 and 2012, the fastest recorded so far, would not be enough. We are moving in the right direction, but we need to accelerate the pace a lot” (ILO, 2018).

The situation, already tremendously challenging, came to seriously deteriorate in **2020**, with the unprecedented health and economic crisis triggered by the COVID-19 Pandemic. According to ILO estimates (ILO, 2020b), the number of hours worked worldwide fell by 14% in the second quarter of 2020 – equivalent to the extinction of **400 million** full-time **jobs**. The impact on the Americas is even greater, reaching 18.3%.

Even greater is the impact suffered by **the informal sector** – where most of the urban child labor is found in the world (ILO; UNICEF, 2020). In the informal economy, there is virtually no substitution of income or savings. For the overwhelming majority of the world’s more than 2 billion informal workers, not working due to lockdown or other containment measures means losing their livelihood and of their family (ILO, 2020a). And vulnerable families, without access to social protection measures, when losing their livelihood, are more likely to resort to child labor.

Add to that the effects of the Pandemic on educational systems worldwide, affecting almost 1.6 billion students, in 190 countries on all continents, according to data from the United Nations (UN, 2020). And worse: the recovery of educational systems is not guaranteed, as the health and economic crisis puts pressure on public budgets, compromising the already insufficient investment in quality education in several countries – especially those with low and middle income (UN, 2020)¹³. With the closing of schools and the lack of mechanisms that allow the continuity of the educational process, the increase in **school dropout** rates is foreseeable, and it is estimated that another 23.8 million school-age children and adolescents will join the more than 250 million out of school – an increase of 9.5% (UN, 2020).

It is not difficult to see, in this scenario, that children and adolescents belonging to vulnerable families, without access to education or social protection, are at greater risk of becoming victims of child labor.

According to data from the ILO and UNICEF, **55%** of the world population has no access to any **social protection** mechanism. They are the most vulnerable to shocks and crises, such as the one that now affects the world economy, both in the short and long term (ILO, UNICEF; 2020). For the World Bank (IBRD, 2020b), the number of people living in conditions of **extreme poverty** (with *per capita* income below 1.90 dollars per day) in 2020 is expected to suffer an increase in relation to 2019 in the order of **40 to 60 million** due to the Pandemic. This is a reversal of a sustained downward trend since 1990 when about 36% of the world population was in extreme poverty. In 2015, this percentage was 10%, corresponding to 734 million people.

ILO and UNICEF (ILO; UNICEF, 2020) warn that, according to statistical evidence, the **1%** increase in extreme poverty rates leads to an increase of at least **0.7%** in the number of victims of child labor.

A more concrete notion of the dimension of the crisis can be obtained by applying these calculation parameters to the Brazilian reality. According to the 2019 IBGE Continuous PNAD, 13.5 million people (6.5% of the population) lived below the extreme poverty line (NERY, 2019)¹⁴. World Bank estimates (IBRD, 2020a) indicate a likely **8%** retraction in Brazil's Gross Domestic Product in 2020. According to studies by Kings' College London and the National University of Australia (BARRUCHO, 2020), a retraction of this magnitude of the national GDP would have such an impact on the income and consumption of Brazilians, that between 700,000 and 3.3 million of them would go into extreme poverty – that is, a 23.9% growth in the worst case, and 5% in the best case.

Applied to the ratio of extreme poverty *vs.* child labor (1 *vs.* 0.7), the probable increase in the number of child workers in Brazil in 2020 would range between **3.5%** and **16.73%** – a jump that could bring the current numbers closer to the 3.2 million victims of child labor registered by IBGE's PNAD in 2013 (FNPETI, 2014).

ILO Director-General Guy Ryder¹⁵, when celebrating the universal ratification of Convention no. 182, referred to the trajectory of this instrument as “a memorable journey” (RYDER, 2020). But he recalled that, despite the successes achieved, with the reduction of child labor rates by more than 100 million since 2000, 152 million children are still victims of this illness. And the catastrophic effects of the health and economic crisis threaten to reverse the advances made slowly, over decades. “Let’s speed up the pace” – he proposes, in an exhortation to the international community to translate into concrete actions the commitments assumed with the ratification of Convention no. 182 and put an end to all forms of child labor.

The journey is certainly memorable. But it is also long and challenging, full of mishaps. The universal ratification of ILO Convention no. 182 is a longstanding objective and deserves to be celebrated. But the bigger challenge is just beginning. To correctly implement the obligations enshrined in the text of the Convention 21 years ago, by the **unanimous** vote of the representatives of workers, employers, and governments attending the International Labor Conference, is more than moral duty, a **legal imperative** – since, at this point, all countries members of ILO have in their legal systems a powerful, clear, and precise instrument on the way forward in the fight against child labor.

The strengthening and qualification of the State’s **inspection** apparatus, as well as the Justice system, is fundamental. The **criminal classification** of exploitation of the worst forms of child labor, with the imposition of adequate and dissuasive sanctions, is also a necessary measure. But no effort will be successful if it is not accompanied by the implementation of **public policies** that ensure everyone’s – especially the most vulnerable – access to fundamental rights, such as health, education, leisure, protection, social security, and assistance, among others. Obviously, the implementation of these measures will depend on the allocation of the necessary resources – which, in a context of crisis, suffer harsh competition with demands from other government sectors. It is time to demonstrate good faith in fulfilling obligations assumed before the international community, as well as an appreciation of the principle of absolute priority for the rights of children and adolescents.

ENDNOTES

- 1 The Global March Against Child Labor brought together more than 1,400 non-governmental organizations, spanning 103 countries on five continents, mobilizing more than 7 million people against child labor.
- 2 Kailash Satyarthi, from India, creator of the Global March Against Child Labor, was awarded the 2014 Nobel Peace Prize.
- 3 Belgian Michel Hansenne was the 8th Director-General of the ILO between 1989 and 1999.
- 4 The other four countries are: Seychelles (09/29/1999); Malawi (11/19/1999); Ireland (12/20/1999), and Slovakia (12/20/1999).
- 5 The United States is the only country in the world that has not yet ratified the 1989 Convention on the Rights of the Child.
- 6 The last country to deposit the instrument of ratification of Convention no. 182 was Tonga, on 8/4/2020.
- 7 According to article 4, item 1, of Convention no. 182, such types of work “will be defined by national law or by the competent authority, after consultation with the organizations of employers and workers concerned, taking into account the relevant international standards, particularly paragraphs 3 and 4 of the 1999 Worst Forms of Child Labor Recommendation.”
- 8 On *Time Bound Programs*, see the ILO International Program on the Elimination of Child Labor – IPEC (ILO, [20--]) page.
- 9 They did not ratify Convention no. 138 until 9/13/2020: Australia, Bangladesh, Cook Islands, Iran, Liberia, Marshall Islands, New Zealand, Palau, Saint Lucia, Somalia, Timor-Leste, Tonga, Tuvalu, and the United States of America.
- 10 The ILO International Program on the Elimination of Child Labor – IPEC was launched in 1992, with six signatory countries (Brazil, India, Indonesia, Kenya, Turkey and Thailand). It grew rapidly, becoming *the world’s largest program exclusively focused on child labor*, according to the Global Report presented to the 95th International Labor Conference: *The end of child labor: an objective within reach*. In 2006, it was present in 86 countries (ILO, 2006).
- 11 There are eight fundamental Conventions, as defined in the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, related to four principles, which must be observed by all member countries of the Organization: Convention no. 87 and Convention no. 98 (protection of freedom of association and collective bargaining); Convention no. 29 and Convention no. 105 (elimination of forced or compulsory labor); Convention no. 138 and Convention no. 182 (abolition of child labor); and Convention no. 100 and Convention no. 111 (elimination of discrimination in employment and occupation) (ILO, 1998).
- 12 This is the case of the *General System of Preferences “Plus”* of the European Union (EUROPEAN COMMISSION, 2020). The United States of America has introduced requirements regarding fundamental labor standards, as in the case of the Free Trade Agreement signed with Jordan, effective from 2001 (article 6) (USA, 2000). Similar provisions are found in the Free Trade Agreements signed with **Chile**, effective from 2004 (articles 18.1 and 18.2); **Peru**, effective from 2004 (articles 17.1 to 17.3); **Bahrain**, effective from 2006 (articles 15.1 and 15.2); **Dominican Republic and Central America** (CAFTA), effective from 2006 (articles 16.1 and 16.2); **Colombia**, effective from 2012 (articles 17.1 to 17.3); **Panama**, effective from 2012 (articles 16.1 to 16.3) and **Korea** (KORUS), effective from 2012 (articles 19.1 to 19.3), among others.

- 13 According to the UN report, the **deficit** for financing quality education worldwide, which was around US\$ 148 billion per year, is expected to increase by up to a third.
- 14 Brazilian Institute of Geography and Statistics – IBGE: National Household Sample Survey – Continuous PNAD 2019 (data referring to 2018).
- 15 Briton Guy Ryder is the tenth Director-General of ILO, from 10/01/2012 to the present date.

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THE CHILD LABOR ERADICATION PROGRAM AND THE IMPLEMENTATION OF PUBLIC POLICIES IN THE BRAZILIAN STATE IN FACING THE EXPLOITATION OF THE WORK OF CHILDREN AND ADOLESCENTS

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Abstract. This article addresses the Child Labor Eradication Program (PETI), making a retrospective analysis of the 24 years of implementation of this public policy, whose main objective is to face the illicit use of child and adolescent labor in Brazil. The article also addresses the work of the Labor Prosecution Service in combating the exploitation of child and youth work, which takes place through the National Committee to Combating the Exploitation of Child and Adolescent Labor (COORDINFÂNCIA), and the intersection of performance between this Committee and PETI.

Keywords: Child labor. Public Policies. PETI.

1 BRIEF CONSIDERATION ON SOCIAL MOBILIZATION IN DEFENSE OF THE RIGHTS OF CHILDREN AND ADOLESCENTS IN BRAZIL

The 80s and 90s of the last century were marked by an intense mobilization of public bodies and civil society in the defense of the rights of children and adolescents. This mobilization contributed decisively to changing the normative situation in Brazil, with the establishment of new legal levels of protection for children and adolescents and, still, the conception of children and adolescents as subjects of rights.

These legal advances had a decisive impact on the fight against child labor, finally inserted in the public agenda as a social wound to be faced. Therefore, a break with a social state which not only compacted with but also encouraged the work of children and adolescents from the poor and marginalized classes in the country was initiated.

Until the 1980s, in Brazil, the population started working life early, mainly driven by poverty. The lower the family's income and the education level of the family unit's reference person, the greater the risk of early entry into the world of work.

There was, virtually, a consensus in Brazilian society regarding the understanding of work as a positive factor for children and adolescents. It is known that this concept still persists in many sectors of society.

The Brazilian State itself constituted a set of policies of a moralizing character that dignified work above all. The Code of Minors, which was in force until revoked by the ECA in 1990, understood a "minor" who did not study or work as a potential "delinquent", to be controlled and repressed by the punitive structures of the government.

As for education, the dominant view was that it should be guided by the economic utility. This perspective ended up legitimizing child labor, seen as a way to make the child "use time in a useful way", teaching him/her, at the same time, "a profession" and "the value of work" (BRAZIL, 2019, p. 9).

In the wake of the social mobilization referred to, article 227 of the Federal Constitution emerged as the result of a popular amendment organized by the *Child and Constituent* and *Child, a national priority* movement during the Constituent Assembly (HOUSE OF REPRESENTATIVES, 2018) and gave rise to the vector rule of the principle of comprehensive protection, which provides, in the special protection guaranteed to children and adolescents, the right not to work before the appropriate age and conditions. Later, guided by the principle of comprehensive protection provided for in the Constitution, the Child, and Adolescent Statute would come, which established a chapter dedicated to the right to professionalization and protection at work.

The Convention on the Rights of the Child was adopted by the UN General Assembly on November 20, 1989, it was ratified by Brazil in November 1990, by Decree no. 99,710/1990. Among the precepts of the Convention, as recommended by art. 32 of the aforementioned Decree, is the recognition of the right of the child¹, "against economic exploitation and against doing any work that may be dangerous or interfere with their education, or that is harmful to their health or to their physical, mental, spiritual, moral or social development" (BRAZIL, 1990, p. 10).

Convention no. 182 of the International Labor Organization, on the prohibition of the worst forms of child labor and immediate actions for its eradication, was ratified by Brazil in 2000 (BRAZIL, 2000) and Convention no. 138, which deals with a minimum age for admission to work, was adopted in our country in 2002 (BRAZIL, 2002). The annual historical series for calculating the rate of child labor was inaugurated by IBGE in 1992. The National Forum for the Prevention and Eradication of Child Labor (FNPETI)² was created in 1994 and the National Commission for the Eradication of Child Labor (CONAETI)³ in 2002.

Within the scope of the Labor Prosecution Service, COORDINFÂNCIA was created in 2000 with the important and challenging task of promoting, supervising, and coordinating actions against the various forms of exploitation of the work of children and adolescents in the sphere of attributing labor *parquet*.

Four years before the creation of COORDINFÂNCIA, in 1996, with the purpose of combating the work of children in charcoal production in the Três Lagoas Region, in Mato Grosso do Sul, the Child Labor Eradication Program (PETI) was born. Subsequently, the Federal Government's initiative was extended to other locations, initiating one of the most important public policies of the Brazilian State in relation to the fight against child labor.

PETI's history is, therefore, umbilically related to the trajectory of action and the constitution of several instances, bodies, structures, and institutions dedicated to combating the exploitation of the work of children and adolescents. PETI thus emerges from the history of facing the exploitation of child labor in Brazil, being a mechanism built after decades of mobilization, reflection, discussion, and interlocution of the protection network. It is an instrument that remains essential for the effectiveness of the social right to non-work for children and adolescents.

2 TWENTY-FOUR YEARS OF PETI

Studies show that the majority of working children have come to this due to their guardians, so only a small proportion of them decide to work on their own. These same studies indicate that families induce their children to work for reasons related to economic conditions, schooling, and multiple social vulnerabilities, such as homelessness, basic sanitation, health and access

to school and socio-assistance devices (daycare centers and the provision of out-of-school free activities, for example). They are mothers, fathers, and guardians who, moved and driven, generally by their own personal stories of exploitation and lack of opportunities, reproduce with their sons and daughters child labor situations that they also experienced. It is the infamous perpetual motion machine of misery.

The breaking of this vicious cycle of poverty is not due to the culpability of families, but rather to the promotion of social inclusion through public programs and policies that guarantee the material and factual possibility of avoiding the involvement of children and adolescents from poor social strata with work. PETI starts from this inevitable finding and came up with the objective of supporting poor families so that they can minimally provide for their subsistence without the use of child labor.

As explained by Maria de Fátima Pereira Alberto and Oswaldo Hajime Yamamoto (2017), PETI was conceived from an initiative developed in the city of Campos dos Goytacazes in Rio de Janeiro in 1992, promoted by the International Labor Organization (ILO), for the rescue of children who worked in the cutting of sugarcane and in domestic services, with the granting of a scholarship and financing for activities at school.

Inspired by an initiative in Rio de Janeiro, within the scope of FNPETI, an instance of cooperation between governmental and non-governmental institutions called the Integrated Actions Program (PAI) was created in 1995. The discussions and interlocutions held at the PAI were conducted to PETI on an experimental basis, the state of Mato Grosso do Sul being selected due to the serious reports of child labor in yerba mate plantations and charcoal camps. In the same year of its creation, PETI was expanded to the Northeast Region and, in 1999, it was already present in several Brazilian states, especially in critical regions for the exploitation of child labor, such as the sugarcane area of Pernambuco and Rio de Janeiro, the sisal region in Bahia, the citrus region of Sergipe, the mining of Rondônia and the urban regions to contemplate children and adolescents who worked in landfills.

PETI was created as an income distribution program to ensure minimum conditions for families to survive, as well as to provide children and adolescents who are victims of prohibited work with activities after school hours. PETI focused on removing children and adolescents from 7 to 15

years old from work situations, with the granting of a scholarship in variable value, depending on the place of residence (rural or urban area). Children or adolescents, in turn, should obtain a minimum attendance of 75% at school and during the extended program hours (which included, among other activities, school reinforcement, artistic, cultural, sports and leisure activities carried out after school hours)⁴.

PETI was also the embryo for the joint action of several networked institutions. The insertion of children and adolescents depended on the identification by the Labor Inspection, which referred the cases to the Social Action Unit, aiming at the registration and inclusion in PETI. The work was accompanied by commissions for the prevention and eradication of child labor, civil society bodies that exercised the social control of the public policy.

In 2005, PETI was integrated by the Federal Government into the *Bolsa Família* Program (PBF) (BRAZIL, 2005). This federal program had been created precisely with the purpose of incorporating and centralizing, in a single public policy, the main social programs already existing in Brazil, such as *Bolsa Escola*, *Bolsa Alimentação*, *Auxílio-Gás*, and *Fome Zero* (BRAZIL, 2004).

With the incorporation of PETI to the PBF, families marked with child labor, identified by the socio-assistance teams of the municipalities, began to receive the amounts provided for the *Bolsa Família* and also to be submitted to the conditions of the program, which provided for enrollment and school attendance (minimum of 85%) of all family members aged 7 to 15 years, the attendance of pregnant women to prenatal examinations and educational activities related to pregnancy, compliance with the vaccination calendar of children and adolescents, periodic attendance at public health units, participation in educational activities related to food and general child health care, among other “counterparts”. It is noteworthy that the PBF provides for child labor in the family as one of the causes of exclusion from the benefit, a condition that did not appear in PETI before the incorporation⁵.

In 2011, PETI was introduced in the Organic Law on Social Assistance (LOAS) and became part of SUAS. PETI was thus recognized as a state public policy⁶.

As of 2013, PETI underwent a “redesign” in order to contribute to accelerating the rate of eradication of child labor. As stated in the National

Plan for the Prevention and Eradication of Child Labor and Protection for Adolescent Workers, prepared and monitored by CONAETI (BRAZIL, 2011), despite the advances achieved so far, with a significant numerical reduction in cases of child labor, there was persistent exploitation of the work of children and adolescents. The plan pointed out, in addition to the still high prevalence of cases, the occurrence of the work of very young children in agricultural activities and the failure to eradicate the “worst forms” of child labor (drug trafficking, commercial sexual exploitation, and other work situations with high exposition to risk of accidents and health problems).

The so-called PETI’s Redesign came in 2013, in the wake of the 2nd Edition of the National Plan, with the challenge of adapting public policy to the reality of child labor in the country, in order to combat the “critical knots”, obstacles and difficulties pointed out in the document.

The PETI’s Redesign proposal resulted from the evaluation of the new configuration of child labor in Brazil, revealed by the 2010 IBGE Census, and from the structural advances in the policy for the prevention and eradication of child labor.

The Census showed a reduction in child labor in the formalized sectors, due to advances in the inspection and formalization of the economy. Thus, the main incidences of child labor are currently found in informality, in the areas of family production, domestic work, family farming, and illegal activities. The challenge is to identify children and adolescents involved in these activities, which are difficult to view and identify and to insert them into the services of the social assistance network and other public policies.

The PETI’s Redesign strengthens the management and articulation role of the protection network by providing for the implementation of Strategic Actions to tackle child labor and provides for specific co-financing for municipalities and states to develop these actions which will be detailed in the course of the text. Strategic Actions are structured in five axes: 1. Information and mobilization; 2. Identification; 3. Protection; 4. Defense and Accountability; and 5. Monitoring (MDS, 2014, p. 7).

3 PETI’S REDESIGN AND STRATEGIC ACTIONS

PETI’s Redesign and Strategic Actions were agreed upon through Resolution No. 5, of April 12, 2013, of the then Ministry of Social Development and Fight against Hunger (National Unit of Social Assistance), precisely with the purpose of giving concreteness to the eradication of child labor in accordance with ILO Conventions nos. 138 and 182. The strategic actions were divided into five axes, which must be developed on an inter-sectoral

basis and together with other public policies in the states, municipalities, and the Federal District, with monitoring by the Federal Government.

The division of strategic actions into axes, together with their content, shows the complexity of the phenomenon of child labor, requiring a set of measures to face it, obligations that are not restricted to a sphere of the Executive Power, but that pass through the integrated performance of all government sectors and the rights guarantee system. The axes of PETTI's strategic actions provide for the indispensable dialogue and cooperation of actors in the protection network to ensure the rights of children and adolescents. The actions are linked and interconnected, complementing the performance of the instances, bodies, and institutions involved, although each with its specific role to defend the rights and interests of children and adolescents.

The first axis called “information and mobilization” comprises:

I – raising awareness of the various constituted social actors and segments that are bound to develop actions to eradicate child labor; II – social mobilization of public agents, social movements, union centrals, federations, associations, and cooperatives of workers and employers for actions to eradicate child labor; III – carrying out campaigns aimed mainly at spreading health and relational problems in the development of children and adolescents subject to child labor, considering the main occupations identified; IV – supporting and following up public hearings promoted by the Prosecution Service to sign commitments for the purpose of eradicating child labor in the territories.

The second axis provides for the identification of children and adolescents in child labor with:

I – an active search and identification carried out by SUAS technical teams and in an articulated manner with other public policies; II – a mandatory registration in the Single Registry for Social Programs of the Federal Government – Single Registry of children and adolescents and their families identified in situations of child labor.

The third axis of social protection contemplates:

I – income transfer; II – insertion of children and adolescents in child labor and their families, registered in the Single Registry, in social assistance services; and III – referral of children and adolescents in child labor and their families, registered in the Single Registry for health, education, culture, sports, leisure or work services, including, in the latter case, with intersectoral actions to ensure full social protection.

The fourth axis of defense and accountability deals with the following actions:

I – articulation with the Superintendencies, Managements and Regional Labor and Employment Agencies to encourage inspection actions; II – monitoring of families with the application of protective measures; III – articulation with the Judiciary and the Prosecution Service to ensure the proper application of a protection measure for children and adolescents in situations of child labor; and IV – articulation with the Guardianship Councils to ensure the application of a protective measure for children and adolescents in child labor situations.

And finally, the fifth axis provides for the monitoring of actions through:

I – registration of children and adolescents inserted in services of social assistance, health, education, among others, in information system pertinent to PETI; II – monitoring: a) the process of identification and registration of children, adolescents in child labor and their families; b) assisting children and adolescents and their families in social assistance services; c) the goals agreed with States and Municipalities.

The PETI's redesign, therefore, provided for the establishment of new interdependent strategies, focused on intersectoral and interinstitutional actions in the process of tackling child labor. These are lines of action that complement each other and must be fully implemented, although it is essential that the planning, selection, and implementation of actions take into account the peculiarities of each territory.

The strategic actions also provided, through Resolution no. 08, of April 18, 2013, of the National Council of Social Assistance (CNAS) for co-financing by the Federal Union for the development of PETI in states and municipalities, with the Federal Union being responsible for national program coordination. The states were responsible for coordinating PETI in their territory and monitoring the goals of the municipalities. And for the municipalities, there was a commitment to define a reference team or technician in the management of Special Social Protection, the planning, execution, and development of actions on all axes.

The redesign and co-financing agreement established the criteria for defining the municipalities with a high incidence of child labor eligible for receiving federal funds, aiming at the development of PETI⁷. The monthly amounts of federal co-financing were established to support the maintenance

of strategic actions linked to PETI, according to the size of the municipality and the relationship between the number of child labor records in the Single Registry and the number of children and adolescents in work situations identified by the 2010 IBGE Demographic Census.

It was also foreseen that the states, when accepting the co-financing of PETI's strategic actions, should contribute with financial resources from the state coffers in proportion to the amounts received from the Federal Government. Initially scheduled for the 2013/2014 fiscal years, federal co-financing was extended successively through new Resolutions of the National Council for Social Assistance (CNAS). Finally, Ordinance no. 627, April 4, 2019, of the Ministry of Citizenship, established the extension for 2019⁸.

The forecast for co-financing by the Federal Government and also by the states to assist municipalities in the implementation of the child labor eradication program has a constitutional and legal basis, considering that the national social assistance policy is attributed to the three spheres of the Federation. In this context, the resources of the federal co-financing for the implementation of PETI's strategic actions are due and essential, especially for small and medium-sized municipalities, as they provide decisive collaboration for the execution of actions, enabling material support to trigger public policy in the territory. Co-financing resources can be used in training actions, campaigns, hiring staff to constitute PETI reference teams, or coordination, among other cost expenses, as outlined in PETI's technical management guidelines (BRAZIL, 2018).

Notwithstanding PETI's strategic actions, data from the Program Monitoring System (SIMPETI), the main reference for monitoring actions, point out that many municipalities have not presented plans for implementing actions, nor have they developed significant measures to combat child labor. Likewise, the monitoring of the balances of the co-financing resources disclosed by the Ministry of Citizenship shows that some municipalities keep resources received from the Federal Government unused, and many returned the installments received without the adoption of PETI's strategic actions.

Almost eight years after the renegotiation and redesign of PETI, there is still no work on global and consistent qualitative and quantitative analysis, with a balance of the implementation and execution of strategic actions. This evidence points to the need to improve coordination, monitoring, and

control actions on the part of the Federal Government, the states, and also the bodies responsible for the justice system, for the effective collection of public administrators regarding the concrete adoption of this important public policy.

4 PETI AND THE WORK OF THE LABOR PROSECUTION SERVICE

Today Brazil has a robust and solid constitutional and legal framework for protecting the rights and interests of children and adolescents. The Federal Constitution, the Consolidation of Labor Laws, the Child and Adolescent Statute provide precepts and normative frameworks that, if strictly respected, would guarantee all children and all adolescents the basic fundamental rights for a dignified existence. However, as with other minimum and basic rights, the protection of children and adolescents in relation to work, especially when poor, blacks, and residents of peripheral communities, is not respected.

It is known that work for people under the age of 16 is prohibited as a general rule, an exception allowed only from the age of 14 for hiring as an apprentice (professional apprenticeship work contract). It is also true that there is a prohibition on dangerous, unhealthy, night work or work harmful to health, safety, morality or that prevents school attendance for people under the age of 18. This is what our legal system provides for, which cannot be ignored, however, it is ignored, and solemnly ignored.

The comprehensive protection provided for in article 227 of the Federal Constitution provides for the right to life, health, food, education, leisure, professionalization, respect, freedom, family and community life, as well as establishes that children and adolescents must be safe from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression. However, when we are faced with child labor cases, tragically still common, it is clear that this violation of rights almost always ends up preventing the effective performance of the rights announced in the comprehensive constitutional protection and that they should include all Brazilian children and adolescents without exception.

Child labor, in a context of diverse and multiple vulnerabilities⁹ that mark the families and victims of this violence, is often seen as a lesser of two evils with the argument that these families, children, and adolescents are

also victims of other violations, which would be more pressing, demanding priority from agencies for defense, control, and guarantee of rights. This reasoning is a big mistake since child labor is not only caused by situations of social risk to which the family of the victim is subject, it is also the cause of these vulnerabilities. Thus, minimizing child labor is to agree with the perpetuation and aggravation of the social weaknesses that subject the victims to this violation of rights.

Through child labor, many children and adolescents lose their lives and health, metaphorically and even literally¹⁰. Early work removes children and adolescents from school, causing a drop in income and also dropping out of school. The professionalization of the child labor victim is severely impaired, since the work performed by children and adolescents, in a prohibited way, does not qualify and still compromises school education. Family and social life are impacted by the many hours dedicated to work. Not to mention that child labor is violence that involves discrimination, exploitation, cruelty, and oppression, leaving indelible marks on the lives of victims.

The right to “non-work” is a prerequisite for achieving the comprehensive protection of children and adolescents, not only because special protection includes respect for the minimum age and conditions for the exercise of work (article 227, paragraph 3 of the Federal Constitution), but also because child labor is the gateway to countless other violations. However, the child labor phenomenon is still naturalized and is not the target of consistent and lasting public policies for confrontation.

The social right to “non-work” is an affirmation provided for in our legislation, but the satisfaction of this right, its realization, is not exhausted by not doing it or only by removing children who are eventually caught in a work situation. There is a need for positive actions by society, the family, and, above all, the State to ensure the material conditions necessary for the right to be violated.

Combating the exploitation of the work of children and adolescents requires the prevention, protection, and care of victims and their families, without prejudice to the control, investigation, inspection, and sanctioning of exploiters who profit from the work of infants. Punctual, sporadic, unstructured, or planned actions are not enough. Combating child labor requires the adoption of affirmative actions in parallel with actions aimed at reducing cases, all duly prepared with planning.

As already mentioned, the child labor eradication program was developed over many years of facing the exploitation of child and adolescent labor. The national coping plans prepared by the National Commission for the Eradication of Child Labor (CONAETI), a body composed of representatives of the government, employers, organized civil society, and international organizations, guided the strategic actions of PETI, built as a basic instrument for confrontation. So, this is the path that should guide the basic actions to combat child labor¹¹.

It is a vital public policy of the Brazilian State for the protection of children and adolescents, however, the program for the eradication of child labor and its strategic actions are still far from the real insertion in the public policies of municipalities, states, and also the Union.

The planning, implementation, execution, and continuous improvement of the work eradication program should be a goal pursued by the Public Power, and it should be emphasized that the political agent at the head of the Executive Power has no discretion to choose whether or not to act against child labor. There is no such margin of choice because there is no possibility of exercising a judgment of opportunity or coexistence in relation to essential public policies to ensure fundamental and constitutionally foreseen rights (MOUSINO, 2015).

The discretion or judgment of the value that can and should be exercised by the Government is limited to the identification and selection of the most effective and appropriate measures and actions at the moment. Even if the public manager judges or understands that public policies to tackle child labor would not be necessary or appropriate, the priority in adopting these policies and actions is absolute, has constitutional support, and does not allow for misrepresentation.

The Labor Prosecution Service defined as one of its priority action goals the fight against the exploitation of the work of children and adolescents and COORDINFÂNCIA, the structure of the labor *parquet* set up with the mission of coordinating activities with this purpose, has as its main strategic project the “*Childhood Rescue*”. This initiative is based on three basic axes: 1) promotion of public policies for the prevention and eradication of child labor; 2) effective professional apprenticeship; and 3) promotion of training, guidance, and awareness-raising activities for education professionals

regarding child labor, through the inclusion of this theme in school curricula, pedagogical programs, classes, other events, and activities carried out in the school territory.

The axes of COORDINFÂNCIA's main strategic project are intersected with the strategic actions of the child labor eradication program, especially in the promotion of public policies. In this axis, the objective is precisely to encourage the elaboration and implementation of coping initiatives, starting with the planning of actions in an interconnected bundle of measures of an intersectoral nature and in interinstitutional articulation to combat the exploitation of the work of children and adolescents.

In the development of the public policy axis, the Labor Prosecution Service selects municipalities with high rates of incidence of child labor as priorities for the performance of *parquet* and, not coincidentally, several of these municipalities are exactly those eligible for receiving federal funds from federal co-financing of PETI, since the election criteria consider the number of child labor cases in the territory, according to IBGE data.

In fact, one of the guiding criteria that has been used for the selection of priority municipalities for the work of the Labor Prosecution Service is the presentation by the municipality of an acceptance term for receipt of federal co-financing resources and execution of PETI's strategic actions. This criterion is one of those observed, not only because the municipalities eligible to receive federal funds are those with the highest rates of incidence of child labor, but also because they are public resources affected for actions to eradicate child labor, being the duty of the public administrator the use of these funds in strict accordance with the original link with PETI.

Elected the priority territory by the Labor Prosecution Service, through instruction and collection of data and evidence, including visits and activities carried out *in loco*, the actions eventually adopted to combat child labor by the municipality are determined. The investigation carried out by the Labor Prosecution Service includes relevant aspects, to a large extent, coinciding with the actions planned for PETI's strategic axes. Thus, the investigation carried out by the Labor Prosecution Service checks, for example, the constitution of reference teams for the execution of the child labor eradication program; the training of professionals in the protection network and system for guaranteeing the rights of children and adolescents

on child labor; the human and material structure of the municipal social assistance facilities (such as CRAS, CREAS, and Guardianship Councils) for the performance of their activities; the existence of socio-territorial diagnoses for investigating cases of child labor in the locality; the existence of teams with a social approach and to conduct an active search in the territory and identify child labor situations; conducting awareness and social awareness campaigns; the insertion of child labor victims and their families in the existing social protection apparatus in the Municipality, by registering with CadÚnico; fostering actions to increase opportunities for protected work and access to professional training for adolescents.

An important aspect in verifying the existence of public policies in the municipal territories is the verification of the realization of the intersectoral planning of the strategic actions for the eradication of child labor, with the creation of structured lines of action, based on local diagnoses, with setting goals, responsible for the execution of the actions, verification mechanisms and constant improvement of the selected measures.

To plan the actions, it is essential to know the local reality, because child labor is not a uniform phenomenon throughout the national territory. Although present in the overwhelming majority of Brazilian locations, from north to south, in each region or municipality there is a predominant type of child labor, which requires identification to make public action more effective and efficient.

Planning is essential to optimize existing financial and human resources, as well as to consolidate the fight against child labor as a permanent public policy. The coping plan contributes to avoiding parallelism and overlapping of actions, also facilitating the flow of interaction between the various instances and structures of the rights guarantee system, which allows the maximum use of available resources.

An essential issue is also the assessment of the insertion of actions to combat child labor in the municipal budget, since it is common for this issue to be neglected in the allocation of public funds, thus preventing the implementation of the coping policy.

Another point that deserves to be highlighted and is the subject of an investigation by the Labor Prosecution Service is the existence of portions of the federal co-financing for PETI's strategic actions, in the state and

municipal banks, which have not been executed or, often, returned to the federal coffers without use. If there is no plausible justification for inertia, the conduct may constitute a serious omission by the public administrator, in the same vein as using resources in violations with the provisions of the program or for other purposes than the fight against child labor. Ultimately, these conducts can even configure the public administrator's administrative impropriety.

ADMINISTRATIVE AND CIVIL PROCEDURE. ADMINISTRATIVE IMPROPRIETY. COMPETENCE OF FEDERAL JUSTICE. FORMAL AND MATERIAL UNCONSTITUTIONALITY OF LAW No. 8,429/1999. APPLICABILITY TO FORMER MAYORS. PARTIAL EXECUTION OF THE AGREED SUBJECT MATTER. IRREGULAR APPLICATION OF PUBLIC FUNDS. ART. 10, CAPUT, XI, OF THE LIA. 1. The causes related to the diversion and/or embezzlement of federal public resources transferred to the States, the Federal District, and municipalities, and subject to the rendering of accounts before the federal agency must be processed and judged before the Federal Justice. 2. The presence of the Federal Public Prosecutor's Office, a federal body, in the procedural legal relationship as an author makes the Federal Justice competent for the process and judgment of the action (ratione personae competence), according to art. 109, I, of the Federal Constitution of 1988. (Precedents of the STJ). 3. There is no need to talk about the unconstitutionality of Law no. 8,429/1992, considering that the Supreme Federal Court, in the judgment of ADI 2,182/DF, proclaimed the formal constitutionality of the mentioned legal diploma. 4. Law no. 8,429/1992 finds constitutional support in art. 37, § 4, of CF/88, being, therefore, a legal means to punish acts of administrative impropriety practiced by agents of the Federal, State and Municipal Public Administration. 5. The jurisprudence of the Superior Court of Justice and of this Regional Court is already undisputed in the sense that the sanctions provided for in the Administrative Impropriety Law apply to mayors and former mayors, regardless of the fact that they are also subject to the dictates of Decree-Law 201/1967. 6. **Proposed action for administrative impropriety due to the irregular application of federal funds transferred to the municipality of Capitão Enéas/MG, with regard to the execution of the Child Labor Eradication Program – PETI.** 7. **The conclusion of the inspection report no. 298/2004, prepared by the Office of the Government Accountability Office, corroborated with bank statements from the specific account of the program and the receipts for payment of monthly grants from beneficiaries, allows us to infer that part of the federal funds transferred was used for a purpose other than that agreed.** 8. **Occurrence of damage to the treasury, in line with art. 10, caput, IX, of Law no. 8,429/1992.** 9. The appellant did not discharge the burden of proving the regular application of the public funds transferred, so the materiality and authorship of the act of impropriety were evidenced. 10. Appeal not granted. (AC 2009.38.07.006198-4, FEDERAL JUDGE MONICA SIFUENTES, TRF1 – THIRD SECTION, e-DJF1 DATE: 02/03/2019. (emphasis added)

After due diligence, the absence of public policies or the absence of essential actions to combat child labor, administrative, extrajudicial measures are offered by the Labor Prosecution Service, such as recommendations or the offer of a term of commitment to adjust conduct and eventually even judicial proceedings, such as public civil action, to the detriment of the responsible public entities and administrators.

It is obvious that labor justice has the competence to judge and, by corollary, the Labor Prosecution Service is responsible for acting in cases of labor relations (even if spurious and illegal, such as child labor). If so, likewise, these bodies of the system of guaranteeing labor rights have the mission of ensuring decent work, combating degrading and demeaning ways of exploiting human labor, through all the tools and instruments provided for in the legal system.

No one is allowed to ignore the existence of a direct link between the absence of public policies, the lack of implementation of the child labor eradication program, and the illegal labor relations that victimize children and adolescents. Thus, the mission of ensuring decent work and combating the exploitation of child labor is only possible without neglecting the need for investigation and even judicial imposition of the implementation of public coping policies.

5 IMPORTANCE OF STRENGTHENING AND CONTINUING THE CHILD LABOR ERADICATION PROGRAM (PETI). CONCLUSION

In the last twenty-eight years, according to data released by IBGE, approximately 7 million cases of child labor have been reduced. However, the last National Household Sample Survey (PNAD) released in 2016 pointed to the expressive number of 2 million and 400 thousand cases of child labor, the majority involving black children and adolescents and from poor or extremely poor families¹². The figures, despite alarming, are far from the much harder and crueler reality, since most child labor is not even recorded in official statistics, as is the case of child labor in drug trafficking, commercial sexual exploitation, on the streets, or even in domestic work. At this rate, Brazil will not reach the goal of completely eradicating child labor by 2025¹³.

According to the ILO World Report on Child Labor (2013), poverty and the occurrence of shocks, such as unemployment, death of parents or guardians, calamities, and economic recession, contribute decisively to the occurrence of child labor. Poor families, without access to means of subsistence, are less likely to be able to delay children's involvement in work. These families sacrifice future, long-term investment in the education and training of their children, for immediate and urgent investment in survival. The report points out that the greater the number of social vulnerabilities, the worse the type of work performed by the child tends to be, and also that children belonging to some social and ethnic groups, without parental care, with sick and unemployed parents or allocated to precarious, casual, informal or seasonal jobs, are more likely to be victims of child labor.

Also according to the ILO's global report, worldwide, the success achieved in combating child labor combined victims' rescue strategies with the social protection of families to make them less vulnerable to poverty and shocks.

In Brazil, especially in the last thirty years, social development has become central to the public agenda. There was a strong investment in income distribution policies, which, together with economic growth, the enhancement of the minimum wage, successive records, and incentives to formalize employment relationships, made it easier for families to access credit, including for educational training, which brought significant social gains to reduce the rates of poverty and social inequality. Thus, combating poverty and social inequality has led to undeniable results in reducing cases of child labor and other violations of the rights of children and adolescents.

In the analysis of these last decades and of the social gains achieved, it is impossible not to mention the contribution of the strong and decisive action of the bodies of the system of guarantee of labor rights and of the civil society organizations in the reduction of child labor cases in Brazil. The very constitution and implementation of PETI can be attributed to a large extent to this great public and social mobilization in favor of defending the right of children and adolescents to non-work.

However, the social agendas, which had a central role in previous decades, are being rejected with frightening vigor in recent years, with a reduction in public spending on social policies. There was a decrease in the

formalization of employment bonds and there are increasing numbers of cases of unemployment, underemployment, informal work, and discouragement¹⁴.

Recent legislative changes in the rules of labor law have made it possible to use instruments and forms of hiring that are expressly precarious, which privilege the fragility of employment bonds and a smaller range of labor rights.

Changes in the direction of public and political investments also affected the defense and control bodies, institutions that were protagonists in the construction of the conditions that enabled social advances already mentioned. There was and still is a policy of weakening the structures of inspection, defense of the legal order, social control, monitoring, and the construction of public policies, being emblematic of this situation the recent incorporation of the Ministry of Labor into the Ministry of Economy and the extinction of the National Commission for the Eradication of Child Labor (CONAETI).

These legislative changes and the direction of the public agenda certainly had and will still have a great impact on the increase in social vulnerabilities, with an increase in poverty rates and social helplessness. In this context, there is an even more poignant need to continue and increase public policies to combat child labor, which PETI has an absolute reference.

ENDNOTES

- 1 A child, for the purposes of this Convention, means “every human being under the age of 18 years old”.
- 2 Constituted with the purpose of articulating and bringing together institutional social actors involved with policies and programs for the prevention and eradication of child labor.
- 3 Constituted by Ordinance no. 365, of September 12, 2002, it was coordinated by the then Ministry of Labor and Employment (MTE), having as one of its main duties the elaboration of the National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers.
- 4 According to the same authors, the activities after school hours received different denominations: initially as “Enhanced Workday”, a nomenclature of MDS Ordinance no. 458 of 2001 of PETI; “Socio-Educational Actions”, a nomenclature of MDS Ordinance no. 466 of 2005 of PETI; “Socio-Educational Service”, a nomenclature of the operational instruction of the National Social Assistance Secretariat of the MDS no. 01 of 2007 (ALBERTO; YAMAMOTO, 2017).
- 5 As summarized by Maria das Garças Rua (2014), the integration of PETI with PBF basically consisted of the following actions: (a) the transfer, to the PBF, of PETI’s

actions related to the transfer of income, which became a financial benefit of the PBF, representing, together with the Single Registry, the main action of this Program; (b) transfer, from PETI to PBF, of budgetary resources destined to carry out these actions; (c) incorporation of all PETI beneficiary families into CadÚnico, together with the PBF beneficiaries; (d) PETI's main finalistic action became socio-educational and coexistence actions, which must be attended by both children/adolescents from families from PETI, as well as families benefiting from the PBF with child labor. As a government program, PETI was restricted to socio-educational and coexistence actions and to monitoring child labor.

- 6 Law no. 12,435/2011 amended Law no. 8,742/1993 (Social Assistance Organization), introducing Article 24C to the latter.
- 7 Municipalities with a high incidence of child labor were considered to be those that, in 2013, had more than 1,000 cases of child labor in the 2010 Demographic Census or growth of 200 cases of child labor between the 2000 and 2010 Demographic Censuses. In 2014, municipalities with more than 500 cases of child labor identified in the 2010 Demographic Census were considered.
- 8 Resolution no. 5 of 05/16/2018 predicted that, following the approval of the III National Plan for the Eradication of Child Labor and Protection of Adolescent Workers by the National Commission for the Eradication of Child Labor – CONAETI, a new process of redesign of PETI's strategic actions and its federal co-financing would unleash, however this renegotiation has not yet occurred. The III National Plan for the Prevention and Eradication of Child Labor (2019 to 2022) was launched in November 2018.
- 9 According to the Development Dictionary, “Vulnerability implies a situation of risk; it means that people and/or communities are in a situation of fragility – be it for social, economic, environmental or other reasons – and for that reason they are more vulnerable to what may arise from this exposition” (LISBON CITY FOUNDATION, 2020). Furthermore, “Vulnerability is often related to practices of exclusion, discrimination, violation of human, social, economic, political, environmental rights... all of which presuppose a dimension of risk and fragility” (LISBON CITY FOUNDATION, 2020).
- 10 According to data from the Observatory for the Prevention and Eradication of Child Labor, in the period from 2012 to 2018 alone, the CATWEB system recorded 17 thousand accidents at work with child and adolescent victims, an alarming number, but certainly underreported, considering that the majority of accidents involving children and adolescents are not recorded through CAT – Communication of Accidents at Work, because most of these victims are in the informal sector. Available at: <https://smartlabbr.org/trabalhoinfantil/localidade/0?dimensao=acidentesTrabalho>. Accessed 15 September 2020.
- 11 The International Labor Organization released the municipal intersectoral diagnoses, the result of a partnership between the international body and the Ministry of Social Development, which allowed the crossing of data from IBGE, Ministry of Education, Ministry of Health and the then Ministry of Labor to present information and analysis on child labor in all Brazilian municipalities. It is an important tool that can assist the planning and execution of PETI's strategic actions in Brazil, from municipal territories. For each municipality, quantitative data is recorded and related to each of the axes of PETI's strategic actions.
- 12 Families with *per capita* monthly household income less than or equal to half a minimum wage are considered poor, and families with *per capita* household income less than or equal to a quarter of the minimum wage are considered extremely poor.

- 13 Brazil is a signatory to the United Nations Sustainable Development Goals (Agenda 2030), committing itself to “8.7 Take immediate and effective measures to eradicate forced labor, end modern slavery and human trafficking, and ensure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end child labor in all its forms” (UN, 2015, p. 27).
- 14 According to IBGE, discouraged are those who “would like to work and would be available, but did not seek work because they thought they would not find it. There are several reasons that lead people to give up looking for work, among them: not finding work in the locality, not getting adequate work, not getting work because they are considered too young or too old, or not having professional experience or qualification” (IBGE, 2020).

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CHILD LABOR AND THE PERFORMANCE OF GUARDIANSHIP COUNCILS

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Abstract. The purpose of this article is to bring to light the importance that the Guardianship Councils have for the fight against the exploitation of children and adolescents to be effective. To this end, it is essential that the members of these bodies understand child labor as a serious violation of rights and the importance of their own work within the System of Guarantees and Rights. The article also presents the legal foundations that give guardianship councilors the duty to inspect and restrain early work. Finally, it suggests to the members of the Labor Prosecution Service ways of action that aim to get closer and get to know the reality of the Guardianship Councils.

Keywords: Child labor. Fundamental rights. Guardianship Councils.

1 INTRODUCTION

Throughout 2019, in which I was based in the city of Palmas/TO, I had the opportunity to approach one of the members of the system for guaranteeing the rights of children and adolescents, whose work I consider to be one of the most essential in the fight against the exploitation of child and youth labor: the Guardianship Councils. Made up of men and women elected by the community of which they are part, they are protagonists in the protection system provided for in the internal and external legal system. They play an active role in ensuring that children and adolescents must be safe from all forms of neglect and oppression.

The contact with the Guardianship Councilors made me realize how important it is that child labor is no longer romanticized in the context of Brazilian society. Many of these men and women had their childhoods marked by this type of exploitation and made this reality a driving force for the commitment to protect children and adolescents.

Not infrequently, pressured by the poverty they experience daily in their communities and the lack of efficient public policies, many councilors do not consider child and youth work as a violation of rights. There is even an understanding that the guardianship councils would not be assigned to inspect the occurrence of violations of this nature.

This article, therefore, has the purpose of assisting members of the Labor Prosecution Service to overcome the resistance of some members of the guardianship councils, permanently adding them to the work related to combating child labor. It also aims to be a guide for the work of councilors who may doubt their attribution and their importance for the success of this endeavor.

2 LEGAL GUARDIANSHIP OF CHILDREN AND ADOLESCENTS IN BRAZIL

The 1988 Federal Constitution inaugurated a new legal order centered, primarily, on the human being as the recipient of rights that are inherent to the human condition. So much so that, right in the first article, the Magna Carta lists as one of its fundamental principles the dignity of the human person¹.

In relation to the treatment given to children and adolescents, there was also a break with the previous paradigm, according to which developing beings were given the status of an object and not of a subject of rights.

In order to have an idea of how children and adolescents were treated before 1988, it is enough to check the “protection” regime that prevailed in the 1960s and lasted throughout the military government. The model assumed that it was the duty of the State, as a way to guarantee national security, to care for children under 18 years of age.

It was during this period that institutions such as FEBEM – Educational Foundation for the Welfare of Minors – and FUNABEM

– National Foundation for the Welfare of Minors – were created. In spite of having “welfare” in their names, in practice, such institutions resembled places of serving sentences. Children and adolescents, called “minors”, in a situation of social vulnerability were simply taken to these foundations as a way of avoiding exposure to delinquency and marginality. It was called the Doctrine of the Irregular Situation.

This model failed precisely because it resembles the application of penalties. There was no concern to tackle the causes of social vulnerability effectively. There was no question of providing the parents of infants with tools and conditions to exercise their parenting.

In opposition to this model, the new legal order, initiated from the 1988 Constitution of the Republic, brought in art. 227 a commandment that safeguards the interests and rights of children and adolescents in the widest possible way, as well as extending the responsibility for guaranteeing these rights to the family and society, known as the Doctrine of Comprehensive Protection. Here is the content of the provision:

Art. 227. It is the duty of the family, society, and the State to guarantee the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, and family and community coexistence, for children, adolescents, and young people, with absolute priority, in addition to putting them safe from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression (BRAZIL, 1988).

It should be noted that children, adolescents, and young people have been granted an extensive list of rights covering all aspects of their life in formation. In this context of changing the visibility of minors under 18, their demands, and their rights, the infra-constitutional legislator edited the Statute of the Child and Adolescent – Law no. 8,069/90. The set of infra-constitutional provisions consolidated in the referred Statute aimed to give concrete form to the rights guaranteed by the Major Law. In this sense, it is Côrrea’s lesson (2016, p. 17).

Even more recently, in 1990, the Statute of the Child and Adolescent more radically innovated the approach of the theme, affirming the condition of children and adolescents as subjects with rights, emphasizing the condition of people in a peculiar condition of development.

It should be noted that the 1988 Constituent Assembly also inaugurated a new way of managing public interests. The country’s re-

democratization required that civil society had greater participation in political decisions, especially those related to the provision of public services. Popular participation was fully in line with the sole paragraph, art. 1 of the Fundamental Law (BRAZIL, 1988), *in litteris*:

Sole paragraph. All power emanates from the people, who exercise it through elected representatives or directly, under the terms of this Constitution.

It was in this scenario that ECA created the Guardianship Council, giving it the responsibility of being the bridge between the community, minors under 18, their families, and the State. The ordinary legislator noted that the Federal Constitution extended responsibility for the causes of childhood and youth to society as well and created a body that functions as a *longa manus* of social will, giving the exercise of its duties the status of relevant public service. In this sense, the wording of art. 131 of the said Statute (BRAZIL, 1990):

Art. 131. The Guardianship Council is a permanent and autonomous, non-judicial body, **charged by society** to ensure the fulfillment of the rights of children and adolescents, defined in this Law. (emphasis added)

The writing of art. 132 of this normative diploma points to the democratic character of the Guardianship Councils, by providing that their members will be chosen through an electoral process by the population of the territorial base in which the respective council is fixed.

This prediction, while seeking to avoid political indication, allows members of a given community to choose those who are best aware of their demands and needs.

In spite of the legislative framework, on which the Guardianship Councils are based, guarantee their autonomy, the reality that prevails in the country is that of unstructured bodies, which operate in absolutely precarious material and security conditions.

What is perceived is that the Councilors strive to fulfill their legal requirements, overcoming both the lack of the most basic work materials and the complete absence of essential public policies for children and adolescents to be removed from situations of extreme vulnerability.

Under these circumstances, what is found is that the reality, more often than not, imposes that the Guardianship Councilors elect the violations of law that they will fight. In a society where child labor is romanticized and

public policies that aim to curb the exploitation of child and youth labor are rare, it is not difficult to see that the situations related to this type of violation are the most tolerated and, consequently, less combated.

It is imperative, therefore, that the Public Authorities, Society, and the Family come to realize that child labor is a serious violation of fundamental rights and as such challenges the action of the various bodies and entities that make up the system of guarantees and rights of children and adolescents.

3 CHILD LABOR AS A SERIOUS VIOLATION OF FUNDAMENTAL RIGHTS

Fundamental rights have a vague and open concept, but they can be defined as those essential to the dignity of the human person and inherent to this condition. Mendes (2007) understands that “fundamental rights and guarantees, in a material sense, are, therefore, pretensions that, in each historical moment, are discovered from the perspective of the value of human dignity” (MENDES, 2007, p. 227). Piovesan (1999, p. 82) deepens this definition and teaches:

The so-called contemporary conception of human rights is based on the universality and indivisibility of these rights. Universality because the condition of the person must be the sole requirement for the ownership of rights, apart from any other condition. Indivisibility because civil and political rights must be added to social, economic, and cultural rights, since there is no real freedom without equality, nor is there true equality without freedom. This conception, accepted by the Universal Declaration in 1948, came to be endorsed by the Vienna Declaration of 1993, which in its paragraph 5 enshrined that “human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equitable manner, on an equal footing and with the same emphasis”.

Inspired by the Universal Declaration of Human Rights of 1948, the UN prepared the Universal Declaration of the Rights of the Child, approved in 1959, in which it lists specific rights of infants, such as the right to special protection for physical, mental, and social development; a name and nationality; children’s education and leisure; to be protected against abandonment and exploitation at work, among others.

The Brazilian legal system, following these and other international diplomas, brought an extensive list of fundamental rights, inserting in it the

rules related to the work of children and adolescents. Item XXIII, art. 7, of the Constitution of the Republic (BRAZIL, 1988), inserted in the list of Social Rights, is strict in prohibiting any type of work for children under 14:

Art. 7 The rights of urban and rural workers, in addition to others aimed at improving their social condition, are:

XXXIII – prohibition of night, dangerous or unhealthy work for children under eighteen and of any work for children under sixteen, except as an apprentice, from the age of fourteen; (Wording given by Constitutional Amendment no. 20, of 1998).

In this regard, there is no doubt that, materially and formally, the fundamental right of children is **non-work** and the right of adolescents, from the age of 14, is **protected work**.

The constitutional provision is consistent with international law, more specifically with Convention no. 138 of the International Labor Organization (ILO).

1. Any Member that ratifies this Convention shall specify, in a declaration annexed to ratification, the minimum age for admission to employment or work in its territory and in the means of transport registered in its territory; with the exception of the provisions of Articles 4 and 8 of this Convention, no person under this age shall be admitted to employment or work in any occupation. [...]

3. The minimum age fixed under the terms of paragraph 1 of this Article shall not be less than the age of completion of compulsory education or, in any event, not **less than fifteen years** (ILO, 1976).

From the analysis of the provisions transcribed above, it is possible to extract the rules in force in the country regarding the work of people under 18 years of age. In short:

- Up to 14 years of age work is PROHIBITED;
- From the age of 14, it is allowed ONLY as an apprentice;
- From the age of 16, it is allowed, as long as it is not night, unhealthy, dangerous work, or considered one of the worst forms of child labor.

The National Plan for the Eradication of Child Labor (BRAZIL, 2018) defines it as

all economic activity and/or survival activity, with or without profit, paid or unpaid, carried out by children or adolescents under the age of 16

(sixteen) years, with the exception of being an apprentice from the age of 14 (fourteen) regardless of their occupational condition.

Despite the clarity of domestic legislation and the commandment contained in ILO Convention no. 138, the Brazilian reality is moving in the opposite direction. It is estimated that about 2.7 million individuals aged 5 to 17 years are working in Brazil. This was pointed out by the 2015 National Household Sample Survey – PNAD.

The 2016 PNAD (IBGE, 2016) found that 1.8 million children were in the labor market. It could be a number to be celebrated, given the significant reduction compared to the number found in 2015. However, the 2016 survey significantly changed the methodology used, excluding minors under 17 who work for their own consumption. This procedure prevented the actual number of working infants from reaching the public. It should be noted that the economic crisis that Brazil is going through makes us believe that the numbers related to work for subsistence are extremely high.

It is true that work plays a central role in the life of every human being. It is through it that resources are acquired for subsistence and a social legacy is left that makes men and women unique. However, work can often also be a means of exploitation and expropriation of other rights that are equally essential to living fully. There are situations in which, instead of dignifying, work harms, hinders, weakens, and fulminates dreams and perspectives. This is exactly what happens with early work.

The extreme inequality that exists in the country, coupled with the cultural aspect that trivializes and even romanticizes child labor, is the foundation on which the alarming numbers that research points out are supported. From an early age, we heard the saying “work dignifies man”. This maxim is only true when human beings are faced with free, well-paid work, which does not undermine their physical and mental health, as well as allowing them to break the cycle of poverty, allowing for social ascension. The concept of decent existence is much broader than the concept of survival.

Child labor is, therefore, a perfect example of work that robs dignity, as it violates the rights provided for in art. 227 of the Magna Carta and prevents beings in formation from developing their full potential.

The losses arising from early work are of the most varied orders. Children and adolescents subjected to early work are more likely to drop out of school, to be victims of accidents and all kinds of exploitation. The Child Labor Observatory points out that 17,000 children and adolescents suffered occupational accidents between 2012 and 2018, according to data included in CATWEB (SMARTLAB, [20--]).

If all these arguments were not enough, it is imperative to point out that the exploitation of children and youth labor affects significantly the economic development of a nation. It is not by chance that the poorest countries on the globe are precisely those that use the most of this type of labor. In a survey carried out by the ILO and the Walk Free Foundation, in 2016 it was found that 152 million individuals between 5 and 17 years old were in a working situation. Of these, 144 million are from Latin America, Africa, and Asia (REDE PETECA, [20--]). It is not hard to see that there is a correlation between human and economic development and child labor. While this labor force is widely used in underdeveloped countries, including Brazil, rich countries protect their children and give them the conditions to fully live their childhoods, so that they can rise socially through education.

Therefore, it is necessary to introject in our society the understanding that in addition to a serious violation of human rights, the exploitation of children and adolescents feeds the cycle of poverty and impedes national development. For this, the role of the Guardianship Council is absolutely essential.

4 THE GUARDIANSHIP COUNCIL AND ITS ROLE IN THE FIGHT AGAINST CHILD LABOR

As seen, the exploitation of the workforce of children and adolescents below 14 years of age and above that age, outside legal assumptions, constitutes a serious violation of human rights.

Along this path, Guardianship Councils have a strategic role in combating child labor. This is what is extracted from Resolution no. 113 of CONANDA – National Council for the Rights of Children and Adolescents, which formally instituted the System of Guarantees and Rights of Children and Adolescents. According to this regulation, the performance of this

system starts from three axes, namely: defense, promotion, and control. Guardianship councils are inserted precisely in the first one, as defined:

Art. 6. The axis of defense of the human rights of children and adolescents is characterized by the guarantee of access to justice, that is, the use of public bodies and legal mechanisms for the legal protection of human, general and special rights, of children and adolescents, in order to ensure their enforceability, in particular.

Art. 7. In this axis, the performance of the following public bodies is located: VII – Guardianship Councils. (CONANDA, 2006).

Nogueira (2016, p. 104) highlights:

Finally, the Resolution expressly refers to the Guardianship Councils, as bodies for non-jurisdictional disputes, charged with “ensuring the fulfillment of the rights of children and adolescents”, particularly through the application of special measures to protect children and adolescents with rights threatened or violated.

Art. 60² of ECA repeats art. 7, XXIII, of the Federal Constitution and prohibits work for children under 16, except as an apprentice. The following articles guarantee the right to protected work for adolescents from 14 years of age, through the apprenticeship contract. Art. 136 of the Statute of the Child and Adolescent (BRAZIL, 1990), provides quite clearly the attribution of the Councils to monitor the existence of child labor:

Art. 136. The Guardianship Council is responsible for:

I – assisting children and adolescents in the cases provided for in the arts. 98 and 105, applying the measures provided for in art. 101, I to VII [...]

The cases provided for in art. 98 (BRAZIL, 1990) are as follows:

Art. 98. Child and adolescent protection measures are applicable whenever the rights recognized in this Law are threatened or violated:

I – by action or inaction of the society or the State;

II – by lack, omission, or abuse of parents or guardian [...]

As seen, there is no doubt that early work is one of the cases covered by art. 98, I, of the ECA, since it is a violation of the right to non-work and protected work, both provided for in art. 60, mentioned above.

In the terms already exposed, it cannot be tolerated that the Guardianship Councils present negative responses to requests for verification about the existence of children or adolescents in a prohibited work situation. This denial weakens the System of Guarantees and Rights, which ceases to be activated in cases where only a systemic performance is capable of offering

satisfactory practical results. In this sense, the Guardianship Councils have a strategic position in this performance. This is because it is these bodies that are immersed in the community in which they operate and, therefore, are able to identify the causes of child and youth labor within it. This identification is essential for public policies to be defined and efficiently implemented.

From another perspective, it is the Guardianship Councilors who represent the State and the possibility of assistance for many families. It is the Guardianship Council that many families turn to when they feel helpless by state services. This body is even responsible for inducing public policies since it knows closely the needs and demands of each community it serves.

In this way, what is expected is that Guardianship Councilors, as well as all public agents, are able to be bothered by all violations of childhood, especially by those with wide cultural acceptance, such as child labor.

It is expected that their performance will be marked by a deeper understanding of the causes and consequences of early work and that all their efforts will be directed towards complete attention to the family nucleus in which the child and/or adolescent worker is inserted.

When child labor becomes essential for the maintenance of the family, it must be supported, for example, with the referral of parents to income distribution programs, professional qualification. The child and/or adolescent in a prohibited work situation, on the other hand, must be referred to programs that allow them to resume their studies and/or guarantee protected work, respectively.

In the event that there is no public policy and/or reception program for these families in the municipality, the role of the Guardianship Council must be articulated with the other bodies or entities that make up the System of Guarantees and Rights. Regarding these circumstances, Corrêa (2016, p. 16) is imperative:

A contemporary, constitutional and humanist view of the legal system imposes a deeper question on the estate agent in order to ensure effective protection of the rights of children and adolescents. What is the real benefit for the professional, cultural and human training of the adolescent's engagement in the job market? What are the reasons for their desire to work: lack of access to educational opportunities, economic shortages? In that case, what social assistance alternatives are available, and who is responsible for accessing those who most need it? It would not be more appropriate to put

an end to public policy managers responsible for providing adequate – and truly affordable – educational opportunities (formal or informal), developing intellectual, social – and, if compatible, professional – skills than to impose on children and adolescents the burden of state inertia? Is it reasonable that the economically disadvantaged child and adolescent are compelled to enter the labor market early (with the approval of the State-Judge), sacrificing their educational opportunities and acquiring the skills necessary for a productive and dignified life in adulthood?

It is these questions that, coupled with the certainty of their duties and the conviction of the importance of their work, that should guide the work of the Guardianship Councilors.

5 THE LABOR PROSECUTION SERVICE IN PARTNERSHIP WITH THE GUARDIANSHIP COUNCILS

The above topics reveal that the right to non-work and protected work is included in the list of fundamental rights. From this perspective, both are in the spectrum of action of the Guardianship Councils and even more of the Labor Prosecution Service, whose constitutional task materializes with the defense of those of the legal order, of the democratic regime, and of unavailable social and individual interests (art. 128, CF).

Complementary Law no. 75/1993 (BRAZIL, 1993), examining the constitutional attributions of the *parquet*, delegates the following function to the Labor Prosecution Service:

Art. 83. The Labor Prosecution Service is responsible for exercising the following duties with the Labor Justice bodies:

V – propose the necessary actions to defend the rights and interests of minors, incapacitated people, and indigenous people, resulting from labor relations; [...]

It is important to emphasize that the expression “actions” must be interpreted comprehensively and in addition to the appropriate legal measures to defend the interests of children and adolescents arising from labor relations. Thus, it is the duty of the MPJT to adopt any and all measures that aim, ultimately, to ensure that the right to non-work and protected work are effectively respected.

