

30 June 2021

To The Honorable Committee on the Rights of the Child

Re: Situation of Trans Children in the Alternative Care System

The representatives of ALIANÇA NACIONAL LGBTI+, legal person under CNPJ nº 06.925.318/0001-60, domiciled at Avenida Marechal Floriano Peixoto, 366, conjunto 43, Curitiba, PR, Brazil, submit Report for the Day of General Discussion of the UN Committee on the Rights of the Child.

Introduction

Human rights entail rights that are inherent to everyone due to their condition of humanity as provided in various international instruments. However, some vulnerable groups receive special protection in specific norms that determine the rights of these groups. This being the case for children in the Convention on the Rights of the Child (the Convention).

The recognition of children as people in need of special protection, especially due to their lack of physical and mental maturity, made the Convention as the human rights treaty with the highest number of ratifications.

The Convention presents as general guiding principles the application of the best interests of the child, without discrimination, for their participation, survival and development in society. It also recognizes that the family has the primary responsibility to nurture and protect children so that they can achieve the harmonious and complete development of their personalities in a family environment, surrounded by an atmosphere of happiness, love and understanding.

However, reality shows that, unfortunately, in many cases, children do not have this family support, whether due to abandonment, resignation, death of family members, abuse or any other reason. In such cases, the State becomes responsible for protecting the rights of that child and for granting the alternative care necessary to ensure the child's safety, well-being and development.

In this context, the Committee on the Rights of the Child announces the topic of Alternative Care for the Day of General Discussion, recognizing the need for a discussion on the protection due to children who are even more vulnerable in alternative care systems.

Recognizing this premise, this Report seeks to inform and address the situation of trans children in Brazil, especially those who depend on alternative care for their survival and development.

Therefore, the theme addressed here goes beyond the special protection owed to children who are in the alternative care system to pay specific attention to the case of trans children who, due to gender conditions, become even more vulnerable.

Due to this theme, on June 10, 2021, the Submitter held a "Preparatory Debate for the proposal of alternative care for trans children in Brazil" (Preparatory Debate) with the presence of families with trans children, professionals of the alternative care system, Mariana Braga, education program officer at UNESCO-Brazil and Angela Pires, human rights adviser at the UN-Brazil to discuss the main difficulties encountered by trans children in the system. Based on this debate, this Report is prepared.

I. The Importance of the Family and Support Networks for Trans Children

Family support is the basis for the full development of children, as recognized by the Convention. From a harmonious, happy, loving and understanding family environment, these children surround themselves with favorable conditions for their development. The same premise is applied to trans children, who need the support and protection of their families to seek their development, especially concerning their gender identity.

Unquestionable is the realization of the need for special protection for transgender children due to their high level of vulnerability. If undeniable are the difficulties encountered by trans adults in the free exercise of their rights, even greater difficulties are those faced by trans children, who, due to their condition as a child, would already need the protection and support of the family and the State, and even more so in because of their gender issues.

Aiming to protect and offer a safe and prejudice-free spaces for trans children, families mention the importance of support networks, which are people or circles of people who will support and ensure the development of trans children in the environments where they live. In other words, they look to friends, school, health care, other families with transgender children, the support they are denied by the rest of society.

The aim here is to emphasize that trans children need, even more, the support of their families and support networks in society for their full development, as these will be the groups that will guarantee the protection and ensure the rights of trans children in the exercise of their gender issues.

Therefore, once this reality is confirmed, it is extremely important that the issue of trans children in alternative care is addressed and debated, as these children will not have their families and support networks to protect them, depending on the State to afford protection that considers the gender issues experienced by them.

II. The Invisibility of Trans Children: Lack of Data and Public Policies

Among the greatest difficulties for the effective protection of trans children, both those living in alternative care and family environments is the lack of data regarding the existence of these children.

The invisibility of trans children leads to the exclusion of this topic from debates in the normative and political fields, resulting in the non-existence of public policies aimed at their protection.

Thus, trans children end up living in a society that does not recognize their existence and in a State that does not regulate their existence, developing a very high factor of vulnerability and constant violations of rights.

The lack of data influences not only the absence of public policies but also groups that seek to promote and protect the rights of trans children, as they make it difficult for institutions and organizations to quantify and qualify the reality experienced by these children, resulting in specific studies that discuss particular cases.

Given this context of non-recognition of the existence of trans children, alternative care professionals are faced with their presence in a system without prior or regulatory knowledge of how to protect the best interests of these children and to protect an effective exercise of their rights.

III. The Refusal of Trans Children in Adoptions and Welcoming Families

The adoption system is the mechanism for children who for some reason are not under the responsibility and protection of their original family, to (r)establish family ties and be (re)inserted into a family nucleus, fulfilling the provisions of the Convention and national norms on the primacy of family responsibility and the importance of the family environment for children's development.

Welcoming families are an initiative to reduce distancing and, consequently, the damage from the lack of a family environment for children who are still waiting to be adopted. In this initiative, families register, making themselves available to care for, protect and support children who have not yet found a permanent home. Therefore, in these cases, the children remain in temporary families, rather than waiting for adoption in shelters or social institutions.

However, when analyzing the reality of welcoming families for trans children, this mechanism is not as effective. According to the social worker, at the Preparatory Debate, who works with this initiative in Curitiba-PR, when they fill out the registration form, the families explicitly choose not to receive trans children. The reasons can be varied, but usually, they are based on prejudice and discrimination towards these children.

The social worker also mentions that is currently looking for a welcoming family for two trans children who are under her supervision, however, the greater difficulty in finding temporary families for these children is evident.

