

The Right of Children to Live in Family and Community and Alternative Care in Brazil¹

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I - Introduction

This article presents the trajectory of the constitutional right of children and adolescents to live in family and community as public policy in Brazil, regarding normative advances, such as: specific legislation, parameters for the provision of alternative care within the Unified Social Assistance System (Sistema Único de Assistência Social - SUAS) and National Plan for the Rights of Children to Live in Family and Community (Plano Nacional de Convivência Familiar e Comunitária - PNCFC). As such, the aim has been to: strengthen family support policy to prevent weakening family bonds; qualify alternative care services; and promote the strengthening of family ties, through reintegration to the family of origin or, if not possible, referral for adoption. Based on the experience in Brazil, some recommendations will be presented for the improvement of policy and systems that promote this right.

2. Normative Advances

2.1. The Brazilian Statute of the Child and subsequent alterations

In line with the Doctrine of Integral Protection, the United Nations Convention on the Rights of the Child, the Brazilian Federal Constitution of 1988, and the Statute of the Child and Adolescent (Estatuto da Criança e Adolescente - ECA - Brazilian Federal Law 8069/1990), recognized that: children and adolescents are the subject of unalienable rights and in a special stage of personal development; have the right to live in family and community and that this right is the mutual responsibility of the family, civil society and the State; deserve alternative care and family support measures aimed at preserving family ties; should never be removed from their family based solely on poverty; and that removal from family life and adoption is a final option under only exceptional circumstances. They also established the principles that underpin good alternative care practice, such as: the preservation of family ties; personalized and individualized service in small groups; integration into community life; the non-separation of sibling groups; and the gradual preparation for leaving care.

In 2009 the Brazilian Federal Law 12.010 was passed which improved the ECA in regard to the right of children to live in family and community, ensuring greater convergence between this federal legislation, the PNCFC, the parameters for the provision of care services in the SUAS and the UN Guidelines for the Alternative Care of Children. It provided, among other advances:

- *Prioritization of the best interests of children and adolescents in the application of protective measures:* the right to be kept informed, listened to and to participate in decisions that affect their right to live in family. Regarding adoption, it

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established the obligation to listen to children and adolescents, and the gradual planned preparation for leaving care and follow-up after returning to their original family or going to an adopted family. It also guaranteed the right of an adopted person to access information contained in the judicial process regarding their biological parents after reaching 18 or earlier, with psychological and legal guidance.

- *Strengthening the rights and duties of the family of origin:* including the right of assistance to the mother who expresses a desire to give her child up for adoption; the right of parents or guardians to be heard in court; and the prioritization of reintegration into the immediate or extended family before referral for adoption. As for duties, parental responsibility was understood as the guiding principle for the application of protective measures.

- *Improving care practice in alternative care services:* prioritization of family based care in relation to institutional care; the necessary requirement of judicial authority approval, stating the motives for entering into care and the preparation of an individual care plan to monitor and plan each child in care; and coplanning between care services and the justice system, with the definition of deadlines and procedures in order to ensure the temporality of care. In this sense, the obligation of the care services to send periodic reports for continued re-evaluation by the Courts, with a formal limit of 2 years within care – with the requirement for a formal approved request by the judicial authority, after this period.

- *Improvements to the Justice System:* established time limits and procedures for family reintegration, the reduction of delays to the permanent removal from the family, inclusion in the adoption registry and the successful conclusion of these processes; the required preparation of applicants for adoption; mandatory implementation of state level and national adoption registers; and improvement of protocols related to international adoption, whilst furthering its exceptionality.

Law No. 13.257/2016 introduced improvements into the ECA aimed at protecting children in early childhood and their families, with emphasis on:

- *the strengthening of family ties, recognizing:* the specifics of early childhood; the importance of the family and its responsibilities in the care and education of children, with an emphasis on responsible parenthood; and the role of public policy in strengthening family bonds. It also changed labor legislation, extending the period of maternity and paternity leave; and criminal legislation, requiring the immediate identification of children to police authorities when a criminal offense committed by the parents becomes known.

- *the improvement of care practice for children aged 0 to 3 years in alternative care:* strengthening of foster care as public policy; and less turnover amongst the primary caregivers offering significant bonds and meeting the affective needs of young children in institutional care services.

Law No. 13.509/2017, in turn, improved procedures related to greater support for a mother desiring to place her baby into adoption via the Child and Youth Courts, ensuring the right to secrecy and establishing deadlines and procedures. It introduced the sponsorship program into law and reduced the deadline for sending updated reports from alternative care services to the Justice Department to three months, and for the maximum time permitted in care to 18 months - with the requirement for a formal approved request by the judicial authority, after this period.