As already seen in this article, the performance of the Guardianship Councils is strongly impacted by the culture of romanticizing child and youth

labor and also by the lack of material structure. The consequence of this is that many times, the members of these bodies are compelled to choose which violation of rights to fight, and, often, child labor is not prioritized.

Given these circumstances, the labor *parquet* cannot remain inert, otherwise condones this state of affairs. It is essential that Labor Prosecutors, inserted in the community in which they work, are aware of the difficulties that Councilors encounter in their work. Not only because such difficulties have a negative impact on the conduct of investigations on child labor, but because it is an institutional duty to act preventively and as an inducer of public policies aimed at combating this type of exploitation.

The National Committee for Combating the Exploitation of Child and Adolescent Labor (COORDINFÂNCIA), which celebrates its 20th anniversary this year, has developed mechanisms to guide and subsidize the work of MPT members. The Strategic *Childhood Rescue* Project is one of these valuable instruments of action. The project has three axes of action that aim to cover all the fronts of the battle against Child Labor, namely: education, public policies, and apprenticeship.

The approximation of the Guardianship Councils can be carried out, for example, with the implementation of the Public Policies Axis. Through this project, it is possible to get to know the reality of each of the bodies that make up the child and adolescent protection network of a given location.

Knowing the difficulties of the Guardianship Councils allows the Labor Prosecution Service to act to improve the working conditions of the councilors, either through the allocation of assets and the carrying out of training or by charging the municipal manager to promote the adequate equipping of the referred bodies and the elaboration of public policies in line with the local reality.

6 CONCLUSION

From all that has been exposed so far, it appears that it is not acceptable that, in view of the aforementioned legal framework, child labor should be excluded from the list of serious violations of fundamental rights. Exposing children and adolescents to early labor causes negative impacts on health,

safety, education, as well as creates a mass of under-qualified workers who are unable to rise socially and strengthen the country's economy.

Currently, more than 2.7 million individuals under the age of 18 have their fundamental rights violated on a daily basis. Under such circumstances, Guardianship Councils are of fundamental importance in combating child labor, as they know the social context in which working children and adolescents are inserted and, therefore, are able to point out more effective solutions and public policies.

Specifically for the work of the Labor Prosecution Service, the Guardianship Councilors carry out an essential inspection, without which it would be very difficult to identify and hold those accountable for child labor responsible.

However, this partnership can and must go further. Labor Prosecutors must be aware of the difficulties that Councilors encounter in their work.

The COORDINFÂNCIA Public Policies Project is an effective instrument in getting closer to the Guardianship Councils, as well as to demand from the Public Power the adequate equipping of these bodies and the elaboration of public policies in line with the local reality.

The tools needed to fight child labor are in place. It is an arduous and challenging task that can only be successful if all the agents involved understand that mutual strengthening is the way for the future of children and adolescents and, ultimately, of our country, to be saved from now on.

ENDNOTES

- 1 Art. 1. The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations: III – the dignity of the human person (BRAZIL, 1988).
- 2 Any work is prohibited to children under fourteen years of age, except as an apprentice.

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GUARANTEE OF THE FUNDAMENTAL RIGHT TO PROFESSIONALIZATION AS A STRATEGY TO PREVENT LETHALITY AND INCARCERATION OF SOCIALLY VULNERABLE YOUNG PEOPLE IN BRAZIL

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Abstract. This article discusses statistics on lethality and juvenile incarceration in Brazil, highlighting the factors of violence and the most affected social, racial, and age profiles. The rates of violence and crime show that young, black people living on the outskirts are those who suffer most from violence and incarceration. The lack of or insufficient supply of good social and security policy programs in peripheral urban communities contributes to school dropout and the co-option of children, adolescents, and young people by criminal groups. The worst forms of child labor are most prevalent in socially vulnerable communities, especially exploitation by drug trafficking. The increase in better sports, culture, and leisure policies for peripheral children and young people, but above all the offer of opportunities for professionalization and protected entry into the world of work, are strategies that can reduce violence, incarceration, and the exploitation of child labor in these communities.

Keywords: Youth. Adolescence. Lethality. Criminality. Incarceration. Safety. Professionalization.

In the 1980s, the debate on human rights – including that of children and adolescents – strengthened worldwide, while Brazil was moving towards ending the military dictatorship established in 1964 and trying to consolidate the re-democratization process. As the main development, the Citizen

Constitution of 1988 was promulgated and, shortly thereafter, Federal Law no. 8,069, of July 13, 1990 – Statute of the Child and Adolescent (ECA), incorporating relevant advances of the International Normative, in particular, the United Nations Minimum Rules for the Administration of Child and Youth Justice (Beijing Rules, 1985), the United Nations Convention on the Rights of the Child (1989), the United Nations Minimum Rules for the Protection of Youth Deprived of Liberty (1990) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990).

The promulgation of ECA translated into a break with a culture that, since the first lights of the 20th century and for almost 90 years, has founded a hygienist and adult-centric view on the role of the State in relation to poor or abandoned children and adolescents. This vision, guided by the so-called *doctrine of the irregular situation*, was the basis for legislation and policy that, under the pretext of “protecting” and/or “correcting” abandoned and/or delinquent minors, used institutional shelter and restraint of freedom as solutions to the “problem of the minor”.

Very clearly, ECA distanced itself from the traditional lines of legislation that, while being both patronizing and highly repressive-punitive, framed people under 18, according to Naves (2004, p. 71):

[...] in the legal category of minors, which implied, less than age discrimination, mainly the lack of recognition of their abilities, their rights, and their peculiarities.

Yes, the so-called special *minorist* legislation was not designed for all children and adolescents, but only for those considered to be in an *irregular situation*, that is, to the abandonment of family protection or involved in acts contrary to the criminal law: the *abandoned*, the *underprivileged* or the *delinquent*.

Under the pretext of protecting *minors* from poverty and preserving them from a life potentially geared towards crime, this legislation conferred almost unlimited powers on the judge of minors to send all those classified in such categories to the shelters and correctional centers maintained by the Federal government. They were not subjects of rights, but merely objects of State and adult intervention.

With the advent of the Constitution of the Republic of 1988 (BRAZIL, 1988) and ECA, Brazil abandoned these paradigms and embraced

the *doctrine of comprehensive protection*, recognizing children and adolescents as subjects of fundamental rights that must be guaranteed by the family, society, and by the public authorities, with absolute priority: the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life (BRAZIL, 1988, article 227).

Munir Cury (1990, p. 42), emphasizing the systemic concept of ECA, notes that:

It is not – it is always good to point out – that the details listed in the constitutional provision are merely detailed or explicit, which could lead to skeptical reasoning of “one more law”. No. The Statute expressly provides for actions of responsibility for offending the rights guaranteed to children and adolescents, referring to non-offerings or their irregular offer; compulsory education; specialized educational assistance for the disabled; daycare and preschool care for children from zero to six years old; regular night teaching, appropriate to the student’s conditions; access to health actions and services; schooling and professionalization of adolescents deprived of their liberty, among other listed hypotheses.

In that plummet, after three decades of CR/88 and ECA, one would ask if the situation of Brazil’s childhood and youth has improved as much as we would like with the application of the principles that govern the doctrine of comprehensive protection.

But, unfortunately, judging by the recent rates of violence and crime and its effects on Brazilian youth, it seems to us that the answer to this question tends to be negative.

Indeed, visiting violence and crime statistics can be a disturbing experience, as we are faced with the reality of 65,602 homicide deaths in 2017, according to the *Atlas of Violence* published by the Institute for Applied Economic Research and the Brazilian Forum of Public Security (IPEA; FBSP, 2019). The study highlights that these deaths were equivalent to a rate of 31.6 per hundred thousand inhabitants, representing more than 10% of the homicides registered in the world and placing Brazil as the country with the highest absolute number of homicides.

In 2017, 75.5% of homicide victims were black individuals (defined here as the sum of black or brown individuals, according to the IBGE classification, also used by the Mortality Information System (SIM), with a rate of 43.1 homicides for each group of 100 black people, while the rate

of non-blacks (white, yellow and indigenous) was 16.0. This shows that for every non-black individual who suffered homicide in 2017, approximately 2.7 blacks were killed (IPEA; FBSP, 2019).

But the hardest intersection shows us the impact of violence on the young population, between 15 and 29 years old. In 2017, 35,783 young people were murdered in Brazil. Homicides were the cause of 51.8% of deaths among young people aged 15 to 19 years; 49.4% for people aged 20 to 24; and 38.6% of deaths among young people aged 25 to 29; these numbers show that homicides were the main cause of death among young Brazilians in 2017 (IPEA; FBSP, 2019).

In addition to gender, race, and age group, another striking feature of homicide deaths in Brazil is low education. Quoting Cerqueira and Coelho (2015), the *Atlas of Violence* (IPEA; FBSP, 2016, p. 21) recalls that

[...] these authors, when doing an econometric exercise based on the microdata from the 2010 demographic census of IBGE and SIM, showed that even controlling for the Federative Unit of residence, marital status, and age, the chances of an individual with up to seven years of study suffering homicide in Brazil are 15.9 times greater than that of someone who entered higher education, which demonstrates that education is a true shield against homicides.

On the other side of this coin, we have statistics on incarceration, according to which Brazil reached in 2014 the position of the third-largest prison population in the world, with 711,453¹ people arrested, according to the *New Diagnosis of Prisoners in Brazil* (CNJ, 2014). Adding the total of 373,991 arrest warrants pending compliance that existed in the same period – according to the National Bank of Arrest Warrants – we would have in Brazil the possibility of reaching the impressive figure of 1.089 million people arrested (CNJ, 2014).

The statistics of the prison system are also dominated by young people and blacks, according to the *National Prison Information Survey* (MINISTRY OF JUSTICE; DEPEN, 2014): in a total population of 622,202 individuals, equivalent to a rate of 306.2 prisoners per hundred thousand inhabitants, 94.2% were men, 61.67% were black and 55.07% were young people between 18 and 29 years old. The latter is a fact that deserves even more attention when compared to the participation of the same age group in the Brazilian population as a whole, which is only 18.9%.

Considering all this, what we have in Brazil is a sad combination of slaughter and incarceration of young people, a kind of generational suicide that compromises the nation's workforce and keeps the entire society in a permanent state of fear and insecurity, not to mention outstanding costs with the public health system and the prison and public security systems.

In this sense, the *Atlas of Violence* (IPEA; FBSP, 2016, p. 19) warns that, in Brazil, the violent death of young people

[...] has grown at an accelerated pace since the 1980s. According to Cerqueira and Moura (2013), the cost of well-being associated with lethal violence that affects youth reaches 1.5% of GDP each year. The problem is even more serious and emergency when we consider that from 2023 the country will suffer a substantial decrease in the proportion of young people in the general population [Camarano et al., 2013]. These demographic dynamics will imply difficulties for future generations at various levels, including the labor market, social security, and the necessary increase in productivity.

Another common characteristic of this *lost youth* (IPEA; FBSP, 2016) is that, for the most part, it is born, lives, and circulates in the peripheries of large urban centers, that is, in the most vulnerable and underserved communities in the Metropolitan Regions.

This territoriality factor can be decisive for the involvement of a person in situations of violence and criminality, as recognized by the Ministry of Justice of Brazil in its *Guide for the Prevention of Crime and Violence in Municipalities* (MINISTRY OF JUSTICE; SNASP, 2006, p. 13):

Violent crimes are, in the first place, much more common in the peripheries of our cities than in their central areas or in their traditional neighborhoods. The regions that are most abandoned by the Government, where people in situations of social vulnerability live, will be those where, as a trend, will contain the highest unemployment rates, the highest frequency of abuse of alcohol and illicit drugs, the highest indicators of bad school performance and school dropout, the highest incidence of cases of early pregnancy and negligence of parents in the care and monitoring of their children, etc. They also tend to be the least policed regions. [...] Living in a region with these social characteristics can therefore imply significant risks for victimization by homicide, for example, or rape. These risks will be even greater in this same region for young people and teenagers.

If this is indeed the case, we must be aware of the fact that, on the reference date of the 2010 Demographic Census, Brazil had 36 Metropolitan Regions and three Integrated Development Regions – RIDE (IBGE, 2013), with approximately 93 million inhabitants only in the capitals and their

surroundings. Furthermore, according to the publication *2010 Demographic Census: subnormal agglomerates: first results* (IBGE, 2011), at that time, Brazil had 11,425,644 people living in *subnormal agglomerations* (favelas).

The Brazilian demographic profile is, therefore, markedly urban, and it is our cities that, in some way, have been behaving in a non-caring way for children, adolescents, and young people from socially vulnerable communities, as well as their families.

This carelessness is very evident in the insufficiency and, often, lack of essential public equipment and services in the peripheries, such as good public schools, health centers, social assistance services, public lighting, sanitation, quality community policing, sports, culture, and leisure areas, and, especially, nurseries. This set of neglect strongly contributes to the social abandonment of these communities and the families that live in them and the most fragile segment that ends up suffering the most intense consequences is precisely the group of children, adolescents, and young people, who, as people in a special condition of development and, therefore, deserve priority attention by the family, society, and the public power (BRAZIL, 1988, article 227), don't have their fundamental human rights respected.

At this point, it is important to make a reservation, so that no one is imagining that violence and criminality are ailments exclusive to poor communities and that every person, just because he or she is poor, black, and living on the periphery, would be doomed to be involved in crime. This is not true and, undeniably, among the vast majority of people living in less favored communities, those who are involved in crime and violence are proportionally few. On the other hand, even though it is a minority among people from the poorest classes, we cannot turn a blind eye to the reality that it is from this minority that the majority of the 711 thousand detainees referred to by the Ministry of Justice and DEPEN (2014) and 44,861 killed by firearms in 2014 (WAISELFINZ, 2016) leave.

In Belo Horizonte, a study by the Center for the Study of Crime and Public Security (CRISP) showed that of the 81 urban conglomerates where the city's favelas are located, only six of them represented *clusters* of violence. In these six markedly violent areas, some common characteristics were observed, such as finishing of houses eight times lower than those existing in other regions, an average number of years of study among residents three

years lower (5.53 versus 8.51), the average age of the population lower than the other regions (25 years against 29), higher rate of informal occupation, worse indicators of infant mortality and illiteracy. In general, social protection indicators were equivalent to 1/3 of the other regions of the city.

We cannot, then, with double excuses, ignore that some factors of violence and criminality are more intense in poor communities in large cities than in other regions of less vulnerability. And, based on this circumstance, seeking to understand the dynamics of life that lead a valuable portion of our youth, in the age of 20, mostly male, black, poorly educated and residents of the peripheries of large centers, to populate the aforementioned statistics.

A good starting point would be to accept the premise that, in most cases – not as an absolute rule –, entry into the world of criminality occurs in adolescence, more markedly between 15 and 17 years of age, a situation observed in Brazil in most countries, regardless of development level. So, we are talking about a trajectory that begins and accentuates between 15 and 17 years of age and, for many, ends with prison or violent death in the 21-year-old age group, or earlier.

Another aspect to consider is the fact that the *relevant criminality* predominantly involves two main types of crimes: theft and drug trafficking. This is because, more often than not, it is the initiation into these two types of penalties – often guided by the hands of adults – that leads adolescents to a kind of criminal progression, culminating in early access to firearms and the practice of increasingly serious conduct, until the tragic outcome in the famous triad *coffin, prison, or wheelchair*.

In this sense, the statistics of the Brazilian prison system (MINISTRY OF JUSTICE; DEPEN, 2014), state that, in 2014, more than half of the Brazilian prison population was arrested for drug trafficking (28%) or theft (25%), which is why it is reasonable to think that a good portion of those arrested for murder (13%) also committed their crimes due to involvement with criminal organizations specializing in theft and drug trafficking.

In order to better understand and address this issue, in addition to social and territorial factors, it seems necessary to investigate the subjective reasons that lead adolescents to initiate an infraction.

We will continue this reflection by talking a little more about the criminal practice that, undoubtedly, is one of the greatest scourges of today, all over the world and especially in Latin America: drug trafficking.

A good illustration on this theme is found in the work *Falcão – Meninos do Tráfico* (BILLATHAYDE, 2006), which presents a vivid behind-the-scenes account of the production of a documentary about the universe of teenagers – and even children – who worked for drug traffickers across the country between 1998 and 2006. In this project, the authors made contact with traffickers in the largest cities in the country and visited the *drug-dealing spots* in the main favelas, in an immersion in which they witnessed all kinds of activities related to drug trafficking, from preparing the drug to be sold to the execution of rival drug dealers. The book was dedicated to young *Força*, the only survivor of the 17 selected for the project, information that, by itself, says a lot about the statistics of firearm deaths in Brazil.

In the transcripts of the interviews carried out with several adolescents and young people, we can identify factors pointed out by them, directly or indirectly, as “pretexts” for entering the drug trade: very weak or nonexistent parental authority; dead or absent father; material and intellectual abandonment (school dropout); lack of prospects; lack of things to do; a desire to be accepted into a particular group with which you relate; the desire to achieve status and respect in the community; access to money and consumer goods.

Moreira, Guerra and Costa (2012), in fieldwork for the qualitative research entitled *A construção do laço social de jovens moradores de territórios com alto índice de criminalidade violenta* (The construction of the social bond of young people living in territories with a high rate of violent crime), interviewed 13 young people from a cluster in Belo Horizonte, identified in the reports of these young people the recognition of some of the factors mentioned above, namely: the economic factor, idleness, consumerism, lack of opportunity and hedonism (drug use). In the authors’ understanding (MOREIRA; GUERRA; COSTA, 2012, p. 407), these categories give young people a kind of ideological justification for entering criminality, as we can see in the excerpt below:

[...] Without seeing any chances of competing for the legal paths in the supposedly meritocratic race that allows access to goods, visibility, and, therefore, social recognition according to the demands of the consumer society, nothing more seductive than drug trafficking, with its promises of

quick profit and status (visibility and recognition), albeit through oblique paths.
[...] However, it is through this same process that, in a perverse circuit, they end up being taken over by the penal system, ready to welcome them into their punitive networks and, thus, confirm their status as marginalized, socially excluded.

The point is that the enticement of children, adolescents, and young people who are vulnerable to drug trafficking, when it does not lead to death or the penal system, in any case, does enormous damage to the healthy development of these individuals, since the trafficking activity, as well such as commercial sexual exploitation, street work, and domestic child labor, is among the worst forms of exploitation of child labor, according to Convention no. 182 of the International Labor Organization, regulated in Brazil by the Federal Decree no. 6,481, of June 12, 2008.

Alberto, Pessoa, Malaquias and Costa (2020, p. 133) point out that because of early work

[...] children and adolescents stop attending school because they have to assume the responsibilities of the work performed or due to tiredness of the long hours or activities that require great physical effort and are repetitive. Therefore, the main activity that starts to guide the development of these subjects is not that of study, responsible for the transmission of systematized knowledge and for the formation of scientific concepts, which expands the capacity for understanding reality and forming consciousness, but becomes work, carried out under conditions that hinder the integral development of the subjects.

It is a perverse reality where, first, the absence of effective public policies to protect early childhood contributes to undermining several basic fundamental rights of children in the most vulnerable communities, and then, when they reach adolescence and youth, they face a new stage of negligence, due to the lack of adequate policies not only for regular education and support for the family but also for sports, culture, leisure, professionalization and protected entry into the world of work. This succession of negligence is what allows and sometimes even pushes many of these individuals to work in drug trafficking.

In this context, the effort made in Brazil in recent years to eradicate child labor in all its forms, and now, with a closer look at the challenge of facing exploitation by drug trafficking, whose complexity seems to require specific strategies, assumes a special relevance.

A promising possibility would be to expand the offer of apprenticeship programs and professional qualification courses adapted to the most vulnerable youth audience, considering the school gap and even the need to overcome prejudices, so that these adolescents and young people, including those involved with the trafficking, have access to opportunities that are often denied.

It is worth remembering that the United Nations Convention on the Rights of the Child, adopted in 1989 by the United Nations (UN), provides in its article 32 that

Member States recognize the child's right to be protected against economic exploitation and the performance of any work that may be dangerous or interfere with their education, or that is harmful to their health or physical, mental, spiritual, moral, or social development.

In Brazil, the Constitution of 1988 recognizes professionalism as one of the fundamental rights of every teenager (Article 227), which must be guaranteed with absolute priority, subject to the restrictions set out in Article 7, paragraph XXXIII, the wording provided by constitutional Amendment no. 20, of 1986, which are the prohibition of any work to people under the age of 16 (sixteen) years, except as an apprentice, from the age of 14 (fourteen); and prohibition of night, dangerous or unhealthy work for people under the age of 18 (eighteen) years (BRAZIL, 1988).

In turn, the Child and Adolescent Statute (ECA) (BRAZIL, 1990) reaffirms in its Article 4 the Principle of Comprehensive Protection and reiterates that it is “the duty of family, community, society in general and the Public Power to ensure, with absolute priority, the realization of the rights related to life, health, food, education, sport, leisure, **professionalization**, culture, dignity, respect, freedom and family and community coexistence” (emphasis added).

Professionalization is, therefore, a right to be guaranteed to all adolescents and young people. To this end, it is essential that Brazilian society mobilize itself to defend and strengthen institutes such as *Professional Apprenticeship*, whereby establishments of any nature must employ and enroll in the courses of the National Learning Services the number of apprentices equivalent to five percent, at least, and fifteen percent, at most, of the existing

workers in each establishment, whose functions require professional training (BRAZIL, 1943; 2000, article 429).

Another fundamental mechanism to create opportunities for the most vulnerable youth audience is the so-called *alternative means of meeting the quota*, which prioritizes the hiring of adolescents and young people in situations of social vulnerability, as exemplified in § 5 of article 66 of Decree no. 9,579/2018:

[...] adolescents graduating from the socio-educational system or in compliance with socio-educational measures; young people serving time in the prison system; young people and adolescents whose families are beneficiaries of income transfer programs; young people and adolescents in institutional care; young people and adolescents who have left child labor; young people and adolescents with disabilities; young people and adolescents enrolled in a public education institution, at elementary school, regular high school or technical high school, including the Youth and Adult Education modality; and unemployed young people that finished primary or secondary education at a public education institution.

Among these, the Childhood and Youth Commission of the National Council of the Prosecution Service (CNMP), through a working group instituted to propose strategies for the national articulation of the Prosecution Service in order to expand the access of adolescents and young people to the programs of learning and vocational education, indicated three situations for which guarantees the right to professionalization becomes an even more challenging task, which are adolescents in compliance with socio-educational measures – most of them involved in drug trafficking –, those who left child labor and adolescents in institutional care.

The aforementioned Working Group produced the publication “Profissionalização e Trabalho Protegido: Subsídios para a Atuação do Ministério Público na Promoção do Acesso de Adolescentes e Jovens em Condição de Vulnerabilidade em Programas de aprendizagem e Cursos de Qualificação Profissional” (CNMP, 2019), aiming to encourage and contribute to the performance of the Public Prosecutor’s Office for the Defense of the Rights of Children and Adolescents and the Office of Labor Prosecution in promoting the rights to schooling and professionalization of adolescents and young people who are in the three situations mentioned above, with the following justification:

[...] this interinstitutional action must include measures aimed at ensuring the right to vocational training for adolescents and young people through apprenticeship contracts, prioritizing adolescents and young people in situations of vulnerability and social risk, especially those who comply with socio-educational measures, those who are sheltered and those in child labor. The complexity of the task is enhanced due to the education profile of this audience, given the strong correlation between schooling and professional success. The situation is aggravated by the prejudice and social representation that we know exists about adolescents and young people who commit crimes, contributing to making them invisible and socially isolated. There is even a need to establish a positive agenda to raise awareness in the labor market, aiming to overcome the selective practices that aggravate the exclusion of this part of our youth, when it presents itself to enter it (CNMP, 2019, p. 9).

By encouraging joint action between the State and Federal District Ministries and the Labor Prosecution Service (MPT), the CNMP recognizes that ensuring access for adolescents and young people to apprenticeship programs and professional courses goes beyond guaranteeing a right acknowledged to all, as well as being a way to prevent soliciting and exploitation of vulnerable individuals by drug trafficking or to try to rescue those who have already been solicited.

It is important to note that MPT has been acting for more than 20 years against the exploitation of child labor, in a continuous and articulated manner, especially through its National Committee to Combating the Exploitation of Child and Adolescent Labor (COORDINFÂNCIA). This effort is articulated with the important work of Labor Inspection in Brazil and with other initiatives such as the Forum for the Eradication and Combat of Child Labor and the Protection of Adolescent Workers (FECTIPA), the National Forum for the Prevention and Eradication of Child Labor (FNPETI), the International Labor Organization (ILO), the Child Labor Eradication Program (PETI) and the Program to Promote Access to the World of Work (ACESSUAS TRABALHO), the latter members of the National Social Assistance Policy.

Networking is essential to ensure professional education opportunities for vulnerable adolescents and young people and to tackle the worst forms of child labor, requiring the participation of various public actors and civil society, especially companies, “S” System and other qualifying entities, agencies of the Justice System and managers of social public policies, at all levels.

And the expansion of the supply of such opportunities, over the years, together with ensuring the fundamental right for these adolescents and young people, will certainly prove to be an important factor in reducing the current rates of lethality and imprisonment of adolescents and young people from the Brazilian peripheries.

All this considered, we proceed to the conclusion saying that Brazil urgently needs to make more and better investments in policies for children and young people, with an emphasis on the most socioeconomically vulnerable peripheral communities, in order to ensure the healthy development of every child, adolescent, and young people who live there, access to quality education, including in child education, in addition to good cultural and sports programs and mechanisms to facilitate the right to professionalization and the protected entry of young people into the labor market.

ENDNOTE

1 This number also included 147,937 people imprisoned at home.

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THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS AS ONE OF THE WORST FORMS OF CHILD LABOR

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Abstract. Although, in the past, strategies to fight sexual violence have focused on the criminal justice system, the commercial sexual exploitation of children and adolescents, as part of the concept of sexual violence, is also of interest to the System for the Defense and Protection of Labor Rights, by virtue of the ratification by Brazil of Convention no. 182 of the International Labor Organization, which considers it one of the worst forms of exploitation of child labor, thus attracting the full responsibility of the Labor Prosecution Service.

Keywords: Child labor. Commercial Sexual Exploitation of Children and Adolescents. Responsibility of the Labor Prosecution Service.

1 INTRODUCTION

Addressing the issue of commercial sexual exploitation of children and adolescents (ESCCA) is a difficult task, not only because of the pain it causes to the victims, which marks them, but also because of the lack of statistical data, due to the taboo that hinders the necessary dialogue for the due confronting of its causes and consequences and due to the lack of recognition that this type of sexual violence is also one of the worst forms of child labor.

According to UNICEF (2019), sexual violence, one of the most harmful sources of psychological scars, affects around 15 million adolescent

girls aged 15 to 19 worldwide. Data from 28 countries indicates that nine out of ten teenage girls who were victims report that the perpetrator of the first rape was someone close or known to them. In Brazil, 70% of the reports of victims of rape refer to children and adolescents.

In 2019, the UN released a report (UNODOC, 2018) that revealed that human trafficking is advancing worldwide, with the sexual exploitation of victims being the main cause behind the phenomenon. According to this survey, which analyzed data from 142 countries, children represent 30% of all trafficked individuals, with the number of girls affected being far greater than that of boys. For girls and boys, a different pattern was detected. Although children are mostly victims of trafficking for forced labor (50%), many are also victims of sexual exploitation (27%) and other forms of exploitation, such as forced begging, recruitment in troops and armed groups, and forced criminal activities. Girls were victims of sexual exploitation in 72% of the analyzed episodes.

Also according to the same report, human trafficking in Brazil affects about 2.5 million victims, and annually, obtains an average profit of 32 billion dollars, of which 85% comes from sexual exploitation. The same text points out that, in a study carried out between 2005 and 2011, of the approximately 475 victims of human trafficking identified by the Ministry of Foreign Affairs, 337 suffered sexual exploitation.

In Brazil, the main source of statistical information on sexual violence is *Disque 100* (MDH, 2018), which is a nationwide and free service. It receives reports of sexual violence against children and adolescents and forwards them to the competent authorities, preserving the anonymity of the author of the calls.

According to *Disque 100*, if we add up only four years (from 2012 to 2016) of complaints made (53,151), and consider the reporting channel's estimates, we will arrive at a frightening average of sexually exploited children in Brazil of 513 victims every 24 hours. According to *Disque 100*, only 7 out of every 100 cases are reported, meaning that underreporting is appalling.

It is important to consider that the commercial sexual exploitation of children and adolescents is transnational. According to a survey carried out on the occasion of the 2014 World Cup in Brazil by ECPAT International (2017),

situations of commercial sexual exploitation of children and adolescents were recorded in 18 twin cities, as well as in 173 border municipalities, in 46 bordering municipalities and in 12 host cities.

As the data above demonstrates, the commercial sexual exploitation of children and adolescents is a sad reality around the world and, given its gravity and complexity, the member countries of the United Nations promoted the organization of three World Congresses, the last of which was held in Brazil in 2008.

The First *World Congress against the Commercial Sexual Exploitation of Children and Adolescents* was held in 1996, in the city of Stockholm (STOCKHOLM DECLARATION, 1998), in which the *Stockholm Declaration* was approved, which contemplates the concept of what is the Commercial Sexual Exploitation of Children and Adolescents and establishes an Agenda for Action, with strategies and action plan to be developed by the subscribing States. The II Congress was held in December 2001, in Yokohama/Japan, where the *Yokohama Global Commitment* was signed. And finally, the III World Congress was held in Rio de Janeiro, in 2008, when the *Rio de Janeiro Declaration and the Call for Action to Prevent and Eliminate the Sexual Exploitation of Children and Adolescents* was approved (RIO DE JANEIRO DECLARATION, 2008). In this last Congress, for the first time, there was an opportunity for the effective participation of adolescents, giving them a voice, which resulted in the *Declaration of Adolescents to Eliminate Sexual Exploitation*, a document attached to the Declaration of Rio de Janeiro.

The aforementioned world congresses brought to light the theme of the commercial sexual exploitation of children and adolescents, not only defining concepts but mainly indicating strategies and public policies for prevention and fighting. The visibility that the theme gained from the events mentioned made it possible to build a new way of thinking about the problem and indicating solutions, imposing on the signatory countries the incorporation of the Declarations that were prepared at the end of each event, which is equivalent to human rights treaties and are incorporated into the normative set of each country, imposing the adoption of these global commitments.

2 SEXUAL VIOLENCE AGAINST CHILDREN AND ADOLESCENTS AND HISTORICAL-NORMATIVE EVOLUTION

As can be seen, it is from the 1990s onwards that the phenomenon of sexual violence against children and adolescents becomes more visible. And, in this sense, the world congresses held are of vital importance, especially when the last one took place in Brazil and it was allowed for teenagers to participate not only as listeners but also to have a voice, a principle advocated in article 16 of the Statute of Children and Adolescents, which gave rise to the approval of the *Declaration of Adolescents to Eliminate Sexual Exploitation* for the first time in the history of world congresses.

The approval of the Child and Adolescent Statute, in turn, which took place through Law no. 8,069/1990, brought about major changes in the normative field, with considerable advances and achievements, notably with regard to a set of protective rules against all types of violence, including sexual violence (BRAZIL, 1990). Children and adolescents started to be considered subjects of rights, breaking with the doctrine of irregular situation, and protecting the peculiar condition of people in development, with absolute priority in their care and recipients of full protection no longer only by the family, but also and mainly from the State and society.

It is also in this decade that the process of economic globalization takes place, which, when advancing in Brazil, accentuated exclusion and social inequalities, which were already quite critical, perversely reaching the most vulnerable segments, especially children and adolescents belonging to the most impoverished groups. It is these children and adolescents who will become the biggest victims of commercial sexual exploitation, although poverty and deprivation are not the only conditioners. Economic globalization is characterized by capitalist hegemony and features high-profile unemployment, poverty, and social inequalities on a large scale, which we have seen most keenly in the year in which the world is affected by a pandemic that exposes and reveals the fragility of underdeveloped countries to cope with the severity of the Covid-19 disease, whether in terms of public health protection policies or in relation to public policies of job protection or emergency aid to families impoverished by the economic crisis that becomes deeper due to the pandemic.

Since 1993, some historical milestones have been instituted in the confrontation of sexual abuse against children and adolescents in Brazil. In June of that same year, the report of the first Joint Parliamentary Commission of Inquiry (CPMI) was prepared to investigate the networks of sexual exploitation of children and adolescents, bringing to light numerous cases of violations of the rights of children and adolescents and highlighting the lack of basic policies of social services and victim assistance (SENATE, 2005).

Since the 1st World Congress, the social movement in defense of the rights of children and adolescents has made efforts to advance the discussion of public policies to face the problem. In this sense, it is worth mentioning the Meeting held in the city of Natal – RN, in June 2000, when the *National Plan to Combat Sexual Violence against Children and Adolescents* was prepared. This document was analyzed by the National Council for the Rights of Children and Adolescents (CONANDA)¹, which decided to adopt it as a unique reference for public policies in addressing the issue of sexual violence against children and adolescents.

Another relevant milestone is the commitment to eradicate sexual violence expressed after the *IV National Conference on the Rights of Children and Adolescents*, in November 2001, which ratifies and recommends the adoption of the *National Plan to Combat Sexual Violence against Children and Youth*.

The Rights Councils are deliberative instances of the greatest importance, inaugurated by the Federal Constitution of 1988 for the areas of health, education, and social assistance, which decentralized the formulation, execution, and social control of public policies, thus allowing the participation of organized civil society and the much desired social control. Since then, many other councils have been created for different and important areas, such as the Councils for the Rights of Children and Adolescents, in the three spheres of government, provided for in the Statute of Children and Adolescents.

One of the most important actions of the Rights Councils is to promote the participation of society in the discussion and preparation of public policy proposals. And it is mainly through the conferences, organized by the Councils, both at the municipal, state, and federal levels, that the new public policies are debated and established.

Since 1995, every two years, CONANDA and the state and municipal councils have convened their Conferences, each with a theme, according to the situation experienced in the period. The 1st and 2nd National Conferences have chosen *Children and Adolescents – Absolute Priority* as their theme. The relevance of the choice is undeniable, considering that even today it is still necessary to discuss and analyze the reach of this principle, provided for in article 227 of the Federal Constitution, and regulated by the Statute of Children and Adolescents, notably in its article 4 (BRAZIL, 1988; 1990). The 3rd National Conference chose the theme *Children and Adolescents: A decade of history towards the third millennium*. And the 4th Conference, considering the alarming data on violence against children and adolescents, dealt with the theme of violence, bringing as its motto *Violence is Cowardice and its Marks Remain on Society*. The 4th Conference had as its general objective “to promote broad reflection on childhood and adolescence and its relationship with violence, in order to point out paths and define proposals that reverse the current reality and contribute to the improvement of the quality of life of children and adolescents”. At this Conference, the Peace Pact (PEACE PACT, 2020) was launched.

Despite all efforts, with the organization and holding of municipal, state, and national conferences, it can be said that we are still unable to develop public policies that, in fact, promote the social transformation promised by our Constitutional Charter and the Statute of Children and Adolescents with regard to almost all of the rights guaranteed in article 227 of the Federal Constitution (BRAZIL, 1988), but very particularly in relation to the more complex issues that cause irreversible damage to children and adolescents when they are victims, for example, the commercial sexual exploitation of children and adolescents.

This reality continues to haunt us, because, in part, sexual violence, as a social, economic, and cultural phenomenon of a complex and multifaceted nature, makes any approach difficult and requires a critical look based on the human sciences, capable of uncovering the contradictions surrounding the phenomenon. Reality can no longer be hidden or ignored.

In this sense, to bring up and discuss the topic of sexual violence, the publication of the Paraná State Department of Education (2009) is of importance. On the subject, it declares that

violence and sexuality are historically constructed categories. Human sexuality is mainly related to cultural and social relations. Since sexuality is a social construction, it is also the result of contradictory relationships, where gender, race, and ethnicity, generations, repression, and emancipation are also determining categories.

Thus, already in 2004, the Paraná State Network of Public Education sought to address a theme that has now become a major controversy, dividing opinions, and that originated from a part of society represented by the most backward notions, threatening to introduce into Brazil obscurantism that serves to maintain patriarchal domination, subduing the bodies and minds of children and adolescents. There is a movement headed by religious fanatics and conservatives of various shades who have sought to remove themes related to sexuality and gender from school curricula, such as the movement called *Escola sem Partido*².

Initiatives that seek to bring to school the discussion of topics that are part of life and that need to be discussed in order to awaken in possible victims – children and adolescents – protection mechanisms, should continue to be encouraged, as it is part of citizenship, as well as protecting children and adolescents from sexual violence – and, as a consequence, from commercial sexual exploitation, including sexual violence practiced within the family relationship.

Violence is the explanatory category for the sexual exploitation and abuse of children and adolescents in relation to the market, family, and institutions. And if we refuse to establish this dialogue within schools or any other space, we will take away from children and adolescents the opportunity to grow and understand the reality and, from there, transform it.

3 THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS AND THE WORST FORMS OF CHILD LABOR. RESPONSIBILITY OF THE LABOR PROSECUTION SERVICE

Sexual violence is defined by the World Health Organization (UNITED NATIONS BRAZIL, 2018) as

any unwanted sexual act attempts to consummate a sexual act or sexual advances; or actions to commercialize or otherwise use a person's sexuality

through coercion by another person, regardless of the person's relationship with the victim, in any context, including one's home and workplace.

Although strategies to combat sexual violence in the past have focused on the criminal justice system, there is currently a movement towards a public health approach that recognizes multiple risk factors. These aggravating factors interact at the individual, relational, community, and social levels. In this perspective, facing sexual violence requires the cooperation of several sectors, such as health, education, social assistance, and criminal justice. Public health seeks to expand attention and security to the entire population and emphasizes prevention, ensuring that victims of violence have access to adequate services and support.

In the field of human rights, violence is understood as any violation of civil rights (life, property, freedom to come and go, of conscience and worship); political rights (right to vote and to be voted for, to have political participation); social rights (housing, health, education, security); economic rights (employment and wages) and cultural rights (right to maintain and manifest one's own culture).

The sexual exploitation of children and adolescents, understood in the concept of sexual violence, within the scope of Labor Law came to be considered one of the worst forms of exploitation of child labor only after the ratification, by Brazil, of Convention no. 182 of the International Labor Organization. This Convention was incorporated into the internal legal system by Legislative Decree no. 178, of 12/14/1999, ratified on 02/02/2000 and promulgated by Presidential Decree no. 3,597, of 09/12/2000, but with effect only as of 02/02/2001. In short: it is only after 2001 that Brazil begins to recognize that the commercial sexual exploitation of children and adolescents must also be combated as one of the worst forms of child labor, according to article 3, item "b", of Convention no. 182, thus attracting the attribution of the Labor Prosecution Service and the competence of the Labor Court (BRAZIL, 2019, Annex LXVIII).

Sexual violence against children and adolescents causes serious physical, emotional, and social damage and its understanding has been built over the years with various actors from the national and international community for the protection, promotion, and defense of the rights of

children and adolescents, included, also, Labor Law operators in relation to the commercial sexual exploitation of children and adolescents.

Therefore, sexual violence is expressed in two ways – sexual abuse and sexual exploitation – it is every act, of any nature, that violates the human right to the sexual development of children and adolescents, practiced by an agent in a situation of power and unequal sexual development in relation to the victimized child or adolescent.

The great distinction between sexual abuse (and other related sexual crimes) and commercial sexual exploitation of children and adolescents is in the marketing character of the crime. In sexual abuse and the like, there is no intention of profit, gain; whereas in the commercial sexual exploitation of children and adolescents, the market relationship, sex as currency, exchange value is a marked characteristic, a *sine qua non* condition. Such sales can be for money, favors, gifts, services, blackmail, etc.

Commercial sexual exploitation is sexual violence that takes place in the relations of production and market (consumption, supply, and surplus) through the sale of the sexual services of children and adolescents through sex marketing networks, by parents or legal guardians, relatives, neighbors, etc.

This practice is determined not only by structural violence, which is the main determinant but also by social and interpersonal violence. It is a result also of the transformations occurring in the present value systems in social relations, such as patriarchy, racism, and social inequalities, that contrast with the idea of social and economic emancipation, cultural freedoms, and human sexuality.

All of these transformations, especially economic and governance-related, have caused collapses in the context of institutional, social, and interpersonal relations, creating deep impacts, with the aggravation of socioeconomic inequalities, causing exclusion not only from the economic point of view, but also from access to social public policies; and, secondly, have been promoting class, gender, and sexual orientation clashes; there is also the lack of legitimacy of the state system that has not been responsible for promoting the social regulation of the structural violence that permeates contemporary society.

It is observed that violence takes on different meanings and signifiers, that is, it reveals itself in several and multiple social, institutional, market spaces and also in the social imaginary, which causes the emptying of the collective spheres of confrontation and resistance, increasing the contradictions and favoring the emergence of new and old forms of exploitation based on corruption, organized crime, the illegal market, human trafficking, and social and interpersonal violence.

This scenario of violence signals the breaking of social rules, ethical consensus, and human values and conducts of the civilizing sense of humanity, its origins, its fundamentals, and difficulties, making children and adolescents easy and unprotected prey.

Sexual exploitation reveals two serious forms of crime: that which occurs in the circuits where the economic and political elites operate (corruption) and that which occurs in the circuits where the subaltern classes dwell; and in geographic circuits for profit, which have as a backdrop the perverse game of socio-economic and cultural relations, where the duality of exclusion and inclusion is fundamental to study this type of violence, that confirms the valorization of power and of unlimited disputes and a depoliticized resistance. The violent market of drugs, sex, trafficking (including children and adolescents), weapons (smuggling), etc. emerges as a response to this modality. Labor exploitation disappears in this context of complex and serious violations.

The commercial sexual exploitation of children and adolescents is defined in the Stockholm Declaration (STOCKHOLM DECLARATION, 1998) as:

the commercial sexual exploitation of children and adolescents is a fundamental violation of children and youth's rights. This includes sexual abuse by adults and remuneration in kind for the child, the adolescent, a third person, or several. Children and adolescents are treated as a sexual object and a commodity. The commercial sexual exploitation of children and adolescents is a form of coercion and violence, which may involve forced labor and contemporary forms of slavery.

Sexual exploitation violates fundamental rights since they are not being respected and guaranteed. Additionally, sexual exploitation places itself in the field of denying an inalienable right: that of sovereignty and autonomy over one's life and over the body itself, which must, above all, be protected for

full development. Additionally, sexuality, as sexual activity, must be exercised in an equal and symmetrical way, as a free option and not as a commodity valued by economic and social injunctions (SANTOS, 2004).

In this sense, commercial sexual exploitation manifests itself in different modalities:

Prostitution: it is a form of commercial sexual exploitation, although it is a voluntary option of the person in such a situation. Female prostitution, in the adult world, opens a field for the debate about its nature, where different disciplines (philosophy, ethics, psychology, sociology, and legal sciences) intervene. Children and adolescents, due to their peculiar condition of development, and because they are subjected to the conditions of vulnerability and social risk, are considered prostituted and not prostitutes. Prostitution consists of a relationship of sex and commercialization and a process of transgression, according to the report prepared by ECPAT (2017).

It is also considered a modern and socially accepted form of slavery, and some maintain that this profession suffers from the same conditions of subordination and dependence as any other job, as Gabriela Leite, who presided over the National Association of Prostitutes of Brazil, defended in an interview granted to *Revista Viração* and published on the website *Outras Palavras* (REVISTA VIRACÃO, 2013).

Sex tourism: it is the exploitation of adults, children, and adolescents by visitors, in general, from developed countries, but also by visiting tourists from the country itself, involving complicity, by direct action or omission by travel agencies, tour guides, hotels, bars, restaurants, clubs, snack bars, beach huts, waiters, bouncers, gas stations, taxi drivers, brothels, nightclubs, and massage parlors, in addition to traditional pimping (ECPAT, 2017).

Trafficking for sexual purposes: in accordance with Decree no. 5,017/2004, which promulgates the Palermo Protocol, art. 2, item “a”,

[...] it is the recruitment, transport, transfer, accommodation, or collection of people, by the threat of resources, by force or other forms of coercion, by abduction, by fraud, deception, abuse of authority or of a situation of vulnerability, or by offering or accepting payments or benefits to obtain the consent of a person who has authority over another for the purpose of exploitation” (BRAZIL, 2004).

Child and Youth Pornography: it is defined as all audiovisual material in which children and adolescents are used in a sexual context or, according to Interpol (apud NASCIMENTO; SILVA, 2014), the “visual representation of the sexual exploitation of a child or adolescent, concentrated on the sexual activity and in the genital parts of that child or adolescent.” For specialists who currently study child and youth pornography on the Internet, it is “a sexual exposure of images of children and adolescents, including implicit sex photographs, negatives, projections, magazines, films, videos, and computer discs” (GOMES, 2004).

In this context, the issue of sexual exploitation of children and adolescents requires an analysis of the suppression of organized crime and the fight against crime as strength, power, and conflict relations that occupy privileged places in society.

But that is not all. For the Labor Prosecution Service, the commercial sexual exploitation of children and adolescents is also one of the most degrading forms of exploitation of child labor, as already mentioned in the references above and contained in Convention no. 182 of the International Labor Organization (BRAZIL), 2019, Annex LXVIII).

Article 3 of ILO Convention no. 182 (BRAZIL, 2019, Annex LXVIII), makes it clear that, among the worst forms of child labor, there is slave labor and commercial sexual exploitation of children and adolescents (using or offering children for prostitution and pornographic production).

Thus, the legal configuration of the commercial sexual exploitation of children and adolescents as an **illegal labor relationship**, degrading and violating the dignity of the human person and of the ethical-moral heritage of society generates to the Labor Prosecution Service the institutional obligation to promote the civil liability of the aggressors for all damages, physical and moral, individual and/or collective, and of any people who will favor such practices, including through omission.

It is also incumbent on the Labor Prosecution Service to seek preventive action strategies, which requires the formulation and execution of public policies to deal with this type of violation, considering all of the complexity involved in the issue. The strategic action also includes the identification of

the exploitation network, from which compliance with obligations that avoid the continuity or permanence of the breach should be required.

4 CONCLUSION

Under Brazilian law, the commercial sexual exploitation of children and adolescents is a crime. However, it is proven that treating sexual exploitation of children and adolescents only from a criminal point of view does not solve the problem in view of its complexity, with economic, political, and social implications.

The Labor Prosecution Service's mission is to safeguard respect for the fundamental rights of human beings in the world of labor and, in particular, of children and adolescents, which is why we consider the commercial sexual exploitation of children and adolescents first as a violation of human rights and, therefore, of fundamental rights and, finally, as degrading appropriation of the workforce.

According to the Organic Law of the Labor Prosecution Service (Complementary Law no. 75/1993, arts. 83 and 84, items V and II), its duties are as follows:

[...] a) to initiate civil inquiries and other administrative procedures, whenever applicable, to ensure the observance of workers' social rights; b) to propose the necessary actions to defend the rights and interests of minors, incapable and indigenous people, resulting from labor relations (BRAZIL, 1993).

Thus, the involvement of the Labor Prosecution Service with the theme of commercial sexual exploitation of children and adolescents occurs not because of the criminal approach, which is an important component, but also under the labor approach, that is, it enables the search for accountability for the exploitation of the labor of children and adolescents in an activity recognized as one of the worst forms of exploitation of child labor, which attracts the attribution of important institutions, previously disregarded in this context, such as the Labor Prosecution Service and Labor Inspection.

Combating the exploitation of child labor is – and must continue to be – a priority for the Labor Prosecution Service, and it could not be different due to the principle of absolute priority established in Article 227 of the

Federal Constitution and its constitutional and legal attributions (BRAZIL, 1988).

As it is a highly complex topic and activity, Labor Prosecutors have, over time, developed strategies for acting in several different lines, especially covering prevention, fighting, and accountability strategies.

We cannot fail to recognize the difficulties faced, but we have come a long way that has brought us a unique practical experience that deserves recognition and, more than that, replicability, that is, we still lack a proposal for national action that involves the whole of the members of the Labor Prosecution Service so that we can, in every corner of this country, act in a way that not only prevents but also removes children and adolescents from such a severe reality, keeping them in programs that guarantee the non-return to this situation.

Additionally, it is necessary to mention the hypocrisy that surrounds the topic, as sexual exploitation is widely tolerated by our society, although the prejudice against workers in this activity demonstrates a terrible paradox, that is while naturalizing the “consumption” of these women, which are even freely advertised in leaflets, on the Internet, in booklets distributed in hotels and even on gigantic billboards scattered in large cities, on the other hand, sex workers are seen as criminals, with very low morals and condemned to live segregated lives.

If the commercial sexual exploitation of children and adolescents is in no way to be admitted, but firmly combated and eradicated, how should we look at women, sex workers, who were once adolescents and, possibly, child victims of this exploitation – and who continue being victims?

In our legislation, women are not prohibited from choosing this profession. She can be a sex worker. To say that, with the recognition of the profession, the dignity of the human person would be affronted, perhaps the working conditions that are imposed on them are unworthy, not the profession already recognized as legal and included in the Brazilian Classification of Occupations³.

Sex workers are brutally exploited every day, without any guaranteed rights, exposed to violence, excessive consumption of drugs and alcohol, internal and external trafficking, disappearance, loss of reference, contagious

sexual diseases, breaking family life, being separated from their children, in short, they are women who have their human rights violated every day. However, we do not want to “talk about it”, as this implies recognizing that, like everyone else, they are also the recipients of all rights, which must be protected, such as, for example, with the guarantee of a healthy work environment.

Considering the inefficiency of the actions developed, it is time to ask ourselves where we went wrong, what we should do, and where we want to go. Have we been silent or complacent about this human rights violation? If it is not possible to combat prostitution, or rather, the commercial sexual exploitation of women, which is institutionalized and will continue to exist, why not recognize the rights of the women who are exploited and who – considering current working conditions – are victims, in conditions analogous to those of slaves? The explanation is perhaps very simple: because for the majority of the population, in this sexist culture, they are not human beings, but sexual objects. And objects have no rights.

Thus, the responsibility of the Labor Prosecution Service, in addition to preventing, combating, and promoting the accountability of those who practice commercial sexual exploitation of children and adolescents, must be broader, in order to achieve the protection of the rights of sex workers, which are debased daily and historically.

ENDNOTES

- 1 The National Council for the Rights of Children and Adolescents – CONANDA is a permanent collegiate body of a deliberative character and equal composition, provided for in Article 88 of Law no. 8.069/90 – Statute of Children and Adolescents (ECA).
- 2 The *Escola sem Partido* Program is a political movement created in 2004 in Brazil and disseminated throughout the country by lawyer Miguel Nagib. He and the supporters of the movement claim to represent parents and students contrary to what they call “ideological indoctrination” in schools.
- 3 CBO – Brazilian Classification of Occupations. The Brazilian Classification of Occupations (CBO) is a document that portrays the reality of the professions in the Brazilian labor market. It was instituted by Ordinance no. 397, of 10/10/2002.

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INSTITUTIONALIZATION AND PUNISHMENT AS A POLICY TO ADDRESS CHILD LABOR IN DRUG TRAFFICKING

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Abstract. The purpose of this article is to discuss child labor that occurs in drug sales and trafficking, as well as to present reflections on the policy of confronting this type of work in Brazil, which is among the worst forms. A research was carried out between the years 2017 and 2020, in the state of Paraíba, in units of socio-educational measures of freedom deprivation and restriction. 137 questionnaires were applied, of which 86.1% were answered by people in the age group corresponding to childhood and adolescence. 110 young people were invited to a more in-depth interview and, among these, it was found that 37.2% worked in the drug trade. Results showed that, in practice, despite legislation aimed at protecting children and adolescents, Brazil does not understand work in drug sales and trafficking as child labor. Thus, the policy of combating child labor related to drug sales and trafficking consists of punitive measures of institutionalization and criminalization.

Keywords: Child labor. Drug trafficking. Socio-educational measures.

1 INTRODUCTION

This article aims to discuss child labor in drug sales and trafficking, as well as to present reflections on how the policy of coping with this type of

work is taking place in Brazil. The discussions were based on empirical data discussed in the light of the literature on the topic. The policy of combating child labor in drug sales and trafficking is presupposed, which consists of punitive, institutionalization, and criminalization measures.

National legislation, Decree no. 6,481/2008, international legislation around Convention no. 182 of the International Labor Organization (ILO) and academic literature recognize trafficking as child labor (FNPETI, 2018). From these perspectives, an empirical study carried out over three years in Brazil, more specifically in the state of Paraíba¹, has investigated child labor in the life trajectory of adolescents and young people who comply with socio-educational measures of deprivation and restriction of freedom. Among the data from the research, the tender presence of child labor was identified in the life trajectory of adolescents and young people, boys, and girls. Among the work activities performed, work in trafficking and socio-educational measures emerge as a punitive factor in the trajectory of these early workers.

If Brazilian society reproduces the myth that “it is better to work...”, it is assumed that child labor would be an “antidote to crime”. If there are 2.5 million (1.8 million employed + 716 thousand who work for their own consumption) of children and adolescents working (IBGE, 2017/2018), there should be no adolescents fulfilling socio-educational measures for work. According to the National Council of the Prosecution Service (BRAZIL, 2019), 18,086 adolescents comply with internment measures; 2,065 comply with semi-freedom measures; and 3,947, of provisional internment. Thus, how can we explain that 150 thousand adolescents between 12 and 18 years old are fulfilling socio-educational measures and at least 24 thousand are deprived of their freedom?

The literature in the area still points out a series of contradictions related to the way this problem is understood in Brazil. In Bortolozzi’s research (2014), it was possible to analyze the meaning of work in drug trafficking experienced by children and adolescents, both those who were working and those who had worked in this market, which, according to the aforementioned author, represents the second-largest global market economy. The results point to a construction – not always immediate – of the traffic as a hierarchically organized company with bosses, different occupations, and career plans, as was also highlighted by Coscione *et al.* (2019), Silva and Simão (2005), and Cruz Neto, Moreira and Sucena (2001).

But why is this not the initial conception? Because participants made a distinction between (decent) work, as a lawful activity that does not harm other people, and trafficking, which is more linked to crime than exactly to the world of work, although they recognized that they were exploited (BORTOLOZZI, 2014; CRUZ NETO; MOREIRA; SUCENA, 2001). Costa e Barros (2019) and Barros and Vilela (2016) explain that drug trafficking has been studied and considered only from comparisons with other types of work activities, which produces this dichotomy of lawful and illicit, distancing work in trafficking from the dimension of work and only approaching the dimension of crime.

The organizational character of this activity is noteworthy, as well as its variability, the infidelity of the environment, the debates of norms that are incident (SCHWARTZ; DURRIVE, 2010). It is a work activity that occupies part (or a large part) of the time of adolescents and young people, depending on the function, including nighttime. According to Bortolozzi (2014), in the hierarchy in which the work in the drug trade is organized, children and adolescents are those who go to the street in order to pass/sell the drug, therefore, they are at the greatest risk of being attributed an infraction, a socio-educational measure or even death. As Silva and Simão (2005) say, the youngest are those who are “on the front line”, therefore the first to be affected. Additionally, police methods dressed with violent practices and violations (CRUZ NETO; MOREIRA; SUCENA, 2001) stand out.

Analyzing the reasons for entering work in the drug trade, the literature points to this type of activity as a way of personal and family survival and, likewise, as a way to reach consumer goods, which may seem superfluous. However, as pointed out by Coscione *et al.* (2019), Bortolozzi (2014), Silva and Simão (2005), and Cruz Neto, Moreira, and Sucena (2001), obtaining these goods is what granted access and visibility to these adolescents and young people before society. Such visibility appears in two moments: 1) when they use the money to obtain the goods/services and become consumers; 2) later when the activities carried out to receive money and access such services are attributed to infractions.

This socio-educational system is considered inefficient, as it does not transform the trajectory of young people and, as it does not make other choices possible, it ends up reinforcing the permanence in trafficking (BORTOLOZZI, 2014; CRUZ NETO; MOREIRA; SUCENA, 2001). Cruz

Neto, Moreira, and Sucena (2001) already pointed to something along those lines, that socio-educational services generated the fear of creating new projects, rather than promote future projects outside drug trafficking.

The insertion of children and adolescents in the activity of selling and trafficking drugs is due both to the fact that they have as models of action the adults who also worked in the drug trade, as well as their previous experiences in work activities considered legal. But it is noteworthy that even these works, by themselves, are illegal, since they are performed by children and adolescents and such practice is also prohibited by law (BORTOLOZZI, 2014). The analysis of the literature on the subject outlines reflections on the type of illegal activity considered dangerous for others, for the middle and upper class itself; but child labor, which is also illegal, only harms the poorest, in addition to being the main victims of murder, as identified by Guedes (2020). There are myths that justify an illegal activity (child labor) in terms of another (infraction). Therefore, the question is: is the infraction not being attributed as a way of penalizing trajectories marked by violations?

These jobs, considered legal by society, are seen in a negative way because the compensation for drug trafficking is higher. This is because licit jobs for those who did not have school/professional training are disqualified, unworthy and badly paid activities, given the low level of schooling and the dropout history of children and adolescents who entered work activities early. Marcon and Furukawa (2008), for example, when conducting a survey with inmates of a penitentiary, found that their trajectory was marked with leaving the school system and that this departure was due to the need to work to help their family.

The prevailing opinion is that school did not make sense, did not meet their basic needs, and, therefore, they sought other (illicit) ways of doing so (BORTOLOZZI, 2014). Marcon and Furukawa (2008) also point out that objective life conditions of childhood and adolescence of prisoners were related to insertion in child labor, leaving the school system, and incarceration. As Silva and Simão (2005) point out, in view of the low wages and struggles of family members, illicit work activities are becoming concrete strategies for survival; the precocious work in the traffic and the resulting money are revealed as the way to satisfy their needs (CRUZ NETO; MOREIRA; SUCENA, 2001).

In view of what has been presented, it is asked: is the socio-educational measure of internment, which can reach up to three years, a protective measure for child labor in its worst forms in the case of drug sales and trafficking? Evidently not. It is concluded that the public policy of the Brazilian State to fight child labor in its worst forms consists of punitive measures of institutionalization and criminalization.

2 THE RESEARCH PATHS

The empirical data presented in this article is the result of three years of research, carried out between the years 2017 and 2020, in the state of Paraíba, in units of socio-educational measures of freedom deprivation and restriction. This research followed the ethical principles of research with human beings and aimed to analyze the relationship between child labor and socio-educational measures. Adolescents and young people, boys and girls, participated in the research. 137 questionnaires were applied: 86.1% stated that they worked in their childhood or adolescence and 10.2% that they did not work, but helped; therefore if you add work and help, you get that 96.3% of the sample were child workers.

Those who reported working or helping were invited to a more in-depth interview, in which 110 adolescents and young people participated and, among these, 41 participants, or 37.2%, worked in the drug trade. However, not all 41 directly fulfilled measures for trafficking, because, sometimes, the socio-educational measure is, on the other hand, an offense that has an indirect relationship with trafficking, for example, theft to pay a debt contracted in drug selling.

Data analysis for the purpose of this article was done by reading each of the 110 interviews. The construction of categories from reading aimed to identify how many reported that they worked, how and why they started working, how they migrated from other activities to trafficking, the process of work activity in drug trafficking, and the consequences for their lives. Drug trafficking as a work activity comprises a whole process that includes tasks, routine, employment relationship, self-employed or employee, forms of payment (how it was paid), what they achieved, drug use, consequences on trafficking (attribution of authorship of the infraction and socio-educational measure), consequences of the measures (punishment and criminalization).

3 CHILD LABOR IN DRUG TRAFFICKING: ACTIVITY, INSTITUTIONALIZATION, AND PUNISHMENT

3.1 Early insertion in child labor in drug trafficking

Among the 110 who participated in the most in-depth interview, 89 adolescents and young people identified themselves as being male and 21 identified themselves as being female, with ages ranging from 14 to 20 years old. As for ethnicity, through a self-declared question, it was revealed that the majority identified themselves as dark (40), followed by white (27), brown (24), black (6), black (4), yellow (2), blonde (2), light-brown (2), indigenous (1), red-haired (1) and coffee with milk (1). Reflection is due to the presence of colorism when addressing racial identity. However, observing the definition of the Racial Equality Statute (BRAZIL, 2010), it is clear that, although they have not identified themselves as such, the data reveal that the majority is black, the result of the sum of dark, brown, black, light brown and coffee with milk, which is exactly 70%.

The ages at which they started to work varied, ranging from 5 to 17 years, in which 70% started in the range of 10 to 14 years old; 9%, between 5 and 9 years old; and 18.18%, aged 15 to 17 years. Since the beginning of child labor in drug trafficking, there were those who started at the age of 5, as stated by one of the participants: “I started trafficking at the age of 5”, but most started in other child labor activities and migrated to drug trafficking.

The main cause of early insertion in work pointed out by the participants was their family’s financial needs, but there were those who combined the financial needs and the desire for autonomy or work as an antidote to marginality; this last cause, represented by the expression “not to do wrong things”. There were still those who attributed drug use, hurt feelings, and revenge when a family member forced them as causes. In the case of drug trafficking, the reasons are the same, but there were those who claimed the change was motivated by the value of the gains that were greater in drug trafficking than in activities considered lawful.

Another aspect pointed out as a cause makes it possible to foresee a glamorization and the introjection of a feeling of power: “Because I thought it was nice, I felt good when I made a sale, but after a long time I stopped

to think that it was not for me”. It is clear, therefore, that, little by little, this feeling of power gradually dissipated and gave way to the meaning of an easy activity, which provides many gains, but also contradictorily, rapid losses. In fact, this idea of easy gain was present in everyone’s answers, for example: “And in drug trafficking, I also made money, a lot of money..., because in drug trafficking easy comes easy goes”.

Such findings corroborate the studies undertaken by Coscione *et al.* (2019), Bortolozzi (2014), Silva and Simão (2005), and Cruz Neto, Moreira, and Sucena (2001) highlighting the entry into drug trafficking as a means of survival and access to consumer goods. Therefore, this form of work organization is configured as a prototype of the consumer society, as pointed out by Barros and Vilela (2016), since it is seen as informal, as illegal, adding all the violence that surrounds this activity. It is worth mentioning that, when drugs were presented as a cause, the trajectory was not always from use to work. On the other hand, there were several participants who reported a reverse process, they started to work in drug trafficking and ended up using drugs: “I started trafficking at the age of 5, I started using drugs at 6 years old”, “I only started using drugs after I got involved with the faction and started working in drug trafficking too”.

Such statements elucidate the objective conditions of life of these subjects, in which illicit forms are possible ways in their eyes (BORTOLOZZI, 2014; MARCON; FURUKAWA, 2008). It seems that there is a path in this trajectory, which passes through child labor: leaving the school system and, as a final consequence, incarceration, which, as Barros and Vilela (2016) point out, legitimizes a moralist conception that results in a bloodthirsty war, in which the little that is done is done through violence, functioning as a resource, normative code of behavior, and as an endpoint for the resolution of conflicts inherent in life.