In the same sense, there is the difficulty of finding permanent families that adopt transgender children. Unfortunately, these children are marginalized and ignored by adoption systems and because of that spend years in shelters waiting for a family.

It is extremely important to highlight the negative consequences for the development of these trans children who spend their entire childhood and adolescence in shelters waiting for a chance to have a new family. The emotional burden, anxiety and damage to the mental health of these children deserve to be widely discussed in order to seek solutions and mechanisms that mitigate these effects.

For example, the social worker mentions that one of the ways for children to gain visibility is to make videos to be sent to families. Therefore, for 3 years in a row, the two trans children dressed up and recorded their videos, but they never received any positive response from the families. According to the social worker, these two children have already stated that they will not make the videos again, since it causes them extreme anxiety and disappointment when they see other cis children who also recorded their videos being adopted before them.

This is just a small example of the daily reality of trans children in adoption systems, who are ignored by foster families and welcoming families, leaving them the only option of staying in shelters until they reach 18 years old.

Thus, the refusal suffered by trans children in adoptions clearly demonstrates the high vulnerability and invisibility of these children in society.

IV. Other Practical Difficulties Faced by Trans Children in Alternative Care

In addition to the difficulties faced by trans children in the absence of their recognition, data and public policies, prejudice and discrimination and refusal of adoptions, they still face structural and practical problems resulting from these difficulties, as mentioned below.

a. The lack of regulations and recommendations regarding the childcare of trans children.

The absence of data and public policies results in the absence of norms, guidelines and recommendations on how to childcare transgender children in alternative care systems.

These systems, such as shelters, institutions and care units, generally divide children between boys and girls, whether in different units, wards or rooms to carry out different activities, with different clothes and different haircuts, and so on. In other words, alternative care systems are governed by hetero-cis-normative rules.

In this context, trans children are once again marginalized, since, in the absence of norms on how to childcare these children, results to the professional's common sense to the childcare that will best respect the child's interests and their rights.

A psychologist who works in a unit of the socio-educational system during the Preparatory Debate highlighted the even greater vulnerability of trans girls in these circumstances, as they are initially sent to male units, which are more crowded and violent and, therefore, are maintained isolated for their safety, but at the same time, they are deprived of activities such as attending school, workshops, leisure activities that result in harm to their development and health.

The lack of preparation and regulations foment the attempts to protect of the care workers to be ineffective once they have to choose between protecting their physical integrity but violating their emotional and social needs.

b. Inadequacy of the collective spaces for trans children

Directly connected with the absence of public policies, data, visibility and guidelines regarding trans children, there is the inadequacy of collective spaces in units and institutions that provide alternative care.

As already mentioned, these spaces follow hetero-cis-normative concepts, which regularly do not serve trans children, who are hampered in their development by the lack of structure in these environments.

c. The lack of training of professional teams

In the same context, the lack of training of professionals who deal with trans children in alternative care deserves to be mentioned. As already discussed, in the absence of norms and guidelines regarding the treatment of trans children, it is up to professionals to decide on the treatment that will be applied.

However, the invisibility of the trans child results in the lack of knowledge of these professionals regarding the correct treatment, as they only recognize this situation when they are faced with the presence of a trans child in the system.

Thus, even if the professional has good sense and discernment in seeking information to serve the best interests of trans children, the lack of data, debates and public policies difficult the actions of those professionals in fulfilling the rights of these children.

It is also highlighted that society is prejudiced and discriminatory, including possible professionals who will assist these children and who may, due to their personal issues, further aggravate the situation of vulnerability of trans children. In the same sense, is important to point out the reality of alternative care institutions and shelters that are religious entities, and because of their beliefs, make it even more difficult to enforce the rights of children in gender issues.

V. Example of Good Practice: Ordinance No. 4 of 2020 of the Secretary of Justice and Citizenship of the Federal District, Brazil

A good example that deserves to be mentioned is the situation that occurred in the Federal District. Faced with the presence of a trans child in the socio-educational system, a case study was carried out and a working group was set up to develop a normative guideline regarding the treatment of the LGBTI+ population in the socio-educational system of the Federal District, resulting in Ordinance No. 4 of 2020. The following articles stand out:

“Art. 6º Any and all forms of discrimination by employees of the Socio-Educational System or third parties based on the sexual orientation and/or gender identity of adolescents and young people assisted in the socio-educational system are expressly prohibited, assuring them the respect for their freedom of self-determination, with the civil servant being able to respond administratively, civilly and criminally.

Art. 7º Considering that it is a Fundamental Right, the identification of the transvestite teenager and the transsexual teenager will be by self-declaration from the beginning of the service in the socio-educational system or at any time of the execution of the measure, to be registered in the Individual Service Plan (PIA) and Information Systems. Such information in public documents must protect their physical and psychological integrity.” [our translation]

However, it should be noted that this Ordinance is only applied in the socio-educational systems for the Federal District, meaning that, when considering the difficulties addressed here at the national level, it is necessary to develop public policies and regulations that act nationally.

Conclusion

Children in need of alternative care already demonstrate vulnerability and require special protection from the State. In the cases of trans children who find themselves in these systems even more vulnerable and urgency is needed for effective protection for the free and full exercise of rights by these children.

In this sense, the visibility and recognition of the existence of these children are extremely important for the development of debates and public policies that regulate the treatment due by the State and society.

The marginalization and ignorance caused by the lack of visibility of trans children aggravate considerably their status of vulnerability, resulting in repeated lack of protections that affect and hinder the full development of trans children and violate their rights provided in national and international instruments, such as the Convention on the Rights of the Child.

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