2.2. National Plan for the Right of Children to Live in Family and Community

This plan is a long-term intersectoral plan approved by the National Council for Child and Adolescent Rights (Conselho Nacional dos Direitos da Criança e do Adolescente - CONANDA) and the National Social Assistance Council (Conselho Nacional de Assistência Social - CNAS). It guides public policy, in conjunction with the Justice System, in protecting the right of children to live in family and community. The concomitant discussion of the United Nations Guidelines for the Alternative Care of Children (UN, 2009) and the PNCFC enabled convergence between the documents.

The structure of the Plan was based on three main dimensions: i. Family Support Policies and Prevention of the Weakening of Family Ties; ii. Reorganization of Alternative Care Services, Implementation of Foster Care Services and Subsidized Youth Housing Program for Care-Leavers; and iii. Adoption Centered on the Superior Interest of Children and Adolescents.

Considering the implementation deadlines recommended by the National Plan, and the dialogue and collaboration between the government and civil society in the need to prioritize this agenda, the National Secretariat for Social Assistance (Secretaria Nacional de Assistência Social - SNAS), of the Ministry of Citizenship (Ministério da Cidadania - MC) and the National Secretariat for the Rights of Children and Adolescents (Secretaria Nacional dos Direitos da Criança e Adolescente - SNDCA), of the Ministry of Women, of the Family and Human Rights (Ministério da Mulher, da Família e do Direitos Humanos - MMFDH), started, in the first half of 2019, the process of evaluating the implementation and results achieved by the National Plan and collating guidelines for its updating. Several partners were added to the project, which brings together several studies:

- **Broad Intersectoral Workshops for the Evaluation of the National Plan for the Rights of Children to Live in Family and Community:** carried out by SNAS/MC and the civil society representative, the National Movement for the Rights of Children to Live in Family and Community (MNPFCFC), with support from SOS Children's Villages and the International Organization of Migrants (IOM). Based on data and the opinions collected in these workshops which included professionals from the five macro-regions of Brazil, the study aimed to evaluate "what has advanced the most", "what has progressed least" and "what is still needs to be done", in the three dimensions that are the basis of the PNCFC.

- **Evaluation of the National Plan for the Rights of Children to Live in Family and Community from the perspective of Adoption Support Groups:** carried out by SNAS/MC, in partnership with the Association of Adoption Support Groups, based on the application of a questionnaire. This study aimed to assess "what has advanced the most", "what has advanced the least" and "what still needs to be done" in the three dimensions that are the basis of the PNCFC, from the perspective of representatives of adoption support groups from the five macro-regions of the country.

- **Evaluation of the National Plan for the Rights of Children to Live in Family and Community from the perspective of the Justice System:** carried out through a partnership between SNAS/MC, the National Council of Justice (Conselho Nacional de Justiça - CNJ), the National Council of the Public Ministry (Conselho Nacional do Ministério Público - CNMP) and the National Collegiate of General Public Attorneys (Colegiado Nacional dos Defensores Públicos Gerais - CONDEGE), with support from the IOM. The study involved the participation

of representatives of the Justice System – judges, prosecutors, public attorneys and professionals from the technical teams in these areas, from the five macro-regions of the country. Its objective was to assess “what has advanced the most”, “what has advanced the least” and “what still needs to be done”, in the three dimensions that are the basis of the PNCFC.

- **My Life on the Outside (Minha Vida Fora Dali):** carried out by the MNPCFC, at the request of the SNAS/MC, the study was coordinated by Dr. Luciana Cassarino-Perez, with support from the Institute Making History (Instituto Fazendo História - IFH). The objective was to listen to young care leavers who had recently left care services. 27 young people evaluated their care experience under the three dimensions of the National Plan, pointing out positive and negative aspects and made recommendations as to what still needs to be done.

- **The “Trajectory of alternative care services for children and adolescents” Report (2021):** carried out by the Institute of Applied Economic Research (Instituto de Pesquisa Econômica Aplicada - IPEA), at the request of the SNAS/MC. The longitudinal report analyzed the trajectory of Institutional, Residential and Foster Care, and Subsidized Youth Housing Program for Care Leavers, pointing out positive and negative aspects and made recommendations as to what still needs to be done.

- **Report "Advances and Challenges in Adoption Practice in Compliance to the National Plan for the Rights of Children to Live in Family and Community":** carried out by the CNJ, at the request of SNAS/MC, this longitudinal study analyzed the trajectory of adoption in the country, encompassing legislative changes and advances in the judicial field in order to support the updating of the PNCFC.