3.2 Drug trafficking as a child labor activity

Not all participants, adolescents, and young people, boys and girls, recognized, aprioristically, that the activities performed in drug trafficking consisted of work. Although they reported the tasks they performed, either part of them or participation in the entire process, the tasks received different meanings, resulting from the alienation that was inscribed in the process,

because, not participating in the whole, they ended up not recognizing themselves in the part that made the product. Another aspect that made the activity invisible was related to the moral character of the activity, dichotomized between “right” and “wrong”, “light” and “honest”, as can be seen in the dialogue below between a Participant (E) and a Researcher (P):

- P: And in trafficking did you do it, did you traffic?
E: I did.
P: And is this a job?
E: Yeah... it's not a job that is right, is it?
P: It is not a job that is not...?
E: It is not right.
P: It is not... It is not right?
E: But I made money.
P: Did you make money?
E: It's illicit work, I don't know...
P: Illicit work?
E: Yeah.
P: But is it a job?

Another example can be seen in the speech of another participant: “E: Yeah. I used to traffic drugs in my childhood. No, just that. I don't remember anything other than trafficking. I started trafficking at the age of 13. Yes, I worked at drug trafficking”.

The dialogue that took place with the researchers led to a confrontation with what they were doing, which often resulted in the detailing of routines with the description of the workload. In the dialogues and in the study of the literature, it was noticed an activity that involves a production and organization process with the division of labor (COSCIONE *et al.*, 2019), a process that has similarities and differences depending on the diversity of contexts of the Brazilians states. In the case of the participants in this research, the process and division of labor include children, adolescents, and young people who participate, occupy, and perform various functions and activities, either as a self-employed person or linked to a boss, such as the “corre”, “avião”, packager, intermediary, seller, freighter, manager, and boss.

As stated by Schwartz and Durrive (2010), it is necessary to take into account what goes beyond the results of the activity, so that the dramatic aspects of the activity are not hidden. The fulfillment of each of these tasks results in dramas that are often made invisible by the other and the worker himself/herself. Thus, researchers, at the time of the interview, confronted

these young people, making it possible to access aspects related to the task performed, as well as the meaning attributed to each task. This composition made it possible to understand this work activity for child workers.

The description of the accomplishment of a set of tasks marks how the insertion of some in the activity took place, the functions fulfilled, and what was physically and psychically required. The reports and dialogues between the researcher and the participant revealed the management of the activity by these adolescents and young people: the expenditure of energy, physical strength, and prolonged activities for days that involved several hours of work, in situations of guarding the commercial territories, under situations of risk, on the lookout for possible invasions by competing and rival groups or a charge by the police, as can be seen in the excerpt: “In a week I spent the entire day, and at night sometimes didn’t even go home. I left the house at 6 am, went to the beach and stayed until 10, 11 at night”, and the next too: “My trafficking routine was 24 for 48. Like, all day there in the traffic and the night too. It was a short time that I went home”.

The “corre”, the terminology used by them to refer to the performance of small services or tips within the drug trade, is sometimes performed by children, which means the beginning of the recruitment process for this activity, as shown in the following statement: “in the ‘corre’, at the ‘corre’ time, the person does the ‘corre’, right. He/she takes the drug, then goes, sometimes they put some kids, actual kids, like, 9 years, 10 years old”. The packer activity refers to the tasks of preparing, separating, wrapping, or bagging drugs in small portions for the retail activity or, in the language of the participants, “making the ‘dola’”, defined by some as a repetitive, endless task, performed without rest throughout the day:

Man! That is sad. I went to (mentions the city) the favela that exists there to do this business of... I spent the entire day in the trap with my cigarette. Then came a “corre”, pack it, then another “corre” and pack it. It’s sad! It’s the entire day! All-day. The person only rests when it is dark.

The seller is in charge of retail, he can stay in a fixed place or move around, like a street vendor, as the following statement reveals:

I only worked in the traffic. I started selling on street corners, in shacks, in houses, I rented the house and then started to add drugs, then the drug addicts arrived, right? How do you say it? The drug addicts arrived and started asking if we got rocks, marijuana; then I started shipping and took the money. No, I did nothing but trafficking.

There was a report of another task for which the participants did not assign a name, but which consists of an intermediary function, whose action does not take place directly with the client, but with a carrier, the “avião”, who will purchase the drug for someone else, but that is part of the routine of the drug trafficking trade: “My trafficking routine was like, you sit there with a powder ball, standing there in a corner, I stay in a bar, I sit, then the ‘avião’ come and take them”.

And there is also the role of the freighter, which is the name used by adolescents and young people to refer to those who seek the drug and distribute it. He is a person of confidence of the boss, as the dialogue of the participants portrays:

[...] I took a load that came, it wasn't for me, it was for my boss. I even took a load of 30 kilos. 30 kilos cost half a million. Then, it was distributed in the neighborhoods. I left 5 kilos there, 5 there. The freighter of the faction is a person who distributes the drug.

The majority referred to the figure of a boss for whom they worked, “the boss is the one who commands everything”. But there were those who claimed to be autonomous and even have people working for them, as shown by the statements of some participants: “I sold by myself and didn't spend all day. There was a person working there too”, “I used to sell myself in ‘dola’. I took half a piece and sold it for myself”. Payment methods can be made in drugs, cash, or other currencies. “At each job, I earned a share, but when I was working for myself I earned my hard-earned money”.

In the case of the participants in the research that originated this chapter, payment is not always linked to the characteristics of the tasks performed, to the physical and psychological demands, nor to the workday or workload, it concerns the drug sold, the product sold, whose agreement of payment can be in a form of sharecropping, that is, for each X sold a certain fraction or percentage of the money or the drug is from the seller, or payment is made through the sale of the drug.

E: Have you worked on anything?

A: Only in traffic.

E: Only in traffic? And how were you paid for work?

A: I had to give the drug money and I kept my money.

E: And did you only receive money or did you receive something else?

A: No, I was getting money, but then I stopped, I didn't want it for me anymore.

E: And how were you paid for work, for that work?

A: From what I sold, right? That I took a lot.

The kilos... each kilo is 1000 bucks, 500 was mine. From every kilo, I took 500, which was mine. When I went to work for the “dola”, of every 5 I sold, 1 was mine. Then, it’s no longer worth it. That’s why I got stressed out. Because from 5 “dola” you only get 1. A “dola” is what, 5 bucks, do you understand?

I would sell it, then I would find some money there, then I would go there to pay the boss and the boss would give mine. I was paid in cash. In addition to the money, I received drugs as payment.

Soon, these trafficking laws, their work context as an economy of experiences, are visible (BARROS; VILELA, 2016). Trust stands as one of the values that organize interpersonal and commercial relationships in trafficking, based on what is said by these adolescents and young people. Advances are in the way of prescribing this activity, and they are constantly managing the activity, the use they make of their body, and what others, especially the boss, make too. The question raised by Barros and Vilela (2016, p. 177) is also highlighted: “Which society, we are daily producing, is capable of making possible the existence of work organizations in which the human is elevated to the condition of an instrument?”. Especially when we talk about children, adolescents, and young people when there is legislation that should protect them.

On the contrary, as pointed out in the material published by FNPETI (2018) and by Silva and Simão (2005), children end up occupying the front line, they are the first to be affected, they are at the greatest risk of having attributed them an infraction, a socio-educational measure, or even death. As Costa and Barros (2019) state, the meaning given to trafficking is established through this link between activity and violence, distancing them from the synonym of work that would imply a socially supported relationship.

3.3 The consequences, infraction, and socio-educational measures of internment

Not everyone recognized the negative aspects of early work insertion, especially work in its worst forms (drug trafficking). Some pointed out that working in drug trafficking prevented starvation, made it possible to help families, earn a lot of money, and access goods, electronics, and consumer objects that make up modern life, such as motorbikes, cars, computers,

laptops, cell phones. But even among those who praised positive aspects, there were those who called attention to the negative aspects of work in drug trafficking. Thus, negative aspects were also pointed out: the suffering caused to the family, which they called involvement with the infraction and having received a socio-educational measure of internment, which, in turn, also had a series of consequences, as illustrated by this interview excerpt: “Having worked was bad, right? There was nothing good because I’m here, there was nothing good for me, just bad things”.

Despite the dichotomy expressed in the participants’ conception when using the expression “easy job” to refer to activities in drug trafficking, the reality is quite different, that is, nothing is easy. There are a number of consequences or implications arising from the performance of tasks, especially the risk of death resulting from clashes with competing rival groups or the police. It cannot be forgotten that, in addition to the risks of the activity itself, these workers are children and adolescents. It comes into question as the culture apprehends beyond defense mechanisms, to be able to carry out the work activity since they recognize the various difficulties, the risks, but, still, they need to do, that is, what reflects the dramas in which they are involved (SCHWARTZ; DURRIVE, 2010). They are subjects in the process of development who have internalized only the conception of crime, have been alienated from the process, and do not perceive themselves as workers.

In fact, it seems that it is not just them who do not understand this as work. The Brazilian State itself, a signatory to ILO Convention no. 182 (ILO, 1999), the Statute of Children and Adolescents (ECA, 1990), and Decree no. 6,481/2008 (BRAZIL, 2008), also do not recognize this practice as work. Even though this child worker in trafficking once worked in other activities, only when he/she migrates to trafficking is he/she seen and penalized with the attribution of an offense author and, consequently, with a socio-educational measure of internment. Thus, an infraction is another consequence of the trajectory of a child worker from an early age, aged 5, 11, or 14 years. The infraction is a consequence of child labor. An adolescent or a young person who has not internalized that he or she is a worker exploited by trafficking internalizes that he or she has been involved in the offense. They use the term involvement to mean their trajectories, as shown in the following statements:

Working early helped me get involved because I saw people in the middle of the street as they stayed there, doing so. Then I paid attention, I just paid attention to everything in every corner of the others and such...

I was 15 when I first got involved. I was already trafficking at about 14 years old. I had no involvement before trafficking. At the age of 14, I got involved for the first time. I got money, sold rocks, cocaine, that's all. I only got money. Only money.

This involvement also has consequences or implications. In the case of involvement in child labor in drug trafficking, adolescents and young people are held responsible, criminalized, and punished with a socio-educational measure of internment or in their expression: They “rotated” – “I was rotated for the first time when I was 12”. Perhaps the term “rotated” is really a representative meaning of the situation, because to rotate means “to turn around”. It happens to them; they start with violence, working early, the State does not protect them, according to the protective measure defined in the ECA, but criminalizes them, leading them to comply with a socio-educational measure in an institution where they are victims of another series of violence and violations that are committed by the State itself (from the non-guarantee of the rights recommended in ECA and regulated in SINASE, to other institutional violence). Then, the tour ends with other violations and violence. As Costa and Barros (2019) state, this dichotomy between licit and illicit produces and legitimizes the distance of work in trafficking from the dimension of work and the approximation only of the dimension of crime.

Although research participants justify drug dealing work with the need to survive, to support their families, the desire to access consumer goods, to be compelled because they were threatened by other people, including family members or faction members, and highlight the positive aspects of earning money, attaining fame and getting women, there are a number of negative consequences, such as loss of childhood, early adulthood, dropping out of school and socio-educational measures. In the case of socio-educational internment measures, they suffer imprisonment, social isolation, institutional violence, violence between peers, fear, loneliness, negative image of themselves, homesickness, withdrawal and suffering from the family, uncertainty about the future, suicide attempt and risk of death (PEREIRA *et al.*, 2020), which turns into genocide, to the point of identifying, in State research, adolescents who fulfilled measures, became workers, but were victims of murder (GUEDES, 2020), leading to Paraíba to present, in some

years, high homicide rates of adolescents and young people, going from 19th place in the state rankings in 1997 to 6th place in 2014 (WAISELFISZ, 2016).

4 CONCLUSION

The analysis and discussion of the data allowed us to approach the assumption that the policy to fight child labor, in drug sales and trafficking, consists of punitive, institutionalization, and criminalization measures.

This reflection goes through the legislative scope, considering Decree no. 6,481/2008 and ILO Convention no. 182, already located in this text. Both define drug trafficking as one of the worst forms of child labor. However, if there are adolescents carrying out child labor measures in the worst forms in drug trafficking, then it is concluded that Brazil does not comply with the aforementioned Convention, Recommendation no. 190 and the Child and Adolescent Statute (ECA), or that Brazil does not understand work in drug sales and trafficking as child labor.

Trafficking work was seen as an extension of the exploitation of child labor, this time in drug sales and trafficking, and the State's response to this problem came through a socio-educational internment measure. Such measures end up enhancing the problem of incarceration, social isolation, and various types of violence; in addition to fear, loneliness, the formation of a negative image of oneself, and the separation from the family, which leads to a question: "What does it mean to be a drug dealer?", considering the vagueness of the law itself in characterizing portions of drugs that define what trafficking is.

There are several challenges and possibilities, among which the need to rethink the socio-education policy and to distance child labor in trafficking from the purely criminalizing analysis is highlighted, bringing it closer to the work process and the dramatic processes that involve it. It is necessary to build a solidary society project, which respects human rights, redistributes income, implements social policies, guarantees the participation of children, adolescents, and young people, creates identities of belonging, critical educational processes, and policies for life protection and fighting child labor.

ENDNOTE

- 1 This study has been carried out by the Center for Research and Studies on the Development of Childhood and Adolescence (NUPEDIA), at the Federal University of Paraíba (UFPB), with resources from CNPq through the Productive Scholarship and the PIBIC Scholarship.

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YOUTH IN CONFLICT WITH THE LAW AND THE RIGHT TO WORK: THE ALTERNATIVE QUOTA AS THE EMBODIMENT OF ACCESS TO WORK

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Abstract. Professional apprenticeship is an important Brazilian Labor Law Institute, through which currently around 500 thousand adolescents and young people aged 14 to 24 years (CAGED, July 2019) are inserted in the world of work. This special employment contract with a maximum duration of two years plays a transforming role in the lives of Brazilian adolescents and young people who, as apprentices, must attend school, participate in a training course offered by qualifying entities and attend work. It is an essential public policy to materialize fundamental constitutional rights of adolescents and young people, especially the right to professionalization, with an emphasis on the priority of the socially and economically vulnerable. The creation of the alternative quota or more commonly known as the social quota allows more and more apprentices to be hired by companies that carry out unhealthy, dangerous, or painful activities to exercise the practical part of learning in public agencies, non-profit institutions, and in the socio-educational system itself. Thus, for the strengthening of this institute, it is essential that the public administration also hires apprentices and that, in general, it uses this institute to re-socialize adolescents and young people who fulfill socio-educational measures in the Infringement System or penalties in the Brazilian Penal System, thus creating a dialogue between labor law and infringement law and criminal law.

Keywords: Institute for the professional apprenticeship. Alternative quota. Hiring apprentices by the Public Administration.

1 INTRODUCTION

This study aims to bring to light professional apprenticeship as one of the main forms of inclusion in the first job, which legitimizes the absolute priority as a practice of society and not just a fundamental constitutional precept¹. This fundamental human right expressed by professionalization is realized when it prioritizes the inherent vulnerability to youth, of those even more vulnerable, such as those who are out of child labor, the beneficiaries of minimum income programs, people with disabilities, here without an age limit, adolescents from foster homes and from the socio-educational system, young people from the prison system up to 24 years old, students from public schools, without forgetting the possibility of hiring the others in a remaining percentage, given that, alongside priorities, vulnerability is a condition that is also part of all youth.

This article also seeks to talk about the alternative quota of professional apprenticeship, which allows companies considered painful, unhealthy, or dangerous to hire apprentices to work in non-profit institutions, in public administration, and also in the closed system of apprentices who comply with socio-educational measures.

This article also seeks to raise awareness about the need for editions of municipal, state, district, or federal legislation to hire young apprentices in the public sector, thus considering direct, autarchic, and foundational public administration in the various federal spheres.

In the end, we intend to bring up the question of the importance of effective actions built through the protection network, so that adolescents who have committed criminal offenses or young people from the prison system up to 24 years old, can be excluded from the infraction or criminal practice through the promoted re-socialization with the professional apprenticeship, which provides them with schooling and professionalization, among other human and fundamental rights expressed in Brazilian legislation.

2 LEARNING AS A HUMAN RIGHT

Professional apprenticeship has existed in Brazil since 1942/1943 with the creation of the National Service for Industry and the National Service of Commerce and has since been updated by the Brazilian Magna Carta

and related legislation. Learning is a right to professionalization for young Brazilians, according to the provisions of the Federal Constitution² and it has been a powerful tool to reduce the social vulnerability of young people, both socially and economically, since it is the duty of the family, society, and the State, among other rights, to promote the professionalization of young people.

Professional apprenticeship, therefore, brings together access to leisure, health, school, culture, dignity, respect, freedom, and family and community coexistence is a possibility that, through their professional lives, young people in Brazil may have access to rights expressed in a definitive manner, such as their rights in the Constitution, but which, in a country still with great economic distortions and in growth and development, resulted in the fact that many of these rights had been denied or even given the opportunity to temporal and quantitative limitations.

In the year 2000, the learning legislation underwent extensive reformulation, with reinforcement in social, labor, and educational aspects, making it possible for entities that are not strictly educational, due to their social character and with an emphasis on insertion in the world of work, to qualifying entities for adolescents from 14 years old up to 18 years old, as well as people with disabilities with no age limit.³

It should be noted that professional apprenticeship is established through a special contract, in writing, for a specified period of up to two years, in which the apprentice has access to methodical technical and professional training and this contract will be duly noted in CTPS (Labor and Social Security Card), the apprentice being necessarily enrolled in a Professional Apprenticeship program, in which the theoretical and practical activities to be developed by it are foreseen.

Brazilian law provides that employers are responsible for hiring apprentices in the percentage of 5% to 15% of functions that require professional training, excluding certain specific functions. The analysis of what are the functions that require professional training is made by the Consultation to the Brazilian Register of Occupations (CBO), in the sense that only those functions that do not require professional training will be excluded initially from the calculation.

It provides for the functions that should be excluded from the calculation, in addition to those that do not require professional training, the update brought by Normative Instruction no. 146, of July 25, 2018, which excludes the following functions from the calculation base:

functions that, by virtue of the law, require professional qualification at a technical level or higher; - functions characterized as positions of direction, management, or trust, under the terms of item II of art. 62 and § 2 of art. 224 of the CLT; workers hired under the temporary work regime established by art. 2 of Law no. 6,019, of January 3, 1974; IV - apprentices already hired (MTE, 2018).

It is asserted that medium and large companies with more than seven employees are required to hire apprentices according to the guidelines outlined above. For small companies, there is the option of hiring and it is necessary to create laws that encourage this hiring by micro or small companies.

They can be qualifying entities of learning, in addition to the “S” System, thus understood the National Service of Commerce and the National Service of Industry, still other members of this category, that is, the National Service of Cooperatives, the National Service of Agriculture and the National Service of Transport with priority in hiring; as well as innovating, making it possible for non-profit entities, technical and technological education schools and, finally, sports entities as able to be qualifying entities⁴.

It is possible to see the strengthening of professional learning by creating the National Professional Apprenticeship Register, establishing the rules for enrolling apprentices in the program, among other measures adopted.⁵

At the Professional Apprenticeship Institute, entities that are part of the National Learning System; technical schools of education; non-profit entities whose objective is assistance to adolescents and professional education, duly registered in the National Apprenticeship Register and registered with the Municipal Council for the Rights of Children and Adolescents – CMDCA; sports entities of the different modalities affiliated to the National Sports System and the Sports Systems of the States, the Federal District, and the Municipalities are able to provide learning.

According to CAGED⁶, Brazil has about 484 thousand apprentices, but has a potential of approximately 977 thousand vacancies if all companies

fulfilled the minimum of 5% of the quota, this number can triple to almost 3 million, should they adopt the 15% that the Law allows and even more so if the direct, autarchic and foundational public administration at the municipal, state or district and federal levels implemented legislation to comply with the legislation on professional apprenticeship. The causes of the contractual terms of this professional apprenticeship contract are listed in the law, named above, adding the just causes. In this regard, Article 13 of Normative Instruction 146/2018 provides:

[...] in its final term; when an apprentice turns twenty-four, observing the provisions of the sole paragraph of art. 6; III – in advance, in the following hypotheses: insufficient performance or inadequacy of the apprentice, which must be proven by means of an appraisal report prepared by the entity executing the apprenticeship, which is responsible for its supervision and appraisal, after consulting the establishment where the apprenticeship takes place; serious disciplinary offense provided for in art. 482 of the CLT; unjustified absence from school that implies loss of the academic year, proven by means of a statement from the educational establishment; at the request of the apprentice; when the establishment is closed when there is no possibility of transferring the apprentice without causing damage to the apprentice himself/herself; before the death of the employer incorporated in an individual company; in the case of indirect termination.

Professional Apprenticeship has become an important mean of accessing the first job, through which adolescents and young people aged 14 to 24 years old have guaranteed their professional initiation, with the receipt of the hourly minimum wage, CTPS notes, the employment contract with a maximum duration of 2 years, without the right to a fine and prior notice, since it is a fixed-term contract; social security rights owed to other employees under similar conditions; the FGTS (Unemployment Guarantee Fund) of 2%; and the transportation voucher.

Compulsory attendance of school has made professional apprenticeship a powerful tool that produces the return to school banks, as the young person must be attending elementary or high school to be an apprentice, being unnecessary if the adolescent or young person has already completed high school.

With regard to financial incentives for hiring the apprentice, it is observed that, in the current political situation, there is no expectation of a change in the legislation and there is no prospect of legislative state action to encourage the hiring of apprentices. The financing of professional

apprenticeship courses, as we understand it, with essential legislative change and that can effectively contribute to the hiring of more vulnerable young people or people with disabilities, effectively reducing the incidence of social inequalities.

For people with disabilities, there is no maximum age limit for being an apprentice and this hiring has become a powerful form of inclusion since the person with disabilities maintains the benefit of continued provision for up to two years.

Quotas for apprenticeships and for people with disabilities are not shared, but the terms of commitment with the Ministry of Economy, through tax auditors and the Labor Prosecution Service, allow the possibility of temporarily hiring people with disabilities as apprentices for up to two years, waiting for the disabled person to stop being an apprentice and wanting to integrate the vacancy of the disabled person, otherwise the agreement is broken and the company must demonstrate the hiring of PCDs (Persons With Disabilities), after the period of up to two years.

The person with disabilities who receives the Continuous Benefit Conveyance (BPC) can enter into a learning contract for a period of up to two years, and it is possible to continue receiving the BPC concurrently, as authorized by paragraph 2 of art. 21-A of Law no. 8,742/93, included by Law no. 12,470/2011, remembering that there is no age limit for entering into an apprentice contract for people with disabilities.

3 THE SOCIAL QUOTA OR THE ALTERNATIVE MEAN OF COMPLIANCE WITH QUOTAS

In 2016, extremely important legislation was created at the sub-legal level, with the participation of labor auditors from the then Ministry of Labor and Employment and the Learning Management at the COORDINFÂNCIA of the Labor Prosecution Service. This legislation made it possible for companies that adduced that they were not able to enter the apprentice under 18 years old in their facilities because they were unhealthy, dangerous, and painful could when they did not fill their vacancies over 18 years old, use the possibility of hiring adolescent and socio-educational apprentices

of the closed regime in administrative areas, to work in public agencies and nonprofit entities.

Regarding the Alternative Quota, Normative Instruction no. 146/2018, sets forth:

Art. 23-A. The contracting establishment whose peculiarities of the activity or workplaces constitute an obstacle to the realization of practical classes, in addition to being able to teach them exclusively in entities qualified in professional technical training, may request from the respective decentralized unit of the Ministry of Labor and Social Security a signature of a term of commitment to fulfill the quota in an entity granting the apprentice's practical experience.

§ 1 It will be up to the Ministry of Labor and Social Security to define:

I – The sectors of the economy where the practical class can take place in the granting entities; and

II – Processing the request for the signature of the term of commitment.

§ 2 The following are considered entities that grant the apprentice's practical experience:

I – Public agencies;

II – Civil society organizations, under the terms of art. 2 of Law no. 13,019, of July 31, 2014; and

III – units of the National Social and Educational Service System - Sinase.

§ 3 Once the term of commitment is signed with the Ministry of Labor and Social Security, the contracting establishment and the entity qualified by it already contracted shall jointly enter into a partnership with one of the granting entities to carry out practical classes.

§ 4 The qualified entity will be responsible for the pedagogical monitoring of the practical stage. (Included by Decree no. 8,740, of 2016)

§ 5 The selection of apprentices will be carried out based on the public employment register, available on the *Mais Emprego* website and should prioritize the inclusion of young people and adolescents in situations of vulnerability or social risk, such as: (Included by Decree no. 8,740, of 2016)

I – Adolescents discharged from the socio-educational system or in compliance with socio-educational measures; (Included by Decree no. 8,740, of 2016)

II – Young people serving time in the prison system; (Included by Decree no. 8,740, of 2016)

III – young people and adolescents whose families are beneficiaries of income transfer programs; (Included by Decree no. 8,740, of 2016)

IV – young people and adolescents in institutional care; (Included by Decree no. 8,740, of 2016)

V – Young people and adolescents who have left child labor; (Included by Decree no. 8,740, of 2016)

VI – young people and adolescents with disabilities; (Included by Decree no. 8,740, of 2016)

VII – young people and adolescents enrolled in the public school system, at elementary school, regular high school or technical high school, including

the Youth and Adult Education modality; and, (Included by Decree no. 8,740, of 2016)

VIII – unemployed young people with primary or secondary education completed in public schools. (Included by Decree no. 8,740, of 2016)

§ 6 The percentages to be fulfilled in an alternative way and in the regular system must be included in the term of commitment signed with the Ministry of Labor and Social Security, with a view to fully complying with the learning quota, observing, in all cases, the limits established in Section IV of Chapter IV of Title III of Decree-Law no. 5,452, of May 1, 1943 – Consolidation of Labor Laws and the contracting of the minimum percentage in the regular system, (Included by Decree no. 8,740, of 2016).

This model was created from concrete experiences and initial theorization of the Learning Management within the scope of the Labor Prosecution Service, which was welcomed by the Ministry of Labor and Employment, currently the Ministry of Economy. These are the following practical experiences: Guarda Mirim of Foz do Iguaçu in Foz do Iguaçu-Paraná; Uniflor in the City of Londrina-Paraná; State Prosecutor's Office, Labor Prosecution Service and Public Defender's Office of Bahia; as well as the experience of Rio Grande do Sul in hiring FASE adolescents.

Then, Ministerial Ordinance no. 693, of May 23, 2017, of the Ministry of Labor and Employment, stated that:

Art. 1 – The establishments that carry out activities related to the economic sectors listed below may request from the respective decentralized unit of the Ministry of Labor the signing of a Term of Commitment to fulfill the quota in an entity granting the apprentice's practical experience, under the terms of § 1 of article 23-A of Decree 5,598/2005:

I – Cleanliness and conservation;

II – Private security;

III – Cargo transportation;

IV – Transportation of values;

V – Collective, urban, intercity, interstate transportation;

VI – Heavy construction;

VII – Urban cleaning;

VIII – Ocean and maritime transport;

IX – Agricultural activities;

X – Service Outsourcing Companies;

XI – Telemarketing activities;

XII – Fuel trading; and

XII – Companies whose activities are mainly provided for in the TIP list (Decree no. 6,481/2008).

§ 1 – The Ministry of Labor may accept the request of other sectors that fit the hypothesis described in article 23-A, at the discretion of the labor tax audit.

Art. 2 – The processing of the request for the signature of the term of commitment will take place with the Regional Superintendence of Labor and Employment of the Federation unit where the establishment is located, under the terms of Art. 28 of Decree no. 4,552, of December 27, 2002, Labor Inspection Regulation.

§ 1 – The percentages to be fulfilled in the alternative form and in the regular system must be included in the term of commitment signed with the labor tax audit, with a view to fully complying with the learning quota, observing, in all cases, the limits provided for in Section IV of Chapter IV of Title II of Decree 5,452, of May 1, 1943 – Consolidation of Labor Laws and the contracting of the minimum percentage in the regular system (MTE, 2017).

Thus, the argument that some companies used before the Ministry of Economy, Labor Prosecution Service, or Labor Justice was superseded with the enactment of this legislation. It was argued that they could not simply hire apprentices, because the object was not allowed for adolescents due to the environment being unhealthy, dangerous, or painful or that there was no specific function for adolescents or young people and no other alternative was sought, hence the excellence of alternative quota denomination. The well-known social or alternative quota was born taking into account the values of absolute priority and the right to professionalization with priority for adolescents from 14 to 18 years old in hiring, that is, if the company is considered unhealthy, dangerous, or painful and activities prohibited to minors of 18 years old, according to the List of the worst forms of child labor, TIP List, edited by Decree no. 6,481/2012, the company can use adolescents to work in sectors in which the elements described above are not present, hiring over 18 years old, or even using the social or alternative quota.

It should be noted that a civil construction, surveillance, or transport company, or even one that has prohibited functions for adolescents, according to the List of the Worst Forms of Child Labor, cannot automatically be excluded from fulfilling its social role of realizing rights, since society also has absolute priority, in addition to the family and the State, as provided for in art. 227 of the Federal Constitution. Professional apprenticeship does not aim to subtract functions that can be filled by older people, but it does not forget the high unemployment rate among young people and the demand for experience when they are just starting their professional lives, hence the forecast of the obligation to hire from 5% to 15 % of employees, excluding certain functions, as apprentices.

Thus, the experience of acting in solidarity brought about situations reported above and exemplified as the social origin of the referred legislation, that is, if a company says that it cannot hire minors under 24 years old in its functions for unthinkable reasons, it is given the opportunity to hire young apprentices who need to work and include them in public agencies, non-profit institutions or even offer adolescents from the socio-educational or prison system, or those who are out of child labor, or beneficiaries of minimum income programs, or socially or economically vulnerable or people with disabilities or the others the possibility of also having access to their first job or sometimes their second job, but not so professionally experienced for the most part, through the professional apprenticeship modality.

Normative Instruction no. 146/2018 of the Ministry of Labor and Employment also provides:

CHAPTER VIII – ALTERNATIVE COMPLIANCE WITH THE APPRENTICE QUOTA

Art. 39. The contracting establishment whose peculiarities of the activity or of the workplaces constitute an obstacle to practical classes, under the terms of the specific regulation of the Ministry of Labor, may request from the respective MTb decentralized unit the signature of a term of commitment to fulfill the quota in an entity granting the apprentice's practical experience.

§ 1 The term of commitment provided for in the caput must be signed by the Labor Auditor responsible for the tax action, as well as by the immediate superior and the contracting establishment.

§ 2 It is considered the granting entity of the practical part public agencies, civil society organizations, under the terms of art. 2 of law no. 13,019/14 and units of the National Social and Educational Service System.

§ 3 The term of commitment must provide for the mandatory hiring of adolescents in situations of vulnerability or social risk, such as:

- a) adolescents discharged from the socio-educational system or in compliance with socio-educational measures;
- b) young people serving time in the prison system;
- c) young people and adolescents whose families are beneficiaries of income transfer programs;
- d) young people and adolescents in institutional care;
- e) young people and adolescents who have left child labor;
- f) young people and adolescents with disabilities;
- g) young people and adolescents enrolled in the public school system, at elementary school, regular high school or technical high school, including the Youth and Adult Education modality; and,
- h) unemployed young people with primary or secondary education completed in public schools.

§ 4 The parties may elect, in the term of commitment, the priority profile of young people and adolescents to be contemplated.

§ 5 The percentages to be fulfilled in the alternative form and in the regular system must be included in the term of commitment signed with the Labor Auditor, for checking the full payment of the learning quota.

§ 6 Once the term of commitment with the Labor Auditor is signed, the contracting establishment and the qualified entity shall jointly enter into a partnership with one of the granting entities to carry out the practical classes.

§ 7 The qualified entity will be responsible for the pedagogical monitoring of the practical stage.

§ 8 Paragraphs 1, 2, 3, and 4 of art. 38 of this Normative Instruction applies to the term of commitment provided for in the *caput* (MTE, 2018).

Thus, more and more the social quota is strengthened in our country, both in a simulated environment and in practice in companies, in non-profit institutions, and also in music, sports, and closed regime workshops, among others.

Through terms of commitment signed by the Ministry of Economy and obligations inserted in public civil actions, the alternative quota system has gradually become more popular and enchanted by granting units and companies that would otherwise not be able to insert all the apprentices they would need, making them direct the look of social responsibility in understanding this process. Here it is up to us to make a parenthesis for the possibility that companies who collect for real profit make a destination for this type of contract with the acquiescence of the respective childhood and adolescence fund. Or, it is essential that the public administrator comes to offer the contracting entrepreneur tax exemptions or financial incentives to strengthen the alternative quota mechanism.

4 PUBLIC AUTHORITY AND THE CONTRACTION OF APPRENTICES

The absolute priority as a fundamental constitutional precept materializes adequately with regard to the Right to professionalization when the Public Authority is willing to effectively legislate about hiring apprentices in its scope of direct, autarchic, and foundational public administration.

For this purpose, in 2009, this proposition was initiated before the National Learning Forum, that is, the Public Administration, in general, has the duty to hire apprentices and prioritize adolescents aged 14 to 18 years old and socially and economically vulnerable adolescents.

Subsequently, new proposals emerged and the pre-project for hiring apprentices in public administration did not advance, although it was approved by the society and public authorities that comprised the National Forum, with numerous new insertions of legislative text.

In summary, it would be mandatory that the federal, direct, autarchic, and foundational public administration contract the percentage of 5% of the totality of its public servants as apprentices, with emphasis on hiring socially and economically vulnerable adolescents, from shelters, from the socio-educational system, from the prison system, coming from a minimum income program of the federal government, people with disabilities, those who have left child labor and public schools and young people who declare themselves black or brown.

The first Law on the subject was Law no. 15,200/2006 of the State of Paraná, the object of a Public Civil Action promoted by the Labor Prosecution Service, in which it was successful in the first and second degree before the Labor Court of Paraná so that 700 job opportunities for the socio-educational sector were filled in the State, and an agreement was signed to include also socially and economically vulnerable adolescents, among others, with the initial appeal coming from the State Council for the Rights of the Child and the Inter-American Development Bank, and it is up to the state executive to suggest the inclusion of the state legislature in the budget so that in the future it will be a state public policy.

As a municipal law, we will mention two below built after the call of the Municipalities in the Labor Prosecution Service to be held in the State of Paraná, and the Municipality of Pinhais was the first to join and later the Municipality of Araucária, with a special commitment from the Prosecutor David Querer Aguiar and verification and drafting suggestion carried out with our support. Next, we will stick to that of the Municipality of Araucária in Paraná, transcribed below, Law no. 3,360/2018 which provides for the inclusion of adolescent apprentices in the Municipal, Autarchic, and Foundational Public Administration in Araucária and provides other measures, coming to establish:

Art. 1 The Municipal Government is authorized to establish, within the scope of the Direct, Autarchic, and Foundational Public Administration, the Young Apprentice Program, according to budget availability, according to the general rules contained in this Law.

Sole paragraph. The program aims to provide registered apprentices with technical and professional training that allows them the opportunity to enter the labor market, through theoretical and practical activities developed in the work environment; offer apprentices favorable conditions to receive professional learning and encourage the insertion, reinsertion, and maintenance of apprentices in the educational system, in order to guarantee their schooling process.

Art. 2 Adolescents from 14 to 18 years old may be admitted to the Program, who will be enrolled in learning courses aimed at methodical professional technical training, promoted by the National Learning Services or by non-profit entities, whose object is assistance to the adolescents and their training and that are registered in the National Apprenticeship Register, of the Ministry of Labor and Employment.

Art. 3 The target audience of this program is formed, preferably, by young people from disadvantaged social classes and/or in a situation of social risk, with priority being given to those who meet the following criteria:

I – Having completed or being in Elementary School (regular, supplementary, or special) in the public municipal or state network or having a full scholarship in the private Elementary School network;

II – Having a family income of up to 02 (two) minimum wages or proving the state of need, through their own registration or of a family member from the same residence in the Federal Government's Single Registry for Social Programs;

III – Do not maintain any type of employment or formal service provision bond;

IV – Be a resident of the Municipality of Araucária.

V – Be disabled.

Sole paragraph. The selection of apprentices by qualified entities in methodical technical-professional training will be carried out through a simplified selection process, which will take into account the minimum knowledge necessary for the performance of the occupations defined in the apprenticeship programs, in addition to adopting criteria, provided for in this article, based on the socioeconomic and cultural aspects, with mechanisms that guarantee the majority participation of adolescents and young people in situations of social and economic vulnerability (PARANÁ, 2018).

The hiring of up to 70 apprentices in Araucária allowed the adolescents who were taking the Senai course at that time, with priority for the socio-educational and vulnerable, to be apprentices in the Municipality of Araucária, after carrying out several joint actions between the Labor Prosecution Service, State Prosecutor's Office, Ministry of Economy, Municipality of Araucária and Senai – National Service of Industry, that is, the businessmen committed themselves to hire apprentices, after a public hearing held with the call of more than 100 companies by the Labor Prosecution Service and subsequent call of the companies by the State Prosecutor's Office to demonstrate that at least one apprentice belonged to the socio-educational system.

A cleaning company, Emparseg Ltda., hired apprentices in the alternative quota modality and a municipal law was enacted that ensured that the municipal government also hired apprentices. A series of actions that can make a difference in the lives of many adolescents in this city in the metropolitan region of Curitiba. It is possible to see the performance of the municipality with the offer of a snack and an initial transport voucher, as well as actions to enable school access close to the workplace and the course as successful agents in this process as well. Thus, it is possible to observe through this mode of contracting the beginning of a new future for countless adolescents and the removal of infraction reoccurrence, with the simple opportunity of a fair and age-appropriate job, with the offer of compulsory school and professionalization with theory in the trainer entity and practice in the company, as is the institute of professional apprenticeship.

5 THE PROFESSIONAL APPRENTICESHIP OF THE ADOLESCENT FROM THE SOCIO-EDUCATIONAL SYSTEM OR THE YOUNG PERSON FROM THE PRISON SYSTEM

The Law that instituted the National Social and Educational System in Brazil for young people who committed infractions foresees the need for the preparation of young people who are covered by this law for the world of work. Thus, it is up to the “S” System, Senai, Senac, as well as Senar, Senat, Sescop, to act so that young people are professionalized.

Thus, Law no. 12,594/2012, provides as follows:

ART. 76. Art. 2 of Decree-Law no. 4,048, of January 22, 1942, comes into force plus the following § 1, renumbering the current sole paragraph to § 2: “Art. 2..... § 1 Senai schools may offer places to users of the National Social and Educational Service System (Sinase) under the conditions to be arranged in cooperation instruments signed between the operators of Senai and the managers of the local Social and Educational Service Systems. § 2 (NR) (BRAZIL, 2012).

Arts. 77, 78, and 79 provide similarly for the Senac, Senar, and Senat System, with the legislation not having ruled on Sescop, but we understand that this does not remove the similar obligation to all “S”.

Note that in practice this legislation is already bearing fruit, as in the case of Araucária-Paraná, where, after joint action between the Labor Prosecution Service, the State Prosecutor's Office and Senai – National Service of Industry, a consistent project was established in the following successive stages, since the end of 2014: summoning companies from the Municipality of Araucária to meet the quota of learning with the inclusion of at least one adolescent from the socio-educational system; conducting a course for socio-educational adolescents, first exclusively and secondly with the others, to avoid any discriminatory possibility at work and in life; investigations and public civil actions by the Labor Prosecution Service in relation to companies not contracting in the Labor Justice; public civil investigations and actions in the Common Justice in relation to non-contracting companies for adolescents who fulfill socio-educational measures in Araucária-Paraná; adoption of a municipal law for hiring apprentices in the municipality who were in compliance with socio-educational measures; signing of terms of commitment for companies to act by hiring apprentices in an alternative way or in the social quota modality to work in the city hall or non-profit institution, as in the case of Empaserg.

It is impossible to forget the performance at Fase of Rio Grande do Sul, an institution of the State of Rio Grande do Sul, responsible for adolescents in semi-open or in a closed regime that, in partnership with the Center for Integration of the Company and School of that state, under the authority of the Ministry of Labor, through the auditor, Denise Brambilla, produced the effective observance of Absolute Priority provided for in the Brazilian Constitution.

It is a social reality modified by the gathering of partners and the idealization of projects that produced differences in the lives of countless young people who were able to access this protection system as members of the Sinase System. Adolescents who, for having committed any sort of criminal offense, were or are being professionalized as apprentices along the lines of the apprenticeship legislation, started to go to school, to learn a profession in a simulated environment, and to have access to remuneration due by companies for which they provide services, part of this remuneration being deposited in a Savings Account and, later, when they leave the system, they will benefit from this remunerative access under labor standards and may continue as apprentices in an open regime or referred to a partner company,

being able to then draw these resources to establish a new housing with their own resources.

Thus, we understand that it is up to the “S” System, obligatorily and not optionally, to apply resources so that young people who are fulfilling socio-educational measures are served in the professional apprenticeship modality, an interpretation verified by the fact that the referred National Services are funded with 1% of payrolls for industry, commerce, transportation, and rural areas, so we understand that this resource is collected imposed, constituting a tax nature and consisting of duty and not just an option.

Furthermore, in view of the principles of absolute priority, the best interests, and the protection of children and adolescents, this law deserves to be interpreted as a duty, combined with the progressive gratuity in the offer of courses granted by Senai and Senac, to further strengthen that such offer of courses to Sinase adolescents should be interpreted as mandatory.

The socio-educational measures correspond to judicial sentences issued by judges of the courts of childhood and adolescence and in some cases comprise young people up to 21 years old. According to the Statute of the Child and Adolescent, these measures can be of six types: warning, obligation to repair the damage, provision of services to the community, assisted freedom, semi-freedom, and internment. Among Sinase guidelines, according to the National Social and Educational Service Plan are: “j) To guarantee the offer and access to quality education, professionalization, sports, leisure, and culture activities in the internment center and in the articulation of the network, in an open and semi-free environment” (BRAZIL, 1990).

Socio-education consists of specific public policy for young people in conflict with the law. Thus, we understand that, in any case of measures adopted, adolescents can and should be directed to professionalization through professional apprenticeship, configuring a rescue of Brazilian society to exclude young people who, often victimized, committed infractions. The adoption of any measure must be pedagogical, and professional apprenticeship guarantees schooling and professionalization.

The National Integrated System of Social and Educational Assistance foresees the need for effective public policies to ensure that public resources are allocated to the area of childhood and adolescence. Thus, it provides for

the “S” System and also for budgetary policies. These provisions must be valued in accordance with the constitutional principles of the best interest, primacy of the child and adolescent, and full protection to interpret and apply rules of the Sinase law, in the sense that they are cogent and mandatory, and public administrators must act to aim at professionalization, professional qualification and thematic workshops for these adolescents.

As an example of public policy adopted for hiring apprentices we can mention the project carried out in the municipality of Campo Mourão, Paraná, in the years 2017 to 2020, according to Aguiar, Passari, and Wood (Article in press):

Through the work of the Labor Prosecution Service, in administrative procedures 000036.2018.09.009/6 and 000025.2019.09.009/4, the Municipality of Campo Mourão signed an agreement with the entity Centro de Educação Santa Maria (CEDUS) and contracted apprentices in the fulfillment of socio-educational measures to provide services to the community and assisted freedom, in an institutional reception program and in situations of child labor. The hiring of apprentices took place indirectly, with the registration of the employment contract by CEDUS, in accordance with article 431 of the CLT and municipal law 3,711/2016, with the theoretical classes offered by CEDUS and practical activities in public agencies of the City Hall of Campo Mourão (PARANÁ, 2018, 2019b). Apprentices were selected through a selection process carried out by the Specialized Reference Center for Social Assistance (CREAS) and CEDUS. During its activities, CEDUS promotes, in addition to theoretical activities, measures to monitor the performance of apprentices, through a team formed by social workers and psychologist, with individualized assistance of apprentices, including home visits to check socioeconomic and health needs of young people, and the resources for the execution of the project come from the destination resulting from the work of the Labor Prosecution Service.

Excellent work developed with the objective of enabling adolescents who committed criminal offenses or those who had left Child Labor to be hired as apprentices to work in the Municipality of Campo Mourão, in view of the publication of Law no. 3,711/2016, supported and encouraged by the Labor Prosecution Service.

And yet, there is no way to forget the Apprentice Hiring Law in the state of Paraná⁷ which established the hiring of 700 apprentices of adolescents in conflict with the Law and in the face of non-compliance by the state, was the object of a Public Civil Action by the Labor Prosecution Service, having signed a second degree of jurisdiction agreement so that in 2020 and 2021

700 apprentices are hired under penalty of a fine to be arbitrated by the Labor Court.⁸

6 CONCLUSION

The Institute for Professional Apprenticeship and its numerous possibilities for introducing young Brazilians into the world of work has brought about substantial changes in the access and perception of society in this process. The speech addressed only to the other, such as “I don’t understand why he/she doesn’t work ”, is clarified and objectified to demonstrate that access depends on a change in behavior so that individuals, family, society and the State can dedicate themselves to effectively fulfill the Constitutional commandment of absolute priority and act based on social solidarity.

The question becomes how can I collaborate individually, collectively, or publicly to change this process? Certainly in the establishment of partnerships portrayed in this article, starting by the Public Prosecutor’s Office in two of its facets, the State Public Prosecutor’s Office and the Labor Prosecution Service, in the construction of legislation in the various spheres of the Brazilian Federation, to enable small and large cities, states and the Government give prestige to the access of apprentices in their federative units, with an emphasis on adolescents or young people with social and economic vulnerability, meaning 80% of them to guarantee priority access for the most vulnerable among the essentially vulnerable youth and, among them, yes, not forgetting young people who are excluded from society for having committed criminal offenses, having been apprehended, or even those in prison systems, an occasion that the law should make an exception for not having an age limit to be an apprentice, so that everyone could be an apprentice of the socio-educational or prison units, only. And yet, public entities are willing to give professional apprenticeship granting units to enable access through the social quota.

We are talking about opportunities expressed in previously prescribed law and, for that, the change must be of an entire society and it only takes shape in action, and the legal and social thinking has helped to base or even indicate ways for this collective action of access to young people from the educational or prison system to professional apprenticeship as an effective

form of individual reconstruction and rehabilitation of young people who have been displaced by the verified infraction or criminal practice.

This is not so that the most individualistic people think so that they give an opportunity to those who made mistakes, simply because life is made up of opportunities and this time supported by the Constitution and legislation, using logical legal reasoning to build solutions that provide a society centered on individual healing so that the individuals can add and rebuild themselves, thus changing their history and also contributing to their society in the future.

ENDNOTES

- 1 Article 227 of the Federal Constitution.
- 2 Item XXXIII of art. 7 of the Federal Constitution.
- 3 Law no. 10,097/00, which amended articles 428 to 433 of the Consolidation of Labor Laws.
- 4 Art. 430 of the Consolidation of Labor Laws.
- 5 Ordinance no. 723/12 of the Ministry of Labor and Employment.
- 6 CAGED – Ministry of Economy – July 2019.
- 7 Law no. 15,200/2005 from the state of Paraná.
- 8 ACP 000107-36.2015.5.09.0004.

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CHILD LABOR IN LARGE COMPANY PRODUCTION CHAINS: SYSTEMIC VIOLENCE AND DISCURSIVE FALLACY

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Abstract. This article analyzes the occurrence of child labor in the production chains of large companies, as well as the concealment practices used to avoid the identification of the links that connect the problem to the real beneficiaries, the corporations that use it, in obtaining their raw materials, the exploitation of children and adolescents. Also mentioned here are examples of research on production chains carried out by this author, in partnership with the Labor Prosecution Service.

Keywords: Child labor. Production chains. Civilizing dilemma.

In production chains, establishing responsibilities for child labor is a complex mission. In general, there are numerous and intricate links between the raw material and the final product. This complexity makes it difficult to track all stages of the business, especially when concealment mechanisms come into play, stratagems that aim to hide the link between large companies and the exploitation of child labor, a phenomenon that occurs more frequently at the base of the production chain. All of this happens, in general, out of the consumer's eyes and, in some cases, also outside the scrutiny of governmental inspection structures.

The concealment mechanisms have the purpose of obliterating the one who controls the capital, hiding it in a maze made up by intermediaries, facade companies, tax fraud, falsification of sustainability reports, dummies, facade contracts, deceptive advertising, and a whole range of simulations and concealments, aiming to preserve the big brands of possible damages to the reputation, when they are accused of exploiting child or slave labor or some other form of violence against human rights.

Care for reputation is directly linked to the company's image. Large multinational brands usually, in general, associate their activities with a discourse of "sustainability" and respect for human rights. But in practice, it is not so. Their behavior changes according to the country where they operate. In many cases, violations against children and adolescents, intolerable in their home countries, are incorporated into the management of the business, depending on where the activity takes place.

This ethical and legal elasticity is visible mainly in countries with weak control over the guarantee and compliance of human rights with environmental legislation. This is the case in Brazil, with the aggravating factor that inspection structures suffer from successive and increasing budget cuts, which favors, in some cases, impunity.

Even so, in the name of preserving their image, companies put the concealment structures into action. In essence, they seek to prevent the establishment of concrete links between them and the exploitation of children and adolescents, used as cheap and disposable labor in various sectors of the economy. The objective is only one: to obtain cheap raw material, no matter human rights, no matter the environment.

In the 21st century, in production chains that operate globally, in real-time, intrinsically connected to technological communication and tracking devices, exploring children and adolescents is not something that happens by chance or without knowing. It is quite the opposite. Companies know what they do and do it driven by the essential logic of old-fashioned and predatory capitalism, but still in vogue in peripheral countries: cost reduction, without taking into account the value of life.

Because of this, it is necessary, more than ever, to investigate and track production chains. Unveil the concealment mechanisms and identify the links between the top and bottom of the process. It is nothing more than raising information and material evidence that establish links between the victims and the explorers who control the structure, the top of the pyramid.

The objective of investigating the production chain is to identify and hold companies accountable for controlling the flow of capital and the marketing of the final merchandise. This is because the understanding is consolidated that, in business networks, those responsible for child or slave

labor are not only the people or companies that are linked to the activity where the violation occurs. Those who finance production and sell the finished product are also responsible.

In a production chain, whoever makes money from the goods that involved child labor, at any stage of production, is responsible for the problem. It doesn't matter how far the company is from the location of the incident. No matter how hidden it is, it is often protected by suppliers, intermediaries, or frauds that aim to hide the origin of the raw material.

A company that purchases inputs without monitoring the source is fully responsible for what happens at the base of the chain. It is worth remembering here an old and well-known phrase, attributed to the Prosecutor Earl J. Silbert, who in the last century served in the North American district of Columbia. Known for the brilliant conduct of the Watergate Case¹ investigation, Silber said to colleagues, during the evidence-gathering phase: *follow the money*. "Follow the money." This phrase is jargon used around the world by investigators of different types of crimes. It is a seemingly simple phrase, but it is very complex.

It is necessary to follow the money, identify the network of suppliers, establish the economic links, detect the origin of the raw materials, trace informal intermediaries, and observe whether there is tax fraud or falsification of documents that aim to hide or make up the origin of the inputs. It is in this initial stage of the chain – obtaining and handling raw materials – where the most vulnerable workers are.

MULTINATIONALS

Brazil still has a lucrative market for cheap human lives. Children and teenagers are available for prohibited, risky, and unhealthy activities. A part of this exploitation network is at the service of the largest companies in the world, multinationals that operate in dozens of countries and are often based in regions that have eradicated child labor, but that are colluding with violations outside their borders.

This is the case, for example, in Switzerland. The country is known for making one of the best chocolates in the world. It publicizes this achievement widely. But it hides that the largest company installed in its territory, Nestlé,

exploits thousands of children and adolescents on cocoa farms in Brazil (CASARA, 2019) and in Africa (WHORISKEY; SIEGEL, 2019).

Barefoot and malnourished children, who do not go to school to work in cocoa plantations in the inland of Brazil, are not only at the service of their families or the middlemen who travel to the region buying cocoa from thousands of small producers (ILO, 2018). These children are at the service of the global chocolate market, a production chain that moves US\$ 100 billion per year (CARVALHO; NETO, 2019) and which is controlled by large multinationals in the food sector.

Cases like this are repeated in other large productive chains, in which the real beneficiaries are hidden or installed thousands of kilometers from the places of violence, often perpetrated by middlemen, agents, or figureheads, all at the service of major brands.

In a sewing workshop that exploits children and adolescents, for example, the responsibility will not only be with the owner of the establishment, but also with the clothing brand that hired the service and that should monitor all links in the production chain, in order to avoid illegal exploitation of labor, of which it is the real beneficiary. This logic applies to any and all economic activities: whoever has economic control of the production chain is responsible for what happens at all stages, from the bottom to the top.

In this context, an important contribution has recently been made to help understand the economic sectors that benefit from child labor. At the end of 2016, a study was launched that served as a starting point for a series of investigations of production chains, including cocoa and clothing, mentioned above.

This study, entitled *Child Labor in the Main Groups of Economic Activities in Brazil* (DIAS, 2016), was produced by analyzing the microdata from the National Household Sample Survey (PNAD), in a work requested by the National Forum for Prevention and Eradication of Child Labor (FNPETI). It offers a wide range of information on the exploitation of children and adolescents in different sectors of the economy.

For cocoa, it points to the existence of 7,990 children and adolescents in child labor, in production areas located mainly in the states of Pará and

Bahia. This data was the starting point of a research that lasted a year and a half, coordinated by this author, in partnership with the Labor Prosecution Service (MPT) and the International Labor Organization (ILO, 2018). The objective was to establish all links in the chain, from the bottom to the top.

The investigation identified six multinationals in the food sector as the main beneficiaries of the exploitation of child labor in cocoa crops: Nestlé, Mondelez, Garoto, Barry Callebaut, Cargill, and Olam Brasil (CASARA, 2019). The data were made available to the MPT and the ILO, which initiated a series of negotiations aimed at changing the business model and eradicating child labor in this production chain.

The problem of child labor, however, is not restricted to this violence alone. In production chains, the exploitation of children and adolescents is never an isolated phenomenon. In general, it is accompanied by other crimes. In the case of cocoa, there is also slave labor, tax fraud, and violation of the Land Statute, in order to make up for the overexploitation of the workforce of families in a joint ownership regime.

The textile and clothing sector chain, another example mentioned above, also suffers from several violations, which further aggravates the problem of child labor. Of the more than 170 thousand children and adolescents working in this production chain (DIAS, 2016), most work in domestic workshops run by a relative who, in general, is also in a situation of vulnerability. In this and other sectors, families employed informally are forced to take their children to the condition of exploitation.

In clothing, at least 800,000 women seamstresses work informally (CNTV, 2015). Most are mothers who have turned their homes into sewing workshops, serving large clothing and accessory stores. It is in this environment that much of child labor thrives. In clothing, associated with the exploitation of the workforce of children and adolescents, gender violence represents a serious and still little-faced phenomenon of violation of fundamental rights.

It is a sector that employs 1.7 million workers in Brazil. Of this, 76% are women. A mainly female production chain, of which 800 thousand work in precarious conditions (*ibidem*). It is a life marked by excessive working hours, human rights violations, gender discrimination, diseases caused by

overwork. All of this in informal or illegal workshops, which exacerbates the problem of child labor.

The cases mentioned above, cocoa and clothing, are no exception. Other production chains suffer from the same problem, such as tobacco, plaster, cassava, nuts, mining, and many others.

In an even more serious extreme, there is the phenomenon of commercial sexual exploitation of children and adolescents, orchestrated by highly specialized networks and operating a lucrative market, still hidden by a brutal mantle of silence. In this scenario, it is worth mentioning the work developed by Childhood Brazil, which seeks to sensitize companies to train their truck drivers, so that they become agents of protection for children and adolescents on the roads.

EDUCATIONAL AND SOCIAL DRAMA

Child labor is “work carried out by children or adolescents that deprives them of childhood, compromises their potential and their dignity and that can be harmful to their health, to their physical or mental development” (ILO, [201-]). In Brazil, the Constitution prohibits work for children under 16, except as an apprentice, from the age of 14. Work under the age of 18 is also prohibited in activities classified in the so-called List of the Worst Forms of Child Labor, which includes any activity that is unlawful or harmful to health or moral integrity (ILO, 2000).

The vast majority of child labor activities that take place at the base of large production chains are outside the limits of what is allowed. They involve unhealthy, dangerous activities that often deprive children and adolescents of the right to go to school. Looking at the educational scenario of children and adolescents subjected to child labor is a gloomy cut and gives the real meaning of what it means to have a life where you are prevented from developing to your fullest.

From a legal point of view, the phenomenon is properly typified. To escape the charge of exploiting children and adolescents in their production chains, companies that benefit from this practice adopt, in different sectors of the economy, a very similar discursive structure: generic sustainability reports, richly illustrated but impossible to prove in relation to the origin

of raw materials or the guarantee of human rights. Companies that benefit economically from child labor simply disregard the damage done to the lives of young workers.

The tobacco supply chain is one of many examples. In Brazil, cigarette production is controlled by two companies, British American Tobacco – the owner of Souza Cruz – and Philip Morris. As demonstrated by a production chain survey published in 2019 by Papel Social, in partnership with the Labor Prosecution Service, these two companies are the main beneficiaries of a wide network of child labor in tobacco fields in the states of Rio Grande do Sul, Santa Catarina, and Paraná (CASARA; DALLABRIDA, 2019).

According to the publication, in some cities in Rio Grande do Sul, more than half of school-age children and adolescents are in child labor. At the same time that they exploit children in hundreds of cities in the South, these same companies publish extensive generic sustainability reports without proof of the information mentioned there, at least with regard to tackling child labor.

There are 150 thousand families that plant tobacco in 619 municipalities in the southern region of Brazil, making it the largest export area in the world (AFUBRA, 2018). It is also the region with one of the most significant impacts on the lives of young students. In Rio Grande do Sul, the largest national producer, 90% of tobacco growers fail to finish elementary school. Only 2.1% finish high school.

From the south to the north of the country, when there is child labor, the scenario is very similar. In Pará, during the investigation of the research that identified the links between child labor and the big cocoa and chocolate companies, this author talked to dozens of teachers, parents, and school managers. The answers are always very similar: tiredness during classes, inability to perform school tasks, dropping out.

The large company that has child labor in its production chain is directly responsible for the perpetuation of misery in the regions that produce raw materials. A child without school will be an adult vulnerable to degrading work and misery.

CIVILIZING DILEMMA

With regard to companies that exploit children and adolescents in their production chains, the discourse of sustainability and respect for human rights presents itself as a fallacy, a scene game that aims, above all, to hide the real practices adopted by these corporations.

Sustainability, in its value of cause, is a conservative device to give the human face to an unsustainable economic structure, in which the discourse of sustainability is in fact equivalent, “to a greater dose of technical-scientific artificialism and more business, more industry and more market”(LIPOVETSKY, 2009, p. 197).

Believing in sustainability as an instrument of transformation, according to Zizek, is like the superstitious belief of a fan in front of the television, shouting and jumping on the sofa, in the expectation that his gesture will influence the result of the match (ZIZEK, 2012, p. 310).

Latouche (2009, p. XII) says that today’s society has been phagocytized by an economy whose sole purpose is growth through growth, which encompasses everything, including movements against it. “The absence of a true criticism of the growth society is significant in most of the environmentalist messages, which only make it wind up in their sinuous statements on sustainable development.”

The fact is that we are facing a brutal civilizing dilemma. The advent of what we call “globalization”, associated with new communication technologies, gave us the feeling that we had finally reached a better place. A sweet illusion. Violations continue. In Brazil, so far, little progress has been made in understanding the importance of the value of life in the manufacture of a commodity. This item does not enter corporate spreadsheets with the same emphasis as other items, such as profitability.

In addition, cuts in the federal government’s enforcement areas ensure that nothing very significant, from the standpoint of repression, should take place for a while. Companies that exploit children and adolescents are protected by a blanket of silence and invisibility.

To be effective, tackling child labor requires the completion of five initial steps, which are easy to describe but difficult to apply:

- The consumer should boycott companies that exploit children and adolescents;
- Companies need to give human rights the same value as they do for quarterly results or the bonus that executives receive at the end of the year;
- The government must stop sabotaging its own enforcement mechanisms and invest in technical training, equipment, and fieldwork;
- The workers' unions need to reinvent themselves and return to take a leading role in the defense of human rights;
- The media must stop being afraid of losing advertisers and start to explicitly denounce brands that violate human rights;

In Brazil, tackling child labor in production chains has not shown the expected effectiveness. What is seen is the issue becoming worse. In the short term, there is no sign of improvement in this scenario.

ENDNOTE

- 1 The Watergate Case was a political scandal that gathered evidence on the involvement of the White House in a heist to the headquarters of the Democratic National Committee, aiming to take pictures of documents and clandestine wiretapping. The case ended up with the resignation of the North American president at the time, Richard Nixon, in 1974.

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PROTECTION OF CHILDREN AND ADOLESCENTS IN WORK SITUATIONS: THE CONTROVERSY PRESENT IN THE (NON) UNDERSTANDING OF THE MATERIAL COMPETENCE OF SPECIALIZED JUSTICE

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Abstract. This article deals with artistic, cultural, and/or sporting child labor in the perspective that it is a job, even if in a situation exceptionally authorized by the international standard, represented by ILO Convention no. 138. Thus, the comprehensive and priority protection that must be addressed to children and adolescents is not limited to a family law issue, but rather involves legal protections typical of the labor field. Being an employment relationship, even if the employment contract hypothesis is not configured, the jurisdiction for granting authorizations lies with the Labor Court, pursuant to art. 114 of the Constitution. This constitutional provision cannot be interpreted in the light of an infra-constitutional rule, as is the case in art. 149 of the Child and Adolescent Statute (ECA). Likewise, this designates the relevance of the work of the Labor Prosecution Service. International experience also indicates the consensus that it is a job and that the protective regulatory frameworks must be relevant to the labor field.

Keywords: Artistic child labor. ILO Convention no. 138. Material jurisdiction of the Labor Court.

1 INTRODUCTION

Is there a difference between artistic presentations and work situations when referring to legal protection addressed to children and adolescents?

Should this constitutional difference guide the definition of material competence within the Judiciary Branch? Does the definition of competence relate to the increase in the guarantee system for the protection of children and adolescents? Inquiries may be at the heart of the debates involving reflections on artistic child labor and the material competence of the Labor Court.

A recent decision in the context of a conflict of jurisdiction within the scope of the Superior Court of Justice (STJ) allows us to observe some interesting aspects about the material jurisdiction of the Labor Court, insofar as it reaffirms the pertinence of the assessment of the cause of asking for purposes of the definition of material competence; the unfortunate recurring consideration of the hypothesis that specialized action is defined only when considering the existence of consolidated employment bonds “a priori”; and the work of the Labor Prosecution Service, in cooperation with the State Prosecution Service, in defending the interests of adolescents in work situations is revealed.

In April 2020, a decision by Minister Herman Benjamin of the STJ, in the context of a conflict of the jurisdiction (CC no. 171408), defined the jurisdiction of the Labor Court to execute a noncompliant clause of the Conduct Adjustment Term (TAC), signed by the Labor Prosecution Service and a specific educational entity, dealing with the work of adolescents between 16 and 18 years of age, even in the face of the granting of permits, by the Common Justice, which authorized the performance as “child guards”.

Observing its constitutional power-duty (BRAZIL, 1988, art. 129, III) the Labor Prosecution Service signed TAC with *Centro de Educação Infantil e Formação Pequeninos de Jesus* to prohibit the provision of children under eighteen years in external activities of control of traffic on streets, avenues, squares, private or public parking lots and event venues. Such term, despite the attempt of the educational center, was not annulled by judicial decision. Even having signed the aforementioned agreement, the private entity subsequently requested in the State Common Justice a legal permit to authorize adolescents aged between 16 and 18 years old to work in the rotating public parking, known as “Área Azul”, in a given municipality. The State Court of the Childhood and Youth Court of the respective District decided to grant the permit, despite the existence of the mentioned TAC. The State Prosecution Service disagreed with the decision, however, without

success in the appeal court. The Court of Justice ruled out the pertinence of the work of the Labor Prosecution Service, even with an appeal from the State Prosecution Service, for not considering the existence of a strict employment relationship, which is equivalent to considering that only such specialized ministerial action would be essential in cases of an employment contract. The cause for asking was not valued, but, rather, a judgment on the institutional competence to be linked to situations of employment contracts.

Therefore, the impasse was present in the face of the permit that was granted by the Common Justice, on the one hand, and the execution required by the Labor Prosecution Service of a non-complied clause of the TAC, all involving the possibility or not of adolescents to activate themselves in a given work situation. The Federal Prosecution Service gave its opinion on the knowledge of the conflict so that the jurisdiction of the Labor Court could be declared. Thus, another branch of the Prosecution Service also understood that the definition of institutional attribution would not depend on the definition, “a priori”, of the existence of contractual employment bonds.

For Minister Herman, the granting of a permit by the Common Justice cannot prevent compliance with the clause in the TAC signed with the Labor Prosecution Service. The cause for requesting the labor execution action provided for in art. 876 of the CLT (BRAZIL, 1943), which involves several clauses, and not only that of labor as “child guards”, indicates developments of the TAC before the Labor Court and, therefore, the related demand should, necessarily, go through the same court. In this reasoning, there is the logic of “force of attraction”. In fact, the judgment on competence, which is linked to the cause of asking, necessarily precedes the judgment on the merits of the case (that is, whether it would be a strictly working relationship or not).

The work of the Labor Prosecution Service on the subject of work, regardless of the employment situation, involving children and adolescents, which may even result in the consolidation of TACs, however, has not been enough to settle disputes over the material competence of the Labor Justice, which has a constitutional seat (BRAZIL, 1988, art. 114).

Evidence of this is the preliminary decision of the Supreme Federal Court (STF), in concentrated constitutionality control (ADI 5326), regarding the jurisdiction of the Labor Court for the authorization of artistic, cultural,

and/or sports child labor, to the extent of disregard for which refers to the protection of children and adolescents in work situations in which there is development and exploitation of economic activity. The preliminary injunction lasts with the possibility, since 2019, depending on the respective procedural progress, that the merit of the discussion on concentrated control may be brought to the plenary appreciation of the STF.

The present article intends to reflect critically on this impasse, starting, at first, from the constitutional normative structure and the provision in an international norm to situate the issue of comprehensive and priority protection for children and adolescents also within the framework of insertion in work situations. Then, aspects of the STF decision and the difficulty presented by the Court in discerning artistic and cultural manifestations, and even participation in events, of the typical and occurring insertion in the working environment, although with the purpose of artistic expression, with economic exploitation, from the so-called child artists, will be discussed. Afterward, regulatory frameworks of comparative law will be mentioned, specifically in the case of Portugal, California (USA), and Argentina, to consider how the foreign experience comprehends artistic child labor as work, to attract the performance of agencies, control, and guarantee, specialized in labor issues.

2 THE EXCEPTIONALITY OF ARTISTIC CHILD LABOR (TIA) AND LEGAL PROTECTION FOR CHILDREN AND ADOLESCENTS IN WORK SITUATIONS

The 1988 Constitution, as amended by Constitutional Amendment no. 20/1998, prohibits any work for minors under the age of sixteen, except as an apprentice, from the age of fourteen. Additionally, it is forbidden to develop work at night or in dangerous and/or unhealthy conditions for children under eighteen years old (BRAZIL, 1988, art. 7, XXXIII)¹.

The Constitution (BRAZIL, 1988, art. 227) also provides for the shared responsibility of the family, society, and the State with respect to the duty to ensure

to children, adolescents, and young people, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom, and family and community life, in addition to putting them safe from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.

It is also a state duty to promote “comprehensive health care programs for children, adolescents, and young people, with the participation of non-governmental entities” (BRAZIL, 1988, art. 227, § 1).

The imperative character of such rules, the superiority of the Constitution over the rest of the legal order and its centrality in the normative system, as a radiating source for the other rules and legal branches, which must be understood and interpreted based on their forecasts, are characteristic that mark the paradigm of the Democratic State of Law, assumed in 1988 (BRAZIL, 1988, art. 1, *caput*)².

The International Labor Organization (ILO), at the Geneva Conference, held on June 18, 1998, defined fundamental principles that would serve as a guide for its activities, namely: union freedom and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in terms of employment and occupation (ILO, 1998). Within the scope of international labor standards, the theme of child labor is a priority.

It is important to refer to Convention no. 138 of the International Labor Organization (ILO), which deals with the minimum age for admission to employment, ratified by Brazil, under the terms of Decree no. 4,134, of February 15, 2002, and contemplated in Decree no. 10,088, of November 5, 2019, which consolidated the normative acts of the Executive Branch that deal with the promulgation of ILO conventions and recommendations. According to article 8, items 1 and 2, the following is obtained (BRAZIL, 2019, annex LXX):

1. The competent authority may grant, upon prior consultation with interested employers and workers organizations, where such organizations exist, by means of individual permissions, exceptions to the prohibition on being admitted to employment or working, as provided for in article 2 of this Convention, in the case of purposes such as participating in artistic representations.
2. The permits granted in this way will limit the number of hours of employment or work authorized and prescribe the conditions under which it may be carried out.

Artistic child labor is part of the exception to the rule prohibiting child labor, or the minimum age for admission to employment, but without forgetting that it is work, so much so that there is a requirement for

authorization by public authority, with limited hours of employment or work and prescription of the conditions under which it should be performed. The prohibition relativized in the case of artistic activities does not necessarily mean that this form of activity is more beneficial for children and adolescents or exempt from the construction of regulatory protection frameworks. Its sporadic character, of developing artistic expression and talents, may indicate its possibility of realization, which happens for the benefit of others, but also for children and adolescents and their families. However, this is not enough to immunize this form of work from any damages or losses for children and adolescents.

Artistic child labor, therefore, was admitted by ILO Convention no. 138, which allows artistic activity for children provided that it is duly authorized by the competent authority, which will establish the guarantees for the development of protected work in line with the primacy of comprehensive protection (BRAZIL, 2019, Annex LXX). This is an interesting matter, since, to date, Brazil does not have a legislative regulatory framework for the topic. Thus, the regulation, case by case, comes from the content of the court permits, so that, at the same time, the activity is allowed, but, still, it is developed in conditions of safety and protection.

In the case of artistic work in Brazil, for several reasons, including cultural ones, the popular imagination links art to glamour, leisure and fun, as if any artistic work excluded the idea of work linked to the production of goods or services destined to the market.

With regard to authorizations, in reality, they are only provided, as observed in the experience of the Judiciary, in large productions, and for children and adolescents who have a fixed role, as a character in soap operas, films or plays, and musicals. In the performance of extras, in any production (cinema, television, theater), or in participation in the advertising market (photos or video), this does not normally occur. This reveals that legal protection has not been covered by international norms.

In practice, children and adolescents are enlisted for these types of work, with or without authorization. The issue is, therefore, intertwined with the structural omission of the Public Power, because it is necessary to recognize that the permit system alone is not enough and, in addition, a legislative regulatory framework capable of guiding or systematizing

the demand for participation, but with protective rules, was never built in Brazil. In fact, it is difficult, in this context, to certify the efficiency of the State for situations that can be called exploratory, but socially diluted, and that often count on the dazzle and complicity of the parents or guardians themselves. In any case, in this context of the absence of a systematized legislative regulatory framework, the Judiciary has a very relevant role of acting, in each concrete situation, as a true guarantor, that is, in order to allow the development of the activity but to condition it to aspects that may also represent comprehensive protection for children and adolescents, as provided for in the 1988 Constitution.

Artistic work is work, even if it is not a job. In fact, work that, to be developed, requires training, dedication, discipline, and sacrifices, which go unnoticed by most people who appreciate art. In the artistic work of children this occurs, to a greater degree, since the subject is more fragile and susceptible to getting tired and irritated easily, being still in the stage of physical and emotional development. This coexistence with the adult world and being subject to the environment's own rules bring various influences to that childhood, such as early maturity.

In reality, unlike free artistic manifestations, that is to say, in cultural centers, in schools, or other similar environments, artistic child labor is work and, as such, impacts the lives of children and adolescents, generating consequences that cannot be considered only positive. Certainly, one of the aspects that hinder the development of an adequate protective system for children and young people in this particular situation is to disregard that artistic child labor is work, even if it is not work developed within a contractual employment framework.

The exceptional permission and, therefore, for a determined period of time, for the work represented by the development of an artistic, cultural, sports, or advertising activity would need to consider, at least, the analysis of physical and psychological fitness of the child and adolescent, the safety of the work environment, including limitation of working hours and rest periods, monitoring by those responsible and ensuring fair and adequate remuneration.

As, outside the field of so-called free artistic manifestations, there is the exercise of work that, under the ILO, is not included in the prohibitive

provision for children and adolescents, the controversies surrounding it, notably regarding the protective aspects, are inserted within the jurisdiction of the Specialized Justice, in the form of art. 114 of the Federal Constitution (BRAZIL, 1988). The Labor Justice is not the Employment or Unemployment Justice, but the Justice that acts on all issues in the world of work. This consideration indicates that the cause of the request related to work (or the authorization to work) and the “force of attraction” of the debates that surround it, both elements indicated in the decision of Minister Herman Benjamin, are relevant to art. 114 of the Constitution to the extent that is appropriate to it.

However, this finding has not always prevailed.

3 STF AND (NON) UNDERSTANDING ON THE NORMATIVE MATRIX OF LABOR JUSTICE MATERIAL COMPETENCE

The question of the competence of the Labor Court to process and judge demands, which includes requests for authorization, related to artistic child labor, has a constitutional matrix, due to the incidence of art. 114 of the Constitution (BRAZIL, 1988), and reveals, as a background, the prevalence or not of a formal system of guarantees that is aimed at understanding the phenomenon inserted in child labor and legal protection at work. However, the STF, in a preliminary decision, confirmed by a majority in the plenary, has indicated a different understanding, interpreting the theme from the infra-constitutional rule (of ECA), when the expectation would be that the constitutional command is to guide the reading of the others norms of the juridical order, as warns the doctrine and the jurisprudence of the Court in other cases. It is the logic of material and formal supremacy of the Constitution that its rules guide the interpretation of the others of the infra-constitutional system and not the other way around.

In May 2015, the Brazilian Association of Radio and Television Broadcasters (ABERT) filed a Direct Action of Unconstitutionality (ADI) no. 5326 at the STF, which is still pending a decision on the merits.

Notwithstanding, the requested preliminary provision was met by the reporting minister, Marco Aurélio, who suspended the effectiveness of the

expression “even artistic”, contained in item II of Joint Recommendation no. 1/14 and art. 1, item II, of Joint Recommendation no. 1/14, as well as departing from the assignment, defined in Act GP no. 19/2013 and Provision GP/CR no. 07/2014, regarding the appraisal of license requests addressed to the participation of children and adolescents in artistic representations and, also, the creation of the Special Court in the Labor Court. In short, the precepts were suspended and the jurisdiction of the Common Justice was based, at least in a preliminary injunction, to analyze applications for permits.

The injunction requested, and reiterated by the plaintiff, was based on the hypothesis of serious legal uncertainty if such acts were to remain in force. However, it was, in reality, the author’s desire to remove from the Labor Court the competence to advance in this theme. Contrary to what was advocated, it was precisely the primacy of legal security that motivated the cooperative construction of acts based on the debates between the State Common Justice, the Labor Court, the State Prosecution Service, and the Labor Prosecution Service.

Specifically regarding Joint Recommendation no. 01/2014, in view of the importance of the State of São Paulo and the number of child labor situations, including artistic work, it was celebrated as a real advance in the institutional articulation to combat child labor and provided on the jurisdiction of the Labor Court and the State Court of Childhood and Youth in the case of an application for authorization for work – including artistic and sports work – for children and adolescents.

Within the scope of the communication from the Superior Labor Court, the normative act was passed on as follows:

Joint Recommendation no. 01/2014 was signed by the Internal Affairs Department of Justice of the São Paulo State Court of Justice; Regional Internal Affairs Department of the Regional Labor Court of the 2nd Region; Regional Internal Affairs Department of the Regional Labor Court of the 15th Region; Coordination of Children and Youth of the Court of Justice of the State of São Paulo; Prosecution Service of the State of São Paulo; Labor Prosecution Service of the 2nd Region; and the Labor Prosecution Service of the 15th Region.

With the signing of the act, it is recommended that the child and youth law judges, the labor judges of the 2nd and 15th Region, and the members of the State Prosecution Service and the Labor Prosecution Service of the 2nd and 15th Region, take as a guideline, for the purposes of jurisdiction:

- the causes based on the fundamental rights of children and adolescents and their comprehensive protection, under the terms of Law 8,069/90, fall within the jurisdiction of the judges of child and youth law;
- the causes based on the authorization for the work of children and adolescents, including artistic and sports, and other related issues arising from these labor relations, discussed in individual and collective actions, fall within the competence of the labor judges, pursuant to art. 114, items I and IX of the Federal Constitution.

With this, the agencies involved understand that the causes whose object is the authorization for the work of children and adolescents, including artistic and sports, and other related issues derived from these labor relations are the exclusive competence of the labor judges. Child and youth judges must judge only causes that have as their object the fundamental rights of children and adolescents and their comprehensive protection, under the terms of Law no. 8,069/90³.

Therefore, the joint institutional performance did not meet the expectations of ABERT, which intends that competence, despite the provisions of art. 114 of the Constitution, were not from the Labor Court because it did not intend and does not intend that any typical work situation be considered to exist, as well as the protective rights that may arise from it. The injunction discredited this institutional effort, and the dialogues that preceded it, indicative of the judicial commitment to the comprehensive protection of children and adolescents, including the work situations to which they are submitted.

The rapporteur, in the preliminary decision, maintained, by the majority, in the plenary, contextualizes the authorizations for children and adolescents to appear on radio and television programs, as well as appearing in theater plays, which indicates the substantial decrease in the scope of what, in reality, involves artistic, cultural and/or sports child labor. In borrowing this diminished context of the activities involved, he considered the competence of the Common Justice in an argument of tradition, and not of the constitution, that is, the logic expressed was that the authorizations “were always formalized by the Special Court – of childhood and youth – of Common Justice”. It is certain, however, that the argument from tradition also did not express reality, so much that the Labor Justice, at least since Constitutional Amendment no. 45 of 2004 (“Judiciary Branch Amendment”), was granted the mentioned authorizations, in the wake of ILO Convention no. 138, and other protective national and international regulations. In fact, in the reasoning of the vote that prevailed, no consideration is given to the fact that the permissive exception for artistic child labor comes precisely from

an international labor standard, and from an organization specialized in the subject of human labor (ILO).

Minister Marco Aurélio rejected the admission as friends of the court of the National Association of Labor Prosecutors – ANPT – and of the National Association of Labor Justice Magistrates – ANAMATRA. If, on the one hand, the reporting minister did not consider the technical contribution of the representative entities of the Labor Prosecution Service and the labor magistracy to be relevant, on the other hand, he used the content of the opinion prepared, at the request of the author, by professor Ada Pellegrini Grinover as the theoretical basis for the decision, who, despite all academic credentials, did not have a background in research, studies and/or experience in the specific field of labor law. The teacher, reporting on the civilist tradition, treated the issue as being “differentiated from developing human beings”, without being able to establish the inseparable link of children and adolescents as subjects of rights, including in the field of work, in exceptional situations in which this is allowed. Following a line of tradition, not of the constitution, the teacher made reference to the voluntary jurisdiction of the revoked Code of Minors. It happens, however, that the protection present in such permits does not concern the defense of fundamental rights of children and adolescents exclusively in this condition, but, rather, within the scope of citizenship in the field of work.

The provisions attacked at ADI, and suspended in a preliminary injunction, do not aim to innovate the legal order in the area of jurisdictional jurisdiction, but, rather, reflect the concrete regulation of constitutional precept, insofar as art. 114 of the Federal Constitution confers to the Labor Court the material competence to process and judge the demands related to labor relations, and not only to employment relations, being certain that the list of items present there is merely exemplary, and not exhaustive. Although the relationship concerned is child labor, in the exceptional artistic, cultural, and/or sporting situation, at the occasion of ILO Convention no. 138, the rapporteur insisted on the need for an ordinary federal law that specifically addressed the matter. However, the aforementioned convention, ratified by Brazil, has the “status” of a supralegal norm, being higher, hierarchically, than other infra-constitutional norms⁴.

The integral tutelage in question concerns a tutelage when the child and the adolescent are submitted to a work situation, therefore, the reading of

art. 227 of the Constitution should be done systematically and in conjunction with arts. 114, 6, and 7 of the same text (BRAZIL, 1988). The isolation of art. 227 made it possible to prevail an absence of work and exclusive protection of the rights of children and adolescents.

The decision, by the way, failed to distinguish between the participation of children and adolescents in artistic events and the presence in such events as workers. Without this important distinction, the normative reference used was that of art. 149 of the Child and Adolescent Statute (ECA), which deals with the first hypothesis, and not the second. Thus, the Constitution, at least in its systemic perspective (arts. 6, 7, 114, 227), and its relationship with international standards (ILO Convention no. 138), was analyzed based on the infra-constitutional norm, and not the other way around, as it should.

The divergent vote of Minister Rosa Weber contemplated this differential landmark because she said that the normative acts, constructed in a cooperative way by the state and labor Judiciary and the state and labor Prosecution Service, related to the authorization for child labor, and not authorization for children and adolescents to participate in events or artistic representations. In a typical work situation, the contracting companies (or intermediaries) request authorization for child labor, which attracts the material competence of the Labor Court.

The conducting vote also reveals the understanding, at least in a preliminary injunction, that the jurisdiction of the Labor Court would depend on the legal norm (if civil law, administrative law, etc.), when, in reality, the same STF has already defined, even before EC 45/2004, that the aforementioned competence is defined by the nature of the versed (labor) relationship and not by the normative diploma that must be applied⁵. The decision also reveals a logic that does not correspond to the provisions of art. 114 of the Constitution that the material jurisdiction of the Labor Court would be limited to employment contracts, and not to labor relations (“lato sensu”)⁶. And, finally, following the script of these misunderstandings, with a typical insertion of a non-legal element in the debate, there is a distorted pre-understanding about the work magistracy or about its ability to act on these issues, because when referring to the Childhood and Youth Court (within the scope of the Common Justice and not the Labor Justice), the rapporteur states that the latter is the authority that brings together the predicates and institutional capacities necessary to carry out such an important and

responsible examination. In this last aspect, it is certain that the division of material competence that arises from the Constitutional Text could not be understood from the criterion of the choice of the judiciary branch that the STF indicated as more competent or with better predicates, due to the responsibility that the theme requires. In short, it is not a case of subjective choice.

The preliminary decision, ratified by the majority of the plenary, distances itself from what has been built in the international experience, considering that artistic child labor is work and, as such, deserves special protection from the specialized field.

4 TIA AND THE EXPERIENCE OF INTERNATIONAL REGULATORY FRAMEWORKS THAT CONSIDER THE FIELD OF LABOR COVERAGE

Although this may not be a definitive answer, it is possible to consider that the difficulties in recognizing the competence of the Labor Court for the demands involving artistic child labor stem from the erroneous understanding that the scope of art. 114 of the Federal Constitution, even after Constitutional Amendment no. 45 of 2004, the existence of an employment contract would remain.

When the international normative system is affirmed, regarding the need for authorization by the competent authority, and, furthermore, the pertinence of a future legislative regulatory framework is indicated, given the persistent omission, there is the conviction that state mediation is necessary considering the constitutional forecasts. Parents or guardians do not have the necessary knowledge to analyze whether the work environment is conducive to children or adolescents. Indeed, diverse needs can leave the family vulnerable, allowing any working conditions to be imposed, bypassing the comprehensive protection defined as a priority for children and adolescents.

In Portugal, the issue is regulated, at least with general rules, in the Labor Code (Law no. 7/2009, of February 12), that is, there is no doubt that non-voluntary artistic manifestations are a form of work and must be protected by observing the principles and parameters built in this specialized field. In the form of art. 3, “a minor under the age of 16 cannot be hired

to carry out a paid activity provided with autonomy” unless he or she has “completed compulsory education and is a light work” (PORTUGAL, 2009). In this sense, it is allowed, for example, provided that with objectively justified reasons, night work for “a minor aged 16 years or over” in an activity of a cultural, artistic, sporting or advertising nature, provided that an equivalent compensatory rest period the next day or as close as possible is guaranteed (art. 76, 3, “b”). Under the terms of art. 81 of the same Code, “the participation of minors in shows or other activities of a cultural, artistic or advertising nature is regulated by specific legislation” (PORTUGAL, 2009).

In the United States of America, and more specifically in the State of California, which is home to one of the largest entertainment producing centers in the world (Hollywood), there are forecasts that seek to guide this special work situation. In the 1700.37 sessions of the California Labor Code, it is predicted that the child or adolescent will not be able to annul what is established in a contract signed with an accredited talent agency, even if this occurred when they were minors, and must provide artistic services featured in films, television, phonographic records, etc., including, according to a non-exhaustive list, services such as actor, actress, dancer, musician, comedian, singer, writer, stuntman, voice actor, among others. For this purpose, there is the completion of a form approved by the Labor Commissioner, the contract is approved by the higher court of the county where the minor resides or is employed (USA, 2020a).

The topic is also addressed in the California Family Code, Section 6750, which regulates contracts concluded between the child or adolescent and a third party. The listed hypotheses reveal contracts of the most varied types, and for the many artistic or creative and sports services, contracted directly or through third parties (loan company, agencies, etc.), always with the concern to define which person or entity should be considered the employer (USA, 2020b). Defined as a contract and the various intermediation situations, with the definition of who the employer is, the regulation defines the concept of gross earnings. The definition is relevant because session 6752 provides, as a general rule, that 15% of earnings should be kept in confidence, in a savings account or other plan, and preserved for the benefit of the child and the adolescent (USA, 2020c).

Therefore, it is noted, in the case of the legislation of the State of California, that the work of children and adolescents in cultural, artistic,

sporting, and similar activities is not limited to a question of family law. It is, in reality, about the participation of legal guardians in protecting the interests of children and adolescents in this exceptional work situation and in order, on the one hand, to guarantee those (entrepreneurs) who agree on the activities, but also the future of these children and adolescents in terms of income, including the definition of who are considered employers in the most diverse types of contractual intermediation.

It is important to note that ABERT, the author of the ADI in the STF (5326), does not have universal legitimacy for proposing ADIs, and should, in reality, objectively prove the occurrence of thematic relevance between the interests it defends and the constitutional question posed for appreciation of the Court. It happens that, defending the interests of radio and television broadcasters, it does not even manage to cover the list of situations, beneficiaries, and interested parties, directly or indirectly, in the theme of artistic child labor. As can be seen from the normative regulation of comparative law, radio and television do not represent or synthesize the range of activities that can reflect a situation of artistic, cultural, and/or sports child labor.

Artistic child labor cannot be treated as an event limited to the family relationship and/or authorization of those responsible. If there is a work situation, although it is not always a job, the issue transcends the family environment and attracts the need for protection that is typical of the area of labor law, which, it should be noted, is not exclusively a right aimed at contractual employment relations.

Argentina has ratified ILO Convention no. 138 and, by Law no. 26,390/2008, established the minimum age for admission to employment, which is now 16 years old, prohibiting, in all its forms, child labor, regardless of whether there is a contractual relationship, with or without remuneration (ARGENTINA, 2008a). Specifically, with regard to artistic child labor, the Minister of Labor issued Resolution (44/2008) to regulate the work of minors within the province of Buenos Aires. It is interesting to indicate, albeit briefly, the motivations of the regulatory action, which precisely reveal the consideration that artistic child labor is a form of child labor and, evidently, a form of work that deserves state attention so that guarantees and protections are defined in favor of children and adolescents.

Here are some of the reasons used: i) the concerns arising from the Provincial Commission for the Eradication of Child Labor, especially regarding the integral development of children and adolescents; ii) the recognition and promotion, by the Convention on the Rights of the Child, of the right to participate in cultural and artistic life, but always considering as a priority their protection against any type of work that may hinder their education or be harmful to their development; iii) the very terms of ILO Convention no. 138 regarding the need for a competent authority to grant, through individual authorizations, the possibility of artistic work, exceptionally outside the minimum age established in the legislation, which must involve forecasting the limit on the number of hours and the prescribed conditions for it to occur safely; iv) the existence, at the international level, of a Recommendation Regarding the Condition of the Artist, approved at the United Nations General Conference on Education, Science and Culture (UNESCO), in 1980, and which was ratified by Argentina, which considers that the artists are cultural workers and, as such, beneficiaries of labor rights; v) the fact that the participation of boys and girls in artistic activities, except when this occurs for the sole purpose of education or culture or recreation, constitutes work and, as a consequence, constitutes one of the many types of child labor; vi) the need for a normative tool for detailed regulation of the process of restrictive individual authorizations to be granted by the Application Authority for the Work of Girls and Boys under 14 in Artistic Activities, in order to guarantee the right to education, development, recreation and leisure (ARGENTINA, 2008b).

Consistent with the idea that regulation is addressed to a form of child labor, albeit artistic, there is a provision that inspection is in charge of the Labor Secretariat (art. 1). Any natural or legal person with the intention of employing boys or girls must apply for authorization in advance, which will be processed at the respective Regional Labor and Employment Office (art. 3). The written request must include the signature of the parents or legal guardian, and also explicitly include details of the terms of the contract, including the number of days and hours of work, the details of the artistic work, and the person responsible for monitoring the development of the activities of the child or adolescent (art. 4). For authorization, if necessary, the Subsecretary of Labor may request the manifestation of a public or private body that he or she considers relevant (art. 7). Other requirements

such as the physical fitness of the artist and the certification of schooling are also expressly provided for (art. 5) (ARGENTINA, 2008b).

Therefore, in Argentina, artistic child labor is publicly regulated in the context that it is child labor and, furthermore, that it is a form of work, with the rights, including labor, of children and adolescents being safeguarded.

The examples listed above reveal, first, the consideration that artistic child labor is work; that children and adolescents should be the recipients of state protection on topics such as work hours, psychological and physical support and analysis, the work environment, protection of their earnings and the existence of supervisory agencies; the theme involves the performance, by its specialty, of labor institutions. Thus, it is far from imagined that only the analysis of parents or guardians and proof of school attendance can sufficiently define legal levels of protection for children and adolescents.

Brazil, however, marks a considerable distance in the adequate treatment of the issue, whether in terms of legal protection for these work situations or in the adequate definition of the formal system that should act as guarantor of the corresponding rights.

5 CONCLUSION

The participation of children and adolescents in the world of arts, entertainment, sport, fashion, and advertising, in work situations, which imply the development of economic activity, requires establishing a legal protection framework that considers the benefits of this insertion, but also, possible losses for such subjects of rights.

The participation of children and adolescents in these activities, which imply assignments, has a nature of work and demands specific protections considering the peculiar condition of children and adolescents. Legal protection should involve several topics, such as working hours, school attendance and performance, environmental labor conditions, income protection, which must be defined under equal conditions, among others.

ILO Convention no. 138 is an international normative framework, with a supralegal character in Brazil, which establishes an exception to the prohibition of child labor, admitting the employment and work of children

and adolescents in the case of purposes addressed to participation in artistic representations. Therefore, artistic child labor is part of the exception to the rule prohibiting child labor, or the minimum age for admission to employment, but without ever leaving off being considered work. Emphatically, children's artistic work is work, although the employment hypothesis may not be characterized.

Although the exception is established because it is recognized that, especially in view of the artistic, cultural, and/or sporting purpose, there are benefits for children, adolescents, and their families, this is not enough to immunize this form of work from any damages or losses.

A recent decision by the STJ (CC 171408 MG) brings back to the discussion important aspects in the theme of work authorization, pertinent to the fact that the cause of asking, related to work, without prejudging the existence of an employment bond, and the "force of attraction" of the debates surrounding this issue, must be considered in the interpretation of the scope of the material competence of the Labor Court. The STF itself, in other precedents, also considers that it does not matter the right to be applied to define the jurisdiction of the Labor Court, but rather the nature of the issues discussed (pertinent to the employment relationship and the surrounding issues).

The matter of the competence of the Labor Court to process and judge demands, which includes requests for authorization, related to artistic child labor, has a constitutional matrix, due to the incidence of art. 114 of the Constitution, and reveals, as a background, the prevalence or not of a formal system of guarantees that is aimed at understanding the phenomenon inserted in child labor and legal protection at work.

However, within the scope of ADI 5326, it is necessary to reiterate the question that it is an authorization for child labor, in exceptional circumstances and not authorization for the participation of children and adolescents in events or artistic representations. In a typical work situation, contracting companies (or intermediaries) must apply for authorization for child labor, observing the guideline of the international labor standard, inserted in a convention ratified by Brazil, which attracts both the functional and institutional competence for the work of the Labor Prosecution Service regarding the material competence of the Labor Court. In fact, non-voluntary

artistic events are a form of work and must be protected by observing the principles and parameters constructed in this specialized field.

The international experience, in different realities, has something in common, that is, the consideration that artistic, cultural, and/or sports child labor does not fall exclusively within the context of family law, on the contrary, it is a manifestation of work and, for that reason, the governing legislation, when it exists, is specific labor legislation, with designation of agencies and/or entities of such area to act in the authorization and inspection regarding the compliance with legal protection norms. In Brazil, however, there is not yet a sufficient and coherent legislative regulatory framework for this special work situation and the question of the competence of the acting agencies has been permeated with misunderstandings about the fact that it is work; the competence of the Labor Court is not limited to employment situations; and the protection of work in the case of children and adolescents, when this is exceptionally permitted, must observe rules that are and were built in the labor field, involving limitation of work hours, protection of remuneration, working environment, among others.

There is undoubtedly a long way to go nationally so that, once the dazzle that forges certain common senses is demystified, comprehensive and priority protection for children and adolescents in work situations due to artistic, cultural, and/or sports manifestations can be considered legally relevant.

ENDNOTES

- 1 In the original wording of the 1988 Text, there was a prohibition on any work for children under 14, except as an apprentice.
- 2 Ana Paula de Barcellos (2007, p. 2-3) lists the fundamental premises of contemporary constitutionalism in the West, from a methodological-formal point of view.
- 3 Available at: http://www.tst.jus.br/web/trabalho-infantil/noticias/-/asset_publisher/ry7Y/content/ato-conjunto-promove-avanco-no-combate-ao-trabalho-infantil. Accessed on: July 7, 2020.
- 4 In fact, the STF decided (RE no. 466,343-1/SP) that the human rights conventions ratified by Brazil, without observing the procedure provided for in constitutional amendments, have supralegal status, that is, superior to ordinary laws. About the referred judgment, according to Daniela Muradas (MURADAS, 2010, p. 152): “[...] the new theory accepted will allow the control of conventionality of national legislation, verifying the compliance of the provisions of national legislation with these international diplomas, removing the effectiveness of those precepts that are incompatible with these international documents, in line with the application of the *lex superiori revogat inferior* criterion”.

- 5 This is Conflict of Jurisdiction no. 6,959-6, judged by the plenary session of the STF on May 23, 1990, with Minister Sepúlveda Pertence as rapporteur for the judgment. The decision has the following extract: “HEADNOTE – Labor Justice: Competence: Const., article 114: employee action against the employer aiming at observing the business conditions of the promise to hire formulated by the company as a result of the employment relationship. 1 – It is incumbent on the Labor Court to judge the demand for *Banco do Brasil* servers to compel the company to fulfill its promise to sell, under given conditions of price and method of payment, apartments which, agreeing to transfer to Brasília, here come to occupy for more than five years, remaining at their exclusive and direct service. 2 – The determination of the jurisdiction of the Labor Court does not matter whether it depends on the solution of the dispute in matters of civil law, but rather, in the case, that the promise to hire, whose alleged content is the basis of the request, has been made due to employment relationship, as part of the employment contract”.
- 6 In a theme with general repercussions, related to the Binding Abridgement n. 22, the STF defined the jurisdiction of the Labor Court for actions for losses and damages, proposed by the heirs and/or successors of deceased workers, in cases of occupational accidents.

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THE HISTORY OF COMBATING CHILD LABOUR IN THE UNITED KINGDOM¹

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Abstract. Introduction; 1. Industry & Child Labour; 2. The Chronology of Combating Child Labour in the UK; 3. Child Labour in the Present Moment and Statistical Data: What Does it Mean To Be a Child?; Conclusion; References.

Keywords: Child labour. United Kingdom. Combat.

*“bis Gottes Fehl hilft”
Hölderlin. Dichterberuf.*

1 INTRODUCTION

Any attempt to historicize combating child labour in the English-speaking world, especially the UK, must grapple with the fact that we’re dealing with the relationship between the political-economic categories of modernity and the ever-returning question of subjectivity. That is, subjectivity, endowed with consciousness (perhaps affected with unconsciousness, sexual (in)dividuation, seeing and being seen) and rights or duties.

We must examine this relation not only at the level of morals, or even social-economic relations, but further, articulate it as a conceptual unity which may help clarify certain institutional problems, and whether such problems are a thing of the past or still very much our own. Furthermore, since this relation (or subjectivity, as such) hinges upon whether the natural bodies in question (children) are seeing and being seen, and thus defined by such

dynamic (whether one's subjectivity is the result of one seeing oneself being seen by others and potentiated by that multiple binds, or merely defined by what others see) we are dealing also with the law in the field of vision and existence: visuality, visualization, being invisible and how to make one seen and heard.

This poses an immediate challenge to law and our conceptions of the law. For too long, the law has been conceived as a matter of words. Of doing things with words, or even worse a matter of The Word. But of course, as children know all too well, seeing comes before words. The child recognizes and looks before he or she can speak. Another sense in which seeing comes before words, no less existential yet perhaps more political, is this: seeing establishes our place in the surrounding world. It is both a matter of difference and orientation. Soon after we see, we come to be aware of the fact that we can also be seen, or not.

The eye of the other combines with our own eye to make it fully credible, not only a fact but also a factoid, that we are part of the visible world. This reciprocal nature of vision is more fundamental than that of the written word and even spoken dialogue. This immediacy, as it were, challenges the currency of certain media in law -written media, or the reduction of legal rhetoric to the media of dialogic and mediated perception. It is in this sense that all images, including that of children, are man-made. Ditto, not merely a fact, or not at all, but a factoid. The factoid that concerns us is the near-invisibility of children in the long history of institutions -legal and political- and their apparent irruption (into the picture) sometime between the 17th and 19th centuries, and with particular intensity in the latter.

2 INDUSTRY & CHILD LABOUR

Children appear (or appear to disappear) to the western eye in the wake of European expansion, global dispossession and the forced displacement or disappearance of countless peoples especially in what would become the trans-Atlantic trade. As such, they appear invested with the look of a renewal of the older categories of Roman Law re-invented to fit the needs of expansion, dispossession and displacement. In other words, as part of the historical and social relationships that we have come to know with the name of "property", so familiar to us. What may be less familiar is the fact that in

such a dramatic relation the role played by children involves, at best, being part of the labour force that produces the good in the goods traded globally (property) and, at worst, as the part that in such a relation defined the non-part. The part of no-part, as philosophers would say. That is the invisible part, the disappearing part.

In the constitutive yet contemporary stages of that non-relation, children come to define legally not only themselves but almost all the other peoples of the globe as child-like: women everywhere, native-Americans and forcibly displaced from what is now known as Africa are all of them seen through the prism of Roman Law's prescriptions for children. That is, as either non-persons or in the best case only *on-the-way-to-becoming-persons*, or, to speak in legalese, *citizens*. Our working hypothesis here, better articulated in the work of people like Frantz Fanon, Etienne Balibar, Silvia Federici, Manuela Carneiro da Cunha and Eduardo Viveiros de Castro, is that political-legal modernity comprises two antithetical movements with respect to the anthropological differences, linear demarcations or dividuations that produce women, natives, slaves and children as (legal) facts.

The project of modernity remains, in this respect, both relevant and incomplete in its very completion and globalisation, as Balibar says. On the one hand, modernity invented a notion of the citizen that not only implies belonging to an organic community created out of the inorganic set of "impersonal" relations that produce goods and the good in them so as to satisfy an ever-increasing diet of needs. But also, that he has access "to a system of rights from which no human being can be legitimately excluded". This universalism represses differences and ways of orientation into the sphere of particularity that both politics and law seek to neutralize – the taming of natural bodies.

On the other hand, modernity enlarges as never before the project of classifying human beings precisely in terms of their particular differences, thereby generalizing the concept of difference and transforming it to designate not so much hierarchical status but rather possibilities of human actualization among which the individual must choose and which come to represent, to make visible, power, ability, value and price. These movements clash with one another when human variation becomes the "logically consistent" means to deprive individuals, collectives, groups or classes of their natural rights (Arendt's right to have rights), thereby enslaving nature and compelling it to

annul itself by producing nonpersons. Children are among such “*nonpersons*” or natural bodies *on-the-way-to-becoming-persons* whose very “potential” (to mature) has to annul their natural relationality to be produced as such. Further, they must choose this destiny, or be seen to choose it. In short, to be denied access to citizenship, they (like women, natives and black people) must also be “excised from humanity”.²

Moving on with and beyond Balibar, the project of modernity isn’t merely relevant though incomplete in its completion. Also, insofar as it must excise from humanity the natural bodies plunged into the obscure abode of the process of production of the good in the goods, it is traversed, through and through, with the denial (more precisely, the disavowal) of the alliances that humans must make with non-humans in order to project the common universe of rights. Such a denial of the human-/nonhuman nexus produces what we shall call the inhuman. This is an obscuring of the universe of nature, or the taming of natural bodies, which occurs when a part (children, for instance) is made into the non-part of the relational nexus while another part (the adult white male) is made to stand for the whole.

This is an imaginary trick: the denigration of a natural body, as when black children seem to disappear into the dark background of Dutch Golden Age portraiture. They’re there but as the non-part of a non-relation. In Fanonian terms, they dwell in the zone of non-being. Or merely as potential unrealized beings. Crucially, that potential which is not realised passes onto the goods they produce, lending their life to them. The trope we speak of is a combination of synecdoche (the replacement of a part for the whole) and fetishism (the voyeuristic sight that objectifies a body, turning it into a quasi-commodity or labour-power & force, as well as a larval subject). This trick, this move makes man the whole of man, on the one side, and on the other (as woman, black, native, children or child-like) man is half or a third of man. Not an individual but a dividual the parts can be bundled, bought and sold.

It is no surprise, therefore, that the history of combating child labour dovetails so clearly and concretely with the dispossession of the body of women and the indigenous as historicised by the likes of Silvia Rivera Cusicanqui and Silvia Federici as well as the forced displacement and trade in enslaved labour. The “surge” of child labour is part and parcel of the taming and commodification, the fetishisation of somebodies (turned nobodies) in the abodes of production seen only as seen by others (as in the formula “the

adult's imagination of the children's imagination"). But also, further into the sequence, the potentiation of that double-vision (seen oneself only as seen by others) into a larval subjectivity capable not only to withstand the most violent onslaughts but also of becoming something or someone else without the need for destruction.

In this respect, it is no surprise either that the combat against child labour appears first in the visualization of other worlds in this one in utopian literature. It is in the book put together by British jurist Thomas More, in his opposition to the emergent merchant economy, *Utopia*, that the situation of women and children in England is first witnessed and denounced. It is left for the better society, which is always in the past in the future, and in the present as anti-future (or the future in the latent possibilities of the past) to imagine a situation in which children and the youth are neither mere proletarians nor condemned to debt and the existence of a precariat.

Of course, such imaginings appear always to those in the present situation as nonsense. If we can believe the sketch that Erasmus left of his friend in a letter to Ulrich van Hutten in 1519, the genius of nonsense and satire was Thomas More's "daemon ... since childhood". This characterization of the children's imagination as that of rebellious larval subjectivity is the key to understand the legal history of the combat against child labour. The narrator of *Utopia* is child-like, his very name, Raphael Hythloday, a play on translations from the Greek meaning "*speaker of nonsense*". To say that the history of the legal combat against child labour is a history of nonsense is, therefore, the highest compliment. It commends the crucial role of the imagination in legal change.

It means both the necessary choice for "indirect" means of communication when those in a situation of being excised from humanity struggle to become fully human, for more integral humanity (with other nonhumans) and the limitations of such indirect methods. For as Raphael Hythloday acknowledges in *Utopia*, the methods of legal transformation and particular justice are imperfect in that they would only yield partial reforms rather than the more radical, root-like (not only rhizomatic) reorganizing that the novel proposes. The point here is that the sphere of imagination (aesthetic as well as political) is more extensive than the limits of civil jurisdiction and the (narrative) constitution.

The latter is created in a conversational fashion, allowing for the construction of the various aspects of subjectivity -identity, identification and recognition- through the narrative descriptions we employ standing in conversation with our immediate historical community, as mainstream and some critical legal theorists such as HLA Hart, Jürgen Habermas and Charles Taylor would put it. But if the idea of identity is central to any understanding of a narrative constitution, and to processes of legal transformation such as those that in Britain and elsewhere provided a modicum of agency to children in the work- and the marketplace, it is important to appreciate that such identities of self and community, being narrative or even literary constructs, are, at once, both imaginary (in the Kantian critical sense that imagination frames our politics and legal rules) and in the concrete historical sequence we're attempting to chart here also the result of instrumentalization & standardization, in the sense given to such terms by critical literature from the 1960s onwards by the likes of Adorno, Benjamin and Enrique Dussel.

In other words, the combat with child labour in the legal history of Britain takes place against the background of what the legal historian Alain Supiot has correctly termed “the dream of harmony through calculus,” and is framed by it. Supiot speaks in this way of the governance of numbers that in the conditions of (state-market) modernity subordinates the content (dare we say the “spirit”) of laws, or there being a likeness of true courage (in the Rousseauian sense of the term, which Hegel rendered into the German term *Tapferkeit* in his 1802 Natural Law essay), to the calculus of utility, price and value so as to put laws “in the service of the economic harmonious patterns that would supposedly rule the functioning of human societies”.³

The point here is that our envisioning of the legal field in the time of colonialism and Capital as if it were the stage of liberal or linear progress towards the better, a plot, through legal enumeration and statistics should in no way obscure the fact that the bodies of children (together with women and the enslaved) are the site of combat, a battlefield, a struggle waged mostly by those excised from humanity or thrown into the side of objects and nature. The political and militant overtones of the term “courage” (*Tapferkeit*, in German) are there to remind us that subjectivity (including the subjectivity of children) comes to mean the concreteness of behaviour that is free and purposefully designed to express that aspect of human personality that lay beyond the realm of physical necessity. That is, away from both “nature”

(conceived of as mere reserve, empty spacetime or the numerical legality of the dream of the spontaneous order of nature) and the sphere of physical necessity, the “inorganic sphere”, or the sphere of mere aggregation in which cohesiveness, were it momentarily to exist, can only have a limited and accidental quality about it.

Instead, the combat for subjectivity (as in combating child labour) is a matter of praxis, the sphere of the organic, or the realm of the true association. Whether pioneers of the understanding of law under the conditions of modernity understood this to include the youth or not, it is the case that what the combat against the mere objectification of the natural body of children as not-fully human or mere labour-power/force (like that of women and black or native peoples) opens up the territory of that which grounded in the alliance between humans and nonhumans (nature) entails the development of personalities beyond what has been given (to men and women) by nature as well as naturalized social conditions -*i.e.* a different spacetime, a creation. In short, the inventive and combative creation of a spacetime based on the systematic repudiation of the ideology of efficiency

If so, let us distinguish (within the movement of legal transformation) between the legal reforms concerning the role of children that aimed at more firmly grounding the ideology of efficiency (just as African enslavement was justified by some Second Scholastic jurists and thinkers in view of the inefficiency of native-Americans, and thereafter the enslavement of Africans superseded by compensation and the personalization of corporations as in the case of 3 & 4 Will. 4 c. 73 in Britain or the 14th Amendment to the US Constitution), on the one side, and on the other those reforms that aim at taking the very idea of efficiency beyond its one-sided application in the inorganic sphere (economic aggregation, morality and psychology) and into the proper political.

The latter include those measures in which children’s practice and imagination are no longer posited in the service of the adult’s imagination but as part of the militant act of dismantling the regimes of austerity, financialization and environmental destruction, in which being able to repudiate efficiency, this is done in the name of other, more progressive, values. We can see that in the treatment given by Thomas More of the plight of children and women towards a *vis utopica* in the sixteenth century, and in the twenty-first century in the actions of children protesting in combat with

the adult's imagination of their imagination concerning the environment and nature as well as their taking to the streets in the Americas and elsewhere towards a different mattering of lives (including access to free education in Chile or the US and the UK, or to the ballot box at an earlier age, or simply to exist as black or native children and so on).

In the latter case, we speak of legal transformation not merely in terms of “solutions” (policy, partial reform) but of “principles” when of Utopia, a modern vision in the sense of a society reflecting upon its having faced work and war, depict a working community mobilized by the struggle against (tamed) nature and poverty. Insofar as it tends toward the juridical-political model of the 16th century, more democratic than authoritarian, one cannot see in *Utopia* a constitutional project or any dogmatic plan for the society of the future, but rather, only an invitation to its readers to look into the topic of “the best form of government” themselves. That is, to invite them to explore the question of what humanity would be like if we were engaged in the endless and incomplete search for a more just or good political order (not to consider their order as the just order once and for all). The point is the liberation of a *vis utopica*, neither a diet of silver bullet solutions nor the conviction that such solutions are well-grounded, but the drive behind the combat against injustices and the excellence of thought about a difference from what currently exists, for instance, child labour or precarious condition, and thus, a matter of principles.

The two principles that endlessly return in the movement toward social alterity (“principle” meaning here the idea of a different beginning that is capable of leading that beginning from the past toward the future and against the future-ification of what is current) are “*the elimination of the hunger of the other*” and “*another aim for social institutions than the mere limitation of the effects of war*”. These are the very same principles to be found in Charles Dickens's re-imagination of the combat against child labour in the 19th century.

Although child labour was not, strictly speaking, an invention of the era issued in by the Industrial Revolution, it is only in the wake of the triangulation between slave plantation, European expansionism and the global factory merchant network that the employment of very young children became widespread. It was part of the set of historical phenomena that in branding certain bodies marked a decisive historical break up with more traditional practice. The young body who denounces the emperor's new clothes joins

the other figures in the literary canon about the origins and development of capitalism, Caliban and the witch. They must be studied together, assembling the proletarian and precarious body that is both the terrain and the weapon of resistance against the emerging logics of the inorganic sphere of (global) society – what has been termed “primitive accumulation” in the scholarly canon on the relation between law and economics.

This analysis must be carried out not only from the viewpoint of waged masculine labour and the production of goods but also from the perspective of the changes introduced into the social place of women and children by the production of the labour force, as, among others, Silvia Federici has observed.⁴ In the UK, the intensification of child employment in the wake of industrialisation triggered a series of Parliamentary enquiries into the working conditions of children in factories and mines. Their reports famously shocked the likes of Elizabeth Barrett Browning and Charles Dickens – inspiring such feats of the imagination based on the harsh reality of young and other marked bodies becoming the site of social conflict as “The Cry of the Children”, “Hard Times” and “David Copperfield”.

In “Hard Times”, social antagonism is re-imagined as existential turmoil in the little heart of “girl number twenty”, Sissy Jupe. In fact, this is what the book’s “fantastic” circus personae are about – a fictional yet realistic portrait of emerging market society’s replacement and corruption of courageous values in the altars of monetary value, price and risk in the trade of contracts and future markets (as in the caveat emptor doctrine adopted on in the English-speaking world, on both sides of the Atlantic in the wake of cases such as *Laidlaw v. Organ*). The point here is not only the representation of a society in which a “rational person”, ideally, would trust no one for no one should be liable to anyone for anything, but also, a society in which the contrast between characters such as young Sissy and the rising class of factory owners and their snivelling satraps reaches the limits of surreality and absurdity.⁵

The greatest 19th-century novelist in the English language, creator of indelible characters representing rising bourgeois merchants, bankers, managers and ice-cold lawyers would have had no problem writing and interpreting in the arguments of counsel for the defendant in *Laidlaw* the evil intertwining between romance and fantasy in a society in which plaintiffs in error, women, black peoples and children must rely to their detriment on

the veracity of commercial entrepreneurs, bankers, factory owners, plantation trustees and other beneficiaries of the triangular trades. Child workers appear in several other Dickens novels, most memorably in “*Oliver Twist*”, with his narrow escape as the apprentice of Mr Gamfield the chimney-sweep, and in *David Copperfield*. *David Copperfield* was, of course, based loosely on Dickens’s own experiences of starting work at Warren’s Blacking factory at the age of 12 following his father’s imprisonment for debt. Charles Kingsley’s “*Water Babies*” presents the plight of the nation’s chimney sweeps together with a host more ephemeral novels, such as Frances Trollope’s “*The Life and Adventures of Michael Armstrong, Factory Boy*” and Charlotte Elizabeth’s, *Helen Fleetwood*.

All of them exposed the suffering of child workers to the middle-class reader. With such writings, many of the period’s most vocal and prolific commentators turned their attention to child workers. The Dickensian picture may be read as fiction, caricature or exaggeration but if so then it is a caricature of the highest order, “which delineates the essential lines of truth,” as E. P. Thompson put it. “Mr Bounderby, the coarse and avaricious mill owner of *Hard Times*, the type of the earlier Industrial Revolution was now giving way to his more sophisticated cousin, Mr Gradgrind. Gradgrind not only has power and wealth: he also has a theory to justify and perpetuate exploitation. The Victorian [English] bourgeoisie had constructed from bits of Adam Smith and Ricardo, Bentham and Malthus a cast-iron theoretical system, which they were now securing with the authority of the State and the Law, and sanctifying with the blessings of Religion. The laws of supply and demand were “*God’s Laws*’ and in all the major affairs of society all the other values [such as courage or the General Will] must bend before commodity values”.⁶

This includes, of course, the values associated with the humanity of black peoples, women and children. The situation of child workers began to enter the more liberal heart of the nation when reformers such as John Fielden and Lord Ashley, the Seventh Earl of Shaftesbury, took up their cause in Parliament. As we shall see in the next section, the campaign against child labour would culminate in two crucial pieces of legislation – the Factory Act (1833) and the Mines Act (1842). The Factory Act would prohibit the employment of children younger than nine years of age and the hours that children between nine and 13 could work. The Mines Act, in turn, would

raise the starting age of colliery workers to 10 years. In effect, these two Acts brought the industrial districts into line with the rest of the country and sought to ameliorate the situation created by the systematic employment of young children.

Raising the age at which children started work was an important step forward for child welfare, but in point of fact, it did too little to improve the working conditions of the many children that remained at work. Children in the workplace still remained largely unprotected from mistreatment at the hands of employers and co-workers. Thus, in the 1850s the future liberal MP, George Edwards, worked as a farm boy under a man who ‘never missed an opportunity to thrash me’. This, he concluded, was ‘no exception to the rule, all poor boys in those days were badly treated.’[1] And “even when parents were aware of their children’s abuse, poverty often meant they were unable to take any effective action. Roger Langdon, for example, described how he was nearly killed by the drunken ploughman under whom he worked. He informed his parents, but as ‘every other place in the parish was filled and my parents could not afford to keep me in idleness’ he carried on working for the man.’ Tackling the systematic abuse of young and vulnerable workers proved a more difficult problem than removing small children from the factories”.⁷

3 THE CHRONOLOGY OF COMBATING CHILD LABOUR IN THE UK

The changes in the way society, institutions and government view childhood did not happen in the form of a revolution. Rather, the search for social changes through written law took place gradually, slowly, and over more than three centuries. This means that the history of the fight against child labour has been occurring in a logical, linear, and continuous way, without any break in time and space. Legislative evolution, therefore, did not bring a new principle (and we must repeat that “principle” here means the idea of a different beginning), but the continuation of a history of objectification and taming of human bodies. In the following lines, we present in a simple and succinctly way the legislative changes that have taken place in the UK to limit the exploitation of child labour.

Having been the first great industrial power, Britain was also a pioneer in the vast use of child labour in various segments of economic activity.

Nevertheless, it was also the first country to host movements for the extinction of child labour exploitation. One can argue that social movements and Non-Governmental Organizations (NGOs) were key for changing social thinking about child labour, as well as for the emergence of rules and regulations to protect children and adolescents.⁸ In the nineteenth century, as some people started to see childhood in a different way and claim for employment regulations, child labour's exploitation gradually started to be repelled and condemned by part of society.⁹ In this context, a series of regulation emerged in England and Wales as a means to limit child labour.

It is important to emphasize that, by that time, patronage was largely against the regulation and prohibition of child labour. Manufacturers, factory owners, as well as conservative and liberal thinkers were strongly opposed to these rules for several reasons. Firstly, they considered the use of a cheap workforce (children and women) as essential to the functioning of the economy. Secondly, it was also claimed that legislative intervention through labour regulation would considerably impair the competitiveness of British products on the market. Thirdly, conservative views also defended that state intervention in this direction would be a threat to individual freedoms, rights that were overvalued at the time.¹⁰ In sum, employers and liberal thinkers sought to maintain the social order as it was: a society in which a small percentage of individuals was effectively regarded as citizens; a society in which the defence of individual rights and freedoms of these citizens (which, not coincidentally, went hand in hand with economic and market interests) occurred by objectifying other human beings (children, for instance).

Despite resistance, different Factory Acts were voted and, later on, became laws regulating child work which slowly eliminated the worst cases of child labour. In fact, the first legislative initiatives took place relatively early, in the eighteenth century. In 1788 a law prohibiting the employment of boys under 8 years old as chimney-sweeps was approved by parliament.¹¹ Nevertheless, the exploitation of child labour continued occurring in the UK. Research has shown that, in spite of the legal prohibition, children were still largely employed as chimney-sweeps in the nineteenth century. In addition to receiving lower salaries than adults, children were also considered more agile due to their smaller size.¹² Yet, the employment of children was widely used in many different fields during most of the nineteenth century, to such an

extent that, in rural areas, for instance, children commonly started working in fields at the very young age of five or six years old.¹³

The case of Martha Appleton is a sad example of the frightening working conditions to which thousands of children were subjected in the nineteenth century. Martha was a 13-years-old child who worked in the textile sector in Wigan as a 'scavenger', collecting loose pieces of cotton under machines. During her workday, Martha fainted, and her left hand got stuck in a working machine with no protection against accidents. As a consequence, Martha was affected by irreversible injuries. Her fingers were severely injured and, as she was no longer able to work efficiently, Martha also lost her job.¹⁴

In the first half of the nineteenth century, many militants against child labour arose from privileged social classes. These militants acted by influencing individuals and group of individuals, making them aware of the harm caused, to children and society, by the exploitation of child labour. They also advocated the abolition of child labour before the press and the floor of the parliament, thus contributing decisively to the passage of the first legislation regulating the use of child labour in industrial production.¹⁵

The approval of the *Factory Act* in 1833 made it illegal for textile factories to employ children under 9 years old. In addition, the Act ordered textile factories to provide at least two hours of education per day for children between 9 and 13 years. Regarding the working hours, the Factory Act established that children from 9 to 13 years should work no more than nine hours a day, while children from 13 to 18 years should work no more than twelve hours a day. The employment of children for night work was prohibited. The Factory Act is also of great importance because it created the post of *factory inspector*, strengthening the enforcement of the rules. However, protection norms were not always observed. Firstly, because very often inspectors were not able to specify the exact age of children workers. Secondly, factory owners commonly did not offer the weekly hours of education that were mandatory.¹⁶

It is worth mentioning that the 1833 Factory Act came at a time when reformers publicised the terrible working conditions to which children were exposed, conditions that could be compared to slavery. Indeed, the Act was passed at the same time that slavery was abolished in the British Empire, which happened in 1833-1834.¹⁷

Work in mines and underground was also the subject of fierce criticism. The degrading working conditions to which women and children in this field were subjected came to light with the publication of a report by a Royal Commission in 1842. The report, illustrated with images of children and women at their work, depicted a terrible scenario in which girls and boys under 8 years old were employed and worked under degrading and dangerous conditions.¹⁸ The situation presented was so shocking that, in the same year, the *Mines and Collieries Bill (Mines Act)* was promptly approved by Parliament. The Mines Act prohibited the employment of women and girls of all ages in any underground activity, and for boys under 10 years old. The Coal Mines Regulation Act raised the minimum age for boys, from 10 to 12 years old, and also improved safety rules in the working environment.

In 1870, the *Education Act* brought about profound changes in children's education as it laid the first foundations for the creation of free and compulsory education. As a consequence, children in the UK were gradually introduced to the school and, therefore, withdrawn from the situation of child labour. Also, children started to be treated no more as '*little adults*', but rather they were now seen as children who deserved special treatment according to their status and necessities.¹⁹

The existence of written legislation, however, was not enough to change reality and social thinking. The practical results arising from these legislations remained below expectations. By the early twentieth century, British citizens were shocked by the abuse and exploitation of children at work that remained a reality. It became clear that legislative measures alone would not be sufficient to change social reality.²⁰ For instance, children were still employed as "*climbing boys*" (an activity that also included girls) and performed dangerous tasks such as cleaning chimneys or extinguishing fire inside them. Working conditions also remained terrible – children were often mistreated by their employers; without safety conditions, children commonly suffered work accidents with consequent injury or death; wages remained extremely low.

Despite the existence of protective legislation for half a century, children remained working in mines, factories and textile mills, under the same degrading conditions. It became clear that a broad social mobilization was key to strengthen existing laws, as well as for the establishment of a more protective standard. Therefore, several organizations which fought against

child labour were established across the UK, whose members belonged to various social sectors and classes.²¹

In 1889 the National Society for the Prevention of Cruelty to Children (NSPCC) was founded. The NSPCC played a prominent role in the history of combating child labour in the UK by strengthening the legal system of child's protection and contributing to the end of the worst forms of child labour. Initially, the NSPCC had as its main goal the abolishing of child labour abuse, especially under hazardous conditions. The charity led the fight against child exploitation in the UK by providing public information about child abuse issues, advocating stricter protective rules, monitoring the observance of laws by society and government, and directly providing protection and shelter for abandoned and destitute children.²² Nowadays, the NSPCC is "*the only UK children's charity with statutory powers that enable it to take action to safeguard children at risk of abuse*".²³ Aiming to make 5 million children safer by 2021, the NSPCC has established five goals, which are: preventing child abuse in families facing adversity; prevent child sexual abuse; help children speak out and adults take action about abuse; help children who have experienced abuse get back on track, and make children safe from abuse online.²⁴

Several legislative developments in child protection continued to take place in the UK not only at home but also internationally. The UK has signed numerous international treaties regarding the rights of children, *i.e.* the UN Convention on the Rights of Children, the UN Declaration of the Rights of the Child, as well as some European Conventions.²⁵ With regard to international standards prohibiting child labour, the UK have signed both the International Labour Organization – ILO Conventions 138 (Minimum Age Convention) and 182 (Worst Forms of Child Labour Convention).²⁶

It is possible to notice that the history of the fight against child labour, ironically, is written and told under an adult man's lenses. While children are seen as mere victims of the Industrial Revolution, the adult man is portrayed as the main character. Historians and scholars very often identify the history of combating child labour with the history of the development of social institutions and legislative acts as a response to the problem of the exploitation of child labour. Therefore, while children are depicted as "*historical objects for whom adults devise appropriate strategies*"²⁷, the main character is the adult man, the one who explored child labour; the one who, later on, freed children; and the one who, nowadays, protects children.

4 CHILD LABOUR AT THE PRESENT TIME AND STATISTICAL DATA – WHAT DOES IT MEAN TO BE A CHILD?

With knowledge of the extensive national and international legislation, as well as the work of charitable organizations which fight child labour in the UK, we will now discuss the effectiveness of this safety net. In other words, this third section intends to analyse data and statistics across the UK to consider the current status of child labour

In research carried out through press sources and official British and European websites, some specific issues have drawn our attention. Firstly, the statistical data on child labour in the UK (and other European countries) is rather sparse and difficult to find.

Secondly, statistics regarding modern slavery and the human trafficking of migrant children are alarming. Data shows a 63% increase in complaints concerning the exploitation of child labour in the UK in 2016. According to an article released in 2017 by the newspaper *Independent*, this increase comprises mainly migrant children and is directly linked to the weak measures of protection currently adopted by the British government. Potential victims were predominantly from Vietnam, Albania and Poland. The article also states that despite the existence of the National Referral Mechanism (NRM) – a framework to identify victims of human trafficking and modern slavery and to prevent the victim's recurrence – after being identified, many victims are abandoned and do not receive any kind of support, which causes them to end up returning to a situation of slavery.²⁸

Thirdly, research has shown that child labour is not a problem that has been solved in the past. Due to the 2008 economic crisis, child labour in irregular conditions has once again become a problem among many European countries. In 2013, it was reported by the Commissioner for Human Rights that, in the UK, children were irregularly working long hours. Additionally, in 2015, at a seminar held in Liverpool, many high school-age children have reported irregular practices at work, such as under-the-minimum pay, lack of safety conditions, informal work, gender discrimination, and the obvious damage to their school education. This happened among families in poverty who, faced with the crisis and unemployment, had no choice but to send their children to work as a way to supplement family income.²⁹

In view of the above data, we question: is child labour and the institutional problems surrounding it a thing of the past? Or do these problems still haunt us? In modern society, are children really seen as subjects of rights, or just objects of protection?

Our thesis here is: while, in the course of history, some children (like the ones from economically favoured families) have become an *object* of concern and protection, on the other hand, a considerable portion of children (like migrant children and children from poor families) remains in the *status quo ante*, that is to say, they remain unseen, abstract, and, as such, an abstraction realised or objectified as potential precarious workers. This is to say that children remain invisible as such and can only become visible as either potential consumers (if born within economically favoured families) or as potential precarious workers (if not). Our argument here is that written law has not changed the object status carried by all children (rich, poor, migrant, citizen, girl, and boy). Still, nowadays, children do not have their own history, but only a historical path in which adult men have taken steps to “improve” the children’s situation while capturing (and imprisoning) their imagination; the children’s well-being, just as their misery, is the object of others’ efforts.³⁰

5 CONCLUSION

We speak in this respect of “the adult’s imagination of the children’s imagination”. We borrow this term from one of our teachers, the anthropologist Michael Taussig who, in turn, has been taught by his Amerindian interlocutors in the Pacific and the Amazon, in between Brazil, Venezuela and Colombia, during his many years of “fieldwork” and fieldwork-notebook/diary-making. As he says, “to talk of the adult’s imagination of the child’s imagination is inevitably to enter the aesthetic no less than the political nature of secrecy”. Ultimately, this is the kind of ethical and political issue that connects human and children rights law not only with the aesthetic but also, crucially, with the *jouissance* from which capitalism profits and proliferates.