2.3. National parameters for the improvement of care services

The document “Technical Guidelines for the Alternative Care of Children and Adolescents” (CONANDA and CNAS Resolution No. 1/2009) consolidated and published parameters for the improvement of institutional, residential and foster care services. Adhering to the PNCFC and the Guidelines for the Alternative Care of Children (UN), the parameters cover, among other aspects:

- **Principles:** Exceptionality and the Provisional Nature of Care; Preservation and Strengthening of Family and Community Ties; Personalized and Individualized Care; Respect for Autonomy; among others;
- **Methodological Guidelines:** Diagnostic Study before and after entering Care; Individual Case Care Plan (Plano Individual de Atendimento - PIA); Working with of the Family of Origin; Intersectoral Collaboration;
- **Political-Pedagogical Project:** particular care during the reception process; non-breakup of sibling groups; maintenance of records of life history and development; role of primary caregivers; building relationship with the family of origin; offering access to community; strengthening autonomy; and a gradual and planned care leaving process.
- **Care and professional management:** selection, training and continuing education of professionals in care services (institutional, residential and foster);
- **Operating parameters:** clear definition of care modalities and limits on the maximum number of children in each of them (institutional care, up to 20 sheltered per service; residential care, up to 10; foster care, 1 per family, except for sibling groups; Subsidized Youth Housing Program, up to 6); architectural aspects; and human resources requirements.

The document "Technical Guidelines for the Preparation of the Individual Care Plan (PIA) for Children and Adolescents in Alternative Care Services" (2018), from the SNAS, also contains guidelines that cover:

- **Definition of the PIA and those responsible for its elaboration;**
- **Guiding Principles:** guaranteeing the rights and best interests of children and adolescents; temporality; and child, adolescent and family participation, among others;
- **Guiding Protocols:** the provision of quality care, protection of rights and development; strengthening of healthy ties with the family of origin and community; working with the child's family; preparation for care leaving and aftercare follow-up.
- **Preparation, Update and Monitoring of the PIA:** including model and guidelines for completion.

Recommendations

- Right of every child and adolescent to grow and belong in a family, and as a priority in their family of origin – parents or extended family when they have ties – and, exceptionally, in an adoptive family, ensuring the equal rights of biological and adoptive children;
- Removal from family life and temporary alternative care as last resort;
- Legislation and intersectoral plans that guide public policy and the Justice System to: support families and prevent separation of families; improvement of care services, prioritizing foster care; carrying out safe family reintegration or adoption aimed at the best interests of the child and adolescent; support and support for teenagers in care and young care leavers;
- Prioritization of the financing of policy aimed at guaranteeing the right to live in family and community;
- Incorporation of the right to family life into the public policy agendas, including mental health, social assistance, education, housing and work and income, for intersectoral action, aiming at the preservation of family life and prompt and effective support in situations which risk removal from the family.
- Policy to strengthen family ties, with tried methodologies to strengthen positive parenting and responsible parenthood;
- Studies to identify factors that threaten or favor strengthening family life, aiming to: strengthen policy to prevent premature removal; build risk indicators; and define criteria to support decisions regarding removal, family reintegration and placement for adoption, all in a safe manner and in the superior interest of the child;
- Development of criteria and instruments that support diagnoses and decision-making regarding: the removal of children from their family, family reintegration and referral for adoption, always with the best interests of the child and adolescent.
- Strengthening the Justice System: territorial coverage; composition of human resources specialized in the area of Children and Youth, in different instances; investment in continuous training; and the implementation of computerized systems for systematic monitoring of children and adolescents in alternative care;
- Adequate psychological care and protection of the mental health of children, including babies, and adolescents in alternative care, including: access to psychological support; training of foster families and the professionals in

institutional care services regarding the needs and care of children and adolescents with trauma;

- Required participation of children and adolescents in decisions about going into care, family reintegration and adoption, with the right to information and access to the Judiciary;
- Development of methodologies for the preparation of child and adolescent care leavers whether due to family reintegration, adoption or ageing out.
- Rights and policy to support adolescents in alternative care and young care leavers;
- Prioritization of Municipal foster care legislation;
- Parameters for the offering of quality care: territorial care coverage; protection of the rights and development of those in care; work to quickly return to the family – family reintegration or adoption; attention to specific and complex situations - disability, use or abuse of alcohol or other drugs, mental or intellectual disability, etc. Training and ongoing training of professionals and caregivers;
- Requirement of preparation of potential adopters and children and adolescents going into an adoptive family. Follow-up after adoption, with medium and long term support;
- Advances in legislation and procedures that strengthen adoption, with family placement determined by the Justiciary and the legal security of the adoption process;
- Monitoring of situations of return to alternative care after failed attempts at family reintegration and adoption, with a view to implementing preventive measures and stop checks.