To be precise, this is a specific, socio-historical kind of *jouissance*. We’re not speaking of individual trauma, but rather, the phenomenon that the black surrealist Pierre Yoyotte called “the misery of desire”. It is exemplified by what happens when adults speak of “serious” or stately things, including children, in the child’s hearing, as though the child cannot hear “or when they

switch back and forth between addressing the child sitting there in front of them one minute as object and next minute as subject”.³¹

This is an “absurd epistemology”, the child put into the position of being and not being there. Or else, when an entire population is deemed effeminate and infantilised or denigrated by “the adults in the room”, namely the stately politicians and their wealthy owners, who impose on them all manner of (more or less legal and moral) prohibitions while at the same time mocking them by means of money. The prime example here is the intersection between Christian evangelical/Calvinist moralising prohibitions (often directed against desire, fantasy and “materialism”), the “sacredness” of law and order and the colonisation of the totality of social space by money.

Evangelical/Calvinist prohibitions treat the population as though a child, in the child’s hearing, who cannot see or hear, put in the position of being and not being there. If people realize their potential as consumers, fine. But if they rebel against their “founding fathers”, as all children must on their way to maturity, then that’s forbidden. The result? As soon as the poorer among the people gain some purchasing power -as they did in Brazil during the Workers Party administrations of the 21st century- they’re called upon to look up to the richest among the people who can use their money to circumvent the moral-legal prohibitions imposed upon the majority. And the people respond to that interpellation. On the one hand, they would like to gain the kind of satisfaction that the more moneyed classes seem to have (which allows them to circumvent all legal and moral prohibitions) and thus identify with them, with “the father”. On the other hand, they’re burdened with moral guilt, reinforced against desire by the strict conservative morals of evangelism/Calvinism and mocked by money. They join the so-called middle classes who are absolutely ripe for a counterrevolution of emotions and ideals. The only way out for these infantilised people is satisfaction, but since no material satisfaction is to come after counter-revolution wins the day they must settle for emotional or mystical ones. “These are infantile victories”, warns Yoyotte.³²

Why? Because, yes, they may have the appearance of a paradise. But paradise is, of course, a place for the dead in which the dead achieve hyperbolic intensity. “Paradise” is the grey area of the police, in which violence also means (patriarchal) authority. As anthropologists like Taussig say apropos of Venezuela, Colombia or Brazil, this grey area is where the spectre emerges in

the midst of law, which on being administered by the police, ceases in fact to exist, “yet it is this swamp that sustains stately” or serious forms. Before us, now, a black young man, a child, in handcuffs pressed against the pavement in Brixton or Harlem, a knee on his neck; or against the wall about to be shot by police or the paramilitary militia in southern Bogotá or in favela Maré, Rio de Janeiro. This is sacred in everyday life: to let die (in a pandemic, for instance, at war and so on) or “improve”, correct and turn into seriousness -or the stately- the unseriousness and capability for the fantasy of children. Law and lawfare in the hands of the father weaponise the fantasy of children, turning it into secrecy or “public secrecy” as Taussig says. The police (and the “father” figure) tell the child in handcuffs: “Everything you do, step by step, you have to ask my permission”.³³

It will not suffice to categorize this as stupid (though the stupidity is palpable), or evil (though it is monstrously evil), or irrational. Like Taussig, we find here a resonance between the long history of combating child labour and being treated as children, on the one hand, and the continuous becoming of the adult’s imagination of the child’s, on the other. What is most at stake here is the working of the rules by which social intercourse courses, including the rules for relating with children and, of course, with children in and out of labour. If there are such laws, their being is this binding informality or mockery and fantasy with formality, seriousness and stateliness. In other words, this is to say that in the wake of colonialism here and abroad or the so-called Industrial Revolution, in Britain as elsewhere, there is no relation (and, therefore, no relation of recognition) between adults and children. The only one possible in such a situation, which is our situation, is the non-relation in which children are either “sacred” or “disposable”. Like women, or crowds, or “people” for that matter.

What next in the history of combating child’s labour and infantilization? Two futures lie ahead of us: The first one is that the child, in its ethical immaturity, sees and talks straight (revealing to the people that the emperor wears no clothes) because he’s innocent, sacred (and, by the same token, disposable). “Listen to the innocent one”, says the father as the father’s policy is about to choke him or shoot him. Second, another way of seeing the child’s act is to regard him as anything but innocent. Rather, as a sophisticated player, who takes advantage of adult positioning of the child as innocent, sacred or disposable, so as to untwist or give a further twist to the public secret that

emperors wear no clothes. In their current role as either potential consumers or future precarious workers they remind us that in our predatory societies the sacred sacrifice of ever-increasing numbers of children, youth and people are not a gift of flesh, but rather, the taking of the gift of life. This would be the truth (of our condition) that children implicate: all work and no play.

In the adult's imagination of the child's imagination, the latter incarnates a passion for the riddle and the secret, and playing or toying with riddles and secrets as an alternative to sacrificing in order to escape and exit from the economy of *jouissance*, of thirst of lack-in-*jouissance*, or the misery of desire that is specific to the capitalist discourse and condition as well as that which characterised the so-called "real socialist" countries. Exiting means here "letting go" and "letting be": letting go of the children and letting them be. A different sense of education (free, universal, non-patriarchal) in which what is infinite in the other can begin to dwell in the apparent finitude of the children's "absolute passivity". If and when children are "authorised" by more or less legal means not to go to school (as has happened in Britain during the 2020 pandemic) they are thereby being allowed to at least partially subtract themselves from the law. In this new, different situation, parents have discovered themselves giving their children the gift of their love, which is the gift of time, which is of course the gift of life. Giving, that is, what they don't have at their disposal.

This may seem too little, to humble as a conclusion. Giving children a little leeway with the ability not to take the norm for the law. But this may also turn out to be crucial. For this act separates the inscription or dwelling of the other in me from the kind of contractual consent that defines at present both the law and its beyond. On the other side lie neither disorder nor chaos pure and simple nor its apparent opposite, law(fare) and (decisive, post-fascist) order. More simply, this is an emphasis on two requirements: First, there's no law without interpretation. Not only in the sense of the fixation or indeterminacy of its meaning, but also, or rather, in the sense of orientation: what is and what is not the law, and sacrifice isn't the law. Second, beyond the law, there's a spacetime for a lived experience that doesn't fall within the jurisdiction of any current law. Here we subtract fullness, what justice is but not yet, from what is considered as just in the legal-normative orders of today. At this level, as many have pointed out before us, the old debate between *nomos* and *nomina* has no object. This brings us back to the

issue of the kind of “oceanic experience” that characterises a child’s play and imagination (in the adult’s imagination). Such is the experience of possibility, unbridled, utopian in the sense of the sea of possibility that surrounds the desert of the real here and now, or utopian and eunomian. No need to name a father here, or the origins of legislation including the laws combating children’s labour. After all, there are no origins, only fragments. And what matters is how we play with such fragments, or what we do after we realise that it is an imperfection that found life or multiplies it. Here, children take the lead. May our daughters and sons keep rioting.

ENDNOTES

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- 3 Alain Supiot, “El sueño de la armonía mediante el calculo” in *Le Monde Diplomatique en Español*, Feb. 2015, 3. See also, G. W. F. Hegel, *The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and its Relation to the Positive Science of Law*, trans. by T. Knox (Philadelphia, 1975) 104, after Rousseau, Montesquieu and Christian Garve.
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THE LABOR PROSECUTION SERVICE IN THE FIGHT AGAINST CHILD LABOR – CHILDHOOD RESCUE PROJECT

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Abstract. This article aims to present the instrument used by the Labor Prosecution Service to collaborate with the eradication of child labor, especially based on the author's practical experience as the National Head of COORDINFÂNCIA¹. To this end, it addresses the *Childhood Rescue* Project in its three axes: professionalization, public policies, and education presenting some results already obtained, notably in the 2017/2019 triennium. It concludes with a quick analysis of the effectiveness of this instrument for the purpose of the work *parquet*, that is, the comprehensive, absolute, and priority protection of children and adolescents, according to article 227 of the Federal Constitution.

Keywords: Labor Prosecution Service. COORDINFÂNCIA. *Childhood Rescue* Project. Child labor. Public Policies.

1 THE LABOR PROSECUTION SERVICE (MPT)

The MPT is defined in articles 127, 128, and 129 of the Federal Constitution (BRAZIL, 1988) as a “permanent institution, essential to the jurisdictional function of the State, entrusting it with the defense of the legal order, the democratic regime and unavailable social and individual interests”, regarding labor relations, being one of the branches of the Federal Public Prosecutor's Office. It is aimed at defending the current legislation with regard to labor relations, acting, therefore, in the service of society and the public interest, with the autonomous existence of the State Powers.

In order to better perform its functions, the MPT established priority goals, as well as created strategic thematic committees for the isonomic, articulated and coordinated treatment of the issues most dear to the institution, which are the following:

- **eradication of slave labor** (CONAETE – National Committee for the Eradication of Slave Labor);

- **defense of workers' health and the healthy work environment** (CODEMAT – National Committee for the Defense of Labor Environment);

- **combating fraud in labor relations** (CONAFRET – National Committee to Combat Labor Relations Dissimulation);

- **combating irregularities in the public administration** (CONAP – National Committee for the Promotion of Labor Regularity on Public Administration);

- **defense of union freedom** (CONALIS – National Committee for the Promotion of Freedom of Association);

- **regularity of work in ports** (CONATPA – National Committee of Port and Waterway Work);

- **combating discrimination in labor relations** (COORDIGUALDADE – National Committee for the Promotion of Equality of Opportunity);

- **eradication of child labor and protection of adolescent workers** (COORDINFÂNCIA – National Committee to Combating the Exploitation of Child and Adolescent Labor).

Observing institutional goals demonstrates that the MPT is essentially aimed at guaranteeing decent work, a concept coined by the International Labor Organization (ILO) in 1999 and that it is achieved when both men and women work, in addition, to be productive and of quality, occurs under conditions of freedom, equity, safety, and dignity. Decent work is a fundamental condition for overcoming poverty, reducing social inequalities, guaranteeing democratic governance and sustainable development, and is supported by four strategic pillars: the fundamental rights and principles of

work, promoting quality employment, extending social protection and social dialogue (ILO, [201-]).

In such a context, the MPT presents itself as an institution of great social relevance, acting directly in guaranteeing rights related to the world of work, thus valuing that labor relations are established with respect to the dignity of the worker. This work is done with the important participation of society, which is primarily responsible for notifying the MPT of irregularities that may be occurring and, consequently, violating the rights established in Brazilian legislation. This news once brought to the attention of the ministerial body, may determine the initiation of an investigative procedure, by which it will seek to confirm or not the fact reported and, once the fact is confirmed, the pursuit of the cessation of conduct, through administrative or judicial proceedings.

In addition to this investigative action, which is of paramount importance when irregularities are reported that violate legislation and labor rights, the MPT has an important proactive role with a view to achieving its priority goals. This action is generally carried out through promotional procedures that aim, among other actions, to bring MPT closer to other institutions and society, to foster public audiences, to implement strategic projects, and to establish channels of dialogue that will strengthen institutional performance in order to achieve the goals mentioned above more effectively. It is in this quadrant of the promotional activity that the *Childhood Rescue Project* emerges, to be analyzed below. First, however, it is important to say a few words both about the concept of child labor in Brazil and about the specific role of the MPT in combating this practice, since it is in this context that the project will find shelter.

2 CHILD LABOR IN BRAZIL

The definition of child labor in Brazilian legislation is quite objective and derives from the Constitutional Text, which in its article 7, item XXXIII, guarantees the “prohibition of night, dangerous or unhealthy work for children under eighteen and of any work for children under sixteen years old, except as an apprentice, from the age of fourteen” (BRAZIL, 1988).

Thus, there is no room for interpretation: the work of children and adolescents before the age of 16 is *prohibited*, except for the special condition

of apprentice, which is admitted only from the age of 14. From the age of 16, work is allowed, but with reservations: as long as it does not occur in unhealthy, dangerous, and night activities.

The infra-constitutional legislation still imposes the prohibition of work before the age of 18 in places that are harmful to the formation and physical, psychological, moral, and social development of the adolescent, and in places that do not allow school attendance as specified in articles 403 and 405 of Decree-Law no. 5,452/1943 (BRAZIL, 1943). The Statute of Children and Adolescents also focuses on protection against child labor, especially in Articles 60 to 69, which, in addition to reiterating the above-mentioned prohibitions, guarantee the right to professionalization and protection at work for adolescents, and the peculiar condition of the person in development that the adolescent exhibits must be respected, as well as their professionalization must be directed to the adequate qualification for the job market (BRAZIL, 1990).

As noted, the legislation is quite protective against child labor, which derives from the principle that informs the Brazilian State's commitment to childhood: its *comprehensive, absolute, and priority protection*, according to article 227 of the Federal Constitution (BRAZIL, 1988). And it could not be otherwise, since work is an environment of diverse and complex risks that often cause the illness and death of adults – let alone children and adolescents!

Because they are people in development, still in formation, such individuals are not prepared, either physically or psychologically, to face the dynamics of work, to face and be able to deal adequately with risks so impactful that they can be found even in the simplest labor environments. Thus, the protection provided by our legislation against child labor is fundamental to guarantee the right to life, education, leisure, in short, to all the rights that are assigned to children and adolescents under current legislation. Child labor steals and kills childhood, and should be removed from the national territory also as a form of protection for the whole of society, since a country that does not have protected children will not be able to progress and truly evolve, with social justice and peace, the conditions required to stop violence spreading so absurdly in our territory.

3 THE LABOR PROSECUTION SERVICE AND THE COMBAT AGAINST CHILD LABOR

As already seen, the MPT has, in combating child labor, one of its priority goals, which allies with the commitment assumed by the Brazilian State in the 2030 Agenda of the United Nations², in the sense of eradicating it from the national territory by the year 2025. To face this important problem, MPT acts in the face of any and all news of irregularities involving the work of children and adolescents – remembering that such illegal practices can be of the most diverse types, from the exploitation of child labor in the family nucleus itself (which will probably determine coordinated action with the State Prosecutor's Office) up to work on drug trafficking – one of the worst forms of child labor, according to the TIP list³ – passing, also, for the commercial sexual exploitation of children and adolescents, work in agriculture, work on the streets, among many other hypotheses that, unfortunately, are found.

In addition to the investigative activity, bearing in mind that child labor has a complex nature, often not being reported due to the social tolerance that still surrounds it, the labor *parquet* understood how to deal with the subject in a more proactive way, without the need for news of some specific fact, and in a nationally articulated way. To this end, in 2000, the National Committee for Combating the Exploitation of Child and Adolescent Labor (COORDINFÂNCIA) was created, aimed at promoting, supervising, and coordinating actions against the various forms of exploitation of child and adolescent labor, seeking uniform treatment of the problem within the scope of labor *parquet*.

Although important actions have been implemented since 2000, it is in 2016, after previous experiences that allowed the analysis of the best actions for the effectiveness of institutional action, that the strategic project object of this article is born: the “*Childhood Rescue*”. The next lines are dedicated to it, aimed at understanding the strategies that guide it.

4 THE CHILDHOOD RESCUE PROJECT

The *Childhood Rescue* Project was born from the meeting of three initiatives that were already being implemented by MPT, each aimed at a specific objective (the projects *MPT at School*, *Professional Apprenticeship* and

Public Policies to Combat Child Labor). This initiative became necessary to consolidate these strategies and obtain better results in the performance of the institutional task of combating child labor. In this sense, it is important to highlight some excerpts from the text itself that consolidates the birth of the project in reference, namely:

The analysis of data from the National Household Sample Survey – PNAD/IBGE, in its historical series, shows that the vector of decrease in the prohibited work of children and adolescents has suffered a significant reduction, slower in the last years, and, still, the last information from the historical series showed an increase in the number of children and adolescents between 5 and 17 years old, from 3.1 million to 3.3 million, demanding greater effectiveness in the fight against child labor, especially in the field of informal work, domestic work and productive chains, normally invisible. It is found that the number of child workers is predominant in informal urban activities, family farming, and domestic work.

In fact, in these fields, the performance of the inspection bodies is limited, with preventive actions being more effective in the field of public policies, education, and professionalization.

One of the factors that hinder the reduction of child labor in Brazil is that part of the population has not yet conceived it as a social problem. Some myths permeate the popular imagination today, acting as true cultural barriers that hinder the realization of the rights of children and adolescents. Thus, it is understood that investing in the training of future citizens, committed to a society without exploitation, is one of the best strategies to reduce child labor.

Thus, we seek a form of concentrated institutional action, focused on results, proactive and capable of strategically directing the efforts of the MPT, with actions aimed at deconstructing the myths of child labor, through the discussion of the theme and performance by strategic projects, focused on education, professionalization and public policies (MPT, 2016).

As noted, the birth of the *Childhood Rescue* Project is based on the need to further increase the effort to eradicate child labor, which was already falling, but still affected a very expressive number of children and adolescents in Brazil at the time of the project's emergence – and which unfortunately still reaches at least 2 million and 400 thousand people under 18 years old. The general objective of the project, also according to the same source mentioned above, is to prevent and combat child labor, raise awareness in society, promote public policies, professional training, and protect adolescent workers (MPT, 2016).

Thus, it is observed that, just as the problem in question is complex, the solution also needs to be multifaceted. For this reason, the project is

based on three fundamental axes: Professionalization, Education, and Public Policies. Such axes face the main edges that need to be trimmed so that there is a chance to effectively eradicate child labor in the place where such initiative is applied. The strategies in question aim, in short, to answer the following questions: how to raise awareness in society about the profound damage that child labor causes to children and adolescents who are victims of this practice? Still, what alternative can be presented to people found in child labor or to those who may be victims of this illegality?

At the same time that it seeks to answer such questions, the *Childhood Rescue* Project presents itself as a fundamental measure for greater protection of childhood, since child labor, in addition to being a deep violation in itself, is also the basis of several other injuries to the rights of children and adolescents. To perform *Childhood Rescue* is to implement the principle of comprehensive, absolute, and priority protection of childhood, guaranteed in the aforementioned article 227 of the Federal Constitution (BRAZIL, 1988). Let us, therefore, proceed to analyze each of the fundamental axes in reference.

4.1 Professionalization Axis

The Professionalization Axis is based on article 428 et seq. of the Consolidation of Labor Laws (BRAZIL, 1943), which establishes the obligation for companies to hire, as apprentices, 5 to 15% of the number of employees. It is a legally established quota for insertion of adolescents and young people in the world of work through a private and specific contract, which brings with it all the guarantees of the employment contract, but without configuring mere exploitation of the workforce – on the contrary, the focus, in this special contract, is the learning of a job in its theoretical and practical aspects, allied to the permanence in school, thus preparing the adolescent to enter the world of work.

Without a doubt, the professional apprenticeship contract is one of the most important policies of attention to the right to professionalization that adolescents have, as recommended by ECA (BRAZIL, 1990). It is a safe way to enter the job market, with respect to the condition of the adolescent as a person in development, and, ultimately, it collaborates greatly in the formation of future qualified labor, since, at the end of the contract, the

apprentice will be fully able to exercise the profession for which he/she was trained.

Several extremely positive effects have been perceived from the realization of professional apprenticeship, especially when it is aimed at the most vulnerable public (that is, adolescents in compliance with socio-educational measures and in institutional care, as well as those exiting child labor). In addition to guaranteeing the rights of adolescent apprentices, society is also profoundly benefited, on the one hand, by the greater supply of qualified labor, but also because there is an evident relationship between professionalization and the generation of opportunities with the reduction of vulnerabilities and consequently, also with the decrease in the rates of social violence.

However, although it is a widely beneficial institute, and although the law is quite clear in imposing this obligation on employers in general – in full application of the principle of corporate social responsibility and the social function of property – there is still much resistance to full compliance with this normative command. A huge percentage of the apprenticeship quotas owed by companies remains idle annually, often with absolutely refutable or easily transposable arguments for non-compliance with current legislation. Such facts make the fulfillment of the apprenticeship quotas one of the main focuses of investigative work of the MPT, being the subject of many investigative procedures throughout Brazil.

In addition to the investigative performance, considering the evident relevance of the professional apprenticeship institute both for the adolescent and young public, as well as for society in general, the promotional activity is necessary and is carried out by the Professionalization Axis, which seeks awareness of companies for the importance of quotas determined by law, highlighting the importance of giving priority to hiring adolescents in situations of greater social vulnerability – which is guaranteed by Decree no. 9,759/2018 (BRAZIL, 2018).

This awareness comes from public or collective hearings that involve local companies, the S system, training institutions, and the child protection network. In these hearings, in addition to the MPT highlighting the advantages of professional apprenticeship, it seeks to establish a link between companies, training institutions, and the protection network, which often do not have

much contact, which means that opportunities do not arise or are not known to the priority public.

Experiences already carried out show that, as a result of the action of the MPT, the open quotas tend to decrease, thus making professional apprenticeship more effective. An example of this situation is the implementation of the Project in the municipality of Luziânia/GO, which took place in June 2018. Before the performance of the MPT in the city, the municipality had 25 hired apprentices. After 6 months of the public hearing involving the local Office of Labor Prosecution, with the active participation of Labor Prosecutor Geny Helena Fernandes Barroso, who was responsible for calling local companies with open quotas and subsequently maintaining the dialogue with them, the number of hired apprentices rose to 139, which represents a 456% increase in the number of hires.

Such data show the correctness of the awareness strategy, which also promoted the approximation of all the actors who need to be involved so that, in fact, the full implementation of the professional apprenticeship quotas provided for by law occurs, prioritizing the most vulnerable adolescents, who are those who need this opportunity the most. This approach took place with the important participation, in the collective hearing, not only of the companies summoned but also of the training entities and of the S system present in the city of Luziânia, as well as of the bodies that make up the local protection network, which could take the existing opportunities to vulnerable adolescents.

Still, with regard to the need to prioritize care where vulnerability is greatest, it is worth highlighting the important role that MPT has played in improving opportunities for access to professional apprenticeship, both by adolescents in compliance with socio-educational measures and by institutionalized adolescents. With the forerunner experience of the Labor Circuit Prosecutor Mariane Josviak, who initiated such negotiations in Paraná as early as 2006, with the approval of state law in this sense, the following projects are current examples of these initiatives: *Medida de Aprendizagem*, effected by Labor Prosecutors Simone Beatriz Assis de Rezende and Cândice Gabriela Arósio in Mato Grosso do Sul; *Criando Juíço*, which created a consortium of entities from the Rio de Janeiro Justice System for this purpose, with the MPT represented by Labor Prosecutor Dulce Martini Torzecki⁴; *Medida de Aprendizagem no Distrito Federal*, led by the current National Head

of COORDINFÂNCIA, Labor Prosecutor Ana Maria Villa Real Ferreira Ramos; and *Aprendizando*, in Rio Grande do Sul, in a partnership between MPT, MP/RS, and ILO, entities represented, respectively, by this author, by the Public Prosecutor Cinara Vianna Dutra Braga and by ILO's official Thais Dumet.

In addition to the nominated projects, many other initiatives have appeared in the national territory, such as in Espírito Santo (by Labor Prosecutor Sueli Teixeira Bessa) and in Paraíba (by Labor Prosecutor Raulino Maracajá Coutinho Filho), due to the perception of the importance of these actions to give the most vulnerable adolescents the opportunities they lack so that they can overcome the difficulties and traumas they have faced so far, and obtain a space (with the proper preparation and protection) in the world of work – which, in the last instance, allows the construction of effective citizenship.

4.2 Education Axis

The Education Axis, known as *MPT at School*, originated in 2008, under the format of the Education Program against the Exploitation of Child and Adolescent Labor (PETECA)⁵, idealized by the Labor Prosecutor Antônio de Oliveira Lima – who to this day continues to implement this program with great success in the State of Ceará, being a national reference in the fight against child labor.

The logic of this axis is the approach to the community through the school, with the training of teachers on the theme of child labor, so that they can debate and dialogue with students about such an impacting problem. The focus is on municipal schools, and currently, the focus is especially on students in the 4th and 5th years of elementary school.

It is observed that the realization of the MPT at School allows busting the many myths that around the theme of child labor, through dialogical reflection, and not the imposition of thought. See, for example, the famous jargon “a child who is in school can work, just keep studying”: from the reflections in the training that the MPT gives to educators, they are able to observe what, effectively, is behind an apparently simple sentence.

In fact, child labor removes from the child and adolescent the right and the condition to study in fact, to assimilate the contents offered to them, since it imposes a very heavy load of activities. For no other reason, child labor is at the root of school dropout – and it is often in training that the teacher will realize that his/her student who has been absent from classes, or who cannot actually follow them, is, in fact, in a work situation (often, it is possible to face domestic child labor, which although it is one of the worst forms of child labor according to the TIP list, remains invisible to society, but producing indelible blemishes in the training of the subject).

This and other myths are deeply analyzed, both through dialogue and playful activities, in order to demonstrate how child labor impairs the physical, psychological, and/or moral development of children and adolescents, robbing them of opportunities and tainting, sometimes irrevocably, their childhood and, at times, their own existence. With the analyzes carried out with the school class, an unimaginable scope of the theme has been obtained within the community, which would not be possible otherwise, given the impossibility of promoting this social insertion, if not through school. The strategy of training educators so that they can exercise the role of knowledge multipliers also proves to be right, since if the MPT kept that knowledge and this possibility of approach for itself, it would not be successful in reaching the number of schools, teachers, and students it has managed to reach.

After the reflection process carried out in the classroom, the axis culminates with the MPT at School Award, for which the works carried out by the students, based on the discussions made in the classroom, can be awarded at the municipal (which is under the responsibility of the municipality that joined the project), state (organized by Regional COORDINFÂNCIA) and national level (which takes place in Brasília, taking the winning students and teachers to the federal capital).

As an example of the success of this strategy, in 2018 it was possible to implement MPT at School in 389 municipalities in 9 units of the Federation, reaching 4,835 schools, training more than 32,000 teachers, which benefited at least 873,000 students.

Thus, in the MPT at School, in addition to a strategy of broad success, it is an instrument for the dignification of education, attributing to the school the fundamental role it plays (or should play) in the life of each student – a

space of citizenship, training, and reflection. At the same time, it gives the teacher recognition of his or her fundamental interaction with students, being directly responsible for the training of each child and adolescent with whom he or she “lives”. It is, therefore, essentially an instrument for recognizing the importance of the school and the teacher, as well as the student’s relationship with that institution and this subject that forms citizenship.

4.3 Public Policy Axis

Finally, the Public Policies Axis seeks to articulate the protection network, the justice system, and the municipal authorities around the problem of child labor, promoting a better identification of the cases in the locality, as well as the proper coping of the problem according to the local particularities. This is a highly relevant action, and it is clear that, after the passage of the MPT in the municipality, the articulation around the protection of children against child labor tends to be strengthened – especially because, if this does not happen spontaneously, the appropriate measures to remedy the problems encountered may be adopted, from the presentation of a conduct adjustment term to the filing of public civil action.

In a nutshell, the axis develops as follows: MPT visits various local bodies, starting with those belonging to the local justice system, going through the entire structure of the municipal protection network. Thus, initially, the Prosecutors responsible for implementing the project usually make contact with the Public Prosecutor’s Office responsible for the locality, with the state justice (seeking, if any, contact with the childhood and adolescence judges) and labor justice. This initial dialogue aims to present the project and make an important rapprochement with such public bodies, which perform high-profile functions in several matters, and also in the defense of the rights of children and adolescents, including with regard to protection against child labor.

After this initial dialogue with the justice system, visits are made, for the purpose of inspection, on the equipment of the municipality’s assistance protection network, notably: the guardianship council, CRAS (Reference Center for Social Assistance), CREAS (Specialized Reference Center for Social Assistance), CMDCA (Municipal Council for the Rights of Children and Adolescents) and others, which may possibly exist. It is important to

remember that the network, although it has this basic structure, can change from one location to another, being more or less stratified according to local particularities (size of the municipality, number of families to be served, greater or lesser incidence of some activity).

Finally, once the network has been diagnosed, visits are made to municipal departments that can collaborate to solve any problems that may be encountered. In general, the Social Assistance Secretariat (or its correspondent), the Health Secretariat, the Education Secretariat, and the Labor Secretariat are visited. Here, too, the structure is changeable from city to city, according to variations ranging from the prevailing local economy to political choices that are up to the municipal Public Administration.

In the end, a meeting is held with the mayor, in which the result of the action is presented, seeking the municipality's commitment to solving the problems that, eventually, have been identified in the location covered by the project implementation. In general, it is possible to declare that there are generally pending issues to be solved, since child labor is a highly complex problem and, however, committed the municipality is to the issue, the problem will hardly have been completely eradicated (we have no information of any Brazilian city in which there is no form of child labor). Thus, the Public Policies Axis plays an important role in highlighting and demonstrating to the manager the issues to be the object of attention, always bearing in mind the priority interest of children and adolescents, who must receive absolute and comprehensive protection.

The Public Policies Axis reached a smaller number of municipalities, given the greater complexity of its implementation, since it requires the displacement of members and employees of the Labor Prosecution Service to the place, with a stay of at least two or three days. However, even with such difficulties, it was already possible to implement such an axis in at least 25 locations, being certain that, after the passage of the MPPI, the municipality starts to observe the problem with more care and commitment⁶.

As an example, once again, the municipality of Luziânia deserves mention: before the implementation of the project, the following factors were identified: lack of human resources and infrastructure in the protection network, especially in the guardianship councils; CMDCA without a full understanding of its duties and competencies; problems in communication

between equipment. Six months after implementation, the change was already visible. The Guardianship Council, which was in a worse condition, had received a new headquarters, adapted to the needs of the work, having improved the dialogue and approximation between the bodies of the protection network⁷.

It is important to highlight that, as the Public Policies Axis has a very specific job in the face of the local protection network, the presence of a social worker is highly qualifying for ministerial interventions. The MPT has a server who technically advises the project in this regard, the social worker Vitória Raskin, who has participated in several national stages related to the implementation of this axis, with excellent results in bringing MPT closer to the protection network.

Finally, the work of the Labor Circuit Prosecutor Margaret Matos de Carvalho, which, during her long history at MPT, produced some of the best results in several fields, notably in the collaboration for the construction of effective public policies to combat child labor and also Labor Prosecutor Tiago Ranieri de Oliveira, who idealized this initiative as an autonomous project, which also was a winner of the CNMP Award⁸.

5 CONCLUSIONS

The tour now carried out allows us to conclude that the Labor Prosecution Service plays a fundamental role in combating child labor, a wound that still plagues at least 2 million and 400 thousand children and adolescents in Brazil. This role is played both in its investigative function, acting on the news that comes to its knowledge, regarding the exploitation of the work of children and adolescents, as well as in its promotional function, which essentially performs the *Childhood Rescue* Project.

This project, through its 3 (three) fundamental axes, allows facing the main edges that need to be trimmed in order to effectively eradicate child labor. This is because a complex problem such as child labor can only be properly addressed if this complexity is taken into account – which evidently determines a plethora of actions that must be articulated together, with the effort of several members and servants of the MPT⁹.

Promoting *Childhood Rescue* is a fundamental measure for greater protection of childhood since child labor is at the root of several other violations of the rights of children and adolescents. Carrying out the project allows us to collaborate for the effectiveness of the principle of comprehensive protection, guaranteed in article 227 of the Federal Constitution. With this instrument, the MPT has acted strongly so that the Brazilian State can fulfill the goal assumed before the United Nations, regarding the eradication of child labor by the year 2025. It is a very difficult challenge, with little chance of full success (although Brazil has achieved a significant decrease in the number of children and adolescents in child labor, especially from the 1990s to 2015). However, difficulties cannot stagnate action. On the contrary: they must encourage all institutions to achieve better results, since we are dealing with the subject of rights that is primarily protected by our Federal Constitution, and without the comprehensive protection of this subject, effective social and economic progress will not be achieved in any measure. Because, as the sociologist and activist Herbert de Souza (1992), the late Betinho, said:

If I don't see a child in a child, it's because someone violated him or her before, and what I see is what's left of everything that was taken from him or her. The one I see on the street without a father, without a mother, without a house, bed, and food, the one who lives in the loneliness of nights without people around, it is a cry, it is astonishment. In front of him or her, the world should stop to start a new encounter, because the child is the never-ending principle, and his or her end is the end of us all.

ENDNOTES

- 1 During the author's management, Labor Prosecutor Ronaldo José de Lira was the National Vice-coordinator, and the managers of the *Childhood Rescue* Project were the following colleagues: Labor Circuit Prosecutor Margaret Matos de Carvalho and Labor Prosecutors Cândice Gabriela Arósio, Jailda Eulídia da Silva Pinto, Dulce Martini Torzecki and Ana Maria Villa Real Ferreira Ramos, who collaborated greatly so that the Committee could achieve the results obtained, which may be found registered with PGEA 20.02.0001.0008862/2019-37.
- 2 The 2030 Agenda, according to its creators, is an action plan for people, the planet and prosperity, which seeks to strengthen universal peace. The plan indicates 17 Sustainable Development Goals, the SDGs, and 169 goals to eradicate poverty and promote decent life for all, within the limits of the planet. These are clear goals and objectives for all countries to adopt according to their own priorities and to act in the spirit of a global partnership that guides the choices needed to improve people's lives, now and in the future (UN, [2020]).
- 3 The TIP List was approved by Decree no. 6,481/2008 and represents the Brazilian State's recognition of the worst forms of child labor listed in ILO Convention no. 182.

- 4 The project *Criando Juízo – a support network for citizenship through apprenticeship* was among the finalists of the 14th Innovare Award, in 2017.
- 5 The PETECA Project was awarded 1st place in the CNMP Award – Induction of Public Policies, in 2018.
- 6 During the period when the author was in charge of National COORDINFÂNCIA, it was possible to implement the project in 10 municipalities (Boa Vista/RR, Luziânia/GO, Medicilândia/PA, Feira de Santana/BA, Ipatinga/MG, Toritama/PE, Santa Cruz do Capibaribe/PE, Rio Brilhante/MS, Santana do Livramento/RS and Juína/MT), with the essential collaboration of the following colleagues: Labor Circuit Prosecutor Margaret Matos de Carvalho and Labor Prosecutor Ronaldo José de Lira, Safira Nila de Araújo Campos, Priscila Moreto de Paula, Geny Helena Fernandes Barroso, José Carlos Souza Azevedo, Mariana Lâmega de Magalhães Pinto, Jaidá Eulídia da Silva Pinto, Ana Carolina Lima Vieira Ribemboim, Annelise Fonseca Leal Pereira, Luciana Marques Coutinho, Adolfo Silva Jacob, Túlio Mota Alvarenga, Cândice Gabriela Arósio, Simone Beatriz Assis de Rezende, Ana Lúcia Stumpf González and Ludmila Pereira Araújo.
- 7 The full data of the implantation can be consulted in PA-PROMO 000168.2018.18.002/5.
- 8 The axis, still as Project Public Policies to Combat Child Labor, achieved the 2nd place in the 2013 edition of the National Council of Public Prosecutor's Award.
- 9 In this regard, it is necessary to register a special thanks to the procedural analyst Bruna Rossol, who served as COORDINFÂNCIA's Advisor during the period in which the author was in charge of the National Committee. Her technical support was essential for both the actions and the consolidation of the data obtained. On her behalf, thanks are extended to all MPT servers who actively support and collaborate for the implementation of the *Childhood Rescue* Project in Brazil.

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WATERCOLOR COORDINFÂNCIA:¹ LIFE STORIES AND TRAJECTORIES.

RAFAEL DIAS MARQUES

*“On a simple sheet, I draw a yellow sun.
And with five or six straight lines it is easy to make a castle.
I run the pencil around my hand and give myself a glove.
And if I make it rain, with two risks I have an umbrella”*

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It was like this, as in the *Aquarela* song by Toquinho and Vinicius de Moraes that, about 20 years ago, a group of members of the Labor Prosecution Service, in the sunny city of Fortaleza, still entranced with their new functions, designed in 1988, rehearsed, among many brushstrokes, under a white, challenging and enigmatic canvas, the first four or five straight lines, the first risks of the National Committee to Combating the Exploitation of Child and Adolescent Labor.

At that moment, everything was still very mixed up, the colors pale and faded, the straight, the curves, the image, the tibia, the work under construction. MPJT was already working – and how it worked! – in issues involving children, adolescents, and the world of work, issuing opinions in individual cases, participating in hearings, filing labor claims. Thus, the Regional Offices for the Defense of the Disabled were being implanted in the Regional Prosecutors’ Offices, later named as Coordination Offices for the Defense of the Interests of Minors and the Disabled.

In effect, since 1994, the MPJT has participated in the National Forum for the Prevention and Eradication of Child Labor and in the embryonic actions of the Child Labor Eradication Program (PETL), in Mato Grosso

do Sul, whose model would become the main policy of the Brazilian State regarding the fight against child labor.

But there, at that moment, a vacuum, an incompleteness, a gap was anticipated among the Labor Prosecutors, where the need to create a structure that meant an advance for collective and diffuse issues was slipped; for a coordinated, harmonious, proactive, and articulated performance with the other institutions of the System for Guaranteeing the Rights of Children and Adolescents; for national action.

Really, there was a lot of paint to paint with, a lot of paper to draw on, a lot of fields to dream about and dare, after all, it had been more than ten years since the promulgation of CF/88 and the edition of the UN Convention on the Rights of the Child, beacons of a novel system of norms for the protection of children, based on the principles of integral protection and absolute priority.

There was still a rich process of discussion regarding the ratification of Conventions nos. 138 and 182 of ILO, which contain rules on questions related to the minimum age to work and the urgent elimination of the worst forms of child labor. Alongside this, millions of children and adolescents in work situations, such as in the sugar cane fields and sisal plantations, in Alagoas, Paraíba, and Bahia, or in the charcoal factories of Mato Grosso, Pará, and Minas Gerais, or even in the footwear sector in the interiors from São Paulo. Thus, it was necessary to make all this, all this raw material, a new design of institutional performance, the traces of a new watercolor. It was necessary to reinvent itself, discolor to color again. And structural change, at least in the MPT, was very close, which is urgent.

It was September 2000, the time of the Seminar to *Combat the Exploitation of the Work of Children and Adolescents – Advances and Strategies – Perspectives for the Future – 10 years of ECA*, held in Fortaleza. At that time and space, several members of the Labor Prosecution Service, from all over Brazil, all in the communion of wishes and dreams, brothers, looking ahead, daring, already announcing how the MPT should organize itself in its mission, apprentices of a new afterglow, drew, with many straight lines, scratches and curves, running the pencil here, here and there, a multicolored watercolor, full of challenges and boldness, which started to be painted in a historical document, marking the Labor Prosecution Service in the times to come: the

Fortaleza Charter – For the Rescue of the Citizenship of Children and Adolescents who Work, which already indicated a change in route and work routine. A history of many achievements, concerns, creativity, and visceral dedication begins. There, the idea of COORDINFÂNCIA was outlined.

That was, then, the backdrop, the canvas, the frame, which would lead the then Prosecutor General of Labor, Guilherme Mastrichi Basso, to give the inaugural stroke, that same year. It came in the form of Ordinance PGT no. 299, of 11/10/2000, which definitively sealed the birth of the National Committee to Combating the Exploitation of Child and Adolescent Labor, arranging paints, colors, lines, and squares in favor of a beautiful watercolor for the defense of the fundamental rights of children and adolescents in labor relations. The main features were defined as follows: A) promote, supervise, and coordinate actions against the various forms of exploitation of the work of children and adolescents; B) promote studies and standardize understandings; C) represent the MPT in varied commitments.

The work was composed by painters representing all national frames, from north to south, east to west, under the initial baton of master deans, standing out, for being there, at the origin, Eliane Araque dos Santos and Lelio Bentes Corrêa, at the that followed so many others, today remembered in this work of homage to the twenty years of COORDINFÂNCIA. The Committee was born, therefore, under the sign of pioneering, avant-garde, she who was and is the mother of all National Thematic Committees of the Labor Prosecution Service.

But, like all freshly painted watercolor, still, with fresh paint, it needed to consolidate its colors, which were in danger of fading among the cracks of the institutional bureaucracy; to stop, before the social dikes of child labor permissibility, before the running of the waters of time.

It was, then, an occasion to affirm its conceptual nuances. Thus, the following brushstrokes were for consolidating concepts, setting parameters, and guidelines for action, as well as affirming a new bias of institutional action, less individual, and more collective, less reactive and more proactive, more planned and harmonious, more integral and more integrated with the other institutions of the system of guaranteeing the rights of children and adolescents.

And then, the first meetings of the Prosecutors-painters followed, twice a year, adjusting the brushstrokes, the sharpness of the images and the purposes, the shape and the volume, after long discussions, a lot of persuasions, a lot of patience and a lot of passion, consolidated important premises, such as domestic child labor as one of the worst forms of child labor; the first in-depth analyzes of sports and artistic work; the first discussions on the thesis of the jurisdiction of the Labor Court for the processing and judgment of judicial authorizations; the first clashes against judicial authorizations for work before the minimum age, granted by a Judge of Law, childhood and/or work, allowing work before the minimum age foresaw, a frank, open, and active violation of fundamental right by Judge State.

In this sense, the first understandings regarding mobile groups, studies of controversial topics, and standardization of procedures were agreed upon. After many smudges, the traces of social and interinstitutional articulation were established, the lines of society's awareness of the perversity and harms of child labor.

Participation in external commissions, public hearings, and discussion forums has been designed with increasing volume, of which the *National Forum for the Prevention and Eradication of Child Labor* is a major example. Several advertising campaigns have been unveiled, aimed at erasing myths about the acceptability of child labor.

These initial outlines met, yes, the need to integrate actions and institutions, after all, webs needed to be woven; hearts needed to be seduced; hands needed – and need – to be given, such as the complexity of factors that lie in the problem of child labor.

The color palette of this COORDINFÂNCIA in watercolor, of perennial formation, expanded even more and, at that moment, believing in a performance that needed to extrapolate employment relations to reach the entire universe of labor relations, especially the informal sector of the economy, some priority fields for urgent action have been outlined:

- 1) protection of adolescents submitted to apprenticeships, internships, and educational work, as alternatives to the famous child guards;
- 2) combating child labor in “dumps”;

3) combating the work of children and adolescents in illegal activities (sexual exploitation and drug trafficking);

4) combating the exploitation of child labor in a family economy regime;

5) combating domestic child labor.

COORDINFÂNCIA was in a hurry, as child protection requires immediacy and priority. At this stage of life, time runs faster, and the need for protection increases. Any damage perpetrated in childhood – among which, the damages resulting from child labor – spill over heavily into other phases of life, causing trauma and supporting projects of problematic adults.

Time passed and, after many studies and tests, new forms of disposition were being considered, new artisans were faithfully getting into the work, with the selfless servants of the Labor Prosecution Service as examples.

The watercolor, previously bathed in a given color, in a certain volume, in a definite form, was transfigured, discolored to be colored afterward, as if a new trend of performance was purifying itself among the many blurs of time, the successes and mistakes, the advances and setbacks, proven, lived, experienced, in the end, by solicitous, creative and daring members and servants of the MPPI, always in search of new tones for a watercolor that was already frayed in time.

Then, a crossing was completed: the era of studies, the consolidation of concepts, the definition of fields of action, the construction of statements and manuals of action, added to the era of execution, the definition of objectives, actions, goals, deadlines, resources, and those in charge, in favor of a Public Ministry able to deliver excellence and tangible results to society more aware of the role of public power; in favor of a proactive and resolute Labor Prosecution Service.

COORDINFÂNCIA, already in 2009/2010, following its pioneering and avant-garde vein, started with Strategic Management paints and brushed them, with more and more accuracy, through project management brushes.

And thus, a large part of the efforts was channeled towards the execution of Strategic Projects, which fulfill the role of enabling the fulfillment of the mission of the Labor Prosecution Service as an institution

that defends the legal order, the democratic regime, and unavailable social and individual interests, in labor relations.

The watercolor, in permanent construction, traced its quadrants in the following Projects, namely:

A) the MPT at School Project: hand in hand against child labor, focusing on raising awareness among students, parents, teachers, and the school community, regarding the harms of child labor, through art education;

B) the Public Policies Project, which, by strengthening the system of guaranteeing the fundamental rights of children and adolescents, including the fundamental right to non-work, through the articulation and eventual accountability of the omitted Public Power, dared to add the State as debtor of minimum actions, in the context of providing public policies essential to the existential minimum and instrumental to the creation of the material conditions that keep children and adolescents from early work, whether in the field of education, professionalization, social assistance, work, income, etc.; and finally,

C) the *Professional Apprenticeship* Project, as a means of guaranteeing the enjoyment of the fundamental right to professionalization, based on premises such as universal access to vocational training, internalization of opportunities, and a concrete and protected alternative, which guarantees labor and social security rights to vulnerable people, such as those who had left child labor, the low-income population, adolescents who had committed infractions and who followed socio-educational measures, as well as those who were institutionalized.

In fact, and because it dared, believed, and counted on its Prosecutors and artisan servants, COORDINFÂNCIA conquered and presents a prominent place in the context of the Strategic Management of the Labor Prosecution Service, as it defined its strategy and aligned its design among its collaborators, defining actions, goals, objectives, master plan and performance indicators, doing so, evaluating and monitoring its performance, knew how to measure its results and deliveries to Brazilian society. It is the nuances of a pioneering spirit, the colors of the avant-garde, the traces of dedication, faith, and devotion that are once again reflected in watercolor.

COORDINFÂNCIA in watercolor follows, therefore, its path and, wherever it goes, exposing itself in deeds and intentions, testing itself in new compositions, it has garnered national and international applause and praise, such as the CNMP Strategic Management Award, edition 2013, which highlighted the Public Policies Project, as good finalist practice, in the area of childhood and adolescence, awarding it the second place in the entire Brazilian Public Ministry. Acknowledgments across national borders have also been dedicated to the work of COORDINFÂNCIA, such as invitations to present good practices in Mozambique, Mexico, and Cape Verde. Additionally, the Public Policies Project was one of three good national practices to combat child labor, selected for presentation at the III Global Conference on Child Labor.

In the last years, in the perennial movement of discoloring to recoloring, there was a need for integration between the three Projects that made the Strategic Management of COORDINFÂNCIA stand out. Thus, they would become one, in symbiosis as effective as efficient to combat the complex problems of child and adolescent labor. The fruitful *Childhood Rescue* Project was born, which started to condense integrated techniques to promote awareness on the subject, the professional training of adolescents, and the promotion of public policies linked to the fulfillment of the fundamental rights of children and adolescents. And this started to add forceful strategic actions against child labor in economic chains.

Its acting theses, many of which are avant-garde, have also been recognized by the Brazilian Courts, including the Superior Labor Court. Indeed, there are several decisions that declare the jurisdiction of the Labor Court to assess ministerial causes in which the State is condemned to provide public policies for the prevention and eradication of child labor. There are so many others that recognize the competence of the Labor Court, to prosecute and judge the deeds in which inhibitory and condemnatory tutelage are discussed, resulting from an offense related to the commercial sexual exploitation of children and adolescents; or, still, those that proclaim the competence of the worker Justice to activate parameters of protection to the adolescents in professional sports training, in the cases of child athletes.

But it is necessary to close, under penalty of getting too tired, those who were willing to read this simple ode to COORDINFÂNCIA, in the

year that the Committee completes 20 springs, counted since those first brushstrokes of the 2000s.

Indeed, much has already been painted and it would be impossible to report this entire trajectory, created and traced with such devotion, now so well conducted by the dedicated and talented hands of Labor Prosecutors Ana Maria Villa Real Ferreira Ramos and Luciana Marques Coutinho.

In fact, much remains to be painted. New and old challenges, in different shades and perspectives, are confronted in this endless watercolor: informal work in large cities; work in family farming; domestic child labor, still invisible and accepted; child labor in drug trafficking; artistic child labor, in which *glamour* and fame hide work, blinding parents, families and even high-ranking judges; the absence of professional training for adolescents who committed an infraction or under institutional care.

On all these fronts, there is COORDINFÂNCIA, inventing and reinventing, painting and repainting, erasing here, sketching there, coloring and discoloring, and coloring again, the framework for protecting children in work relationships.

Many, however, intrigued, do not understand the liveliness, resoluteness, and proactivity of the Committee in watercolor, the feeling of belonging that spreads from it. They are amazed when they see the typical fragility of a watercolor, painted with water and paint, before the fortress and avant-garde performance of the Committee. They question why things work out in COORDINFÂNCIA, why they expand by occupying blank spaces and expanding frontiers of action. Others, members of the MPT and civil servants, simply let themselves be infected and devoutly thicken the chain, without shame, without modesty, without parsimony.

It is that that profuse watercolor was gaining more and more momentum, dripping its paints beyond the canvas of the Labor Prosecution Service, as an institution. The paints escaped into the lives of MPT members and servants and, mixing with their skin, blood, fluids, souls, and desires, body and mind, gained substance, strength, and courage. They created a feeling of dynamism.

And now, they are no longer made only of pigments and water, they resist the force of time and can no longer be erased or torn. They are the

start, the hope, the faith, the belief, the conviction, the certainty that a Brazil and a world without child labor is possible.

Ah, COORDINFÂNCIA, there are so many of its properties, so many of its colors, so many of its shades, so many of its spans through which feats, desires, and dreams run, that it cannot be understood just like that, as time goes by. It is a state of mind, the profession of faith, missionary life, mantra, fever, visceral strength, bowels, childbirth!

It definitely doesn't fit in a timeline. It could be one, two, ten, twenty, fifty years. It is simply that it fits only in our hearts and minds, where there is no time or space, where there are no limits, no borders, no dikes, no boundaries, no censorship; where everything is infinite, wide and abyssal like the universe; where everything is possible and beautiful, especially possible and beautiful, when, in the end, is the beginning of everything: childhood and adolescence, so fragile and simple, so fertile and fruitful, so magical and creative, where daring marries with imagination, the base where the greatest work of life will break: the human person in his/her dignity and citizenship, full, filled, pregnant!

There is a whole future to color, discolor and color again, smudge, make and redo, after all, as Toquinho and Vinicius say, in the song *Aquarela* that embodies life: "A boy walks and walking arrives at the wall. And right there waiting for us the future is. And the future is a spaceship that we try to pilot. There is neither a time nor pity nor a time to arrive. Without asking permission, it changes our lives. Then it invites you to laugh or cry. On this road, it is not up to us to know or see what will come. At the end of it, nobody knows for sure where it will lead. We are all going on a beautiful walkway".

Long live, COORDINFÂNCIA!!

By me, Rafael Dias Marques, a painter-craftsman-apprentice of the causes of childhood.

ENDNOTE

- 1 A text based on a Tribute Speech to the National Committee to Combating the Exploitation of Child and Adolescent Labor, given on the occasion of a commemorative ceremony for their 15 years.



INFORMALITY AND CHILD LABOR: THE COMPLEXITY OF THE CHALLENGES TO SOCIAL REGULATION OF WORK

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Abstract: This article aims to discuss the extent to which child labor is related to informality, shedding light on the importance of public policies aimed at the eradication of child labor in dialogue with the expansion of the formal labor market, prioritizing the regularization of jobs and access to citizenship rights, with complementary association with income transfer, income generation, and access to credit policies. Based on a survey of data and studies on the conceptualization and composition of informality, its exclusion in relation to social policies for the protection of work and the complexities generated for our labor market, notably in the light of racial and gender markers, the scientific production that links the incidence of child labor to contexts of informality is revisited, questioning the consistent simplification in attributing the causality of child labor exclusively to poverty. Finally, the article connects the debates over the dispute over social regulation of work centered on the idea of protection, based on international and constitutional parameters, and the struggle for the implementation of the doctrine of comprehensive child protection.

Keywords: Child labor. Informality. Work Regulation. Comprehensive Protection.

For Elis.

1 INTRODUCTION

The exploitation of child labor is a historic wound in capitalist societies. Since its beginning, it has presented itself with greater intensity in contexts of poverty, underdevelopment, and overexploitation. If labor law asserts itself in historical development as a fundamental technology for the preservation of life and minimum levels of social cohesion, the eradication of child labor is one of the prerequisites for fulfilling this mission.

The development of the idea of child protection, with the sophisticated improvement of the comprehensive protection doctrine, consolidates, in addition to the prohibition of early work, the public duty to ensure children and adolescents healthy and full development, through the imperative of public policies that dialogue with the complexities of the risks to which they are exposed.

Based on this bias, this article aims to discuss the extent to which child labor is related to another structural problem in the Brazilian labor market: informality, shedding light on the need for public policies aimed at the eradication of child labor to dialogue with the expansion of the formal labor market and, above all, with the prioritization of the affirmation of citizenship rights and the regularization of jobs, correlated, in a complementary way, with credit and income generation policies¹. This article consists of this introduction and four more parts.

In the first item, a survey of data and studies will be carried out on the conceptualization and composition of informality, its exclusion in relation to social policies for the protection of work, and the complexities generated for our labor market, notably in the light of racial and gender markers.

In the second item, we will revisit the scientific production that links the incidence of child labor to informal contexts, questioning the consistent simplification in attributing the causality of child labor exclusively to contexts of poverty, in spite of other relevant exclusion markers.

In the third item, we will try to connect the debates about the dispute for a social regulation of work centered on the idea of protection, based on the international and constitutional parameters of protection of workers in a broad sense, and the struggle for the realization of comprehensive protection for children.

Finally, we will present the final considerations.

The preparation of the article results from interdisciplinary theoretical research, resulting from the dialogue of economic, sociological, legal, and social service knowledge, always from an intersectional perspective, in which the structural inseparability of oppressions of race, gender, and class is considered (AKOTIRENE, 2018).

2 INFORMALITY AND SOCIAL UNPROTECTION

There are a series of questions regarding the category “informality”, which refer to its potential to explain the recent phenomena of restructuring the capitalist market (new informality) and the old precarious forms of labor (old informality), especially due to the significant range of phenomena that it encompasses and the different conceptions that circulate in common sense, in the academy and in the formulation of public policies (KREIN; PRONI, 2010). In this topic, the objective is to extract from the concepts covered instruments useful for the contextualization of child labor in relation to informality.

2.1 The evolution of the concept of informality

As noted by Krein and Proni, in the early 1970s, the International Labor Organization (ILO) directed its scope of understanding to a significant portion of the population in peripheral countries not incorporated in the advancement of modern market relations (KREIN; PRONI, 2010). The concept of the “urban informal sector” was based on the belief that the formal wage-earning standard with social protection was an inexorable destination for the capitalist march, with backward sectors that had not yet been incorporated into its dynamics, engendering other survival strategies. “Informal activities” would be residual aspects of a society in the process of modernization and the role of the State would be to incorporate this human contingent into the formal labor market (KREIN; PRONI, 2010, p. 8).

The designation “informal sector” referred to activities outside the Fordist standard of formal wages in the urban context (coined the traditional sector), an environment in which “development”, the introduction to technical progress, and urban expansion flourished. Thus, the informal sector would

have a “functionality”: absorbing the surplus labor force in times of economic slowdown and providing labor in a growth scenario – a gateway to the formal market. These activities would be marked by their inherent character “to the survival of the individual or his/her family group, low productivity, lack of protection from the social point of view and fundamental rights, in addition to being taken on ‘on their own’ or by ‘very small enterprises’” (KREIN; PRONI, 2010, p. 8).

The identification of the existence of the informal sector with the non-absorption of the economically active population in formal and salaried jobs, due to the insufficiency of economic growth, directed research on the topic to analyze the problems related to the generation of employment and to formulate actions on the fight against poverty. It was believed that the trend of the informal sector was the disappearance due to the economic expansion and the formalization of some activities, through the selective posture of the State in the face of the promotion of informal activities that should prosper and others that should disappear as a result of inter-capitalist competition (KREIN; PRONI, 2010).

The 90s began², new social processes were incorporated into the capitalist dynamics, notably related to the adaptation of modern companies in face of the instability of demand and the incorporation of measures of productive decentralization combined with the subcontracting of companies and workforce (KREIN; PRONI, 2010).

The growth of unemployment and the reappearance of precarious forms of work directed the debate to two different paths: eliminate the heterogeneous set of activities that constituted the informal sector of the economy; or take advantage of the potential to generate income and occupations for most of the destitute population. The ILO opted for the middle ground at the time, which consisted of supporting the informal sector by rejecting situations of extreme exploitation and inhumane working conditions.

In 2002, the ILO started to use the term “informal economy”, with the recognition of the social and political importance of those activities, which were once doomed to disappear with economic growth. It is assumed that there are different degrees of formalization in the economic structure, ranging from absolute informality to total formality (a kind of protection

scale). This conception also allowed an important distinction within the informality phenomenon: the situations related to the unstructured sectors of the economy and those related to the informal execution in the organized sectors of the capitalist economy.

The imagined state intervention, in view of the aforementioned scenario, should have a gradual character, aiming at reducing the gap between the employment pattern defined for formal activities and the conditions related to informal work. Legal recognition of informal activities would be necessary, as well as access to a set of social rights and protections, in addition to the representation of their rights with the States (KREIN; PRONI, 2010).

In the national context, debates also became more systematic in the 1970s, with an investigative interest in the urban informal sector. From this framework, three types of approaches have emerged and predominated (THEODORO, 2000).

Initially, the *technical approach* was used, for which economic development is an end that justifies the means. Informality would be a transitory anomaly, the result of rapid and violent transformations in developing countries. The role of formalizing these activities was reserved to the State since informality would be automatically extinguished with the achievement of developed country status (THEODORO, 2000, p. 10).

In another way, the *political approach* (created during the New Republic period, in the midst of rising unemployment, informality, and a growing inflationary process) considers informality as not only an economic but a social problem, with a view to rescuing citizenship (THEODORO, 2000, p. 12). This would not be a transient anomaly in the functioning of the labor market, but a possible solution to contextual unemployment and a survival strategy due to the lack of jobs and a universalized security system. Public policies should be directed to the aspect of formalizing work activities in parallel with a fragmented and assistentialist social policy.

Finally, the last approach would be the *subsidiary*, which has its home in the productive restructuring and redefinition of the role of the State, being a “Brazilian” reinterpretation of the neoliberal discourse (THEODORO, 2000, p. 14). In this perspective, it is considered that each informal worker would be a potential small entrepreneur, who should be supported through

credit policies and regulated by the market in its priority demands. In this approach, there is a substantial loss in the “transforming” character of public policy in the social reality. In this sense, public policies aimed at supporting the informal sector suffered from these design deficiencies, as were marked by clientelism, corporate actions, and political injunctions^{3 4}.

In the search for theoretical improvement of the concept of informality, it is important to highlight the delimitation of conceptual types that would portray its different forms. The *old informality* would be embodied in the insufficiency in the generation of jobs and absorption of the economically active population, which would have as a consequence the realization of survival strategies. *Neoclassical informality* is related to the rationality of companies in seeking to reduce the cost derived from labor legislation. Finally, the *new informality* or *post-Ford informality* results from the introduction of technical progress and new forms of work organization (KREIN; PRONI, 2010, p. 20). The concept of new informality, attributed to the structural changes of capitalism and the precariousness of work, gained strength in the first decade of the 21st century, combining formal and informal activities, and distinguishing itself from the old informality, which refers to the inherent character of survival.

In another perspective, Cacciamali (2000) adds to the debate the concept of the informality process, which is related to the structural changes underway in society and in the economy, affecting the redefinition of the relations of production, of the forms of insertion of workers in production, work processes and institutions. In the outline of the informality process, one would be learning both certain forms of organization of production that involve self-employment and work for micro-enterprises, with low organization and productivity, in which the figures of employee and employer are confused in the search for survival and the different forms of illegal wage-earning.

This second group would be composed of jobs without registration or without the right to social protection, as well as an expansion of atypical contracts, such as temporary work, labor cooperatives, and labor contractors. Cacciamali (2000) considers this concept relevant to examine changes in the relationship of production and insertion in the labor market nowadays since there would be no watertight dichotomy between formal and informal markets, but a *continuum* of situations that can be observed both on the

labor demand side as well as the labor opportunities. What would define this informality would be the precariousness of labor, devoid of the protection of labor and social security laws established in public state norms and collective bargaining.

2.2 Informality, race, and gender

In addition to this process, there is a structural *racial component* in the phenomenon of informality, which affects the population unevenly and indicates the social construction of the black person's place in the labor market.⁵ The predominant narrative built on work (and on labor law itself) in Brazil was conducted in a different direction to this recognition, identifying the history of labor in the national territory with the history of free, paid work, marked by the exclusion of black female and male workers, despite their fundamental role in the production and generation of wealth (ALVES, 2019).

The studies carried out – considering the particularities of the formation of the free labor market in post-abolition Brazil – indicate that it is essential to note that, while the formal labor market (later protected by labor legislation) was protected for white immigrant workers, starting from a deliberate and incisive policy by the Brazilian government to launder the population, the freed blacks were relegated to low paid positions and understood as related to the “subsistence economy”, especially in the service sector. Later, it is this set that will give rise to the “informal sector” in Brazil (THEODORO, 2005), in a process that has been reproduced historically.

It is not possible to understand informality apart from racial segregation in Brazil⁶ because the meaning of abolition in the country was multifaceted. There was a loss of workspaces by former slaves, who were pushed into a process of impoverished urbanization and precarious work, notably in the informal sector. In another perspective, the incorporation of blacks into the “free” labor market was excluded from integration into the political and citizenship spheres, elements that meant, in concrete reality, access to land, work, and mobility to think and act (ALVES, 2019, p. 21). For Theodoro, it is not possible to think of poverty and exclusion in Brazil apart from the destiny of former slaves and their reproduction (2005), in which informal work played (and plays) a central role.

It is, to a large extent, the generational developments of the “winners” (REIS, 2019): people, predominantly black, who persisted, since post-slavery, engaged in informal work through gaining activity, because they were not absorbed by the legally protected forms of work, nor were they socially inserted in a satisfactory way so that they could qualify for them. This structural segment of our labor market has been studied by recent literature, especially by studies focused on the racial issue (ALVES, 2019), not as an accidental figure in times of crisis, but as a central marker of our labor market that, at moments of crisis and due to the neoliberal discourse, it tends to grow, “swallowing” slices of the formal labor market.

The scenario presents a special vulnerability to the female workforce, and notably to black women, whose historical occupations in domestic work and paid care⁷, in street commerce and in illegal wage relations determined by the intense precariousness or by the concealment of bonds (outsourced cleaning workers in a situation of disrespect for labor rights, cosmetics sellers, “autonomous” workers in beauty salons, among others) tend to find lower incomes than men and social protection incompatible with the family burdens assumed by this group, accumulating the conditions of subjugation and abuse of physical strength, which Angela Davis (2016, p. 19) and Patricia Hill Collins explain in their works (2019, p. 107-108).

In view of this situation, in which there are still activities carried out as “a strategy of survival or income supplementation” (old informality) and created situations that “tend to circumvent the protective archetype that enables workers to access social security and labor rights” (new informality), in a continuous interchangeable process, deepened by gender and race markers, this analysis is included in the social regulation of informality related to child labor⁸.

3 INFORMAL AND CHILD LABOR: CONNECTIONS BEYOND POVERTY

The vast literature available on the exploitation of child labor is unanimous in the sense that the recruitment of child labor by families is not the result of autonomous decisions or individual context: it is a problem that integrates the social issue and is part of the constitution of the capitalist production system (LOURENÇO, 2014). Business activities on a global

scale produced in contemporary capitalism connect multinationals to smaller companies or individuals who work on their own at their own risk, creating a kind of underworld labor, due to the search for lower production costs. There is thus a process of construction of different realities of production, which are part of the same precarious economic dynamics (ANTUNES, 2018).

At the same time, as noted by Edvânia Lourenço (2014), the context of families' precariousness is combined with an ideological discourse that ratifies child labor, which is anchored on the premise that early work would be an efficient way of preventing what is called marginality, even with an educational character. Such a criminal perspective evidently starts from a limited perception of the problem, because it emphasizes and privileges – among the multiple causalities of crime repressed by the State – the subject's intentionality and not the perverse mechanisms of selectivity and social exclusion that inform it. For her, the combination of these two elements – family precariousness and ideological discourse – would lead to a perpetuation of the parents' situation by their children: informal work would be linked to this chain insofar as it is responsible for the lowest family income, which, in turn, induce the demand of parents for the work of their children (LOURENÇO, 2014).

The so-called “survival work”, a marker of the old informality, whose execution tends to happen, to a large extent, in the private space of workers' homes, with low productivity and lacking social protection, would be a facilitator of the insertion of children in the dynamics of the lives and work of their respective families, either because these two spheres end up getting confused, or because they make the work environment antagonistic to state inspection (LOURENÇO, 2014).

Similarly, Souza, Bidarra, and Staduto (2012) understand the relationship between child labor and informality, considering that the subjects that make up the group of informal workers are characterized, in addition to the low income from their work, by low qualification. For the authors, child labor and the resulting damage to schooling imply limiting opportunities for insertion in the labor market, also defining a reverse relationship between child labor and informality, which would engender the intergenerational transmission of child labor.

Research carried out in Paraná that crosses the data on informality and schooling identifies the greater presence of child labor originating in informality than in formality and allows to clearly design a cycle involving “informal work – low income – low family income – child labor – no schooling – informal work – low income and again child labor” (SOUZA; BIDARRA; STADUTO, 2012, p. 17).

In addition to these connections, it is worth reaping the more specific contribution of Cacciamali, Batista, and Tatei (2011) regarding the causality between the form of insertion of the head of the family and the propensity for child labor. The authors point out, based on a broad empirical survey, that the understanding of the dynamics that engender child labor cannot be limited to the question of income and, therefore, to the scenario of poverty. According to economic theory, the demand for child labor results from at least four factors: substitution on some scale of the adult’s work for that of the child, lower cost of the worker in this age group, little organizational capacity for this group, and appropriate legislation and its application (CACCIAMALI; BATISTA; TATEI, 2011, p. 13).

Evidently, there is no empirical scope to understand that informal work, as a rule, allows the achievement of higher income than formal work. However, during the methodological treatment and investigation of data, the authors highlight points for understanding the situation. Cacciamali *et al.* separated two analysis groups according to the reference of family support: those families with income from formal wage labor and those with income from self-employment. Except in the situation of self-employed professionals, child labor is used more intensively in families with income from self-employment, since the participation of children or adolescents is seen as a cost reduction strategy, as well as an element of confidence and guarantee to operate and maintain the small business (CACCIAMALI; BATISTA; TATEI, 2011).

It is interesting to note, for example, that although the family income of families with work related to domestic employment (formal wage earners) is lower, the intensity of use of child labor in this group is lower than that found in families whose income comes from their own activities (CACCIAMALI; BATISTA; TATEI, 2011, p. 14), showing the complexity of the phenomenon, which is not only explained by poverty or lower income.

Another relevant aspect that supersedes the one-dimensional criterion of income and poverty is that the self-employed person, for assuming what they call “income risk management”, has more incentive to recruit the work of the family and children, since this resource directly impacts their income and also their ability to face adversities (CACCIAMALI; BATISTA; TATEI, 2011).

As a rule, less affluent families, because they do not have savings or liquid assets, or even because they do not have access to credits, end up using child labor as a way of guaranteeing to face the inconsistency of income. The informality process, by pointing out the interrelationship of the forms of work linked to the new and the old informality, also explains that its predominance as precariousness impacts on the intensification of child labor.

The formal socially protected wage standard inhibits the need to use child labor as a form of risk management since there is the possibility for these adults to use the guarantees provided in the public social protection screen. Since the informality process distances labor relations from this pattern, the link between the aforementioned violations and vulnerabilities is presented.

In this sense, studies produced in Brazil demonstrate that the parents’ occupational status affects the propensity for child labor in a more relevant way than family income or school attendance itself – which is often pointed out, including common sense. Cacciamali *et al.* explain that formal workers manage the risks and possibilities of loss of income through the social protection screen (unemployment insurance, severance pay, FGTS (Unemployment Guarantee Fund) withdrawal, social security insertion), while informal workers tend to find it as the only alternative for risks and loss of income the family base itself, which includes children and adolescents (CACCIAMALI; BATISTA; TATEI, 2011, p. 17).

The forcefulness of this conclusion tends to be clouded by the fact that, with rare exceptions, the income from formal work is usually higher than informal income, but the isolation of the variables allows us to observe that there is a greater propensity to use child labor among self-employed workers than among employed workers, as well as certain geographical peculiarities (greater propensity to use child labor in the countryside than in the city and greater incidence in the South and Southeast than in the Northeast).

Therefore, one can assume that employment and family income are significant variables to prevent child labor (CACCIAMALI; BATISTA; TATEI, 2011), which invites an important direction of public policies aimed at the eradication of child labor to face the aforementioned context of informalization of the labor market, which is a global trend of the current capitalist period (ANTUNES, 2018) and intensifies in Brazil after the Labor Reform (Laws no. 13,429 and no. 13,467/2017).

This clarification is significant in thinking about public policies aimed at preventing child labor in areas plagued by poverty. Crediting adult income generation alone to combat child labor can mean the construction of public policies based on incomplete diagnoses, which do not capture the complexity of this reality and which cloud the relevant role of protective regulation of work for concerted action against child labor (CACCIAMALI; BATISTA; TATEI, 2011).

The discourse to encourage entrepreneurship found a perspective of neoliberal rationality for work and for the formation of subject-companies (DARDOT; LAVAL, 2016), disconnected from their class, gender, and race trajectories. Its promotion through microcredit, coming from an irresponsible state perspective in the face of informality (subsidiary approach), may result in stimulating business arrangements whose profitability is based on the circumvention of the protective regulation of work and which is associated, indirectly, with forms of facilitation of child labor.

In this sense, too, income transfer policies, such as the *Bolsa Família* Program⁹, in which the impact on schooling and the inhibition of child labor due to the increase in family income is highlighted, have no positive consensus assessment by researchers in the area. Some note that programs in this format have not had the same – nor a persistent – impact, particularly in rural regions, with a long tradition of family farming and in some poor households. Although they act to reduce child labor, in some regions, as a result of poverty reduction, these policies are not able to eliminate persistent centers of child labor in longer periods of time. Thus, it is clear that policies to combat child labor also cannot focus exclusively on income transfer and ignore variables such as schooling and formalization of the labor market (RAMALHO; MESQUITA, 2013).

On the other hand, but in the same way, the evidence that families under the responsibility of a self-employed person are more likely to enter the labor market early, due to the possibility that their parents can make productive use of child labor, points out an inconvenience in the promotion patterns based only on microcredit (CACCIAMALI; BATISTA; TATEI, 2011).

The delicate link between the parents' occupational status and the propensity for child labor is evidenced, other relevant markers in the reproduction of the chain between informality and child labor are deepened: if there is a historical reproduction of informal work among black people and if, within this segment, lower-income and stereotyped activities are carried out by women, considering the special victimization, by child labor, of black children, with increased exploitation for those of the female gender, in a reproduction of family trajectories and ethnic-racial characters, and that reproduce cycles of poverty, racism and female oppression¹⁰.

4 THE DOCTRINE OF COMPREHENSIVE PROTECTION AND SOCIAL REGULATION OF WORK: A COMPLEX INTERSECTION

Conceptually demarcated the heterogeneous group and the different situations covered when it comes to informality, as well as its racialized and structural composition made explicit from the economic point of view, in the Brazilian context, the common denominator reached is that informality presents itself as a product of significant omissions in the protective regulation of labor, thus understood that supported by the constitutional normative construct in its promise of effectiveness.

The absence of social protection resulting from the aforementioned omissions in protective regulation is multifaceted and profound. In the sense of a historical omission, it materializes when we refer, for example, to domestic workers without a formal contract and to street vendors – as they are of subjects present in the functioning of the country's social reproduction, since slavery, and whose forms of labor and existence were not absorbed by a public screen for the protection of work and the realization of citizenship. In the sense of an exclusion resulting from the disputes over the dialectical process of social regulation of work (DUTRA, 2018), it asserts itself when

the protective prescription does not reach the dimension of effectiveness because the legal non-compliance by employers finds in leniency, or even in the speed of action of the protection institutions and actors, an important shelter for the persistence of informal situations that result from illegality (FILGUEIRAS, 2012; CARDOSO; LAGE, 2007), embodying what Antonio Casimiro Ferreira calls subversive labor law (2012). It is worth mentioning that the failures of institutional regulation are more frequent among vulnerable groups, such as women and black people, even when it comes to formal work, as research on the subject points out (DUTRA, 2018).

On the other hand, the construction of the **doctrine of comprehensive child protection**, within the scope of international protection instruments ratified by Brazil and internal rules, has been designed since 1924 with the Geneva Declaration, including the 1959 Declaration of the Rights of the Child, the Federal Constitution of 1988, the United Nations Convention on the Rights of the Child (1989) and the Statute of the Child and Adolescent – ECA (Law no. 8,069/90).

This normative complex develops around ten protective postulates that guarantee children and adolescents *the right to equal and non-discriminatory treatment; the right to special protection*, with opportunities and facilities that promote the development of all its potentialities in the most diverse dimensions; *the right to name and nationality; the right to social security benefits¹¹; the right to special treatment in the event of a possible condition of disability; the right to the complete development of his/her personality; the right to education; the right to priority service; and the right not to be treated in cruel or perverse ways and not to be placed in child labor* (RIBEIRO, 2014).

In this assembly, special labor protections stand out, which, within the scope of the International Labor Organization, were transmitted through the first ILO Conventions (Conventions no. 5, no. 6 and no. 7), consolidated through Conventions no. 138 and no. 182, in addition to being diffused in several special ILO conventions and also in its recent Agenda for Decent Work. The challenges to achieving comprehensive and multidimensional protection for children and adolescents, reflected in the principle of the best or greatest interest of the child (RIBEIRO, 2014), have their amplitude accentuated due to the dimension of social inequality and the existence of gender and race discrimination in a nation.

In the realization of this universal standard in developing countries, violated by deep processes of impoverishment and exclusion, it is necessary to consider the diversities and political-economic issues that plague the reality of these countries. The specific and unique formation of the labor markets, the quality of labor regulation and the nature of the occupation of adults, as well as the exclusion processes to which they are subjected are fundamental elements in the policy to combat child labor, as that considers this social risk – in addition to an ethical or individual choice of families – as a result of structural processes. Scenarios of profound disqualification of social rights operate according to ways of life incompatible with the full and safe development of children.

In articulating these structures, thinking of informality as an indicator and as a social issue to be dealt with together – and as a premise – for combating child labor dialogues with ILO data that show that in emerging and poor economies it is common for more than half of the workforce is engaged on the fringes of informality. Some of them, with emphasis on Latin American, African, and Asian countries, have 70% of the informal workforce (e. g. Bolivia, Peru, Indonesia, Pakistan, Tanzania, Mali), reaching 90% in India (NICOLI, 2016). These data, not coincidentally, coincide with those indicators of child labor concentration, which reveal the highest incidence of child labor in Asia and the Pacific, followed by the regions of Sub-Saharan Africa and Latin America and the Caribbean (ILO, 2011 *apud* RIBEIRO, 2014, p. 25).

As Pedro Augusto Gravatá Nicoli observes, work in conditions of absolute precariousness has always coexisted with regulated employment (2016), and it is pertinent to consider the heterogeneous composition of the “class-who-lives-from-work” (ANTUNES, 1999), including all those who live off their work, including unemployed and informal workers. In the last decades of the 20th century, however, with the advent of productive restructuring and the transformations that the capitalist system of production has undergone, what used to be the margins of the system expands in such a way that it starts to occupy its center, challenging the instituted systems of labor protection to return their criteria (NICOLI, 2016).

That is why the challenge, for labor law, to stop treating informality as an undesirable and provisional externality, and to use its technologies and legal arrangements to think about ways of reaching this group, as the prospects

for protection at an international level, in the restoration of protective frameworks that recovers the original vocation of labor regulation and promotes a reckoning with the historical outskirts of segregation (NICOLI, 2016, p. 74).

In this sense, Nicoli explains that, since 1999, the ILO has signed the need to care for all workers – salaried, unregulated, self-employed, and domestic – doing so through the decent work agenda (NICOLI, 2016, p 115). Since then, the ILO has defined its institutional mission based on a concept of global protection that implies recognizing that everyone who works and needs protection has rights, which implies saying that all its Conventions are applicable to labor relations in a broad sense, as well as a general duty established for States, of protection of work in a similar scope, with the engagement of executive, legislative and judicial measures for that purpose (NICOLI, 2016, p. 117-121).

It is clear, when articulating informality and child labor, that the bottleneck of public policies for the aforementioned issues is found, above all, when child labor is identified exclusively with poverty and not with the productive arrangements that determine it. When reporting, in addition to poverty, occupational status as a relevant element, it is essential to combat child labor, reinforce the fight against fraudulent and illegal labor relations, as well as the encampment of priority public policies focused on citizenship rights and to formal insertion, which can be associated, only as a complement to credit and entrepreneurship, which have been led by neoliberal reason (DARDOT; LAVAL, 2016).

The reinforcement of inclusion policies that dialogue with the ownership of rights, dignity, and political participation shows a tangible path of intervention in the trajectories of families that face the risk of child labor. The subsidiary approach to informality, the marriage of its priority agendas with the neoliberal agenda, the exacerbation of the violence of the Penal State – including that arising from the normal functioning of the public administration – the selectivity and focus on purely assistance public policies and the weakening of the social protection screen, through reforms in the labor and social security system, are aggravating the violations of the postulates of protection for children and adolescents, which are entangled in the complex whole of social regulation of work.

5 FINAL CONSIDERATIONS

According to the conclusions of the extensive research undertaken by Cacciamali (2010), the regulation of the new informality presupposes a dispute over-regulation and for the effectiveness of the provisions concerning wage and social protection. The employment envelope ensures, in addition to income and subsistence, relevant dimensions of building citizenship at the individual and collective level, covering families and communities. On the other hand, the understanding of the old informality and its historical roots is essential for the construction of public policies compatible with this sector, which aim at the economic growth and the reflex growth of informal earning options, ensuring their citizenship rights and reducing their vulnerability (CACCIAMALI, 2000).

These policies to deal with the problem of informal work are aligned with the fight against child labor, as this injury is crossed, according to important studies (CACCIAMALI; BATISTA; TATEI, 2011; RAMALHO; MESQUITA, 2013), not only due to situations of poverty but because of the productive and occupational arrangements that define certain citizenship or sub-citizenship status of the families of children who are put in such risk.

The necessary articulation and integration between the doctrine of comprehensive protection and the decent work agenda involve a strengthening of social regulation of work, as a policy affects the Public Authorities – the Executive, the Legislative and the Judiciary Authorities – as well as the prioritization of public policies that ensure solid citizenship and inclusion processes, not ensured by policies exclusively structured on income transfer or adherence to the neoliberal trend of micro-entrepreneurship and microcredit.

ENDNOTES

- 1 It should be noted that “for two years, Brazil has not known how many children and adolescents are working in Brazil. The last information released by IBGE, responsible for surveying one of the worst Brazilian problems, was in 2016, released the following year. That was 2.3 million that year. The release of data for 2017 and 2018 was scheduled for June of last year, passed to November, then March of this year and now, according to the institute, it should happen in June, already bringing data from 2019” (O GLOBO, 2020). Add to the information in the report that the disclosure of the aforementioned data also did not occur in June 2020.

- 2 The ILO rediscussed the issue of informality in 1993 at the 15th International Conference of Labor Statisticians (KREIN; PRONI, 2010, p. 11).
- 3 However, some distinctive features deserve prudence in the discussion and conceptualization of “Brazilian informality.” Initially, it must be taken into account that regional inequalities produce different scenarios of “informality”, and a single concept or interpretation is not applicable to the different situations that arise in a country of continental dimensions and different realities. In addition, the preconception that informal work operates in interstitial areas is considered to be mistaken, since it does not correspond to the reality experienced in the country. In several metropolises, the supply of products through *street commerce* competes directly with *formal commerce*, sometimes even sharing contiguous spaces.
- 4 It should be noted that the rejection of the concept must also be considered in academic manifestations. In the foreground, it is argued its conceptual indeterminacy (and less specificity) over the course of its development history, leading to an infertile ambiguity in dealing with the reality of the national labor market. Another critical perspective is that which considers that the new informality has no interstitial character, proliferating with the logic of the capitalist system. Productive restructuring and flexibilization transform formal relationships into informal ones, and these new strategies were not altering the content of subordination, but rather intensifying the exploitation of labor. Finally, a third critical perspective argues that, with the dissipation of consensus on “minimum standards of legality”, the concept of informality becomes problematic. The polysemy of the term can lead to confusion in the interpretation of diverse and comprehensive situations.
- 5 This approach draws attention to the fact that racial prejudice in Brazil ended up defining “the place” of black people in the job market, that is, black people are seen predominantly in unemployment, informality and occupations with precarious relations of work (MARTINS, 2012, p. 457).
- 6 Blacks and browns that make up the country’s black population are the majority among unemployed (64.2%) or underutilized (66.1%) workers, according to the Social Inequalities by Color or Race in Brazil, released today (13) by the Brazilian Institute of Geography and Statistics (IBGE). The survey presented in the month that celebrates Black Awareness Day (11/20) gathers data from several surveys, such as the Synthesis of Social Indicators, the Census and, mainly, the National Household Sample Survey – Continuous (Continuous PNAD) of 2018. Currently, blacks represent 55.8% of the Brazilian population and 54.9% of the workforce. Informality also affects this contingent more. While 34.6% of white people are in informal working conditions, informality reaches 47.3% of blacks and browns (AGÊNCIA BRASIL, 2019a).
- 7 “A study carried out in partnership between the Institute of Applied Economic Research (Ipea), linked to the Ministry of Planning, and UN Women, a United Nations arm that promotes equality between the sexes, compiled historical data for the sector from 1995 to 2015 and constructed an evolutionary portrait of the notions of race and gender associated with domestic work. The results show the predominance of black women over time. In 1995, there were 5.3 million domestic workers in Brazil. Of these, 4.7 million were women, 2.6 million of whom were black and brown and 2.1 million white. The average schooling of white women was 4.2 years of study, while that of black women was 3.8 years. Twenty years later, in 2015, the general population of these professionals grew, reaching 6.2 million, with 5.7 million women. Of these, 3.7 million were black and brown and 2 million were white. White women’s school level has evolved to 6.9 years of study, while in the case of black women, it has reached 6.6 years”(WENTZEL, 2018).

- 8 The National Household Sample Survey (PNAD), the most recent survey by the Brazilian Institute of Geography and Statistics (IBGE) that deals with the subject, shows that there are 2.7 million children and adolescents between 5 and 17 years old in this situation. In general, the number has a downward trend, but remains worrying, especially regarding the age group of 5 to 9 years. Before completing 10 years old, 79 thousand Brazilians are already working – an increase of 13% between 2014 and 2015, in the most recent comparison by IBGE (AZEVEDO, 2017).
- 9 It is not a question of debunking the results of such policies, which are unquestionable in mitigating Brazilian social inequalities, but of problematizing, based on research results, their limits specifically in relation to the issues addressed in this article.
- 10 Data from the Brazilian Institute of Geography and Statistics (IBGE) in 2016 show that Brazil has 2.4 million children and adolescents between 5 and 17 years old working. Black and brown adolescents correspond to 66.2% of the total group identified in child labor (AGÊNCIA BRASIL, 2019b).
- 11 In this field, it is worth mentioning the decision issued in Public Civil Action no. 5017267-34.2013.4.04.7100, when admitting to the under sixteen year old, as contribution time, the work proven to be performed while mandatory insured, in addition to accepting for the proof of the work exercise the same evidentiary means made available to the other mandatory insured persons over sixteen years old, with the exception of those insured to the optional insurance, nationwide.

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THE LABOR INSPECTOR IN THE COMBAT AGAINST CHILD LABOR: EVOLUTION AND PERFORMANCE INSTRUMENTS

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Abstract. This work aims to study the evolution of the performance of labor inspection in combating child labor. Labor inspection emerged and developed in conjunction with Labor Law, initially aimed at protecting working children and adolescents. The performance of labor inspection in combating child labor in Brazil, throughout its existence, was strongly marked by a repressive performance. As of the Federal Constitution of 1988, the inspection became concerned with the need for greater effectiveness and efficiency of its actions, and with the implementation of alternatives to solve the problem. Through experiences gathered in its trajectory, the inspection has sought to overcome the standards that assign to the inspection activity functions that are only punitive, to also act in the promotion and guarantee of the fundamental rights of children and adolescents. In this context, it has been developing new bases of action aimed at the implementation of definitive and sustainable solutions to tackle child labor.

Keywords: Child labor. Labor Inspection. Labor law.

1 INTRODUCTION

Since its creation, labor inspection has focused on reducing child labor rates in Brazil, initially with an action directed only at repression in the face of non-compliance with legal rules. However, as of the Federal Constitution of 1988 (BRAZIL, 1988), with the evolution of society's position in relation to the rights of children and adolescents and the adoption by the Brazilian legal system of the doctrine of comprehensive protection, labor inspection

also started a process of transformation in the way it operates, seeking greater efficiency in its actions and broader alternatives to change the reality of child labor in the country.

This period of development allowed the accumulation of knowledge and experiences about reality, the causes, and the consequences of early work. Additionally, Labor Inspector (AF'Is), touched by the many child labor situations they find in their daily work, became concerned with the need to implement permanent and sustainable solutions to solve the problem.

The result is that, throughout its path of action in the fight against child labor, labor inspection has sought to overcome the standards that assign to the inspection activity functions that are only punitive, through the establishment of new bases of action, with the objective of promoting the guarantee of the fundamental rights of children and adolescents.

To approach the theme, we will initially deal with the history of the creation of labor inspection as an institution that was born dedicated and initially focused on issues related to the work of children and adolescents, being co-simultaneous with the very origin of labor law (BIGNAMI, 2007).

In continuation, we will present the new bases of action of work inspection that point to a more comprehensive action, overcoming the merely repressive inspections, with the objective of ensuring the comprehensive protection of children and adolescents at work.

And, finally, we will present the instruments available to the Labor Inspector in combating child labor within the new standards of work inspection.

2 HISTORICAL EVOLUTION OF THE PERFORMANCE OF LABOR INSPECTION IN COMBATING CHILD LABOR

Historically, the law identified in England as Lord's Althorp Act is considered as the starting point for the inspection of labor in the world as a State body (BIGNAMI, 2007).

The aforementioned rule, promulgated in 1833, brought important provisions on the work of children and adolescents, among which we highlight: the prohibition on the employment of children under 9 years old;

limiting the hours of workers under 13 years old to 9 hours; the prohibition on night work; and compulsory education (OLIVA, 2006, p. 48). To ensure compliance with the rules, four inspectors were appointed, who had the power to enter factories, resolve conflicts arising from the application of laws, and impose sanctions on offenders (SUSSEKIND *et al*, 2000, p. 1,262).

Subsequently, other countries also instituted inspection services to ensure compliance with standards related to minors, as was the case in France in 1841, which instituted an inspection service composed of 15 employees “in order to curb the work of children under eight years” (BIGNAMI, 2007, p. 26).

In this context, according to a study by the International Labor Organization (2003, p. 1): “The origin of the labor inspection is historically linked to the need to monitor and effectively combat the worst abuses against children in the world of work and protect their health”.

In Brazil, labor inspection has a historic contribution to the reduction of child labor and remains one of the most important government actions to tackle the problem, which is considered by the ILO as a reference of good practices to be shared with other inspection services (ILO, 2010).

It is an institution whose oldest creation record in the country is dated January 17, 1891. As the first record of labor inspection in the world, its creation in Brazil was also related to child labor. In this case, Decree No. 1,313, in its article 1, provided for the creation of labor inspection for the specific purpose of “[...] permanent inspection of all establishments where minors work” (BRAZIL, 1891). This decree was never implemented, serving only as an instrument of Brazilian diplomacy to demonstrate the country’s commitment to social norms (BIGNAMI, 2007).

In 1931, as of the constitutional amendment that passed to the Union the competence to legislate on labor matters, Decree 19,671-A was promulgated, which established the organization of the National Labor Department, whose assignment included work organization, hygiene, safety, and inspection (MATIJE; MATIJE, 2017).

In 1943, the Consolidation of Labor Laws (CLT) came into force through Decree-Law no. 5,452/1943. CLT brought together workers’ rights in a single document and reserved Chapter I, Title VII, to deal specifically with

labor inspection, under the nomenclature “Administrative Fines Process”. This title emphasized the then repressive character of the labor inspection activity (SUSSEKIND *et al*, 2000).

The Federal Constitution of 1988, in its article 21, item XXIV, expressly established the competence of the Union to “organize, maintain and perform labor inspection” (BRAZIL, 1988). According to Sussekind (2000), “the previous constitutional texts did not record a similar provision” (SUSSEKIND *et al*, 2000, p. 1,265).

Based on the evolution of society’s position in relation to the rights of children and adolescents and the adoption by the Brazilian legal system of the doctrine of comprehensive protection, the role of labor inspection in combating child labor in Brazil was intensified in the 1990s, in view of a large number of children and adolescents aged between 5 and 17 years working in Brazil, whose number was over 10 million (ILO, 2010).

To face this problem, the first measure adopted in the scope of labor inspection was the creation of groups of Labor Inspectors (AFTs), in each unit of the Federation, dedicated exclusively to child labor. These groups were responsible for the preparation of diagnoses of children and adolescents work centers by mapping the main activities that, at the time, used child labor in the country. This work has evolved, resulting in the publication of the Indicative Map of Child and Adolescent Labor, in the period from 1999 to 2005, based on information collected by AFTs (ILO, 2010).

Based on the diagnoses carried out, the labor inspection started to plan and execute fiscal actions in economic activities that most used the labor of children and adolescents, also seeking articulation and integration with other instances dedicated to the prevention and eradication of child labor.

In 2000, the Special Groups for Combating Child Labor and Protection for Adolescent Workers (GECTIPA) are created. These groups “acted as a special cell to generate competence and institutional capacity that could be applied across the entire labor inspection structure” (ILO, 2010, p. 27).

The work of GECTIPA resulted in “a great improvement in the inspection of child labor, including significant development in the standardization of techniques and procedures”. Additionally, members of GECTIPA played an important role as agents of articulation for the

development of the State Forums for the Prevention and Eradication of Child Labor and the entire network of protection for children and adolescents, also helping to develop social programs aimed at eradicating child labor (ILO, 2010).

In 2004, in order to adapt to the new legislation that regulated the career of the AFTs, the GECTIPAs were extinguished and actions to combat child labor, within the scope of the Regional Labor Precincts, became the responsibility of all AFTs (ILO, 2010).

Subsequently, normative instructions (no. 54, no. 66, and no. 77) were issued with the aim of standardizing the inspection procedures and documents related to the inspection to combat child labor.

Currently, Normative Instruction no. 102, of March 28, 2013, establishes the inspection procedures to combat child labor.

3 DEVELOPMENT OF NEW BASES FOR THE PERFORMANCE OF LABOR INSPECTION IN THE COMBAT AGAINST CHILD LABOR

Throughout the trajectory of work inspection in Brazil, it was found that child labor, being a complex phenomenon, with a multiplicity of causes and consequences, and which presents itself in different ways, should be better understood in order to plan and develop actions to face it.

Another issue also perceived was the need for the performance of Labor Inspectors specialized in the matter, as well as the adoption of appropriate procedures and instruments for this type of inspection.

Furthermore, it was observed that the isolated action of the inspection to combat child labor focused only on determining the removal of the child or adolescent from irregular work, coupled with the imposition of administrative penalties in the face of the offending company, would not have the possibility of produce, by itself, effective results in guaranteeing comprehensive protection for children and adolescents and non-return to work.

In this context, based on the learning acquired during these years of activity, the foundations that currently guide the performance of labor

inspection in combating child labor were established. Next, we will address each of these aspects, highlighting their specificities.

3.1 Knowledge of the child labor phenomenon

The appropriation of knowledge about the child labor phenomenon is essential for the design and implementation of effective actions to face it and to guarantee the rights of children and adolescents.

In this context, labor inspection has been conducting studies and diagnoses on child labor in Brazil since the 1990s, identifying the economic activities that represent the greatest risk for children and adolescents (ILO, 2010).

The evolution of this work resulted in the publication of the first Indicative Map of Child Labor, in 1997, containing detailed information on the focus of child labor and the damage to the health of children and adolescents as a result of early work. The last publication of the Map took place in 2005 (ILO, 2010).

The learning acquired in this period pointed to the need for knowledge of the dimension, the causes, and consequences of the problem, in order to enable the planning of actions, strategies, and setting goals against a complex phenomenon such as child labor.

3.2 Specialization of labor inspectors and development of operating procedures and instruments

The fight against child labor requires different capacities and actions from AFT, in view of the peculiarities and complexity of the matter. For this reason, in the development of the inspection of child labor in Brazil, it was adopted, at first, a policy of formation of groups of specialized AFTs, which served as a pole of agglutination and diffusion of knowledge on the theme (ILO, 2010).

Subsequently, the fight against child labor became part of the list of institutional skills of all AFTs and each unit of the Federation now has a Coordination responsible for the specialized activity to combat child labor.

For the realization of fiscal actions, another point to be highlighted is related to the development of procedures and instruments of action that

consider the peculiarities that involve fighting child labor. In this context, from the 1990s, several Normative Instructions were issued, establishing specific protocols and actions to be observed in fiscal actions to fight child labor. Each normative instruction that came to replace the previous one brought more elements to the actions to fight child labor, based on the learning acquired over the years.

Currently, Normative Instruction no. 102, of March 28, 2013, establishes the inspection procedures for combating child labor, considering the peculiarities of this type of action, as well as providing the technical instruments, including standardized documents to be used in inspections.

3.3 Articulation as an indispensable action to combat child labor

Child labor, as already mentioned, is a complex multi-causal social phenomenon that transitions in the social, economic, and cultural dimensions. As a result, its adequate confrontation can only be achieved through the integrated action of the government with society and the articulation of different levels (federal, state, and municipal) and government sectors (work, education, social assistance, health, among others).

Within this context, AFTs, from the Federal Constitution of 1988, started to act in the articulation of actions for the eradication of child labor, either in the participation in the creation and coordination of articulation spaces, such as the National Forum and the State Forums for the Prevention and Eradication of Child Labor, whether in promoting joint actions with other bodies and entities (ILO, 2010). Additionally, AFTs began to coordinate the National Commission for the Eradication of Child Labor (CONAETT) and to participate in the state and municipal commissions for the eradication of child labor.

The accumulated experience in the coordination and articulation of actions against child labor has brought the following lessons:

a) it creates clarity in relation to the role of each institution, considering that, often, the competencies of each body are presented in a concurrent or overlapping manner;

b) it ensures intervention in child labor situations by bodies with specific, applicable, and efficient instruments of action for a specific case;

c) it provides a combination of efforts in order to make the actions of each social actor more efficient and effective;

d) it reduces the recurrence of children and adolescents removed from child labor, through the inclusion in sectorial public policies, in professional apprenticeship, among others; and

e) it ensures the coherence and sustainability of the actions.

In the day-to-day inspection of work, we can systematize the activity of articulating actions for the eradication of child labor in three distinct moments: when planning actions; in the execution of inspection actions; and after inspection actions.

The first aims at sharing information between agencies and entities on the occurrence of child labor and prohibited adolescent work, in order to subsidize and guide the planning of actions to combat child labor. The best experiences in this type of articulation pointed to the establishment of protocols (flows) of information between the different agencies, with the objective of streamlining the exchange of data and information.

The second aims at combining efforts to ensure the most efficient intervention to face different types of child labor. We can mention the following actions related to this type of articulation:

a) carrying out actions to combat child labor jointly between agencies and entities in the search for greater efficiency and effectiveness;

b) forming a task force for more complex cases of child labor, with coordinated participation of different bodies with different competencies and attributions, thus allowing a more complete and efficient approach; and

c) previously establishing action protocols with the objective of streamlining the articulation of actions to face different types of child labor.

Finally, the third aims at combining efforts with the objective of ensuring the sustainability of the fiscal actions carried out, preventing the recurrence of children and adolescents in a prohibited work situation, by including young people who have left child labor in public policies that ensure the social protection, inclusion in school, health protection, access to culture and sport, vocational training, etc.

In this connection, the labor inspection carries out those who left child labor to the bodies responsible for the implementation of public policies for the protection of children and adolescents. Additionally, labor inspection works to promote services and actions to implement definitive and sustainable solutions for the eradication of child labor.

4 INSTRUMENTS OF LABOR INSPECTION IN THE ACTIVITY TO COMBAT CHILD LABOR

The performance of labor inspection in combating child labor and protecting adolescent workers is regulated by Normative Instruction (IN) no. 102/2013. This norm, developed within the new bases of labor inspection activities, brings important instruments for tackling child labor, as well as the procedures that must be observed during inspection actions.

IN no. 102/2013 is complemented by IN no. 112, of October 22, 2014, which provides for the constitution and performance of the Mobile Inspection Group to Combat Child Labor (GMTI).

In continuation, we present the main provisions of the Normative Instruction, as well as the instruments of action of labor inspection in the fight against child labor.

4.1 Planning inspections

According to IN no. 102/2013, in art. 3, inspections related to the fight against child labor and those aimed at protecting adolescent workers have absolute priority within the scope of the Regional Labor Superintendencies (SIT, 2013).

The planning of actions is carried out based on goals established by the Sub-Unit for Labor Inspection, which is prepared based on the Pluriannual Plan (PPA). Inspection actions are planned based on diagnoses prepared with data from the IBGE, especially those related to the Census, Rural Census, and PNAD, sector studies, as well as complaints, and information received about the occurrence of child labor and irregular work by adolescents.

4.2. Coordination of actions

Currently, each unit of the federation has a Coordination responsible for the activity to combat child labor, as well as specialized AFTs dedicated to the matter distributed in the different inspection units (Superintendencies and Regional Managements). At the national level, the actions are coordinated by the Division of Child Labor and Equal Opportunities (DTIOP).

4.3 Articulation of actions with the child and adolescent protection network

The importance given to inter-institutional articulation can be seen in IN no. 102/2013 (SIT, 2013), which contains several provisions on the matter.

According to art. 4, the activity to combat child labor must include the promotion of articulation and integration with the bodies and entities that make up the protection network for children and adolescents, within the scope of each unit of the Federation, aiming at the elaboration of diagnoses and the election of priorities that will compose the annual planning, with the indication of sectors of economic activity to be inspected.

In article 5, it is recommended the action be taken with state and municipal forums to combat child labor and protect adolescent workers, as well as the integration and strengthening of the child and adolescent protection network.

Finally, article 12 deals with the referrals that must occur after the inspection for the child and adolescent protection network. Additionally, it also states that the activity Coordinator must follow up on the referrals and requested measures, as well as establish a flow of information with the bodies or entities belonging to the child and adolescent protection network.

4.4. Training and specialization of labor inspectors

In order to prepare AFTs for the activity to combat child labor, a continuous training course is being promoted, within the scope of the National School of Labor Inspection (ENIT), a continuing training course, organized in four modules, totaling 160 hours of study.

One of the training objectives is to provide the AFTs with the necessary knowledge to act in the face of different types of child labor, including those in the informal sector, applying new forms of approach and inspection protocols, especially in the face of the worst forms of child labor.

Another important action to qualify actions to combat child labor was the creation of the Mobile Group to Combat Child Labor (GMTI), through Normative Instruction no. 112/2014 (SIT, 2014).

GMTI, operating throughout the national territory, unlike other mobile inspection groups within the scope of the Unit for Labor Inspection, was conceived from the combination of repressive action with intersectoral articulation, with the objective of achieving effectiveness and sustainability of inspection actions, so that the results achieved are maintained and enhanced.

Its actions are planned to focus on the following priorities: a) economic activities classified among the worst forms of child labor; b) the most significant focal points of child labor, based on studies and diagnoses; and c) complaints about child labor that present indications of greater risk or complexity (SIT, 2014).

4.5 Inspection procedure

Below, we list the main actions carried out by AFTs in the course of an inspection action to combat child labor and protect adolescent workers.

4.5.1 Identification of workers under the age of 18 (eighteen) years in a prohibited work situation

This action is among the most important in the activity of combating child labor, bearing in mind that it is essential both for the application of administrative penalties and for the promotion of the fundamental rights of children and adolescents.

In order to carry out this activity, the AFT completes the document, entitled “Physical Verification Form”, whose model is provided for in Annex I, IN no. 102/2013, for each child and/or adolescent found in an irregular situation regardless of the type of employment relationship. The

data recorded in the referred form will be sent to the child and adolescent protection network.

It is important to highlight that the data contained in the form will allow the identification of children and/or adolescents found in an irregular work situation, as well as their location, either in their residence or at their school, in order to enable the adoption of protection measures, integration in social programs and inclusion in professional apprenticeship.

4.5.2 Determination of change of function

This is a measure that aims to regularize the work of adolescents aged between 16 and 17 years old who are working in activities or conditions prohibited by law.

For the “Determination of Change of Function”, the AFT draws up and delivers to the employer a Term, the model of which is provided for in IN no. 102/2013, relating workers in an irregular situation and determining the change of function. It is important to note that there will only be a determination to change the function if conditions and activities permitted by the legislation for the work of adolescents between the ages of 16 and 17 exist in the area.

If the person in charge of the establishment or workplace does not comply with the determination of a change of function, or the adaptation of the adolescent’s function is not possible, the indirect termination of the employment contract is configured, pursuant to the sole paragraph of art. 407 of the CLT (BRAZIL, 1943).

4.5.3 Determination of work leave

This measure will be adopted when the occurrence of children or adolescents working without the minimum age for work is found, or in the hypothesis that it is not possible to change the function or adapt the working conditions of adolescents aged between 16 and 17 years caught in activities or conditions prohibited by law.

By this measure, it is determined to the employer, through the drawing up and delivery of a Term, the model of which is provided for in Normative

Instruction no. 102/2013, to, immediately, provide the interruption of the activities of the worker in irregular condition, as well as terminate the employment relationship, including the payment of due labor costs.

The payment of labor costs will occur in the presence of the AFT. At the time, children and adolescents must be accompanied by their legal guardian or competent authority.

4.5.4 Assessment

Once the irregularity related to child labor or the work of adolescents in conditions prohibited by law is found, the AFT must draw up an infraction notice, with the identification of the infringer, the citation of the rule that was not complied with, a description of the facts found during the inspection, and the elements that led to the conclusion of the existence of irregularity, ensuring the principles of opportunity to be heard and adversary proceedings.

It is important to note that in relation to infractions related to the work of children and adolescents, a double visit will not be observed, in view of the understanding consolidated in Technical Note no. 62/2010/DMSC/SIT, which precludes the adoption of this criterion in the hypotheses of infractions characterized as insurmountable. Such understanding lies in the fact that, in the offenses related to child labor, the double visit could not cause any change in relation to the infraction already consummated, which, once occurred, causes damage to early workers, especially in the case of the worst forms of child labor.

4.5.5 Communication of child labor and request for measures, inspection report, and inclusion in professional apprenticeship

In order to ensure effectiveness and efficiency in fiscal activities, by promoting definitive solutions for the eradication of child labor, including the prevention of the return of children and adolescents to irregular work, a series of actions were established in the inspection protocols that must be carried out after inspections.

In this context, at the end of the inspection, the head of labor inspection provides the forwarding of the physical verification form, accompanied by a document entitled “Term of Communication for Child Labor and Request for

Provisions”, provided for in IN no. 102/2013, for the guardianship council, social assistance, and the State Prosecution Service’s Office. Such referrals are aimed at activating bodies that can enable the guarantee of rights, inclusion in social programs, and the protection of children and adolescents who have left child labor (SIT, 2013).

Additionally, there is also the submission of a detailed inspection report to the Labor Prosecution Services accompanied by the documents resulting from the inspection (Term of Work Leave, Term of Change of Function and Notice of Infraction, etc.). This measure aims to provide the Prosecution Service with information and documents relevant to non-compliance with rules related to the protection of children and adolescents at work.

In relation to adolescents removed from work, especially those from vulnerable families, labor inspection has promoted, when possible, inclusion in professional apprenticeship. This action has provided the generation of qualification opportunities for adolescents while ensuring protected professional training, the guarantee of labor and social rights, and the prevention of recurrence of unprotected or irregular work situations.

5 FINAL CONSIDERATIONS

The role of labor inspection in combating child labor based only on repressive and punitive actions proved to be insufficient to face the problem, considering that it did not take into account the specifics of the phenomenon, which should be better studied and understood; it was not concerned with the promotion of the rights of children and adolescents, necessary to give sustainability to fiscal actions; it was not concerned with preventing the return of children and adolescents to child labor, and it did not act in a coordinated manner with other social actors.

The development process of the new operating bases was carried out over many years, from the accumulation of experiences provided by the daily activities of Labor Inspectors.

As a result of this entire transformation process, new bases of action for labor inspection in combating child labor were developed, based on the following premises:

a) knowledge of the dimension and reality of child labor is a *sine qua non* condition to guarantee the efficiency and effectiveness of actions to combat child labor;

b) the action to combat child labor, considering its complexity, requires specialized action, including the training of agents and the development of procedures and instruments for action;

c) the efficiency and sustainability of actions to combat child labor depend on the existence of an articulated work with the protection network and the promotion of public policies that make it possible to guarantee comprehensive protection for children and adolescents.

Finally, it is important to note that this change process is not a closed system. Despite the advances observed in the last decades, the inspection has been constantly looking for innovations and developing new working methods in order to promote improvements in the way it operates and guiding its work within the new realities of child labor in Brazil.

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ADOLESCENTS IN SOCIO-EDUCATIONAL MEASURE: WHAT DOES CHILD LABOR HAVE TO DO WITH IT?

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Abstract. This is an article with the presentation of part of the results of research on professional apprenticeship used to promote Human Development and assist in the social reintegration of adolescents in compliance with socio-educational measures with freedom restrictions. In view of their development process, the adolescent has unique vulnerabilities, making him/her more susceptible to risk factors, which increase the negative consequences if there are no adequate protective factors, which can lead to committing an infraction. Among these risk factors are the exploitation of child labor, including illicit activities, therefore the perception of the interviewed adolescents about this factor is presented. As a primary source, interviews with adolescents in the states of Mato Grosso do Sul, Rio Grande do Sul and Rio de Janeiro were used. As secondary sources, the specific bibliography on the topics covered was consulted and, as documentary research, judicial records of the execution of socio-educational measures of the research subjects were analyzed. As a result, it was found that 87.17% of the interviewed adolescents, 10 of them graduates and 29 still fulfilling a socio-educational measure, had a history of child labor.

Keywords: Adolescent. Socio-educational measure. Child labor.

1 INTRODUCTION

Can child labor be considered a risk factor and stimulus for committing an infraction? Can child labor be considered a factor in preventing the infraction? Reflections that come from the myth, propagated even today,

in the 21st century, that “it is better for the child to be working than to steal” and that can generate diametrically opposed responses and of apparent obviousness to their interlocutors.

Knowing whether the adolescent who fulfills a socio-educational measure has a history of child labor can shed light on reality. An attempt is made to dive into the universe of these adolescents in compliance with a socio-educational measure, whose peculiar situation ordinarily affects the under-sufficient population, black/brown and male, to extract from the source what is their perception of child labor.

The purpose of this article is to bring part of the results of the field research carried out for the preparation of the Ph.D.thesis in Local Development¹, by Universidade Católica Dom Bosco (UCDB), entitled “Apprenticeship for adolescents serving socio-educational measures with restriction of liberty: human development and social reintegration”, defended in June 2019 (REZENDE, 2019).

The field research was carried out through semi-structured interviews, whose script, composed of 46 questions, made it possible to collect data for the three analysis categories chosen. One of these categories, **Territory lived/ social reintegration**, remained subdivided into “Link with the territory of origin” and “Relationship with family/community”. In the **Professional Apprenticeship Course** category, “Education/Schooling”, “Hiring by the company” and “Course results in terms of competence, values, and personally constructed perspectives” were researched. The category of analysis named **Work** was subdivided into “Labor market” and “Child labor” and the results of the latter are now presented.

The questions asked about the **Child labor** subcategory had, in turn, an objective and a more subjective core. It was asked, for example, if the interviewee worked as a child; how old he/she was; what activities were undertaken; if he/she stopped studying; whether there was an incentive from parents or guardians to work; whether there was any damage to the studies; whether he/she was working when he/she committed the infraction; what are their perceptions about the work itself; and, if he/she believes that child labor contributed to the practice of the infraction.

Thus, it was intended, with listening, to give voice to the 39 adolescents interviewed in the states of Mato Grosso do Sul, Rio de Janeiro, and Rio Grande do Sul, from November 2018 to February 2019, on the issues exposed above.

2 CHOICE AND SOCIODEMOGRAPHIC PROFILE OF THE RESEARCH SUBJECTS

The research subjects were divided into two groups. Group 1, with 29 adolescents who, at the time of the interview were fulfilling a socio-educational measure with restricted freedom, and who had been included in a professional apprenticeship program, being certain that several of them had already completed the course. The 10 adolescents in Group 2, at the time of the interview, had already fulfilled the socio-educational measure with restricted freedom and, at the time of fulfillment, participated in the professional apprenticeship program.

The research was carried out by means of non-probabilistic sampling, that is, the selection of the sample subjects was not random, but rather dependent on the identification and location of the studied population, considering the possibility that the young person who has already fulfilled the socio-educational measure is not accessible, which was partially confirmed. Thus, given the condition of interns in a socio-educational unit, with very strict safety standards, the adolescents interviewed in Group 1 were chosen by the technical team and the identification and contact of the adolescents in Group 2 occurred with the help of the CIEE/RS teams in Rio Grande do Sul and the Paulo Freire School of Socio-Educational Management/RJ in Rio de Janeiro and, despite efforts and the undertaking of hard work in search and attempts to contact, few adolescents attended the interview sites.

All the names of the interviewed subjects are fictitious, chosen by them at the time of the interview, to preserve the confidentiality of their identities. An unusual fact occurred and deserves to be noted. When asked to choose a fictitious name, one of the adolescents replied that he could be “Anyone” and, when asked again, he reaffirmed his choice. The only possible answer at the time and that was given by the author, would be that he was not just anyone and that it was important to know which name or nickname would like to appear within the research work. Finally, the adolescent made his choice.

This manifestation, of striking sincerity, is the perfect portrait of the invisibility of adolescents, who are or have been in a socio-educational measure, in addition to others in situations of vulnerability and social risk. Thus, the highlighting of the names of all interviewed adolescents is justified, whose speeches illustrate the results of the research.

Knowing the life trajectory and personal condition of the research subjects was an arduous and impacting activity, but essential to have a look at their perceptions about the topics under analysis. After consulting the 52 judicial processes for implementing the socio-educational measure of the 39 interviewees, with the handling of approximately 9,500 pages, it was possible to elaborate a summary of the life context of each of the interviewees.

It should be noted that access to court records only occurred after the interviews to prevent possible direction, even if involuntary, of the questions asked. No question was asked as to the nature of the offense committed, as it was not the focus of the research.

For the same purpose, some personal information was collected from the adolescents before the interview, by self-declaration, with the purpose of identifying the researched population regarding age, color, education, family income, marital status, the existence or not of children, and, yet, gender. It was found that of the 39 adolescents:

- on the day of the interview, 97.44% were aged between 16 and 19 years and 43.58% of respondents were between 16 and 17 years old;

- 66.66% of respondents declared themselves to be brown or black, 30.76% white²; and 1 respondent did not answer (2.56%);

- although the majority of adolescents are between 16 and 18 years old (74.2%), only 38.43% of them were attending or had finished high school; and the rest, 58.96%, attended the 4th to the 9th grade (2.56%, that is, 1 adolescent did not declare schooling);

- 53.84% had a family income of up to 3 minimum wages and only 7.69% of 3 to 5 minimum wages, considering all the earnings of those who work, divided by the number of residents of the same residence; none of the interviewees declared income above 5 minimum wages and 38.46% did not know or did not want to declare;

- 32 of them declared themselves single, 5 married and 1 divorced;

- 6 of them declared having a son, including Yara; and,

- 98.44% of the interviewees declared themselves to be male, being sure that only Yara, from Group 2, appeared for the interview, that is, only 2.56% of the total was female.

According to the 2014 SINASE Annual Survey (BRAZIL, 2017, p. 32), 56% of the adolescents who were in compliance with socio-educational measures were in the age group of 16 to 17 years old; “56% of adolescents and young people in restraint and deprivation of freedom were considered brown/black, 21% were attributed to white and 1% to yellow” and 22% had no record regarding their color (BRAZIL, 2017, p. 33).

It can be seen, therefore, that the universe of adolescents surveyed has a certain similarity with the population in compliance with a socio-educational measure, according to the 2014 SINASE Annual Survey (BRAZIL, 2017).

3 THE INTERVIEWED ADOLESCENTS TAKE THE FLOOR

The ideal would be to approach the results extracted from the research taking into account all aspects embodied in the three categories of analysis chosen and compared by the theoretical framework of the thesis.

However, the testimonies of the 39 adolescents about child labor, which bring strong accounts of their experience, authorize the extraction of excerpts that enable the objective presentation of the data.

As explained above, the research subjects were asked about the age of onset and the work activity developed, the conditions that trigger child labor, the role of parents for early insertion at work, and whether they were working or studying when they committed the infraction.

3.1 The voice of adolescents in Group 1

Part of the adolescents denied that they had worked as a child, but they revealed it when they answered how old they started working. **Ilson**, for example, said that he did not work as a child, but “when I was about 12, 13 years old I used to repair the car, I used to do bodywork”.

The impression that they did not work, but only “helped” family members is shared by some adolescents, such as **Simi** who helped his father who had physical problems and, also, **Adriano** who stated that he liked to work and help his father. **Thales** reinforces the same situation:

Speaker A: Did you work when you were a child?

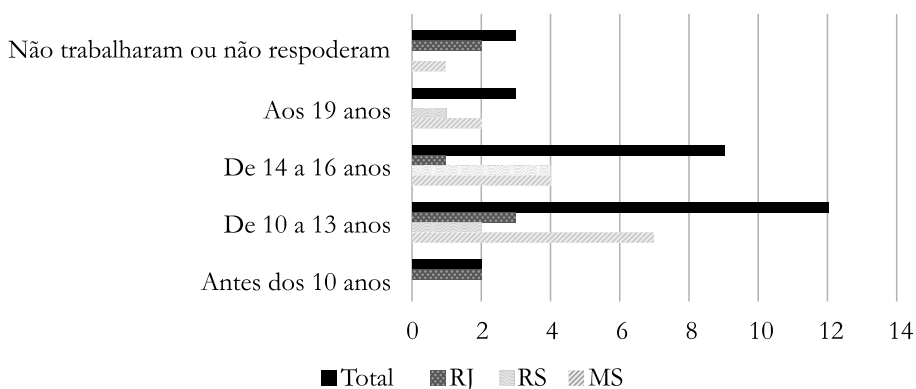
Thales: My father has always taught me what is right since I was a child. I worked.

Speaker A: Did you work? How old did you start working?

Thales: About twelve, eleven. Not working. More like helping. Mechanics assistant so I can learn so I don't have to struggle later. Do you know, ma'am? Learning. So I was learning to help. You know? Fetch me that screwdriver. Which one? This one is called a cross-head screwdriver. This one is called a slotted screwdriver.

Of the 29 interviewees who were fulfilling a socio-educational internment measure, 23 stated that they had started working in lawful activities between the ages of 7 and 16 years old, and of these 23 adolescents, 7 (seven) stated that they started working before or even 11 years old (**Adriano, Josué, Magrão, Paraguaio, Davi, Balança, and Bocão**). Of the 29 adolescents, three stated that they started working with a professional apprenticeship (**JC** at 16; **Leandro** and **Tam** did not inform their age) and one of them, **Yuri**, said that he did not work.

Graph 1. Age at the beginning of child labor – Group 1



Source: the author (2020).

Initially, **Gui** said he started working at the age of 18, with professional apprenticeship and in the educational boarding school unit. However, at another point in the interview, he revealed that, at the age of 14, he was

studying in the morning and “dealing drugs at night”. The court records show that, at 16, he was apprehended for driving a stolen vehicle. Likewise, **Yuri**, who, at the age of 15, was apprehended for an offense analogous to drug trafficking.

Other adolescents, also disregarding labor exploitation for drug trafficking or other illicit purposes, reported only the age at which they started working in lawful activities. **Jean** said that at the age of 15 or 16 he helped with his brother’s civil construction work, but the court records revealed that at the age of 12 he was already involved in the production and trafficking of drugs when his first internment occurred. **Mateus** says that at the age of 17 he started working in a market “to give me a break from what I was doing here”, that is, he was already committed to drug trafficking, appearing in court records that at 12 he was apprehended by a guard with illegal possession of drugs, possession of firearms and ammunition.

The statements reflect the common sense that the adolescent’s involvement in drug trafficking and other illegal activities is not seen as exploitation of his/her labor, as expressly stated in Convention no. 182 of the International Labor Organization, ratified by Brazil³, which describes the worst forms of child labor, whose subparagraph “c” of Art. 3⁴ has the following wording:

Article 3. For the purposes of this Convention, the expression of the worst forms of child labor includes: [...]

c) using, recruiting, or offering children to carry out illegal activities, in particular, the production and trafficking of narcotics;

Other activities considered to be the worst forms of child labor are listed in the other subparagraphs of Art. 3 above, that is, all forms of slavery or practices similar to slavery (subparagraph “a”); the use, recruitment, or offering of children for prostitution, the production of pornography or pornographic performances are included as exploitation (subparagraph “b”); and, finally, work that, due to its nature or the conditions in which it is carried out, is liable to harm the health, safety or morals of children (subparagraph “d”).

In view of this international instrument, Brazil approved the List of the Worst Forms of Child Labor, the so-called TIP List, by Decree no. 6,481, of June 12, 2008, and when comparing the countless work activities

undertaken by the interviewees, as a child or adolescent, it appears that they are included among them.

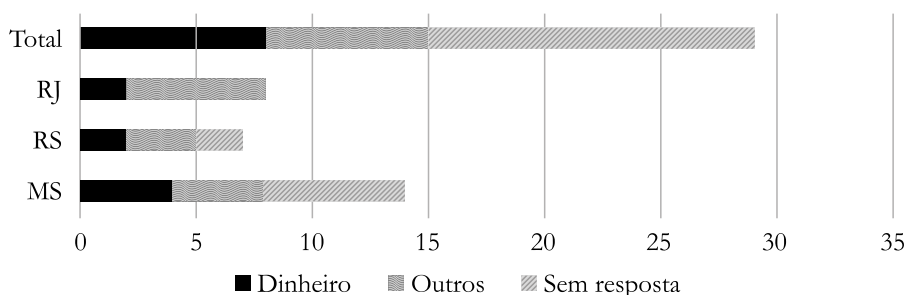
Guerreiro, Josué, Juliano, Davi, Tony, and Robson worked in the car wash, which is prohibited, as can be seen from item 77 of the TIP List, due to the use of organic or inorganic solvents, diesel oil, and other products, whose exposure can cause “Occupational dermatoses; encephalopathies; burns; leukocytosis; elaiocniosis; depressive episodes; tremors; personality disorders and neurasthenia”. **Ilson** also worked on activities described as the worst forms of child labor, namely, metal workshops (item 52) and car body shops (item 24).

At the age of seven, **Bocão** started selling candies and sweets on the streets, whose activity is described in item 73 of the TIP List, that is, he was exposed “to violence, drugs, sexual harassment, and human trafficking” in addition to being run over by a vehicle (“Probable Work Risks”). As “Probable Repercussions to Health”, this activity can cause, among others, affective impairment, chemical dependency, sexually transmitted diseases, and early sexual activity. From the profile and context of the adolescent, built from the information contained in the judicial records analyzed, **Bocão**, at 11, was a drug addict. And, at the age of 15, the risk of sexual harassment was realized, which led the adolescent to an offense analogous to that of homicide, as he killed, by mechanical asphyxiation, a man he met while selling candy and sweets at a traffic light. He reported in the court records that the victim offered R\$ 150.00 to have oral sex with the adolescent and later refused to pay.

Civil construction works, including restoration, renovation, demolition are listed in item 58 of the TIP List due to the existing occupational risks, such as intense physical effort, accidents due to falling or with machinery and equipment, exposure to paint dust, cement, and other materials. These activities are listed among those undertaken by **Luan, Paraguaio, Simi, Yago, Davi, Jean, Robson, Tony, Balança, and Bocão**.

Regarding the triggering conditions of child labor, 14 of the adolescents did not answer or were not asked⁵, 8 of them state that they needed money and the other 7 are justified saying that they only help, or that they like to work, among others. The chart below identifies the reasons for the beginning of child labor by State surveyed.

Graph 2. Conditions that trigger child labor – Group 1



Source: the author (2020).

The role of parents or guardians at the beginning of child labor is described as a positive matter, considered as an incentive and inspiration by ten adolescents (8 from MS, 8 from RS, and 2 from RJ). Some mentioned that child labor started on their own will. Eleven adolescents did not respond or were not asked.

As for the question about the relationship between early work and dropping out of school, it is clear that the vast majority of respondents do not believe that there is cause and effect. **Bocão**, for example, claims that he was “immature” and that he was influenced by his friends. **Robson** says he never stopped studying, but at 18 he is in the 9th grade of elementary school. **Artur**, at 16, is still in the 7th year of elementary school. The school gap is an indication that child labor may not be the only cause, but it contributed to the demotivation and disorganization of the adolescent to attend school. The age/education distortion was evidenced in the research.

None of the interviewees mentioned the deficiency of formal education and the educational system as a reason for their absence and justified school dropout due to change of residence, drug use, involvement with the criminal world, among others. **Leandro** and **Artur** did not know how to answer, but **Magrão**, **Guerreiro**, **Davi**, **Simi**, and **Bocão** made it clear that they needed to prioritize the work and were unable to reconcile the two activities:

Magrão: I stopped studying and went to work, right?

.....

Guerreiro: In the joinery. Then I studied in the morning, right? Then my boss said that if I worked all day, I could earn more and put me in the night

shift and I accepted, I started working at night and stopped studying. That's why I'm in the ninth grade. I was supposed to have finished studying.

Speaker A: Did you start working all day and studying at night?

Guerreiro: Yeah.

Speaker A: And it didn't work out?

Guerreiro: No. Because there was heavy-duty there in the joinery, right? Sometimes I had a bench load and everything to send out and I got home tired and wouldn't even study...

[...]

Speaker A: And do you think you stopped studying because you were working too much?

Guerreiro: Truth...

.....

Speaker A: Did you stop studying at the time you started working?

Davi: I didn't stop studying.. When I was in the eighth grade I stopped studying.

Speaker A: But were you working? Did you stop studying why you were working?

Davi: Yup.

Speaker A: Yeah? Why? No time?

Davi: No. I worked all day, but then there was confusion.

The tutelary council people went there to talk to my grandfather, to my aunt, to solve this.

Speaker A: About the work?

Davi: Then I started to work half a shift from there. I only worked in the morning.

Speaker A: The tutelary council was there because you were just working, you weren't studying, is that it?

Davi: I wasn't going to school anymore.

[...] Speaker A: At the time, what did you think of working?

Davi: In this case, I thought it was good there, to be learning, but it is also bad because I was leaving school, that school was the most important thing. But I could help my grandfather.

.....

Speaker A: And you haven't stopped studying, even while working?

Simi: No. After I, like, I sank into drugs and started stealing, then I dropped out of school, while I was working my father wouldn't let me miss school, he said, "you want to work for others, you will have to study". Then, after a while, I started smoking marijuana, getting more involved with others, with theft, then I virtually abandoned my studies.

.....

Bocão: I did. Work, side hustles, weeding, whatever you need, I'm there. I want to work, whatever you call me to do, I'll do.

Speaker A: But then, it made going to school difficult, a little bit, right?

Bocão: Yeah, the only thing that it made worse for me was school.

It cannot be denied that formal education in Brazil needs urgent reform of its guidelines since only universalization and equal treatment will

make it be possible to comply with the constitutional principles of citizenship and human dignity. In a survey conducted at the Socio-education Center of Ponta Grossa/PR, it was found that most of the adolescents served had been deprived of their fundamental rights since they were born and did not finish elementary school, as they were expelled from school for “hidden content”, strong expressions, but that define the situation. Jesus (2013, p. 133) notes:

Adolescents generally have a low level of education, drop out of school, or have been “expelled” from it (although expulsion is officially prohibited, the hidden curriculum expels them). The school through the hidden curriculum, understood by Giroux “as being the norms, values, and beliefs imbued and transmitted to the students through underlying rules that structure the routines and relationships in the school and in the life of the classroom” (GIROUX, 1986, p 71); subtly expels from within those who are not ideal students (without learning difficulties, with good hygiene habits, respect, and adaptation to school rules, without age/grade distortion).

The interviewed adolescents also did not see the relationship between child labor and committing an infraction and when using, as a justification for “absence from work”, they put themselves in the position of providers of their own subsistence. The difficulties of staying in school are immense and are viewed with impressive naturalness, as can be seen from the excerpts below:

Speaker A: Do you believe that work as a child may have contributed in some way to the practice of the offense?

Davi: The lack of... It helped, didn't it?

Speaker A: Huh?

Davi: The lack of work helped.

Speaker A: Ah, it's the other way around. Do you think the fact that you are not working... Yeah?

Davi: Yeah.

Speaker A: Why do you think that?

Davi: Because when I left my house... It was just me and my grandfather. So my grandfather had a problem, he was sending the papers, he had a knee problem and could no longer work. And we received only a grant from the government, which was from Bolsa Família, which was a hundred or so. So I had to help my grandfather there, so I was always working. Hence in my case, the market I used to work in, the owner got involved with some guys, there was a situation. He got shot then I had to stop working in the market because the guys went there to shoot there.

.....
Guerreiro: Uh... I used to make 1,000, 1,200 a month. But I owed him a lot too. As his father had a bar and I spent at the bar and took a lot of money in advance with him, at the end of the month there was not much left. I stopped working afterward and I ran out of money, I had nothing and my

mother always said that we needed things. Then a lot of people called me to do the wrong thing and I didn't think and accepted it.

.....
Yago: Ah, there is a connection, right, because... I didn't find a job and if I didn't find a job I couldn't get some money. Then, as I saw people from crime earning easy money, quickly there, I would go there, take the money there, I would spend there, I would get enough money, I took it and said, "Oh, I'm going to see how it is". Then I took it, it was where I entered and I was until now, you know, before I was arrested.

.....
Robson: I don't know if I got it right, but if I had been working I wouldn't have done the infraction.

.....
Balança: No, no. One thing is to work, another thing is to steal. But then you see you are not getting anything at work. Then, you stole, so what? [unintelligible] [00:17:41] money, each one [unintelligible] [00:17:44] is in need.

These are, in quick lines, the perception about child labor and its influence on schooling and on committing an infraction of adolescents who, at the time of the interview, were interned, in compliance with their socio-educational measure.

3.2 The voice of adolescents in Group 2

Adolescent graduates report work activities at 8 years old (**Pirata** and **Nabo**), 11 to 12 years old (**Thales** and **Yara**), and 13 to 14 years old (**Jonatas**, **Naor**, **Brain**). Two of them did not inform their age (**Japinha** and **Cauan**). It can be seen that, just like the subjects in Group 1, the adolescent graduates do not have knowledge about the minimum age for starting work, as can be seen from the statements by **Jonatas** and **Naor**:

Speaker A: Did you work when you were a child?

Jonatas: No.

Speaker A: No? How old were you when you started working?

Jonatas: When I was a child, no. But before joining FASE, I worked helping masons, on worksites, and in hotels.

Speaker A: And how old were you when you first started working?

Jonatas: I don't remember, but I wasn't a child.

Speaker A: No, what was it, about 12, 13?

Jonatas: Yeah, like 13 years old.

.....
Speaker A: Did you work as a child?

Naor: I did. But not as a child.

Speaker A: How old did you start working?

Naor: I was around 14 years old.

The early work mentioned by the adolescents includes activities in commercial establishments (store, hotel, bar, mechanic shop, and “snack bar”), in the trade (making ice cream and truffles, assembling “trampolines”, washing machine repair), in public places (sale of truffles, sale of candy and sweets, sale of fruits and vegetables), construction, farm, in addition to domestic child labor (baby sitter). Several of the activities mentioned by the adolescents are included in the TIP List, such as work in worksites (item 58) and in public places (item 73). Only **Cauan** said he never worked, but it turned out that at 16 he was involved in drug trafficking.

Also, **Cabelo** and **Japinha** said they started working on professional apprenticeships. However, the first was apprehended for an offense analogous to drug trafficking at the age of 17. There is no indication or mention in **Japinha**’s file of involvement with trafficking.

The need for money was a triggering condition for the beginning of work in the speech of most adolescents (**Cabelo**, **Jonatas**, **Naor**, **Pirata**, **Yara**, and **Brain**). **Yara** reports that she did not work, but helped her mother, while **Thales** said that he helped to “learn”, a distorted but very common perception:

Thales: About twelve, eleven. Not working. More like helping. Mechanics assistant so I can learn so I don’t have to struggle later. Do you know, ma’am? Learning. So I was learning to help. You know? Fetch me that screwdriver. Which one? This one is called a cross-head screwdriver. This one is called a slotted screwdriver. [...] I got a benefit every Friday. They gave me money over there. [...] I just learned. Like. This is a screwdriver. Those are pliers. This is a torque wrench. That’s how you screw a screw. Teaching me like this. And I stood and watched.

.....
Yara: I started to work and it wasn’t out of necessity, it was because I was a very imperative person, then like my mother, I helped her sell too, she made sweet bakeries to sell too, then I helped, I went out to sell with her and sometimes I went out to sell alone, but not out of necessity, but to earn more income.

The role of parents or guardians at the beginning of child labor was not fully clarified in Group 2, as five respondents said nothing about it, one said he was inspired by his mother and went to work, another that his grandmother encouraged him, two others had the mother’s encouragement or were not prevented by her. **Nabo**, motherless, lived with his uncles and

said that, at the age of 8, his uncle taught him “how to do things, he didn’t like it when I just watched TV, I liked to see old cartoons”. **Pirata** reports that at the age of eight “I was already going there to the worksite to help my father”. Pirata’s impression is that he “just helped”.

As for the question, if they stopped studying due to work, five of them said yes, but presented other justifications, excluding the correlation with early work. It is noteworthy that Nabo stated that he did not study when he started working at the age of eight and that he only started attending school at the age of ten.

It was found that half of the adolescents were out of school and did not work at the time of committing the offense that led them to comply with a socio-educational measure. **Cabelo** and **Japinha** stated that they were studying when they committed the offense, **Thales** said that he was studying and working and **Yara** said that she was not studying. **Brain** did not comment on the matter.

The adolescents in Group 2 were less willing to answer some of the questions asked in the interviews, predicting a certain embarrassment or shyness.

4 MSE AND CHILD LABOR: RESEARCH RESULTS

Child labor is culturally accepted by Brazilian society and the adolescents’ speech reflects this, as some of them denied that they had worked as a child and, in later responses, answered that they started working at 12 or 13 years old.

None of them saw themselves as subjects with the right to non-work and there was not even a hint of questioning about the need to work due to the lack of financial conditions in their family or even public policies.

Adolescents also do not see the relationship between child labor and committing an infraction, justifying it by the absence of work, that is, they put themselves in the position of providers of their own subsistence, as they need to act as if they were adults when they are still children, exchange childhood games for the responsibility of their survival and, sometimes, of their family (BARQUERO, 2011).

It was found that 76.92% of the total, that is, 30 adolescents declared, in the interview, that they performed work activities before the age of 16 and always in a precarious way, considering that, with the exception of **Pirata**, all the others said that the first registration in the Employment Card occurred with the hiring for the apprenticeship course.

Of the 9 adolescents who stated that they had not worked before the age of 16, it was found that 4 of them, at a young age, started to be exploited by the traffic, such as **Gui**, who at the age of 14 studied in the morning and “trafficked at night”, **Yuri**, apprehended at 15 for an offense analogous to drug trafficking and **Jean**, who at 12 was already involved in drug production and trafficking. **Mateus**, at the age of 12, was also arrested for guard and possession of drugs, possession of firearms, and ammunition. It was not possible to extract from the court records accurate information about the other adolescents not mentioned.

Thus, considering the 30 adolescents who claimed to have started work before the age of 16, adding to the 4 mentioned in the previous paragraph with a history of exploitation for illegal activity before the age of 16, the percentage of interviewed adolescents who were submitted to early work rises to 87.17%.

If the finding of the percentage of 76.92% of self-declared child labor would be enough to overcome the myth that working children and adolescents do not “steal” or do not commit other infractions and that early work protects and teaches, the more the percentage of 87.17%⁶.

5 CONCLUSION

The universe of the interviewed adolescents proved to be denser than was supposed at the beginning of the research and the moments experienced in the interviews show the damage to their integral development due to the harsh reality experienced by them. Some gestures and interventions, such as taking psychiatric drugs, for example, may be a small sample.

Each face and each look was recalled in the reading of the judicial records of the execution of each person’s socio-educational measure and brought and brings reflections about the future of the next generations.

Nothing justifies the violation of the rights of others by the practice of an infraction. But it is necessary to conclude that, in view of the reports, it appears that child labor contributed to their removal from school and brought them other harmful physical and psychological consequences.

It is necessary to rethink public policies and build opportunities for adolescents who had their childhood cut off by the exploitation of their labor, without the right to protective management by a responsible person to help them build a path.

The true protective factors that can positively impact the lives of children and adolescents are those that, in addition to ensuring their physical and psychological integrity, promote their integral development, articulating the various dimensions of human nature, such as social, intellectual, emotional, and physical.

The finding that 87.17% of the adolescents interviewed have a history of child labor authorizes us to answer the questions at the beginning. Yes, child labor is a fact of risk and encouragement to commit the infraction. No, child labor is not a factor in preventing infringement.

Bocão's sad life trajectory, who started working at the age of 7, at the age of 11 was a drug addict and, at the age of 15, killed by mechanical asphyxiation a man he met on a street corner when selling candy, as he offered him R\$ 150.00 for oral sex and later refused to pay, reinforce the results of the research that child labor can contribute to infractions.

ENDNOTES

- 1 Local Development is understood, by the postgraduate program, "as the leading role of the actors of a given territory, with the support of public and private organizations, in the reflection of the reality experienced to manage and coordinate, through interactive and cooperative processes, the tangible and intangible resources originating from the local or external areas, in the search for sustainable solutions to the problems, needs and collective aspirations, of a social, economic, cultural, political and of the natural environment order". Available at: <https://site.ucdb.br/cursos/4/mestrado-e-doutorado/32/mestrado-e-doutorado-em-desenvolvimento-local/13242/sobre-o-programa/13243/>. Accessed on: June 19, 2020.
- 2 According to the IBGE, color can only be self-declared and, according to the PNAD of 2014, most of the Brazilian resident population is white, that is, 45.5% of the total, 45% are brown and another 8.6% declared themselves black.
- 3 Decree no. 3,597, of September 12, 2000, promulgated Convention no. 182 and Recommendation no. 190, both of the International Labor Organization (ILO) on

the Prohibition of the Worst Forms of Child Labor and Immediate Action for its Elimination, concluded in Geneva, on June 17, 1999. And Decree no. 10,088, of November 5, 2019, revoked that decree, replacing it.

- 4 This way, the articles in the Convention are listed, that is, without the “” symbol, which differs from Brazilian laws.
- 5 In some moments, it was not possible to ask all the programmed questions, whether due to the moment of the interview, the context, the change of subject by the adolescent or some detail perceived by the researcher.
- 6 In a survey carried out in 2002, in educational units in the State of Mato Grosso do Sul, it was found that 98.43% of adolescents had started working early. The report was published for the first time, in 2018, by Journal No. 11 of the Public Labor Prosecution Services of Mato Grosso do Sul, on the initiative of the author with the proper authorizations (CATARINO; SARAVI, 2018).

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THE 20 YEARS OF COORDINFÂNCIA: RESISTANCE AND STRUGGLE IN THE FIGHT AGAINST CHILD LABOR

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Abstract. This article describes the actions carried out during the exercise of the national committee of COORDINFÂNCIA, with emphasis on the political context experienced by the country in that period. Brazilian democracy, in a continuous and accelerated process of erosion after the 2016 coup, began to experience the annihilation of fundamental achievements, with the weakening of inclusive public policies that reduced social inequalities. In this sense, the severe impacts suffered in the area of child protection started to demand even more resolute, proactive and efficient action by the members of COORDINFÂNCIA from the Labor Prosecution Service.

Keywords: COORDINFÂNCIA. National Committee. Comprehensive child protection. *Childhood Rescue*.

1 INTRODUCTION

The 20th anniversary of COORDINFÂNCIA deserves to be celebrated with intensity, as it is an extremely important commemorative date for the Labor Prosecution Service. Created on November 10, 2000, the National Committee to Combat the Exploitation of Child and Adolescent Labor is a symbol of resistance and struggle since the beginning of its work. The combative colleague Eliane Araque dos Santos was its first national head, responsible for printing the initial identity towards the concerted and harmonious performance of the regional heads of each one of the Offices of Labor Prosecution in the Country.

I joined COORDINFÂNCIA for almost 20 years. Today I am convinced that the richest professional experience was not having been its national head between the years 2016 and 2017, but, rather, having witnessed, over the years, the daily struggles of the Labor Prosecutors who work in child and youth protection. Being a member of COORDINFÂNCIA is to defend the implementation of the Federal Constitution on a daily basis, it is to know that the constitutional text does not work miracles if there is no real appropriation of the constitutional guidelines for child protection.

When I took over the national committee, alongside the friend and competent Labor Prosecutor Tiago Ranieri, Brazil had just suffered the severe coup of 2016, the initial episode of a devastating process that resulted in a serious economic, political and social calamity for the country. Brazilian democracy, in a continuous and accelerated process of erosion, began to experience the annihilation of fundamental achievements, with the weakening of inclusive public policies that reduced social inequalities.

Political crisis, social and ideological polarization, partisan media aligned with the economic sector, judicial activism, fiscal crisis, privatizations, extinction of ministerial departments such as that of Human Rights, this very adverse scenario verified in that year 2016 required COORDINFÂNCIA to boost its resolute actions, in order to reconstruct the positive agenda in the field of fundamental rights, thus avoiding further social setbacks.

The main objective of this article is to collaborate in the construction of the memory of COORDINFÂNCIA. For this purpose, the main actions carried out during the period in which I held the position of national head will be consolidated here. It should be noted that they could only be realized due to the competence and dedication of each of the Labor Prosecutors that make it up.

The main initiatives adopted during my office as a national head, in summary, were: a) simultaneous implementation of the 3 structural axes of COORDINFÂNCIA's action (education, apprenticeship, and public policies) by the strategic project *Childhood Rescue*¹; b) creating of a distance learning course to train tutelary counselors through the MPT platform; c) unifying at the national level of the #chegadetrabalhoinfantil (#stopchildlabor) campaign; d) preparation of new didactic material for the education axis and for the apprenticeship axis; e) celebrating the world day to combat child labor

with the unprecedented presence in the MPT of Kailash Satyarthi, awarded with the Nobel Peace Prize².

It is time, therefore, to discuss each of these initiatives, but not without first putting the struggle for the eradication of child labor into context in the light of the constitutional rules and the 2016 coup.

2 THE CONSTITUTION, CHILD LABOR AND DEMOCRATIC EROSION FROM 2016

One of the most significant contributions of the 1988 Constitution to the development of democracy in Brazil was the conscious choice to defend fundamental rights. The intense performance in the area of protection for children and adolescents reveals the importance of constitutionalizing the fundamental right to not work before the age of 16, as well as the protection of adolescents between 16 and 18 years old, as expressed in art. 7, item XXXIII.

Art. 227 of the Federal Constitution, before the Convention on the Rights of the Child itself, requires that the State, family, and society accept their mission of protecting, with absolute priority, the rights of children and adolescents, holding them jointly responsible in this regard. The theory of comprehensive protection is central to the Brazilian legal system as they are children and adolescents with rights who demand special attention, as they do not have all the mechanisms capable of fully realizing their rights.

In addition to the constitutional norms that protect children, there are international conventions nos. 182 (elimination of the worst forms of child labor) and 132 (minimum age to work), both of the International Labor Organization and ratified by Brazil, which must be respected, promoted, and respected even by States that have not ratified it. It is also important to register the 2030 Agenda³ for Sustainable Development, of the United Nations (UN), which recognizes the eradication of poverty as the greatest challenge of the century.

In Brazil, despite the protective legal and constitutional framework of childhood, there are still about 2.4 million children and adolescents in the age group of 5 to 17 years old in a working situation⁴. In the context of growing poverty, the greatest difficulty encountered in the process of eradicating child

labor is facing the false belief that work, regardless of the age at which it is performed, always ennobles and dignifies. Most of the Brazilian population accepts child labor and identifies it as an evil of lesser social impact, which reiterates that the greatest obstacle in the fight to eradicate child labor is the myth that working in childhood does not bring serious harm.

Child labor is a social affliction incompatible with the paradigmatic changes brought about by the 1988 Constitution, being one of the most serious human rights violations for harming the present and the future of its victims. The challenge of eradicating child labor is a struggle to be fought in several arenas, demanding that MPT assume an even more resolute and proactive stance in its performance.

In most of the complaints brought to the attention of the MPT in relation to child labor, apprenticeship, or non-compliance with public policy, it is not enough the performance limited to the initiation of civil inquiries and the consequent filing of public civil actions, or even the signing of terms of commitment to adjust conduct. The uncompromising defense of the comprehensive protection of children and adolescents requires, even within the traditional sphere of action by the MPT, a broader and more comprehensive discussion of the theme, with deepening of the horizontal dialogue with social actors and the search for creative and sustainable solutions with the actors at the base.

The MPT needs to deepen, also in the extrajudicial sphere, its performance in defense of the legal order and unavailable social interests. This means stating that there are many successful experiences of MPT's participation in forums, collectives, and public agencies aimed at formulating and implementing measures aimed at implementing constitutional norms and principles. As an example, I mention the National Forum for the Prevention and Eradication of Child Labor (FNPETI) and its ramifications in the states. In these environments, the Prosecution Service is one of several public or private social actors, whose objective is the same, namely: to postulate the performance of constitutional principles inherent to the Democratic State of Law. Undeniably, the fight for the comprehensive protection of children and adolescents leads to the implementation of the principle of the dignity of the human person, placed as one of the gravitational centers of the Constitution of the Republic of 1988, as listed in art. 227.

The Labor Prosecutors who are part of COORDINFÂNCIA testify daily to the potential of collective action, social movements and the need for the effectiveness of the fundamental right to non-work before the age of 16 and the comprehensive protection of children and adolescents to be operated by the whole society, by the family, and by the State, at the risk of making a dead letter of the important and unprecedented guidelines foreseen in the Constitution.

The severe impacts suffered in the area of child protection, after the 2016 coup, demanded even more resolute, proactive, and efficient action by the members of COORDINFÂNCIA. The dismantling of existing public policies, the weakening of governmental actions that were underway in previous years, the disruption of the positive childhood agenda, the doubt as to the concreteness of constitutional norms and principles made the structured performance of the MPT in various ways imperative, namely, the preventive, the repressive, in concerted and dialogical action with organized civil society and public authorities in its different spheres. Understanding the consequences of the weakening of democracy and resisting the measures that cause precariousness, arising from an illegitimate government, were the biggest challenges experienced by the members of COORDINFÂNCIA at that time.

The fight against child labor is a theme that needs to be guided on the most diverse fronts of discussion with the objective of building possible solutions, proposing and demanding the implementation of public policies, demanding the fulfillment of the apprenticeship quota, sensitizing society about the losses resulting from work before the age of 16 and the necessary protection in the age group of 16 to 18 years old.

In a brief summary, I will list the main specific actions of COORDINFÂNCIA in the period between July 2016 and August 2017, when I held the position of the national head.

a) The Childhood Rescue Project and the implementation of the 3 structuring axes of COORDINFÂNCIA's action: education, public policies, and apprenticeship

The *Childhood Rescue* Project was officially instituted as a strategic project of the MPT in October 2016, based on the need for simultaneous

implementation of the 3 structuring axes of COORDINFÂNCIA's action: education, apprenticeship, and public policies.

The name of the project (*Childhood Rescue*) was chosen democratically among all the members of COORDINFÂNCIA, in one of the first meetings of our management in August 2016. The fact that the verb “rescue” evokes the sense of urgency that child protection requires was decisive for the choice of this name, connecting to other equally fundamental actions, such as saving, recovering, resuming.

Rescuing childhood is imperative in the universe of coordination and its direct transitivity with childhood has made us unanimously choose that name for our strategic project. Its main objective is to prevent and combat child labor, raise awareness in society, promote public policies, promote professional training, and protect adolescent workers.

To this end, the implementation started to be made initially in those municipalities that had benefited from the federal government's budget co-financing, but that had not yet adopted in their territories the necessary measures for the prevention and eradication of child labor.

Simultaneously, the axes of education, public policies, and apprenticeship started to be implemented in those municipalities previously identified and with a high rate of child labor. It is important to note that COORDINFÂNCIA has always had such structuring axes as the gravitational center of its performance, with spatial and temporal factors being the great differential of the strategic project *Childhood Rescue*.

It is necessary to make brief and synthetic considerations in relation to each of the project's axes of action, in order to expose the way it was implemented in its new format.

Education Axis

With regard to the education axis (former MPT at School), it is important to reiterate that its greatest scope is the awareness of teachers and students in relation to the theme. We cannot deny that many teachers still replicate the myths about child labor, helping society to accept and make invisible this serious violation of constitutional norms. Developing the theme in the classroom, a privileged space for promoting knowledge, is not only

providing the standardization of essential information for the full mastery of the theme but also enabling the school community so that its members are social actors in the identification of possible victims.

The first step in the development of this axis is the public act that involves the clarification and awareness of school principals, pedagogical coordinators, and teachers from the public network of municipal and state education. This is the moment when the MPT presents its didactic and pedagogical material, making it available free of charge to the municipal manager, as well as emphasizing that its content must be taught preserving the pedagogical method of each teacher.

It should be noted that the present axis, in addition to the prominence of the teacher's role, highlights the student as another major protagonist in the process that involves the eradication of child labor. As is well known, almost 97% of children in the country are enrolled in schools, which means that the school community is absolutely essential in the process of raising awareness of the damage caused by child labor.

The culmination of the education project occurs with the presentation and awarding of works developed by students in the classroom. The process, until it reaches its conclusive stage, ensures that the knowledge acquired by students can reach their homes, neighborhoods, and other living spaces, disseminating the necessary information so that the losses arising from child labor are known to all.

Apprenticeship Axis

Item XXXIII of art. 7 of the Constitution of the Republic expressly states the prohibition of work before the age of 16, except as an apprentice from the age of 14. Besides the fundamental right to not work before the minimum age is the fundamental right to professionalization, provided for in art. 227 of the 1988 Constitution.

Since Law no. 10,097/2000, MPT has been working to raise awareness among companies about the benefits of apprenticeship for the apprentice's life, as well as for the company itself. Public hearings, seminars, promotional procedures, participation in regional apprenticeship forums are examples of MPT's extrajudicial actions, whose objective is to raise the awareness of

companies to comply with a legal obligation: the apprentice quota provided for in art. 429 of the CLT.

In the second semester of 2016, we resumed the articulations already initiated for the integrated and joint action of the MPT, Labor Magistracy, and the then Ministry of Labor and Social Security. The idea was to hold annual public hearings in May in order to demand that companies comply with the legal quota for apprenticeships. National Apprenticeship Weeks was born, events in which the institutions mentioned went beyond the perspective of mere awareness and started to prioritize the effective fulfillment of the legal quota foreseen since the year 2000.

Based on this national initiative, the *Childhood Rescue* Project boosted the promotion of apprenticeship in Brazilian municipalities that received government co-financing for the eradication of child labor, but that persisted in non-compliance with legislation. By mapping the predominant economic segments in the respective territory, as well as in the surrounding municipalities, the MPT aimed to embody the fundamental right to professionalization through apprenticeship.

It should be noted that the performance of the MPT prioritized, in addition to compliance with the legal apprentice quota, the implementation of professionalization programs, with the qualification of professional courses compatible with the region; conducting diagnoses of professional training entities; checking the regularity of the apprenticeship courses already offered; raising the community's awareness of the mandatory legal compliance with the hiring of apprentices by companies, as well as the identification of young people and adolescents included in apprenticeship programs.

Public Policies Axis

In the application of the public policies axis by *Childhood Rescue*, the municipality chosen for the implementation of the project was analyzed from three perspectives: the budget forecast of the specific item in the municipal budget for the area of childhood; the structuring and intersectoral articulation of the protection network; the existing alternatives offered to the vulnerable population.

The main objective of the public policies axis is to assess the existence of a specific item within the municipal budget to fund actions

to combat vulnerabilities in the area of children and adolescents. The real institutionalization of the referred item is the first evidence of the implementation of the constitutional principle of comprehensive protection. In practice, it appears that municipalities are not even aware of the mandatory existence of their own budget for children, different from the items intended for education, health, and social assistance.

The ultimate purpose of the project is to provide alternatives to the family, children, and adolescents, in order to integrate, in an area of expanded citizenship, the victim of child labor. Thus, it is essential to check the structure and intersectoral articulation in the protection network of the municipality, namely the tutelary councils, the Reference Center for Social Assistance (CRAS), and the Special Reference Center for Social Assistance (CREAS). Given the reality found in the municipalities, it is often necessary to train the actors in the protection network on the topic of child labor.

MPT members, when implementing the said axis in their respective municipalities, often need to hold individual hearings with each unit to, in an articulated manner, check if the services of coexistence and strengthening of bonds in the school day are working, if there are cultural, leisure, sport projects, if there are full-time schools, etc. It would be useless to take the children out of early work and not give them alternatives to exercise their rights under the 1988 Constitution. Thus, it is essential to structure the protection network, create service flows for vulnerable groups and enable alternatives to eliminate and curb the recurrence of victimization.

The mission of the MPT, therefore, is to analyze the main characteristics of the municipality regarding the fight against child labor and, from there, propose to the mayor the signature of a term of conduct adjustment commitment after the clauses are made, discussed, and presented in accordance with local needs. If an extrajudicial adjustment is not possible, there will be no alternative but to file a public civil action.

b) Creation of the Distance Learning Course, a training course for tutelary counselors by MPT platform

The award-winning training course for tutelary counselors promoted by ESMPU, devised by the Labor Prosecutor and former national head

Elisiane Santos, was the inspiration for the first distance learning course created by COORDINFÂNCIA on MPT's own platform.

The goal of our management in the National Committee was to make the autonomy of a distance learning course feasible to raise the awareness of tutelary counselors without the need to submit to the ESMPU seasonal calendar. As the public policies axis is centered on the training of the child protection network, COORDINFÂNCIA, in partnership with CODEP/MPT, made every possible effort to create an objective, resolute course that could assess and certify regular and qualitative attendance of the participants.

The course produced by COORDINFÂNCIA was attended by members of the Committee, as well as by the main representatives of the system of guarantees for children's rights, actors, and human rights activists.

c) National unification of the #chegadetrabalhoinfantil (#stopchildlabor) campaign

An important initiative in our coordination period involves the use of the hashtag "chega de trabalho infantil" ("stop child labor"). This motto was created by the PRT-15th Region, which pioneered the creation of a modern, updated campaign, with the potential for dissemination among the other PRTs. Thus, we chose to suggest to the members of COORDINFÂNCIA the unification of their respective institutional campaigns, with the objective of giving a more striking identity to COORDINFÂNCIA itself. The suggestion was very well received by the regional heads, who expressed their agreement and enabled the hashtag #chegadetrabalhoinfantil (#stopchildlabor) to be adopted nationwide, including the making of t-shirts with the campaign theme, as well as the placement of a banner on the front facade of the headquarters of the Office of the Prosecutor General of Labor in Brasília.

d) Preparation of new studying materials for the Education and Apprenticeship axes

The teaching material used by COORDINFÂNCIA until 2016, idealized for the project then called *MPT at School*, was the booklet "Play, study, live... Only work when you grow up", in which the characters Rafael, Clara, Ana, Dudu, and Júlio experienced the consequences of child labor in

the school community. The main damages suffered by a working child are portrayed in an objective, creative, and very well illustrated way. At the end of the booklet, there were crosswords, word searches, maze, and coloring games. Excellent quality material that has fulfilled and fulfills its role of making society and the school community aware of the damage caused by child labor.

When assuming National Committee, however, the need arose to update and improve the pedagogical material to be used in the implementation of the education and apprenticeship axes. The difficult task of preparing a new teaching material also had direct and tireless help from the managers of the structural pillars of *Childhood Rescue* (Antonio Lima, Cândice Arosio, Dulce Torzecki, Margaret Matos e Tiago Ranieri). Thus, the pedagogical guidance books now have information related to the concept of child labor, how to denounce child labor, what are the myths and truths on the subject, the main forms of child labor, support material made up of new publications, board games, posters for classrooms, comics.

All this important material can also be used in the training of the protection network, that is, it will be able to be used also in environments outside the school, as in the courses for sensitization of tutelary counselors and the rights guarantee system in general (units, municipal councils, civil society organizations, etc.).

e) The cocoa production chain

An important initiative by COORDINFÂNCIA was to conduct a study on the cocoa production chain in order to map its actors, understand the dynamics of the entire production process, determine the existing working conditions, as well as enable the adoption of performance strategies for the eradication of child labor.

The year 2017 began with the hiring, by the International Labor Organization (ILO), through a partnership with the MPT, of researchers who started to visit the main Brazilian cocoa producers to collect the necessary information. As of July 2017, the researchers' visits to the main cocoa-producing centers in the country began, with the conclusion of the work in June 2018.

f) Presence of Nobel Peace Prize winner Kailash Satyarthi in the PGT auditorium

The celebration of the World Day to Combat Child Labor, in June 2017, featured the unprecedented presence of Indian activist Kailash Satyarthi in the auditorium of the Office of the Prosecutor General of Labor. National COORDINFÂNCIA and the National Forum for the Prevention and Eradication of Child Labor held an event with the participation of all managers of the structural axes of *Childhood Rescue*, children, adolescents, Labor Prosecutors, Ministers of TST, Judges of the 10th TRT Region, as well as several representatives of the rights guarantee system.

On the occasion, Kailash Satyarthi stressed that to deny the right to education is to deny all constitutional rights, emphasizing that child labor appears to be the greatest crime against humanity because it prevents opportunities for education and reproduces poverty.

3 CONCLUSION

In the final part of this testimony of the period in which I was in the national Committee of COORDINFÂNCIA, I would like to emphasize one aspect: everything that was accomplished would be impossible without the invaluable partnership of the then Deputy National Head, Tiago Ranieri, of the managers of the *Childhood Rescue* axes and, of course, all Prosecutors who were together in the fight against child labor, keeping the flame of comprehensive protection for children and adolescents alight. I am sure that the legacy of the management leading COORDINFÂNCIA was that of the learning and maturation brought about by living with such valuable and active colleagues.

As I write these lines, I see this publication as a unique opportunity to celebrate 20 years of struggles and achievements in this area that is so fundamental to Brazilian society. I reiterate the importance of mobilizing so many colleagues, in dialogue with civil society and government institutions, in the search for education, health, and dignified life for children and adolescents now and in the future.

Congratulations on the 20 years of this unique and fantastic committee, our COORDINFÂNCIA.

ENDNOTES

- 1 The *Childhood Rescue* Project was created by Ordinance PGT no. 659, of October 26, 2016, whose objective is to prevent and combat child labor, raise awareness in society, promote public policies, promote professional training and protect adolescent workers.
- 2 On June 13, 2017, COORDINFÂNCIA, in partnership with the National Forum for the Prevention and Eradication of Child Labor, celebrated the World Day to Combat Child Labor in the auditorium of the Office of the Prosecutor General of Labor, with the presence of the Indian activist Kailash Satyarthi.
- 3 Objective 8: To promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. [...] Goal 8.7: To take immediate and effective ways to eradicate forced labor, end modern slavery and human trafficking, and ensure the prohibition and elimination of the worst forms of child labor, including recruitment and use of child soldiers, and by 2025 end child labor in all its forms.
- 4 According to data extracted from the website of the National Forum for the Prevention and Eradication of Child Labor, the National Household Sample Survey (PNAD), in 2016, attested to the existence of 2.4 million of children and adolescents from 5 to 17 years old in child labor, which represents 6% of the population (40.1 million) in this age group.



WORK, CHILDHOOD, AND MODERNITY: FIVE CENTURIES OF SUBORDINATION?

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Abstract. This text discusses aspects of child labor explored in the context of Western modernity, focusing on the colonial relations that constitute the cultural practice of this activity, which are hidden by much of the academic literature dedicated to the theme, considering that they adopt Eurocentric epistemological models for the analysis of this secular phenomenon. In contrast to these western-centric theoretical references, another epistemology is proposed, based on “decolonial” thinking, which dialogues with traditional knowledge of an African diaspora and indigenous matrix, and through critical intercultural reading, in order to highlight other ways of understanding educational processes aimed at children and different ways of understanding the world of work. Early childhood education, within the Western colonial model, has emphasized capitalist work as a pedagogical project of the mercantile agenda instituted by modernity, through a linear, disciplinary, and uniform architecture. Afro diaspora and indigenous pedagogy are based on the ancestral knowledge taught by the masters and masters of their culture, in the making of their community practices, in respectful contact with nature, and in the cult of spirituality. To face these contradictions, the text invites us to a “decolonial” turn of rupture with the subordination imposed by patriarchal and capitalist colonialism.

Keywords: Exploited child labor. Modernity. Decoloniality. Afropindoramic pedagogy.

This article aims to discuss how the notion of work and childhood was built through the colonization process imposed on the Pindoramic territory¹ (SANTOS, 2015), which was named Brazil by European colonists.

The Eurocentric view of understanding work and early childhood education was formulated within the assumptions of the colonial matrix that, until today, underlies the main pedagogical practices aimed at children in this scenario, both in school and training institutions, as well as in families and other broader social relationships. The idea of a supposed superior and noble knowledge, arising from a so-called civilized culture, violently imposed, in symbolic and physical terms, a cultural hegemony that started to constitute the subjectivity of Brazilians and other Latin peoples.

However, in the Pindorama, as the quilombola Nego Bispo (SANTOS, 2015) refers to, there were already ways to see the child and, in turn, to educate them, which were very different from the western-centric view, considering different indigenous ethnic groups that inhabited this vast territory located in the southern hemisphere of the planet. The educational pluriversity of these practices became more complex, with the arrival of the various African ethnic groups that were enslaved by the Portuguese, since the beginning of the 16th century. Within this context, the construction of Afropindoramic and African diaspora pedagogies was articulated (SANTOS, 2015; COSTA; UDE, 2019) which were consolidated through different epistemologies in relation to the colonial model of education, although some indigenous villages maintained their unique forms of educating. However, these pedagogies were ignored or neglected by our society and, even, by the academic world that preferred to follow, in a hegemonic way, the Eurocentric canons, understood as a superior form of philosophizing.

In fact, the only philosophy admitted as legitimate, within the Eurocentric and colonial model, became one that is in line with the dictates of the Greek matrix and its classics. As if the Pindoramic and African matrices were not constituted by philosophical principles of thinking and understanding life, within its complexities. Therefore, it is worth asking: How was this hierarchical and dominant way of understanding these different cultural views established? The analysis of historical aspects of Western thought indicates that this hierarchy was constituted by the body/mind dichotomy based on Greek thought, which Plato systematized when he instituted that the body is the place of passions, imbalance, dirt, inferiority, and the primitive; in contrast to the reason that represents a superior, noble, clean and disciplined place (TAYLOR, 2013; SODRÉ, 2017; SANTOS, 2019). Furthermore, within this perspective, reason and the body were

conceived as situated in the individual, and, therefore, if someone leads a controlled and successful life, it was because he followed reason individually; and if someone lives in an uncontrolled way it is because he has followed the primitive passions of the body. This belief became the great motto of modernity, in its liberal version, that is, failure is the result of individual choice and success is an achievement resulting from individual effort and discipline. This individualizing configuration was established as a backdrop for the institution of meritocracy, in order to hide social inequalities, by placing on the individual the only responsible for his own failure (SOUZA, 2012).

However, Afropindoramic epistemologies conceive life in a pluriverse way, as they do not operate with these separations between body/mind, subjective/objective, reason/emotion, nature/culture, profane/sacred, among other dichotomies produced by the Western-centric matrix. On the contrary, these dimensions are conceived in an articulated way in African and indigenous matrices. In other words, in an indigenous or African ritual, the sacred, the profane, the playful, the corporeality, the dance, the music, nature, the personal, the social, the joy, the sadness, the evil, the secrets, among others manifestations are expressed jointly, in their tensions and in their interlacing. This way of understanding life calls us to produce a “decolonial” turn that breaks with this hierarchical and dichotomous way of being, thinking, and establishing power relations, imposed by the colonizers (MOTA NETO, 2016).

In this sense, this article is based on the “decolonial” matrix, a proposal defended by different authors from the Southern Hemisphere, mainly from Latin America, such as Anibal Quijano, Walter Dignolo, Nelson Maldonado-Torres, Ramón Grosfoquel, Enrique Dussel, Orlando Fals Borda, and Brazil, such as Paulo Freire, Muniz Sodré, José Jorge de Carvalho, Antônio Bispo dos Santos, Nilma Lino Gomes, João Colares da Mota Neto, among others, from a movement that emerged from the post-colonial perspective inaugurated by Franz Fanon (2008) in the 1960s. In fact, it is about defending another paradigm, based on Afropindoramic ancestral knowledge, on social movements, on the social practices of our territory, in an epistemological reflection that articulates this knowledge and its practices, with unique methodologies emerging from the different sociocultural experiences of our intercultural matrix, in an “ecology of knowledge”, with a liberating character (SANTOS, 2019).

However, other forms of struggle and resistance are prior to this affirmative process constituted in the academic environment that has been built through epistemological ruptures with Eurocentric models, such as the liberation struggles unleashed by indigenous and quilombola peoples, who, in the great majority, are not registered in the bibliography of national studies. In this regard, it is worth noting that this type of content has only recently become mandatory in Brazilian schools, after claims by affirmative movements in the Afro-Brazilian community.

Still, within the Eurocentric colonial matrix, the reason was conceived as male property, belonging to a white, heterosexual, and wealthy man. In this perspective, the superior reason is man's possession; and the woman, the slaves, and the child are only endowed with bodies, which need the discipline of their patriarch. As noted, it is a striking nucleus of patriarchy, founder of macho, feminicidal, homophobic, transphobic, and authoritarian practices, as well as the constitution of a predator that tries to impose its supposed superiority on nature, through the depredation of the ecosystem. In this configuration, it is possible to situate the separation between nature and culture produced by the western-centered and colonial matrix.

For what interests us here, in this brief reflection, taking the colonial model as the hegemonic matrix that established the child as the object of an adult owner of an absolute, patriarchal, and superior reason, within a capitalist system, the meaning of child labor is evidenced explored in the history of our society. In this assumption, reason has become synonymous with discipline and order which, in turn, have become the markers of capitalist work and education. In fact, modernity has built a direct relationship between work and school education, with a focus on individualism and competition, which are marks of modernity. The hegemonic model of the bourgeois patriarchal family, of European, nuclear and heteronormative origin, also composes this construction of the subordination of women and children. It is enough to consult the iconographic studies of Ariès (1981), which show how the ideas of work, family, childhood, and school were produced simultaneously, to meet the mercantile and hierarchical model that was based on modernity, as it was transmitted through the western colonization.

As Mota Neto (2016), inspired by Fanon, points out, "Coloniality, is the dark side of modernity". The racist, sexist, and predatory practices of nature, observed in modernity, are based on colonialism. Likewise, the

exploitation of child labor is within this same bulge. Thus, the fight against exploited forms of work, aimed at children, needs a “decolonial” look, in order to break with colonizing practices that still populate our imaginary and our social practices. This type of epistemological and political stance in the face of so much violence, “[...] means that the “decolonial” perspective seeks to reveal the terror, death, discrimination, and epistemicide hidden behind the salvationist rhetoric of modernity” (MOTA NETO, 2016, p. 44-45).

When children are exploited at work in rural areas, such as cutting cane, harvesting oranges and coffee, charcoal production, and other debasing forms of slave labor, we can see that our colonial history is present in these social practices. Several arguments are presented to justify this type of activity, such as: “It is better to work than to steal”; “It’s to help the family”, “Work is discipline”, and other narratives. This same representation of exploited child labor is found in the urban environment. In fact, in a study I carried out on children working on the streets of Belo Horizonte, at night, it was evidenced that there is a very close relationship between rural child labor and urban child labor, as it constitutes a transgenerational practice of vulnerable families who migrated from the area to the city and found no means of survival that would be able to break the work of children on the streets (MARQUES, 2001). In fact, this type of strategy was learned in the fields when mothers and fathers, during their childhoods, worked for the boss, the owner of the farm.

On the other hand, the argument that it is a survival strategy to help the family shows that the patriarchal model associated with the Judeo-Christian idea of a holy family that needs to be maintained at any cost also hides the social inequalities that produce this type of phenomenon. In fact, a family in conditions of extreme vulnerability will never be able to realize the bourgeois patriarchal model, imposed as an ideal and superior model. All of these myths of colonial modernity need to be questioned and deconstructed. If we analyze the families that depend on the exploited child labor, the majority is made up of family caregivers with low education and, consequently, with professional disqualification, due to situations of subordination that they have faced in their lives, including by occupying their childhoods with work activities that compromised schooling, family life and sociability (MARQUES, 2001).

Additionally, a good part of these families is composed of black and brown people, configuring, once again, pictures that refer to colonialism present in this context of social inequality. The racial issue needs to be addressed

in this debate, as academic studies, influenced by Eurocentric theories, do not vigorously discuss this aspect, as they emphasize class differences to the detriment of the racial issue. It is necessary to show that racism determines the subject's class condition. Within the colonial parameter, skin color defines who is classified as people and who is classified as non-people. It is not possible to detach one condition from the other. This epistemological and political problem, which dichotomizes class and race, represents points that are highlighted by “decolonial” thinkers, such as José Jorge de Carvalho (CARVALHO, 2018, p. 85) when observing the following:

This racist and xenophobic myth, the result of imperialisms, colonialisms, and Atlantic slavery of previous centuries, was transplanted to Brazil in the creation of our first universities, especially in its francophone version, as was the case with UFRJ and USP, founded by two French missions, thus installing our white academic elite as a continuation or tropical warehouse of the European academic elite. It is not left to note that our mental colonization was even more complete because the social space in which the universities were installed was entirely white, which facilitated the identification of our academics with their (white) Europeans.

Obviously, these racist practices are crossed by gender relations, within a patriarchal and colonial model, constituting a plot that the feminist movement of African American women, in the United States, called intersectional oppression of race, class, gender, sexuality, and nation (COLLINS, 2018). In fact, there is a selective modernization that aggregates these components that integrate colonialism, patriarchy, and capitalism (SOUZA, 2000). The androcentric and European format of dictating social relations elected the white male figure and the elite as a superior entity that represents a noble way of thinking, being, and imposing power. These interrelated elements need to participate in the process of analyzing our social problems, through the “decolonial” approach.

In the survey on urban child labor, which I mentioned above, I found that 68% of families were single-parented by women and most of them were headed by black and brown women. As for men, they circulated among these women, reduced to genitors, because they were unable to provide for the family with their condition of being underemployed or unemployed, and became weakened in their identities due to the imposition of a prescriptive patriarchal model for the exercise of toxic masculinity. Faced with this subordination, they became involved with alcoholism and died early. The children entered the gap produced by the paternal absence, since the mother,

according to patriarchy, must remain in the condition of caregiver. Then, within this family plot, there is a cross between gender, class, race, sexuality, and family life cycles, in which children are sacrificed to maintain their vulnerable family, in their transgenerational history. In fact, children were adultized and adults were infantilized, as it was very evident the exchange of roles and responsibilities in the context of these groups (MARQUES, 2001).

In view of these brief considerations, I argue that all these elements should be included in the understanding of public policies aimed at eradicating exploited child labor. Therefore, in the next topic, I discuss the need for a “decolonial” look to think about the relationship between children and work, from a “decolonial” perspective.

1 CHILD AND WORK: THE NEED FOR A “DECOLONIAL” ROTATION

In the constitution of the Western model, there was a close relationship between childhood, work, education, and discipline, with the family as the primary socialization process of this scenario and the school as responsible for secondary socialization, under the control of the State, in an official character, to consolidate the capitalist system (ARIÈS, 1981). This configuration was based on the cult of order, understood as synonymous with the supreme reason, and associated with the idolatry of capitalist work as a solution to all ills due to the access of happiness to be consumed (WEBER, 2004). On the other hand, it created an aversion to ludic, leisure, leisure, contemplation, fun, vagrancy, and entertainment, which became perceived as dangerous passions located in the body and also as manifestations originating from primitive peoples (MELO, 2011; FOUCAULT, 1987). Within this logic, leisure was configured as a cursed territory, a place of rascals, vagrants, and troublemakers. Just look at school times/spaces dedicated to culture and leisure, they are usually restricted or almost nonexistent. Most of the time, children are confined in square rooms, in desks lined up in a straight line, sitting and with their bodies subordinated (MALHEIROS, 2012; POUZAS, 2012).

Although schooling can represent an important learning experience for the expansion of children’s knowledge, in terms of sociability and socialization, within the western-centric perspective this horizon is not

observed, since the transformation of the child into a student deprived the potential of being a child as an active, creative, inventive and interactive subject (SARMENTO, 2015). In this subordination scenario, school activity started to be configured as a hidden form of exploited child labor, since the exploited work is characterized by the exercise of activities imposed as mandatory, regardless of the subject's choice. Alienation through work results from this submission that prescribes the individual the activity he or she must perform, making him or her alien to him or herself, acting mechanically in a servile manner to the productive and consumerist process that sustains capitalist logic. The learning of writing proposed by the Western school brought, in its contents, the dominant ideology of the Eurocentric model and did not represent a liberating practice for its practitioners. In this context, literacy through writing did not constitute a possibility of liberation through the discussion of the importance of traditional knowledge, as well as the history of the tragedies of colonization and the forms of resistance of Afropindoramic people in the face of violence by Europeans (SANTOS, 2015).

In contrast to this alienating perspective, it is necessary to highlight the educational dimension of work when it becomes an active and dialogical practice, in which the subject recognizes himself or herself in what he or she does, finding meanings and senses in the activities that express dimensions of his subjectivity, configured within their personal and social experiences shared with the other participants in the process of building the knowledge produced. This is the challenge posed for discussion in the field of combating the eradication of exploited child labor. In this regard, the educator Miguel Arroyo (2015, p. 21) asks: What is the pedagogical agenda for children in Brazil today? How to get them out of this massacre that overwhelms their potential? I think that this provocation needs to be debated with diligence by practitioners of this struggle who aim at the liberation of the oppressed, in a movement of counter-colonization and decolonization of our social and educational practices (SANTOS, 2015; CARVALHO, 2018).

In the field of “decolonial” pedagogies, we find pindoramic, afropindoramic, and African diaspora epistemologies that are distinct from the Eurocentric matrix, since their philosophical foundations are at odds with Western premises. The first striking principle of “decolonial” pedagogies is circularity or circular pedagogy (COSTA JUNIOR; UDE, 2019), since Western

pedagogy follows Cartesian rationalism in a square and linear architecture. The circularity follows the movement of the vital cycles of the ecosystem, in its complexity, integrating different dimensions in its expressive processes. It follows the rotation of the planet and proposes a “decolonial” rotation. All indigenous and African rituals, as well as that of other Eastern peoples, take place in circles and circular movements. The end becomes the beginning and the beginning is made by the end of a vital moment, in an unfinished and procedural way, following traditions that are transmitted by the guardians of ancestry. Not in an ephemeral way as modernity proposes, in its race for spectacular hyper-consumption, so accelerated by new technologies.

Another differentiated basis of the “decolonial” paradigm is the emphasis on collectivity, an ethic that defines the existence of the subject in relation to the other, in his commitment to the nation, in the ways of producing and sharing, without attacking nature, which is also part of the planetary community. These fundamentals are present in Afropindoramic practices because it produces what is sufficient to survive without generating surpluses since excesses unbalance the vital dynamics. The circular movements follow this collective principle, the wheels are followed by palms, drums, dances, spiritualities, religions, foods, drinks, branches, salts, fire, stones, and other elements that make circular dance sacred (RAMOS, 2015). The harvests are followed by songs that are transmitted across generations.

This form of education through circular dance also aims at health, healing, and contact with the transcendental. A perspective differentiated from the Western matrix, as its materialistic rationalism removed spirituality and religiosity, making the Eurocentric vision the supreme and absolute knowledge for the solution of all evils. As José Jorge de Carvalho (2018) points out, every master of the Afro-Indian matrix cultivates their religiosity, making it a challenge to establish a dialogue of knowledge between the intellectuals of the colonized university. Likewise, the masters do not give up their drums, clapping, drumming, incense, and singing, promoting an environment populated by entities and noises that are foreign to the silence imposed by Western reason and their schooled discipline.

The child educated in an African diaspora or pindoramic cultural practice learns from their elders, who are the representatives of ancestry, and these masters *teach by doing*. This way of *teaching by doing* is very different from Western teaching, which conducts learning through oratory and rhetoric, just

like a Western school teacher who talks in front of students, for hours, far from the students' reality. The master, with his ancestral knowledge, teaches performing together with the child, in the woods, in the plantations, in the rituals, the drumming, in the prayers, in the dances, and other activities that make up the group's ethos. A capoeira master teaches a movement through its execution together with his apprentice, takes the child's hand to teach the swing and *ginga* technique, plays the berimbau accompanied by the clap of hands, tambourines, reco-reco, *ganzá*, and atabaque, also performed by his disciples. Litanies, *chulas*, and *corridos* are sung according to the context of the game and the circumstances of the events, often metaphorically. Following the tradition of orality, they tell stories of ancestors, their struggles, strife, parties, and conquests in a sung way. Orality represents a great tool for these ancestral pedagogies. However, the masters of Afropindoramic matrices also transmit secrets that the written language cannot translate, as they are in the "pipe smoke", *mandinga*, *axé*, incorporations, and other mystical experiences that it produces (KANITZ, 2011; SOUZA, 2016).

This same process of teaching *capoeiragem* can also be observed in *congados*, *candombes*, *jongos*, candomblés, sambas, and other African diaspora manifestations; keeping the distinct differences between ethnic matrices and the unique meanings of their manifestations. Although capoeira contains elements of candomblé, it is not candomblé. These differences are important to try to understand the complexity of these epistemologies and their foundations. In any case, this spirituality that crosses these expressions is a witch in the sense of the enchantment it generates in its viewer and its practitioner, although other senses are produced. It is very difficult to approach a samba circle and not swing your body, or see a capoeira circle and not be enchanted by its musicality and the movements expressed in the relationship between its practitioners. As the wisdom of samba says, "whoever doesn't like samba is not a good guy, he's either bad in the head or sick of the foot."

Joy represents another element of these cultural practices, as they sing to plant, fight, dance, play, harvest, learn, say goodbye to the dead, pray, and celebrate. This way of facing life produces a subjectivity very different from the Western way of understanding life. The cult of a restrained and disciplined body, straight and homogeneous, derived from the Eurocentric model is confronted with the swing of an Afro-Brazilian education that values the expression of malice in the trickster game of facing a colonial system, in its

gaps, just as a header in a game of *capoeira mandingueira*. Street smarts here are understood as wisdom to face adversity. However, these ways of re-existing (resisting) are criminalized and demonized. Colonizing practices still today harbor strong prejudice against these cultural expressions of an Afro-Indian and Afro-diasporic nature.

Thus, we need to confront the knowledge of the masters and their ways of teaching with the colonial Eurocentric practices, with a critical intercultural stance, and not of submission. We learned several theories of child development that are based on the western-centered framework. We need to assess their assumptions and theses that have some significance for our children, assessing their limits and possibilities for early childhood education. Western theories are contaminated by a stage-based tradition of understanding human development, as if the subjects were going through a linear and homogeneous development, denying their personal and social subjectivity, treating them as passive, and neglecting their singularities. Families are analyzed according to the bourgeois patriarchal model, even if they belong to an urban periphery or to a rural area of quilombolas, indigenous or Afropindoramic. The colonized view, in most cases, hides the racial, patriarchal, and capitalist issues present in these configurations, contributing to overshadow racism and social inequalities arising from this economic and historical-cultural scenario.

When we fight exploited child labor, it implies that we have a conception of a child to be defended. So, we need to be inspired by Arroyo (2015) and think about the following: What is our pedagogical agenda? What are our pedagogical assumptions for the exercise of a liberating educational practice? Here, in this short text, I set out to defend an African diaspora and afropindoramic pedagogy, so denied and criminalized by modern and Eurocentric colonial practices. This struggle faces three strong opponents who seek to dictate a true cognitive empire, that is, colonialism, patriarchalism, and capitalism (SANTOS, 2019). The challenge is set and represents a possibility of thinking about a possible “decolonial” turn in the face of the ills of this century-old triad.

2 FINAL CONSIDERATIONS

Exploited child labor, as opposed to educational work, constitutes a modern colonial practice installed since the beginning of the 16th century, in Latin America and in so-called Brazil by the Portuguese colonizers. It was from this historical landmark that I tried to problematize this phenomenon that, for decades, we have tried to fight to consolidate a socio-political configuration that allows the liberation of children found in conditions of subordination. This choice implies a “decolonial” turn to understand this theme because if we continue to follow Eurocentric assumptions to understand this plot, our analyzes will hide racism, patriarchy, class differences, and ethnic aspects, without visualizing oppressive intersectional modes located in this context.

This proposal, in line with “decolonial” authors from the Southern Hemisphere, calls us to think and build – another university – based on epistemologies that start from the center of our daily practices, which are distinguished from the Western Eurocentric and colonial model of perceiving the world. Our critical intercultural matrices present philosophical, cultural, and political foundations that are at odds with the dichotomous and rationalist model of the Western matrix, since they start from a collective circular pedagogy as opposed to a square, linear, individualistic, and competitive pedagogy, so useful to the capitalist system.

Obviously, we are going to come across other conceptions of children that are configured in the African diaspora and pindoramic pedagogies and that we need to dialogue to promote a different paradigm, to produce a rotation capable of freeing ourselves from colonial rancidity. This confrontation involves discussing the importance of promoting knowledge meetings at universities that include ancestral masters and the defense of epistemic quotas to guarantee the presence of these representatives of Afropindoramic communities with the academics of the current university, in a pluriverse dimension, instead of following monolithic reasoning.

As explained above, this short text was produced with the aim of reviewing our epistemic and political principles, as we are products of colonization, but also of other matrices that resisted and still resist in the face of this oppressive and secular process. We arrived at a historic moment when we need to take a stand in the face of so many barbarities, through a “decolonial” turn. This “decolonial” turn was already present in a *capoeira*

rabo de arraia, in which the author of this text was also trained, and seeks to expand the hidden pedagogy in this practice. Axé!

ENDNOTE

- 1 Pindorama – According to Antônio Bispo dos Santos (2015), Tupi-Guarani term that means Land of the Palm Trees.

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CHILDREN'S FUNDAMENTAL RIGHT TO NON-WORK

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Abstract. The historical-normative construction of the child's fundamental right to non-work. Initial considerations. Protection under Brazilian law. Constitutional developments. Legislative framework. Conventions nos. 136 and 182 of the International Labor Organization. Fundamentals for protection.

Keywords: Childhood. Right to Non-Work. Childhood Protection.

1 THE HISTORICAL-NORMATIVE CONSTRUCTION OF CHILDREN'S FUNDAMENTAL RIGHT TO NON-WORK

1.1 Initial considerations

The affirmation of the dignity of the human being – in the multiple phases and projections of its experience – is the result of a slow and painful process of historical conquests, permeated by advances and setbacks.

This gradual evolution, to which decisively contributed diverse factors (political, economic, social, philosophical, moral and even religious), resulted in the consecration of the doctrine of fundamental human rights, understood as “the set of faculties and institutions that, in each historical moment, fulfill the demands of human dignity, freedom, and equality, which must be positively recognized by the legal systems at national and international level” (LUÑO, 2004, p. 42).

Many political documents and declarations of rights, produced throughout history, reveal the struggle for respect for human beings, as an

individual, from a personal and social perspective, based on their full and inalienable dignity.

The movement to proclaim and seek the realization of fundamental rights took place in the direction of its universalization, in view of the increasing generalization or internationalization, and of its multiplication or specification regarding gender, the stages of life (childhood, adolescence, old age) and the normal and exceptional states in human existence (illness and disability), according to Bobbio (1992).

With regard to the rights of children and adolescents, there is recognition and specialization in various international instruments and in constitutional and infra-constitutional rules, integrating them unequivocally in the list of fundamental rights, as a result of the valuing the dignity of the person, in its initial stages of development and training.

Thus, the normative construction of the essential protection to the rights of children and adolescents, based on the 20th century, with the strength of proclaiming its essentiality, stands out. This was the century of appreciation and consensus on this protection when basic rights were positivized, also taking into account the evidence presented by scientific advances in the areas of health, pedagogy, and psychology (MARCÍLIO; PUSSOLI, 1988).

In the labor field, it is registered that the 19th century mirrored the cruel reality of the free exploitation of child and youth work, accentuated throughout the Industrial Revolution, in the middle of the liberal regime, being a sad chapter in the history of civilization.

At that time, the increase in child labor was remarkable, with the disregard of the peculiar condition of the children and the nature of the service they were forced to do, prevailing the unidirectional view of the employer, focused on obtaining maximum profit, which was stimulated with the cheapness of labor and the vulnerability and incapacity of the claim that are typical of young age, and consequent lack of maturity, physical and psychosocial, to integrate a working relationship. Thus, the flagrant and recurrent disrespect for the most fundamental human rights was experienced, in relation to their life, freedom, health, assistance, education, and security.

In England, for example, children were used on a large scale in manufacturing and mining activities, subjected to exhaustive hours and

inhuman working conditions. The need to prevent such abuse generated, in that country, the first labor protection law in the world, exactly in view of the imperious nature of protecting children: the *Act for the preservation of health and moral apprentices employed in cotton and other mills*, of 1802, issued by Minister Robert Peel, setting the minor's work at 12 years. This was, without a doubt, the first positive norm that signaled the conception of protective social legislation of Labor.

The account of the Spanish professor Manoel Alonso Olea (1997, p. 333-335), about the reality experienced in the exploitation of child labor, is impressive:

Working hours, up to fourteen and sixteen hours, monotonously repeated, are extreme for any age; applied, as they sometimes were, to children up to eight and nine years old, in workshops and mines, and even younger ones in the textile industry, constituted one of the saddest and most regrettable episodes in the history of the economy, the *great moral scandal of the Industrial Revolution*, and more, if it is considered that the basic reason for its use was strictly economic, namely, to be able to save on costs, due to the low wages traditionally paid to child labor [...]. In the British textile industry, apprenticeships started at the age of seven and, in certain counties, children worked *from the age of five, from the age of four, as long as they considered them capable of attention and obedience, in a situation of virtual slavery – so that the master 'would do with it whatever he wanted [...]* (emphasis added)

Then, on a worldwide scale, there was the evolution of a legislative line aimed at the creation of rules for the protection of the work of children and adolescents, and, subsequently, the conquest of the constitutional status of these rules in most legal systems – as in Brazil –, which was integrated into the list of fundamental rights and guarantees, mainly from the movement called *social constitutionalism*.

This was the case with the change in the profile of the State, starting to intervene in the economic and social domain, in order to seek to ensure a minimum of balance and justice in private relations, especially in the field of protection for the under-served, especially workers, to view of the demeaning conditions evidenced in the space of industrial relations. This new stance led to the insertion, in the text of the Constitutions, of rules for the protection of rights conceived from a social perspective.

Added to this, the production of a series of supra-state documents, the result of the work of international organizations, in an attempt to

increase and standardize the protection of children and adolescents in the face of the exploitation of their work. Greater examples of this initiative are the Conventions and Recommendations adopted by the International Labor Organization (ILO), starting in 1919, and, later, by the United Nations (UN).

In this step, the new perspective unveiled by the socio-legal doctrine of comprehensive protection gained strength and acceptance, under the consideration that children and adolescents have the right to special protection to ensure their physical, psychological, and social development, through a healthy, safe, and dignified life. This basic principle was enshrined in the Convention on the Rights of the Child adopted by Resolution L.44 (XLIV), of the United Nations General Assembly, on November 20, 1989, ratified by Brazil on September 24, 1990.

The legal system of labor protection for children and adolescents is based, therefore, on the proclamation and implementation of fundamental human rights, guaranteed by international instruments (Declarations, Conventions, Treaties, and Recommendations) and by constitutional rules that give validity to infra-constitutional legislation, as examples are, in Brazil, the Consolidation of Labor Laws and the Child and Adolescent Statute. This normative, harmonious, and integrated set, given the nature and essence of the protected law, is thus composed of rules of public order, of an imperative nature.

For this reason, it is said that the reality of child labor translates into intolerable violation of human rights and the denial of fundamental principles of constitutional order, as are the principles of comprehensive protection and absolute priority, which are based on the sourcing norm of human dignity, in a way to give an immediate and effective reaction from the protection agencies, especially those charged with ensuring and protecting the rights of children and adolescents.

1.2 Protection under Brazilian law

1.2.1 Constitutional developments

In historical analysis, it is registered, initially, that there is no, in the *Constitution of the Empire of 1824*, and in the first *Republican Constitution of 1891*, relevant reference to the legal protection of the child.

It is in the *1934 Constitution* that, in an innovative way, the precept of child protection was inserted, with the fixing of the minimum age for work at 14 years old. In this sense, article 121, item “d”, states “the prohibition of work for children under fourteen, night work for children under sixteen; and in unhealthy industries, children under eighteen and women”.

The *1937 Constitution*, enacted by Getúlio Vargas, established that it is the Federal Government’s exclusive competence to legislate on rules for the defense and protection of health, including children, providing in its Article 137, item “k”, on the prohibition of “work for children under fourteen; night work for children under sixteen and, in unhealthy industries, children under eighteen and women”.

In *the democratic Constitution of 1946*, the minimum age limit of 14 years for work was reiterated, and the work of children under 18 in unhealthy industries and night jobs was prohibited. The provision of article 157, item IX, prohibited the

work of minors under fourteen; in unhealthy industries, women, and children under eighteen; and night work, for children under eighteen years, respected, in any case, the conditions established by law and the exceptions admitted by the competent judge (BRAZIL, 1946).

In the *1967 and 1969 Political Letters*, the minimum age was set at 12 years, a condition that represented a setback, in terms of protection, in light of the existing International Conventions. Indeed, from the first of these Constitutions, the wording of article 158, X, was observed, in the sense of the “prohibition of work for children under twelve and night work for children under eighteen, in industries unhealthy for these and women”.

Finally, the *democratic Constitution of 1988*, in art. 7, XXXIII, in line with the progress in the field of guaranteeing the fundamental human rights inherent to children and adolescents (individual and social), established the minimum age for work at 16 years old, except as an apprentice, from the age of 14 years, and the prohibition of night work, dangerous or unhealthy work for children under eighteen (BRAZIL, 1988).

The new Constitutional Statute welcomed, in the wake of international norms, the socio-legal doctrine of comprehensive protection, of which its article 227 is an expression, the result of a popular amendment signed by one and a half million citizens.¹

Children and adolescents, thus considered citizens in a peculiar condition of people in development – and not miniature adults or incomplete or unfinished people – rise to the condition of subjects of rights,² and no longer an object of rights, thus ruining the outdated and mistaken assistance and sanctioning doctrine that underpinned the Codes for Minors of 1927 and 1979.³ The concept of a person in a peculiar condition of development adequately complements the conception of children and adolescents as subjects of rights, as holders of all the rights of adults compatible with age. And, due to the condition inherent to age, they cannot provide basic needs for themselves, without prejudice to personal and social development.

In short, from a child's tutelary/punitive right, which characterized the "doctrine of the irregular situation", the paradigm of the protective/accountable right, inherent to the "comprehensive protection doctrine" was adopted.

The current Constitution, therefore, when proclaiming in its art. 1 that the Federative Republic of Brazil constitutes the Democratic State of Law, chose among its foundation citizenship, the dignity of the human person, and the social value of work, as an essential pillar of all actions undertaken by the state system, especially those of a legislative nature pertaining to the labor protection of children and adolescents.

In this sense, it is emphasized that the list of fundamental rules for the protection of children and adolescents is open, allowing the incorporation of other rights and guarantees arising from the regime and principles adopted by the Constitution of the Republic, in art. 5, § 1, or, still, of the international treaties adopted by our country.

It is also evident that the basic social rights contained in the constitutional text are part of the list of fundamental rights (Title II), pointing out in Article 6 that "education, health, work, housing, leisure, security, social security, maternity and childhood protection, assistance to the destitute, are social rights in the form of this Constitution" (BRAZIL, 1988).

Finally, it can be seen that the constitutional legislature, in the area of assistance, chose as one of its objectives the protection of children and adolescents, alongside the promotion of integration into the labor market, as observed in article 203, items I and III of the Political Charter. Equally

clear is the principle line embraced by the national legal system to encourage and guarantee, with priority, the basic and professional educational training of children and adolescents (arts. 205, 208, 212, and 214 of the Federal Constitution). This will always result in the primacy of stimulating education over the reality of work.

1.2.2 Legislative framework

The Brazilian infra-constitutional legislation in force, regarding *child labor*, is in line with the constitutional precepts that incorporated the postulates of child protection established by the Convention on the Rights of the Child, adopted in 1989 by the United Nations – UN, and which fixes, in Article 32, the following obligations:

Article 32

1. States Parties recognize the right of the child to be protected against economic exploitation and the performance of any work that may be dangerous or interfere with their education, or that is harmful to their health or to their physical, mental, spiritual, moral, or social development.
2. States Parties shall adopt legislative, administrative, social, and educational measures to ensure the application of this Article. To this end, and taking into account the relevant provisions of other international instruments, States Parties shall, in particular:
 - a) establish a minimum age or ages for admission to employment;
 - b) establish appropriate regulations regarding hours and conditions of employment;
 - c) establish penalties or other appropriate sanctions to ensure effective compliance with this Article.

In this sense, the constitutional rule-vector is inserted in the *caput* of article 227 (BRAZIL, 1988):

Art. 227. It is the duty of the family, society, and the State to guarantee to children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, to freedom and family and community coexistence, in addition to putting them safe from all forms of neglect, discrimination, exploitation, violence, cruelty, and oppression.

And, in article 7, item XXXIII, with the amendment introduced by Constitutional Amendment no. 20/1998,⁴ the Magna Carta established, as previously mentioned, the prohibition of (I) any work, to people under the age of 16 years, except as an apprentice, from the age of 14; and (II) night work, dangerous or unhealthy work for people under the age of 18.

It is a norm of a prohibitive nature, with visible protective and tutelary scope, establishing the fundamental right to non-work at an age corresponding to the stage of physical, psychological, moral, and social development of the human being, and to protected work, from the minimum age, in order to preserve the formation, integrity, education, leisure and family life of the child and adolescent.

There are, therefore, constitutionally, two situations of protection for children and adolescents, in the face of work: first, the general rule of the right to non-work for persons under 16 years of age; second, the right to protected work, from 16 to 18 years old, and, exceptionally, from 14 years old, as an apprentice.

The proper interpretation of this constitutional precept expresses that the prohibition of any work for children under sixteen years extends to all types of work activity, as a protective measure of the physical, psychological and social integrity of the child/adolescent, not being restricted to typically subordinate work only, since the protection sought by the standard is broad, to understand all aspects of the life of the child and adolescent (personal, family, educational and social).

This understanding stems from the systematic interpretation of the rule and from the understanding of the principle of comprehensive protection, because if the legislator's intention were different, it would certainly have used the expression "prohibition of any job", and not "any work".

Indeed, it is undeniable that early work directly interferes in all dimensions of child development, harming: (a) physical development, in the face of exposure to conditions not compatible with natural limitations and personal capacity, as well as the risks of accidents, diseases, and bodily sequelae; (b) the psychic-emotional development, given that children submitted to work often present traumas, fears, violent reactions and difficulties in establishing affective bonds, due to the unfavorable and inappropriate conditions present; and (c) social development, as children and adolescents are obliged to perform jobs that require maturity and behavior typical of the adult world, in addition to living in an inappropriate and, as a rule, not friendly or welcoming environment, which keeps them away from social interaction with people of the same age.

The constitutional prohibition, however, is not absolute, with three exceptions to the general rule of the minimum limit of 16 years for work, provided for in the legal system, however, with conditions for its validity. These exceptions refer to the following specific activities:

- apprenticeship,⁵ from the age of 14, as explained above, extending to the age of 18, a milestone in the acquisition of full labor capacity;

- the sporting nature, in the hypothesis of a non-professional athlete in training, from the age of 14, with the provision of receiving financial aid from the training sporting entity, in the form of a learning grant, as provided for in article 29, § 4, of Law no. 9,615/1998 (Pelé Law); and

- that of an artistic nature (e.g. in the circus; in advertising; on television and in the theater), provided that they are authorized by court order, and subject to the following requirements: (I) the demonstration that the artistic expression cannot be performed by someone over 16 years old; (II) the prior and express authorization of the legal representatives of the child/adolescent; (III) the evidence that the artistic expression is not harmful to the biopsychosocial development of the child and adolescent, this condition being duly proven by a medical-psychological report; (IV) proof of enrollment, attendance and academic performance; (V) the demonstration that school hours do not coincide with artistic activity, safeguarding the rights of rest, leisure and food; (VI) the guarantee of effective and permanent medical and psychological assistance; (VII) the prohibition of activities and services in dangerous, nocturnal, unhealthy, painful locations, or in conditions of risk and harmful to morality; (VIII) verification of the workday, workload, rest intervals, food and environment compatible with the condition of the child and adolescent; (IX) monitoring by the legal guardian during the performance of the activity; and (X) the guarantee of the deposit of payment for work, in savings accounts, on behalf of the child or adolescent, in a percentage levied on the remuneration due.

Regarding the legal requirement for a legal permit for the participation of children and adolescents in artistic representations, there was a marked divergence of legal positions, either because the artistic work was not accepted as an exception to the general prohibitive rule of labor under the age of 16 – in view of the understanding of the non-compliance with the constitutional norm (art. 7, XXXIII) of the referred article 149, II, of the ECA, not allowing

exceptions that have not been expressly foreseen in the Magna Carta –, either because it is understood that today, the competent authority to authorize the performance of the artwork would be the Labor Judge – not the Judge of Law –, given the expansion of the jurisdiction of Labor Justice, promoted by Constitutional Amendment no. 45/2004 (art. 114), to cover all issues arising from any employment relationship.

The issue came to be defined in 2018, by the Supreme Federal Court, in the judgment of the Precautionary Measure in the Direct Action of Unconstitutionality no. 5326,⁶ assuming that the jurisdiction for issuing the permit is that of the Childhood and Youth Court, based on the provision of article 149, II, and §§ 1 and 2 of the ECA:

Art. 149. It is incumbent upon the disciplinary judicial authority, through ordinance, or to authorize, by means of a permit:

[...]

II – the participation of children and adolescents in:

- a) public shows and their rehearsals;
- b) beauty contests.

§ 1. For the purposes of the provisions of this article, the judicial authority shall take into account, among other factors:

- a) the principles of this law;
- b) local peculiarities;
- c) the existence of proper facilities;
- d) the type of attendance usual to the place;
- e) the suitability of the environment to the possible participation or attendance of children and adolescents;
- f) the nature of the spectacle

§ 2. Measures adopted pursuant to this article must be substantiated, case by case, general determinations are prohibited.

It is also important to point out that articles 405, § 2, § 4, and 406, of the Consolidation of Labor Laws, are currently revoked, since the arrival of the current Federal Constitution, which, at the time, in reality in the 1940s, and under the aegis of the old Code of Minors of 1927, provided for the possibility of judicial authorization for the work of children and adolescents, in the following situations, by means of a permit provided by the so-called Judge of Minors⁷:

- work performed in the streets, squares, and other places, provided that the occupation is verified as essential for the minor's own subsistence or that of his/her parents, grandparents, or siblings, and if that occupation cannot result in harm to his/her moral formation;

- work as a paperboy, as long as the minor is under the sponsorship of entities assigned for his protection, officially recognized;

- work performed in magazine theaters, cinemas, nightclubs, casinos, cabarets, dancing clubs, and similar establishments, in circus companies, in the role of an acrobat, jumper, gymnast and similar roles, provided that the performance has an educational purpose or that the play he/she is part of cannot be harmful to his/her moral formation; and provided that the occupation of the minor is guaranteed to be indispensable for his/her own subsistence or that of his/her parents, grandparents or siblings and that there is no harm to his/her moral formation.

Finally, it should be noted that apart from the hypothesis of artistic work – and provided that the conditions listed above are met –, any judicial authorization granted by means of a permit for a child or adolescent labor under the age of 16 will be incurred in flagrant unconstitutionality, violating the rule of article 7, XXXIII. In other words, “it characterizes a serious violation of the human rights of children and adolescents, as well as of the Brazilian legal system, the granting of a permit or judicial authorization for the work of children and adolescents under the age of 14, and this practice must be vehemently opposed by the Prosecution Service of the States and the Federal District, with the observation that the work of adolescents between 14 and 16 years old is only allowed as an apprentice, under the terms of Law no. 10,097/00”⁸.

Returning to the line of the legal framework, the Child and Adolescent Statute – ECA (Law no. 8,069/1990) was adopted, in line with the constitutional provisions, devoting Chapter V to the *Protection of Work and the Right to Professionalization*, and also set a limit for the minimum age in any job (art. 60), corresponding today to 16 years old, except from the age of 14, as an apprentice. Additionally, this law reinforced the prohibition of adolescents aged between 16 and 18 years of work performed:

I – at night, between 10 pm on one day and 5 am on the following day;

II – dangerous, unhealthy, or painful;

III – in places that are harmful to their training and to their physical, psychological, moral, and social development;

IV – at times and places that do not allow school attendance (art. 67).⁹

It is noteworthy, on the point, that the Consolidation of Labor Laws – CLT, since its edition, contained Chapter IV of its Title III, dealing with the Protection of the Work of the Minor, thus stating in article 403:

Art. 403. Any work is prohibited to children under 16 years of age, except as an apprentice, from the age of 14.

Sole paragraph. Minor's work may not be carried out in places that are detrimental to his/her education, to his/her physical, psychological, moral, and social development, and in times and places that do not allow him/her to attend school (updated wording).

In conclusion, the constitutional basis of our norms for the protection of children and adolescents, in the face of work:

- it is composed of imperative rules, aligned with the list of fundamental rights;

- fully adopts the principle of comprehensive protection, considering the peculiar condition of children and adolescents as people in development;

- establishes, as a consequence, as essential rules, the prohibition of any work under the age of 16, except from the age of 14, as an apprentice, in addition to the prohibition of night, unhealthy, dangerous work or that risk physical, moral and psychological integrity;

- as an exception, it admits artistic activities by children and adolescents under the age of 16, by issuing a court order under the jurisdiction of the Judge of the Court of Childhood and Youth, and such authorization is subject to attend to the following essential requirements (a) the demonstration that the artistic expression cannot be performed by someone over 16 years old; (b) the prior and express authorization of the legal representatives of the child/adolescent; (c) the evidence that the artistic expression is not harmful to the biopsychosocial development of the child and adolescent, this condition being duly proven by a medical-psychological report; (d) proof of enrollment, attendance and academic performance; (e) the demonstration that school hours do not coincide with artistic activity, safeguarding the rights of rest, leisure and food; (f) the guarantee of effective and permanent medical and psychological assistance; (g) the prohibition of activities and services in dangerous, nocturnal, unhealthy, painful locations, or in conditions of risk and harmful to morality; (h) verification of the workday, workload, rest intervals, food and environment compatible with the condition of the child and adolescent; (i) monitoring by the legal guardian during the performance of the activity; and (j) the guarantee of the deposit of payment for work, in a savings accounts, on behalf of the child or adolescent, in a percentage levied on the remuneration due.

- is integrated and in harmony with the rules of international treaties;
- assures children and adolescents, in the event of a working relationship configuration, labor, and social security rights¹⁰; and
- prioritizes access to basic education and training, especially professional.

1.3 Conventions nos. 136 and 182 of the International Labor Organization

The establishment of minimum age for work is conceived as an initiative of a protective nature for adolescents and children, forming an integral part of the set of actions and political-legal commitments, which aim to provide protection of their fundamental rights, including emphasizing the basic education and the means and conditions required for training and professional qualification.

It is important to note, initially, that the Convention on the Rights of the Child, adopted by the United Nations on 09/20/1989, in its art. 1, considers a child to be every human being under the age of 18, while our Child and Adolescent Statute adopts a distinctive criterion, considering a child to be someone younger than 12 years old, and a teenager to be between 12 and 18 years old.

Brazil is a signatory to the International Labor Conventions nos. 136 and 182, adopted within the scope of the International Labor Organization – ILO, both focused on the serious issue of child labor. Convention no. 138, ratified in 2001 (Decree no. 4,134), defined the imposition of minimum age for work, from the age of 14 or over, based on factors such as compulsory education and protection of health and child safety.

Convention no. 182, with ratification in the year 2000 (Decree no. 3,597), provided for the prohibition and immediate action to eliminate the worst forms of child labor, considering, among other factors, that the effective elimination of the worst forms of child labor requires immediate and global action that takes into account the importance of free basic education and the need to remove children from all these works, promote their rehabilitation and social integration, and, at the same time, meet the needs of their families.

In its article 3, it explained that the expression of the worst forms of child labor comprises:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, bondage by debt and servitude, forced or compulsory labor, including forced or compulsory recruitment of children to be used in armed conflicts.

- the use, demand, and supply of children for the purpose of prostitution, the production of pornographic material, or pornographic shows.

- the use, demand, and supply of children for illicit activities, particularly for the production and drug trafficking as defined in the relevant international treaties.

- work which, by its nature or the circumstances in which it is carried out, is liable to impair the child's health, safety, and morale.

As a result of this international commitment, Decree no. 6,481 of 06/12/2008, was issued by the Executive Branch, which approved, in our country, the List of the Worst Forms of Child Labor.

2 BASICS FOR LABOR PROTECTION

It is stated, on a scientific basis, that the legal protection afforded to children and adolescents, in relation to the limitation of the minimum age for work, is justified on grounds of the following orders:

- physiological: due to the irreversible impairments to physical health and the marked risks of accidents at work, diseases, contamination, and other harmful consequences to the child's body integrity, in view of the peculiar condition of people in development and, therefore, of the greater biological and physical vulnerability.

- moral and psychic: given the severity of subjecting them to certain tasks, routines, conditions, or environments whose characteristics compromise and impair their training, in addition to allowing the practice of abuse and harassment.

- economic: considering that the occupation by children and adolescents of jobs or activities suitable for adults constitutes a factor in increasing informality, fraud, income, and tax evasion, creating social distortion and damage, contributing to the increasing of the unemployment scale.

- cultural: taking into account that depriving them of education, training, and adequate qualification for entering the formal labor market results in keeping them in the exclusion cycle, feeding this chain of educational and informational under-sufficiency.

- legal: in view of the unequivocal vulnerability of children and adolescents, considering the inability to understand the terms of an agreement, rights, and duties, and the consequent personal inability to assess the working conditions that are placed on them or even required from them.

Additionally, in a booklet edited by the former Ministry of Labor and Employment, entitled "*Saiba tudo sobre o trabalho infantil*"¹, the following physiological reasons for denouncing child labor were listed, based on medical evidence regarding the child's physiological structure:

- it does not have fully developed bones and muscles; thus, it is at greater risk of suffering bone deformations, muscle fatigue, and damage to growth and development, depending on the environment and working conditions to which it is subjected.

- pulmonary ventilation is reduced; therefore, it has a higher respiratory rate, which causes greater absorption of toxic substances and greater wear than in adults, which can even lead to death;

- it has a higher heart rate than adults for the same effort (the heart beats faster to pump blood to the body) and, therefore, it tires more, even it is through exercising the same activity;

- exposure to pressure from work can cause several symptoms, such as headaches, insomnia, dizziness, irritability, difficulty in concentrating and memorizing, tachycardia, and, consequently, low school performance; this is because the nervous system is not fully developed. Additionally, these pressures can cause several psychological problems, such as fear, sadness, and insecurity;

- the liver, spleen, kidneys, stomach, and intestine are in development, which causes greater contamination by the absorption of toxic substances;

- it has a body that produces more heat than adults when subjected to heavy work, which can cause, among other things, dehydration and greater tiredness;

- it has less developed skin, being more vulnerable than adults to the effects of physical, mechanical, chemical, and biological agents;

- it has a lower peripheral vision than the adult, with less perception of what happens around them. Additionally, work instruments and protective equipment were not made for their size, subjecting them to the greatest chances of suffering work accidents;

- it is more sensitive to noise than adults, which can cause stronger and faster hearing losses.

This document also records that child labor is the cause of a triple exclusion: in childhood, when the child loses the opportunity to play, study and learn; in adulthood, when it is discarded from work opportunities, due to lack of professional qualification; in old age, in the absence of decent conditions for survival.

Historically, child labor in our country has never been represented as a negative phenomenon in society's mentality, as the National Plan for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers (MINISTRY OF LABOR AND EMPLOYMENT, 2004), elaborated in 2004 by the defunct CONAETI (National Commission for the Eradication of Child Labor)¹², which worked under the coordination of the Ministry of Labor and Employment, registered.

The document points out that, until the 1980s, the consensus on this theme reflected the perception of work as being a positive factor in the case of children who, given their economic and social situation, lived in conditions of poverty, exclusion, and of social risk. Both the elite and the poorest classes fully shared this way of conceiving child labor.

A set of simple but powerful ideas has remained unquestioned for centuries. Sentences such as: "It is natural for the father to teach his son work", or "It is better for a child to work than to be on the street exposed

to crime and bad habits”, and also, “working educates the child’s character”, or “It is good for the child to help in the family economy” translated the deeply ingrained notion that “work is a solution for the child”.

The study also records that some employers expressed the understanding that they were doing the child a favor by providing them with an opportunity to “learn a trade”, “earn some change” or “use their time on something useful”, and since “work is good by nature”, it could not have negative consequences for the child. And it is, moreover, bluntly:

If child labor was a preventive measure for the social elite, for the poor it was a way of survival. If for some unoccupied children on the street it was a danger to be combated harshly, for others it was a lurking opportunity. For the former, the solution was work or prison; for the latter, it was about finding a permanent source of income. Public security case for the former and destination for the latter. For different reasons, elite and disadvantaged classes agreed: the place of poor children is at work.

For this reason, a working child was seen as an example of virtue, and an unemployed child was seen as a synonym for something lost, as a symptom of a problem. The media often celebrated the cases to be set as an example of working children and adolescents: their discipline, their seriousness, their dedication, their courage. On the other hand, it put all negativity in the cases of children and adolescents caught on the street or committing crimes: they were not working and, therefore, were delinquent and, in the worst case, prostituting themselves. They became, almost by nature, dishonest, lazy, dangerous, disoriented, disorderly.

These cultural myths acted as catalysts for the actions of public and private institutions regarding working children and adolescents.

Education, disconnected from immediate economic enjoyment, was seen as unnecessary and even problematic. Learning to play, having fun, and experiencing the playful and contemplative character of some activities were seen as a total waste of time or as meaningless. Education that did not teach how to work was seen as a deviant activity, sometimes from family traditions (since many fathers, mothers and grandparents had to work alongside their parents), and sometimes from the economic reality of the families of these children because the equation was to work to survive or starve.

The culture of “*enjoying the time*” defended work as being fundamental to this premise. All work meant a time well spent, even when work did not mean economic gains. On the other hand, all educational and recreational activities lacked legitimacy and were, therefore, characterized as negative and as a “*waste of time*” from which no gain or benefit would be obtained. In more traditional sectors, playing was even related to *evil* itself, and work, to *good*, thus giving a religious background to the alternative in favor of children’s work. Suffering and sacrifice will be rewarded transcendently. Having fun, in turn, will be punished.

Anyway, all this controversy about child labor made it, in the worst case, seen as a minor problem, and not as a crime or a violation of the rights of

children and adolescents. Brazil's secular inertia towards social work can only be understood when considering the strength of the mentality that housed child labor in its midst as part of the nature of things.

Such a mindset kept millions of children and adolescents connected to activities that, in addition to marginalizing them from any possibility of physical, psychological, and spiritual development, reproduced all the vices of an unequal, exclusionary, corrupt, and unethical society (MINISTRY OF LABOR AND EMPLOYMENT, 2014).

It is notorious, therefore, that in our culture false dogmas are still ingrained, which are used hypocritically to defend and tolerate child labor, despite the evidence of the seriousness of their losses and risks to the life and health of children and adolescents, as well as the social and economic effects of its existence. Hence, it is necessary to list and deconstruct them, with real arguments and data¹³, in the light of truth:

- When someone says that “the insertion of children in work contributes to their formation and constitutes a school of life to make them a more dignified adult”, it is refuted with the statement that early work is deforming childhood, and long working hours, routine, repetition, tools and utensils and machinery suitable for adults result in serious risks, physical and psychological compromise, health problems and increased rates of accidents, illnesses, and mortality. Child labor, in its real face, does not represent an educational element and is directly responsible for reproducing the cycle of exploitation and indignity that will accompany the child until and during adulthood.

- When someone says that “child labor is a positive element, given the unfavorable economic and social situation, and the conditions of poverty and social risk”, it is refuted with the statement that this thought ignores the fundamental rights of the child, discriminating the child and accepting a previous and deterministic socio-economic condemnation, reflecting myopia towards the scientifically proven reality of the harm and consequences of work for the child's life.

- When someone says that “it is better for children to work than to be on the street, exposed to crime”, it is refuted with the statement that the reality of the work of children and adolescents portrays unfavorable, harmful, inadequate, and unsafe conditions, which cause irreversible damage to their physical, psychological, moral and social development, and that working on

the streets and public spaces subject them to much higher risks, representing a significant percentage of children submitted to work in our country.

- When someone says that “work helps in the formation of the child’s character and moral values”, it is refuted with the statement that childhood is the only and precious time for their physical and psychological formation, to play, learn and grow with health. Early work deforms and subtracts this essential phase of life from a child, with irreversible psychophysical consequences, including preventing school attendance and impairing their education, denying them the right to live their own childhood, which is irrevocable and inalienable.

- When someone says that “it is good for the child to contribute to the family’s survival”, it is refuted with the statement that, when the family becomes unable to provide for itself, it is up to the State to assist it, in accordance with the constitutional responsibility attributed to it, being a logical-legal excrescence to transfer this duty to the child. Additionally, more than 50% of children receive nothing for the work done, and those who earn any remuneration, the majority of which represents only about 10% of the family income.

- When it is said that “unemployed children on the street pose a danger to society”, it is refuted with the statement that this was the foundation of the ancient Code of Minors of 1927 and the outdated doctrine of *the irregular situation*, putting the blame to the children for their abandonment from the family and educational space. The new constitutional paradigm recognizes children as a subject of rights and mandatory, special and priority protection by the State and society, and the right to be cared for and be safe.

- When someone says that “children who work get smarter, learn to fight for life and are able to win professionally as an adult”, it is refuted with the statement that the view of reality is that early work does not educate, does not teach, and does not bring professional qualification to adult life, but prevents and distorts the child’s adequate educational growth, excluding the future possibility of their insertion in the labor market.

- When someone says that “it is natural for children to work, learning a trade with parents, who should encourage this work when there is nowhere to leave their children”, it is refuted with the statement that activities that

the child develops in workplaces where, as a rule, are performed by family members, such as open fairs, dumps, potteries, plantations and charcoal factories, do not allow any education, apprenticeship or professional training. The child subjected to this situation loses the chance and the right to study, to become professional, and when he/she is an adult, he/she will be impaired to enter the labor market.

- When someone says, lastly, that “a working child is synonymous with discipline, seriousness, and courage, avoiding vagrancy and laziness”, it is refuted with the statement that child labor is, evidently, the cause of serious psychological and behavioral impairments for the child, which generate fears, insecurity, aggression, revolt, and emotional and social relationship difficulties.

3 CONCLUSION

The theoretical-doctrinal and normative construction, at the international and domestic level, of the recognition and protection of the fundamental right of the child to non-work, opposes and bluntly refutes any justifications or movements, of cultural or economic order, aimed at the defense of early work or backward in relation to the protection parameters established in the legal system.

It is imperative to understand the false logic of irrational and discriminatory discourse, to justify practices that exploit child labor, which still regrettably insist on remaining naturalized in underdeveloped and emerging countries, such as ours.

The fundamental norms of protection, which emancipate the human rights of children and adolescents, do not allow flexibility to reduce this civilizing achievement, especially in order to facilitate or encourage child labor.

The fundamental rights recognized to children and adolescents are protected in and by the citadel of respect for human dignity, as a superior, unavailable and universal value, and, therefore, keeping it impregnable constitutes the responsibility of the State, society, and families, especially in the face of lingering anachronistic and perverse cultural traditions and patterns.

ENDNOTES

- 1 This constitutional provision inspired the rule inscribed in Article 3 of the Child and Adolescent Statute (Law no. 8,069/90): “Children and adolescents have all the fundamental rights inherent to the human person, without prejudice to the full protection referred to in this Law, assuring them, by law or by other means, of all opportunities and facilities, in order to provide them with physical, mental, moral, spiritual and social development, under conditions of freedom and dignity”.
- 2 Mônica Silva Ferreira and Patrícia Anido Noronha note that “this conception recognizes the child as a citizen, granting him/her all the necessary rights for an evolution peculiar to his/her needs, such as the right to respect, dignity and freedom, data that must be taken into account in the assistance and protection process, which gives others, in addition to the judge, the power to seek the guarantee of these rights”. And they conclude by pointing out that the “conception of the child as a subject of rights was already claimed by some jurists [...] has as meaning the care of the child as a citizen, **who can no longer be treated as a passive object of the intervention of the family, society and of State** [...]. The fact of being considered a person in a peculiar condition of development has to do with the rights that children and adolescents should have as those directed to adults and present in the formulation of human rights, added to those that are in accordance with their age, need and interest, still having absolute priority in any social actions” (BASÍLIO; EARP; NORONHA, 1998, p. 151 and 154). (emphasis added)
- 3 Tânia da Silva Pereira rightly notes that “the 1979 Code of Minors (Law no. 6,697, of October 10, 1979) adopted the Doctrine for the Protection of Minors in Irregular Situations, which covers cases of abandonment, practice of criminal offense, misconduct, lack of assistance or legal representation; in short, the law of minors was an instrument of social control of children and adolescents, victims of omissions by the family, society and the State in their basic rights.” (BASÍLIO; EARP; NORONHA, 1998, p. 149).
- 4 The original 1988 text established the general minimum age of 14 years for work and apprenticeship from 12 years old.
- 5 Apprenticeship contract is provided for in arts. 428 et seq. of the CLT, defined as the special employment contract, adjusted in writing and for a specified period, in which the employer undertakes to ensure the over 14 and under 24 years old, enrolled in an apprenticeship program, technical and professional methodical training, compatible with his/her physical, moral and psychological development, and the apprentice, to perform with zeal and diligence, the tasks necessary for such training.
- 6 MC-ADI n.º 5326-DF, Rel. Min. Marco Aurélio Mello, j. 27.09.2018. Available at: <http://portal.stf.jus.br/processos/downloadPeca.asp?id=15342702615&ext=.pdf>. Access on: Oct 18 2020.
- 7 The aforementioned CLT provisions provided for: Art. 405. [...]. § 2. Work performed in the streets, squares and other places will depend on prior authorization from the Judge of Minors, who will be responsible for verifying whether the occupation is indispensable for his/her own subsistence or that of his/her parents, grandparents or siblings and whether this occupation cannot result in harm to their moral formation. § 4. In places where there are officially recognized institutions for the protection of minor paperboys, only those who are under the sponsorship of these entities will be granted the work authorization referred to in § 2. Art. 406. The Judge of Minors may authorize the child to perform the work referred to in items “a” and “b” of § 3. of art. 405: I – provided that the representation has

an educational purpose or the play in which he/she participates cannot be harmful to his/her moral formation; II – provided that the occupation of the minor is guaranteed to be essential for his/her own subsistence or that of his/her parents, grandparents or siblings and that there is no harm to his/her moral formation.

- 8 Statement no. 2, approved at the National Forum of Child and Youth Support Centers of State Public Ministries, at the XI National Meeting. Available at https://crianca.mppr.mp.br/arquivos/File/idade_penal/xi_foncaij.pdf. Access on: Oct 18, 2020.
- 9 The special condition of children and adolescents – considered to be developing people who are given comprehensive protection – makes absolute protection of their physical and mental health imperative in relation to work activity. Therefore, it is easy to see, firstly, that working on a night shift is a scientifically proven factor of greater wear and physical and psychological impairment of the worker, due to the inversion of the biological clock, which is why it is prevented that the adolescent with under the age of 18 submit to this potentially harmful condition. As for the prohibition of work in unhealthy and dangerous activities, the device on screen is even more relevant and imperative. In any case, it would be unacceptable to subject the health and integrity of children and adolescents to jobs that, by their nature, conditions or methods, would expose them to agents harmful to health, above the limits of tolerance established due to nature and the intensity of the agent and the time of exposure to its effects (as is the case of the unhealthy activity or operation), or to those that, by their nature or working methods, imply permanent contact with flammable substances or explosives under conditions of high risk (as with dangerous activities or operations). It is well known that, even adults, whose physical and psychic formation is already defined, when subjected continuously to such activities, as a rule, they are victims of some type of damage to health, often resulting in compromising consequences of their health. The forcefulness related to the prohibition against minors under 18 years of age working under the conditions described meets the greater imperative of preserving their dignity. It should also be noted that, in view of the constitutional norm of art. 227, *caput*, any other work that characterizes a situation of risk to the physical, moral and psychological integrity of adolescents under the age of 18 is also prohibited.
- 10 In a decision rendered by the STJ in AgInt in the Appeal in Special Appeal no. 956.558-SP (Rel. Minister Napoleão Nunes Maia Filho, DJe 06/17/2020) the following understanding was based, extracted from the following points of the Amendment. “3. Under the jurisprudence of the Federal Supreme Court, art. 7, XXXIII, of the Constitution cannot be interpreted to the detriment of the child or adolescent who performs work activity, given that the constitutional rule was created for the protection and defense of Workers, and cannot be used to deprive them of their rights (RE 537.040/SC, Rel. Min. DIAS TOFFOLI, DJe 8.9.2011). The interpretation of any positive rule must meet the purposes of its edition; in the case of protective rules for the rights of minors, legal understanding can never undermine the protective purpose that inspires the legal rule. 4. In the same vein, this Court has already taken the view that the legislation, by prohibiting child labor, had the scope of its protection, and a ban was established for the benefit of the child and not to his/her detriment. Recognizing, therefore, that minors cannot be harmed in their labor and social security rights, when the exercise of labor activity in childhood is proven. 5. This time, it is not permissible to disregard the rural activity carried out by a child impelled to work before he/she was 12 years old, under penalty of double punishment of the Worker, who had its childhood sacrificed due to work in rural life and who could not have such time taken into account when granting its retirement. Interpretation to the contrary would be violating the inspirational purpose of the protection rule. 6. In the hypothesis, the

court of origin, sovereign in the analysis of the factual-evidential set of the records, asserted that the material evidence carried along with the witnesses heard, prove that the author exercised peasant activity from childhood until 1978, although it set it as the initial term for taking advantage of such time the moment when the author implemented 14 years of age (1969). 7. Strictly, there is no need to establish a minimum age for the recognition of work performed by children and adolescents, imposing on the judge to analyze in each specific case the evidence about the alleged rural activity, establishing its initial term according to reality, not in an abstractly pre-established minimum age limit. It is reiterated that work by children and adolescents must be repressed with unyielding energy, with no exception that may justify it; however, once the work is done, the respective time must be computed, and such calculation must be the least that can be done to mitigate the damage suffered by the infant, but without exonerating the employer from the legal punishments to which those who employ or exploit child labor". Available at: https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1918142&num_registro=201601945439&data=20200617&formato=PDF. Access on: Oct 18, 2020.

- 11 Available at: https://www.chegadetrabalhoinfantil.org.br/wp-content/uploads/2017/02/cartilha_trabalho_infantil-1.pdf. Accessed on: Oct 19, 2020.
- 12 Federal Decree no. 9,759, dated 04/11/2019, unjustifiably extinguished CONAETI, seriously damaging and compromising the country's performance in the fight against child labor, reflecting regression and inestimable consequences for the guarantee of fundamental rights to children and within the scope of protection against early and illicit work.
- 13 This list was thought from a study by Vilani (2007).

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FIGHTING CHILD LABOR IN DRUG TRAFFICKING: FOR THE CONSTRUCTION OF ALTERNATIVES BEYOND THE NEOLIBERAL STATE

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Abstract. This article aims to demonstrate that the activity of children in drug trafficking should be categorized as one of the worst forms of child labor as a condition for effectiveness in combating the illegal exploitation of a child and young workers and for the effectiveness of the comprehensive protection policy provided for in art. 227 of the Federal Constitution. The studies developed in the present text also aim to show that the political struggle to overcome the neoliberal State and its practices, in all spheres of social coexistence, is a historical necessity to obtain any success in combating the reproduction of child labor in trafficking.

Keywords: Child labor. Drug trafficking. Neoliberal State.

1 INTRODUCTION

This article aims to identify child labor in drug trafficking, from an epistemological, legal, cultural, and socioeconomic perspective, in order to demonstrate the factors that influence the enticement of children and adolescents and the alternatives for preventing and combating child labor in drug trafficking.

From the contextualization, to be explored below, it is clear that the capitalist mode of production articulates the combination of the modern and the backward, with regard to the forms of workforce management, which is why the reality is revealing the voracity for profit by the capitalist fractions that reproduce, in the chain of production, commercialization, and distribution

of drugs, the exploitation of enslaved workers, women and children. This reveals, in principle, that child labor was never, in fact, a marginal source of labor, but a source of wealth generation that is present prominently in the world of drug trafficking.

It is postulated here before the reader the permission to use the age framework of the Convention on the Rights of the Child, of 1989¹ (BRAZIL, 1990a). By the way, it is fixed, now, that for the purposes of the aforementioned Convention and, still, according to its art. 1, a child is every human being under 18 years of age. This does not dispense with saying that in terms of Brazilian infra-constitutional legislation, the ECA – Statute of Children and Adolescents (BRAZIL, 1990b), provides in its art. 1 that is considered as a child the person up to twelve years old incomplete and the teenager the one between twelve and eighteen years old. Thus, making a contrast between the international normative system and the ECA, whenever the author here talks about a child, he will also refer to the teenager as well.

The reader is also asked to pay attention to the prior understanding of some core categories. The first is the category “wild areas” as a synonym for peripheral territory. The second category is that of “social apartheid” now presented in the context of the crisis of the social contract and the emergence of social fascism, according to the categories explored by Boaventura de Sousa Santos, in his work “The grammar of time”. According to Santos (2008), social apartheid is the way of demarcating the territorial spaces in force or derogating from the social contract. It is the division of urban space between civilized areas, where the social contract is observed, but, as it is permanently under threat from wild areas, it has to be erected in the form of walls, enclaves, and feuds that are supervised and controlled; and the wild zones are those that re-edits the Hobbesian wild state. In one, the State is by law; in another, the state is a predator (SANTOS, 2008).

The present work is still structured in the approach on the category of child labor in trafficking in four topics.

The first topic, the object of item 2, aims to discuss the relationship between the child’s involvement in trafficking and the category of work.

In the second topic, the concern is aimed at identifying the elements, subjective and objective, that influence the child’s involvement in child labor in trafficking.

In the third topic, an approach to child labor in drug trafficking will be conducted through the mediation of field research.

In the fourth and last topic, the object of item 5 of this text, the alternatives for combating child labor in drug trafficking will be discussed.

2 CHILD LABOR IN TRAFFICKING: A CATEGORY TO BE DEMYSTIFIED

A central problem affecting public policy to combat child labor in drug trafficking begins with the denial of the category of work and, consequently, with the denial of worker status. Child labor is any activity performed by people below the legal age allowed and which compromises the full development of children and adolescents.

Categorization, as an instrument of language, if constructed in a hurry, is a way of previously automating and reducing the space of gravitation of the problem and of inducing in the popular imagination the most immediate way to face it. It is in this perspective that the trafficking category is a predicate used pejoratively to induce the subject to, with a biased view, condemn, combat, repress and destroy those involved in trafficking.

The stigmatization of the social phenomenon and immediacy, as its direct reflection, has become an authoritarian way of trying to deny the need to place children, especially those from impoverished families, as recipients of public policies, with absolute priority, as provided in art. 227 of the Federal Constitution (BRAZIL, 1988). It is in the wake of this negativism that penal populism, of a repressive and recluso-centric nature, became appropriated by the necropolitics. Here, necropolitics is understood in the meaning given to it by Achille Mbembe (2018), that is, as the State's power of discretion to say who should continue to live and who should be killed.

Necropolitics is not just the extinction of the other's body; it is rather the destruction of life in its full sense. Necropolitics is the action or omission that kills people's rights, causes segregation, war, hatred, intolerance, cruelty, and people's suffering. Before killing life, necropolitics kills the possibility of civilizing coexistence through violence, intolerance, and hatred.

The 1989 Convention on the Rights of the Child provides in its art. 33 that States Parties will take all appropriate measures, including legislative,

administrative, social, and educational measures, to protect children against the illicit use of drugs and psychotropic substances and to prevent children from being used in the production and marketing of drugs (BRAZIL, 1990a).

ILO Convention no. 182 considers the use of child labor in the productive and commercial chain of drug trafficking as one of the worst forms of child labor (BRAZIL, 2019, Annex LXVIII). It should be noted that the conventional text is not concerned with blaming anyone, but with recognizing how I work to draw consequences from it, among them the greatest, which is a comprehensive protection for the child.

Child labor in trafficking is poorly understood when it is approached from a criminalizing perspective because such an approach ends up dissolving and denying the approach to the social phenomenon in the name of the supremacy of the legal-criminal phenomenon. Work from a sociological perspective is a fact, an unchallenged reality, despite the way it is treated by law, morals, religion, etc. It is on this path that work is considered to be all human activity, tending to be costly, which involves the expenditure of human energy and is considered a means of subsistence.

The work specifically involves a relationship that, as a rule, is not emptied by the simple fact that it is an act that gives rise to moral reprobability. A human being, whether an adult or a child, does not lose his/her status as an alienated worker if what he or she produces for others, whether on an occasional or continuous basis, is the means to provide for his or her livelihood. It is in this perspective that Labor Law, under the influence of sociology and legal realism, adopts the principles of the primacy of reality and the non-retroactivity of absolute nullities.

The activity of children in trafficking consists of a type of work, whether from a sociological point of view or from a legal point of view, because it involves a social division of labor and a work process, even when those involved assume armed security functions. Strictly speaking, in the activity of child laborers in trafficking, all the elements that characterize the vertical working relationship are present, such as the expenditure of human energy; the structure of the social division of labor; the existence of duties, hours, working hours and remuneration; the subordinate relationship of the working child to his superior; and the economic end of the service borrower's

business, which consists of the distribution and commercialization of the drug.

The work process in drug trafficking imposes certain constraints on child workers. On the one hand, work in trafficking implies job insecurity, loyalty, hybrid schedules, varied remuneration, and the possibilities of hierarchical mobility in the short and medium term. On the other hand, it involves disputes and competition, revenge, in addition to relationships marked by violence. Regarding the conditions of child labor in trafficking, it is possible to have a reference from the research carried out by Observatório de favelas (2018). This research identified that 36.8% of the interviewees worked on 12 hours shifts, however, most had flexible hours.

In the social division of drug trafficking there is an organic performance of people and processes that put into practice functions, namely: the plane that does the messenger work, usually sending messages to the traffic manager and the owner of the trap house; the “vapor”, which is the one who sells the drug reporting directly to the manager; the scout, or radio operator, who is in charge of monitoring the movement of people in the territory, as well as issuing alerts, to members of the group, if he suspects that there are members of rival factions or police in the territory; the trafficking manager who does wholesale business in relation to the drug that is sold by the sellers. The manager is also usually the one who defines the route to be followed and who authorizes the bribes.

Children involved in trafficking are workers subject to a subordinate relationship. They intrude on the fiduciary and responsibilities of their profession, which allows them an “inclusion” with permanence conditional on the success of the trafficking business. Children also take on personal assignments, obey the rules of the territory, observe the time they must remain in an activity, engage in the service, on a continuous basis, and earn remuneration, in utility (drugs, objects from the criminal actions, etc.) or even in kind.

With regard to remuneration, this has been objectively much higher than that verified in the formal labor market. In a relatively recent survey, Observatório de favelas (2008) found that 57% of adolescents involved in trafficking receive between 1 and 3 minimum wages per month. In the CEBRAP survey (GALDEANO; ALMEIDA, 2018) it was found that a seller

earns from 15% to 20% of the sale made in the “trap house” or points of sale and may even receive a monthly income ranging between R\$ 2,400 to R\$ 9,600.

From a Marxist point of view, work is the exchange between man and nature, so that only the work that produces more value in the real production process is qualified as productive, which would be more suitable for work in narco-plantation and industrialization of the drug.

Labor in drug trafficking, when involving alienated labor, confronts the goods produced and it is also considered a commodity that is exchanged for paid remuneration. The labor relationship itself is also commercialized, that is, in the capitalist mode of production, there is a relationship between people that is transformed into a relationship between things.

The drug, as a commodity, has its use-value, but its interest for trafficking is given by the exchange value. Drug trafficking, in its structure and functioning, from the most complex to the simplest forms of exploitation, establishes a remuneration for those who perform alienated work.

The child involved in trafficking spends the necessary work time not only to get his/her wages but as surplus work which is the part that constitutes the appropriation of unpaid work.

The hegemonic media and the common sense of society see the child who works in trafficking as a criminal person. This stance feeds an angry stance on the part of society. Thus, any speech that associates the miserable socio-economic conditions of part of the Brazilian population and the increase in violence involving children in peripheral territories tends to be an object of contempt.

Although there is a correlation between child labor in trafficking and the ineffectiveness of the social inclusion system, common sense tends to ignore this fact in view of the prevention that leads to blaming the miserable for their misery. In such a position there is a mixture of prejudice and perversion because it is expressed through a discourse that implies the ambiguous idea that every miserable person is peremptorily blamed for his/her misery, for having been unable to resist and overcome it. It is as if resilience is a sacrifice or mortification to be demanded only of impoverished children and families.

3 REASONS THAT TAKE CHILDREN TO CHILD LABOR IN DRUG TRAFFICKING: THE FACTORIAL DETERMINATION OF THE REPRESSIVE STATE

Child labor in trafficking is subject to the influence of a set of factors, so that the reality of each peripheral territory may vary to a greater or lesser extent in relation to the levels and determining factors of the phenomenon referred to.

Despite this multiplicity of factors, there are motivations that are repeated and are identified in several surveys. In a survey published in 2002 by the ILO, coordinated by Jailson de Souza e Silva and André Urani, the main reasons cited by the children themselves for entering child labor in drug trafficking are, in order: identity with the group; adrenaline; the possibility of helping the family financially; the desire to earn money; prestige and power; professional and salary limitation; the defense of the community; family violence; revenge or rebellion; difficulty at school; and drug use (ILO, 2002).

Research published by the ILO (2002) reveals that children from impoverished families “give in” to drug traffickers because they see such an activity as an opportunity. Despite the economic shortages that affect poor families, the violence observed against residents of peripheral territories and the solidarity that makes a person feel protected in a gang, for example, also influence boys and girls to join work in drug trafficking.

The factors listed by the survey published by the ILO (2002) are the result of an investigation of the subjective manifestations of the interviewees involved in child labor in drug trafficking. There are, however, several objective factors that interfere with the involvement of children and adolescents in child labor in drug trafficking, among which the following stand out: the lack of opportunities for individuals to access social rights; job insecurity and unemployment among adults; the school’s lack of attractiveness; the toxic masculinity that links involvement with trafficking as a ritual to affirm the boy’s virility; and the economic policies of the neoliberal State. The neoliberal State is understood here as the strategy for managing socio-economic policy through the market and dismantling public policies through privatization, the commodification of social goods, the deregulation of social rights, and the lowering of the cost of reproducing the labor force.

In peripheral territories, such as precarious areas, slums, and settlements, the situation of child labor in trafficking is aggravated by the way the neoliberal State refuses to support families. These are ignored, seen as a problem in themselves, and their members are often seen as people who, instead of buying a property to live in, disturb the order and desecrate other people's territory in search of housing.

The strong presence of repressive apparatus and the dispute for dominance over the territories in which vulnerable families live have become more important for the State than respect for the human rights of residents. By the way, the State, the hegemonic media, and the elites either consider human rights as an expression of the audacity of groups interested in denying the moral superiority of a class or consider it a luxury for vulnerable populations.

The state stance, of criminalizing those who cannot pay to be entitled to decent housing, comes together with two other stances that seal true social apartheid (SANTOS, 2008), namely: the first stance is the stigmatization of the so-called "wild areas", which coincide with the peripheral territories inhabited by the impoverished, in contrast to the civilized zones, inhabited by the middle class and the wealthy; and the second stance is the denial of impoverished families' access to basic rights, such as drinking water; energy; basic sanitation; Internet; public facilities; health services; schools; nurseries; etc.

In the peripheral territories, in addition to the residents being considered by the repressive apparatus, the State adopts conduct of approaches to war, in which the logic of dialogue gives way to the logic of indiscriminate confrontation. Indeed, in one of the opportunities, the Rio de Janeiro judiciary even granted a collective warrant to authorize the police to enter all houses, naturalizing the suspension of residents' constitutional rights.

The State, when appearing before families, just for the purpose of repressing them, transformed the peripheral territories into "squares of war" or the *locus* of the vulnerable and susceptible to approaches, not only by trafficking people but also by conservative politicians, opportunistic religious leaders, real estate speculators, squatters, and militiamen.

Criminalization of drugs is also one of the objective factors that influence the following aspects: the increase in repression; the rise in homicides; the dispute over drug trade points; the need for people, linked to crime or not, to protect themselves against police action; the arms race; the feeling of insecurity; the rise in corruption and violence involving the promiscuity of State agents with criminal organizations; the increase in expenses with the repressive apparatus, to consume resources that could be invested in health and education (THORNTON, 2018). Criminalization has fueled the “war on drugs” and has served as a pretext for the State, instead of supporting and protecting people in vulnerable territories, imprinting on them an escalation of violence and extermination.

It is visible that sociality in areas controlled by trafficking has been marked by the repressive posture of the neoliberal State, which tears up the social contract by refusing to assume the condition of the agent of social inclusion. The neoliberal state, therefore, has contributed to deepening the social gap, so that the trafficking zone is now characterized as the space of absences, where citizenship rights are suspended.

It should also be noted that in the peripheral territories there is respect and fear concerning those involved in trafficking. Some communities feel at times protected, at times oppressed by violence and fear spread by the trafficking network. It is not uncommon to see how the trafficking network induces people in a community so that the trafficker tends to assume the condition of a subject who oscillates between being feared and being admired, thus attracting the attention of children and adolescents.

The survey of Observatório de favelas (2018) reveals that people involved in trafficking cannot get rid of repression and social inequality. Not all workers involved in drug trafficking can reproduce even a pattern of consumption equivalent to that of a member of the middle class.

The authority of the heads of the trafficking network, hierarchical discipline, based on loyalty and complicity, and the ability to protect members of the network are aspects that can lead to the imposition of the community’s relationship of dependence on drug trafficking. Concerning the organization of trafficking, norms of behavior tend to be organically assimilated by the community, so that in most cases there is a “natural acceptance” of authority and discipline.

Norms and the justice system tend to be seen as a need to be introjected not only by members of the trafficking network but also by the community. It is not uncommon to have an implicit “mutual protection” pact between the community and the control of trafficking, permeated by the exchange of favors. However, such adherence tends to be strongly influenced by the daily violence experienced by agents of trafficking.

4 UNDERSTANDING CHILD LABOR IN DRUG TRAFFICKING FROM FIELD RESEARCH

For any reality intervention process, prior data collection is important to have the dimension of the problem that one wants to understand and face. Hence the importance of research as a strategy for man to continue to unveil and transform his world. Research, according to Paulo Freire, tends to leverage the generating themes contemplated in the humanization process and tends to enable success in the intervention. In this regard, Freire (2017) says: “I research to verify, when I verify, I intervene, when I intervene, I educate and I educate myself. I research to find out what I still don’t know and communicate or announce the news” (FREIRE, 2017, p. 30).

Two recent surveys help to gain an understanding of child labor in drug trafficking: the first, carried out by Observatório de favelas (2018); and the second by CEBRAP (GALDEANO; ALMEIDA, 2018).

The research carried out by Observatório das favelas (2018), called “New configurations of criminal networks after the implementation of the UPPs”, helps to understand the reasons why a child can get involved and can withdraw from drug trafficking. Observatório de favelas is an NGO, operating in Rio de Janeiro, which conducts studies and research on the right to life and public security in peripheral territories, with an emphasis on the situation of adolescents and young people.

The referred survey, involving 261 people, of which 62.8% were between 14 and 16 years old, revealed that there was a 50% increase in the number of children between 10 and 12 years old who enter the drug trafficking network. The largest portion of those involved (54.4%) are in the age group between 13 and 15 years old, were black or brown (74%) and men

(96.2%), raised mainly in single-parent families where the mother was the main responsible (OBSERVATÓRIO DE FAVELAS, 2018).

Despite the strong presence of the repressive State in the peripheral territories, the research reveals that there is a lack of a State that provides public policies, including with regard to health services. This absence partially explains why so many adolescents, in addition to being involved with drug addiction and violence, start to naturalize the possibility of working in the drug trade. Of the respondents, 47.5% expressed having entered the traffic through contact with a friend, 47.1% stated that they started using drugs aged between 13 and 15 years and 75.9% said they had been victims of police violence.

One of the most striking pieces of data from the Observatório de favelas (2018) survey relates to the relationship between engagement in drug trafficking, the family's economic weakness, and school dropout. Among the interviewees, 62.1% stated that the need to help the family is the main factor that keeps them in the traffic; 78.2% stated that they no longer attended school, with 34.5% saying they had stopped studying between 15 and 16 years of age; 22.6% said they dropped out of school from the age of 17. The majority (40.4%) justified dropping out of school for economic reasons and 66.3% stated that it was necessary to work to help support the family.

According to the Synthesis of Social Indicators, from IBGE (2019), which compiled the 2016 data, 11.8% of the poorest young people, aged between 15 and 16 years old, left school without completing high school. School dropout and poor education rates reflect the living conditions of children and adolescents, as well as the social deficit that the country has mainly towards impoverished families. According to IBGE data, in 2018, in terms of education, the country presents the following picture: school dropout in Brazil is 8 times higher among adolescents from impoverished families; among Latin American countries, Brazil has the fifth highest illiteracy rate (8%) among people aged 15 and over; 24.1% of students do not finish elementary school until the age of 16; about 40.0% of the Brazilian population aged 25 or over has not completed elementary school (IBGE, 2019).

A survey data from Observatório das favelas (2018) brings a light of hope when it is known that 54% of the interviewees stated that they would

leave the traffic if they had the chance to get a formal job. In this research, when asked about the dream of their lives, the interviewees – most of them – stated that they want to quit work in drug trafficking, get a formal job, and have more time for the family.

It should be noted that the research contemplates an approach on the aspirations of the interviewees' projects, and they regard the activity of drug trafficking as a precarious and transitory activity, in view of the need to provide for their economic needs and that of their families. Furthermore, the research revealed that people involved in drug trafficking have dreams and desires to live from a centrality based on formal work and care for the family.

5 ALTERNATIVES FOR COMBATING CHILD LABOR IN DRUG TRAFFICKING

In order to discuss the alternatives, it is necessary to start from some assumptions capable of marking the rupture of an approach on child labor in drug trafficking in a prejudiced and unimplicated way.

The first premise is that the repression and criminalization of children and adolescents only reproduce child labor in drug trafficking.

Stigmatizing the child or adolescent involved in drug trafficking as a “thug” is the first measure to condemn those who should be protected and to prevent the withdrawal or stop the entry of boys and girls in the mentioned activity. The unprotected worker is a worker, so he/she cannot be condemned for the fact that he/she is pushed to perform an activity, be it dangerous or unhealthy, and has not been the recipient of rights. In this regard, ECA reproduces in its text a moralistic sin in treating adolescents as the perpetrator of the offense, and not as a child worker and as an unprotected subject who has been denied the set of rights recognized by the Federal Constitution.

The second premise is to move away from the moralistic approach that simplifies and stigmatizes who should be the recipient of social protection. In addition to the moral values of those who judge, it is urgent to consider that child labor in drug trafficking, even if it seems deceptive to be the child's free choice, cannot be understood by abstracting the history of needs, frustrations, and violence to which the impoverished people and families living in the peripheral territories are subjected, and the material

conditionalities that make boys and girls appropriable subjects before being objectively appropriated subjects by the drug trafficking network.

The third premise is to understand the activity of children and adolescents in trafficking as work. This is a condition to enable the full protection that is contained in art. 227 of the Federal Constitution, and the granting of rights foreseen in the ECA and in the labor laws. Strictly speaking, research such as that carried out by Observatório de favelas (2018) and CEBRAP (GALDEANO; ALMEIDA, 2018) is revealing that involvement in drug trafficking is verified by the need for work and how work should be treated. Not by chance, the ILO – International Labor Organization –, through Convention No. 182, addresses such involvement as human labor in trafficking and qualifies this activity as one of the worst forms of child labor (BRAZIL, 2019, Annex LXVIII).

The fourth premise is that there will be no solution to combat child labor in drug trafficking without support for families and communities in peripheral territories, in addition to prevention and rehabilitation services. The poverty and unemployment of the residents of the communities, the lack of access to health, education, work, and decent housing tend to facilitate the growth of trafficking and the enticement of children and adolescents (DOWDNEY, 2003).

The fifth premise is that the fight against child labor is a political struggle and, being of a political nature, it cannot be faced unless it is a struggle against the prevalence of the neoliberal State. It is important to emphasize that under a neoliberal State, whose concern is only with the super profit of the market, a public policy of reception and social insertion becomes impossible. The success of any action, program, project, or initiative to combat child labor in trafficking will depend on a state posture that allows, in addition to legislation, reliable planning and the serious execution of a project articulated with the entire protection network.

Law 11,346/2006, which instituted the National Public Policy System on Drugs, seemed in principle an advance to encourage the removal of the repressive bias and to inaugurate a model of care, attention, and inclusion of drug users, creating chances, for example, adolescents, instead of being stigmatized as dangerous, are granted access to health services and the labor market (BRASIL, 2006). However, the influence of conservative religious

elements and of immediate perceptions, pathologizing in the field of health and reactionary in the specific field of public policies, strengthened a moralistic and criminalizing culture that influenced penal populism. The latter, when chancellor of a prohibitionist social practice, seeks, on the one hand, to discredit humanizing therapeutic approaches and, on the other hand, to advocate a recluse-centric and incarceration logic.

The State's repressive system has contributed to making peripheral territories more violent. The residents of such areas, when assimilating the tension and fear in relation to the conflicts caused by the repression, tend most of the time to mortgage silent support to the traffic as an imposition to obtain minimum protection from the parallel and oppressive power of the local organizations involved in the drug trade.

Based on the reflections already presented so far and, considering the importance of theoretical approaches and field research mentioned in the present work, the alternatives to combat child labor in trafficking challenge the adoption of the following measures:

a) Mapping the territory, physical and virtual, from local to global, where drug trafficking flows, in order to obtain strategic information about the profile of those involved and the procedural logic of soliciting people in the trafficking activity;

b) Studying to understand the *modus operandi* of approaching and recruiting children for trafficking;

c) Surveying strategies for the withdrawal and weaning of children involved in drug trafficking;

d) Adopting an interdependent policy that involves the entire protection network for children and adolescents, in addition to support and partnerships with families, the community, and the school;

e) Creating dialogue channels with the participation of children from the communities most affected by drug trafficking;

f) Conducting continuous research-action that traces the profile of children and the community and that raises information about the most recurrent causes of child involvement in drug trafficking, considering the diversity and plurality of regions in the country;

g) Adopting a communication system that establishes the themes of legal protection topics in order to raise awareness and make communities aware of the rights of the child, including the worst forms of labor;

h) Structuring of the protection system and the rehabilitation of the health of children involved in the drug trafficking network;

i) Promoting reform in the legal system, which is more welcoming and less repressive, to discourage the inclusion of young people and children in drug trafficking;

j) Investing and training to make schools more attractive and engaged in improving individuals and families, and creating a system of active search for children involved in drug trafficking;

l) Encouraging criminal deals and reducing sentences in cases where adults, involved in the trafficking network, commit themselves not to use children in illegal activities and not to approach them for solicitation;

m) Implementing of an intelligence system that receives and investigates complaints, including anonymous ones, with the purpose of combating the involvement of children with the drug trafficking network;

n) Mechanisms to increase preventive education strategies with the articulation and involvement of families, the child protection network, schools, and communities;

All alternatives require, as a precondition, a break with the punitive State that stigmatizes the inhabitants of peripheral territories and makes children and adolescents criminalizable before being criminalized. The dialogue between the State and society is fundamental to return to the direction of the alternatives now proposed and to break the distance that prevents reciprocal intelligibility.

6 FINAL CONSIDERATIONS

The complexity of the different situations that make up the history of child protection and State repression in Brazil leaves open the debate and the approach on child labor in trafficking, but signals for provisional conclusions that can be highlighted, namely:

a) The need for internal recognition of the child's activity in trafficking as one of the worst forms of child labor, in accordance with Convention no. 182, of the ILO, is an urgent challenge to materialize the protection provided for in art. 227 of the Federal Constitution (BRAZIL, 2019, Annex LXVIII; BRAZIL, 1988);

b) The urgency of a political struggle to overcome the neoliberal State and its practices, in all spheres of social coexistence, is a historical need to obtain any success in combating the reproduction of child labor in trafficking;

c) The fight against school dropout and support for families are simple measures that tend to avoid the solicitation of children by the drug trafficking network, as demonstrated by the most recent research that looked at the topic. For this reason, the adoption of public policies to provide material support to families and to combat school dropout are urgent measures in the immediate horizon of the fight against child labor in trafficking;

d) The expansion, structuring, and articulation of the child and adolescent protection network must coincide with the use of strategies to bring the assistance network closer to the families, the community, and the school, in order to enable a dialogue that allows time and voice to children from peripheral territories;

e) The decriminalization of drugs can be an important instrument to fund the fight against child labor in trafficking, given that the resources currently spent on the policy of repression can be used to promote health and education for residents of peripheral territories.

ENDNOTE

- 1 The Convention on the Rights of the Child was ratified by Brazil on 9/24/1990, as recognized by Presidential Decree no. 99,710, of 11/21/1990.

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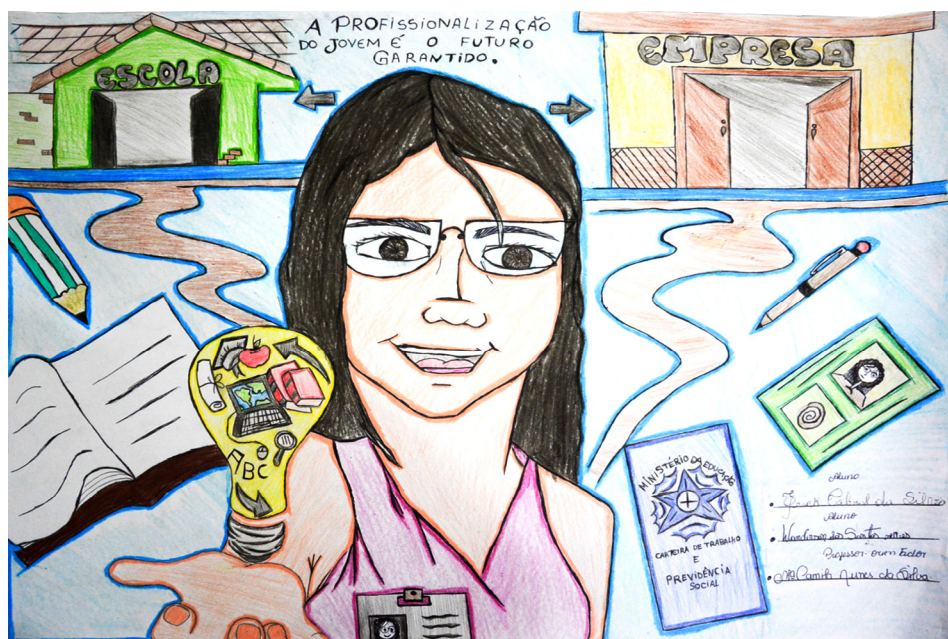
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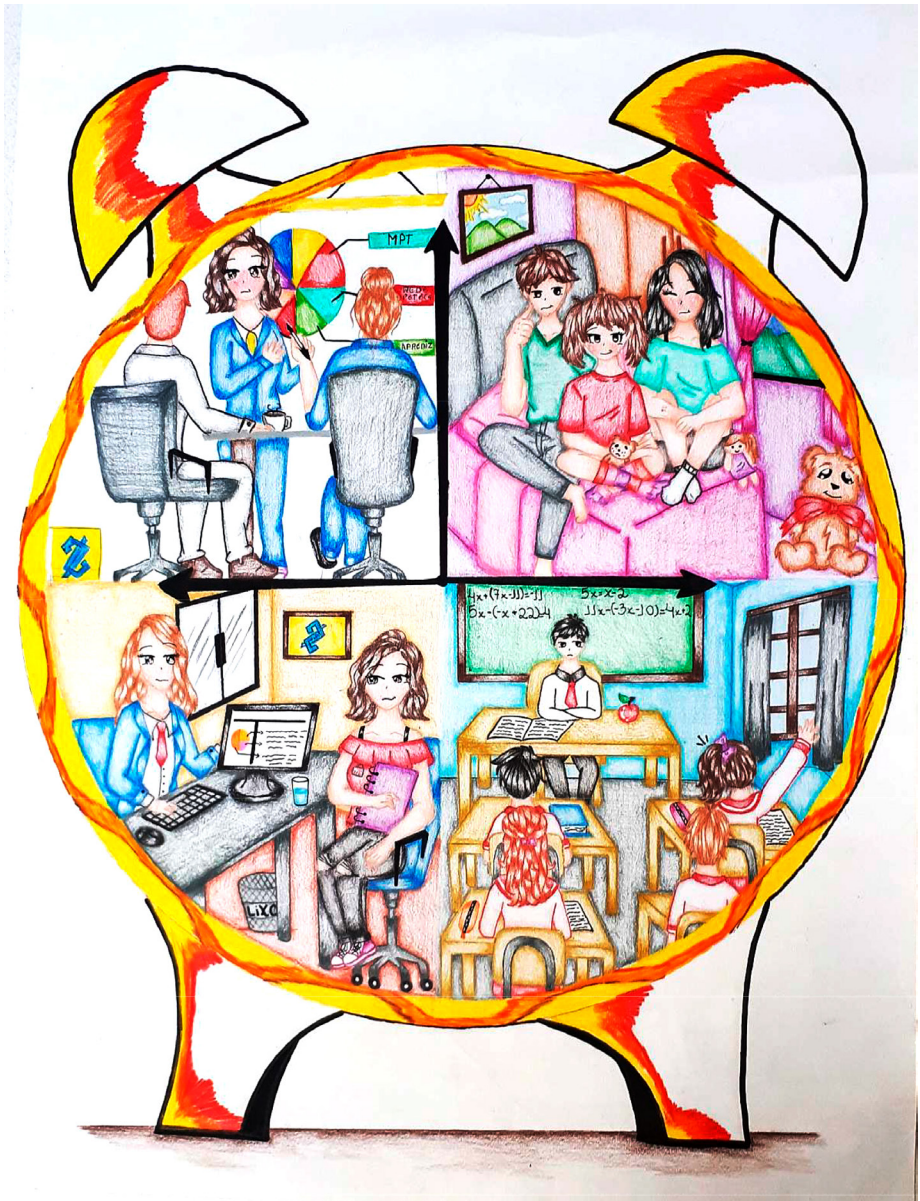
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