

# ELETRÔNICOS

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## THE RIGHT TO HEALTHY INTERNET ACCESS BY CHILDREN AND ADOLESCENTS IN BRAZIL AS A FUNDAMENTAL RIGHT<sup>1</sup>

*O direito ao acesso à internet sadia por crianças e adolescentes no Brasil enquanto um direito fundamental*

Valéria Emília de AQUINO 

Universidade Federal de Goiás – Goiânia/Goiás, Brasil.

**Abstract:** The present work has as general objective to present the theme of access to the internet by children and adolescents in Brazil, reiterating the importance of access and healthy use by these individuals and raising the hypothesis that such right should be understood as a fundamental right, since it is directly related to other rights already established in Brazilian law. In this sense, as specific objectives, the work will address the issue of the vulnerability of children and adolescents, as well as the forms of violence that can be committed against them in the digital environment, to later present how their protection occurs in the country, through presentation of laws, public policies and institutions dealing with the theme. Finally, in the final remarks, this article intends to highlight the challenges to be overcome by the Brazilian government in relation to the protection of these individuals and the guarantee of healthy access to the internet.

**Key words:** Internet access. Fundamental rights. Vulnerability. Protection of children and adolescents.

**Resumo:** O presente trabalho tem como objetivo geral apresentar a temática do acesso à internet por crianças e adolescentes no Brasil, reiterando a importância do acesso e utilização sadia por esses indivíduos e suscitando a hipótese de que tal direito deve ser entendido como um direito fundamental, já que se relaciona diretamente com outros direitos já positivados no ordenamento. Neste sentido, como objetivos específicos, o trabalho abordará a questão da vulnerabilidade de crianças e adolescentes, bem como as formas de violência que podem ser praticadas contra elas no ambiente digital, para, posteriormente, apresentar como a proteção delas ocorre no país, por meio da apresentação de leis, políticas públicas e instituições que

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tratam da temática. Por fim, nas considerações finais, o presente artigo pretende destacar os desafios a serem transpostos pelo governo brasileiro em relação à proteção desses indivíduos e à garantia do acesso sadio à internet.

**Palavras-chave:** Acesso à Internet. Direitos Fundamentais. Vulnerabilidade. Proteção de crianças e adolescentes.

## 1 INTRODUCTION

One cannot deny that we live in the information society, a society in which children and adolescents are born "connected", in which the flow of information is so fast, that it is possible to broadcast events in real time, and to have access to information around the globe. In addition, children and adolescents today, or "Generation Z" and "Generation *Alpha*", are taught new skills and knowledge that other generations - boomers, X and Y or millenials - very possibly did not have access to, such as: programming, digital marketing and use of social networks, or robotics.

While these skills are useful for the formation of the intellect, human development and personality of the child, they are also dangerous, because they expose these individuals to an environment whose standards of protection and good usage are still in formation, and also because the internet can be accessed by anyone and anywhere, without their identity being necessarily revealed, which ends up making children and adolescents "easy" targets of sexual predators, scammers, and other criminals.

Furthermore, children and adolescents can also have access to all kinds of information, which can also hinder their development and make them susceptible to crime, if access is not accompanied by their legal guardians or if protection filters are not developed, which limit or forbid the access to illegal or adult content by them.

According to the DataReportal database (2021)<sup>2</sup>, approximately 4.66 billion people - about 59.5% of the world population in January 2021 - have access to the internet, and of these, 4.2 billion have some type of social network. Such data reflect that a little less than half of the world population still does not have access to the internet, whose situation is accentuated in

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<sup>2</sup> Data retrieved on 24/23/2021, related to the month of January 2021.

developing countries. In Brazil, one in four Brazilians does not have access to the internet, which represents approximately 46 million of the population, the highest percentage in the North region of the country (13.8%), a region that still lacks not only adequate access, but of basic infrastructure services (Agência Brasil, 2020)<sup>3</sup>.

In relation to the number of children and adolescents using the Internet, in 2019, this number reached 24 million (among children aged 9 to 17 years), however, it was found that approximately 4.8 million of this total, lived in households without internet access until the date of the research, and that 1.4 million had never accessed the internet (CGI Brasil, 2020, p. 27).<sup>4</sup>

Nevertheless, as conflicting as the issue of access and use of the internet by children and adolescents may be, the COVID-19 pandemic not only highlighted the need to discuss the regularization of a healthy use, but also in guaranteeing access to it by this group, as a fundamental right, since the right to internet access is directly related, among other rights, to dignity, to education, to human development, as well as to mental health.

Thus, the present work aims, as a general objective, to present the theme of internet access by children and adolescents in Brazil, through an exemplary and not exhaustive methodology, raising the hypothesis that, although not foreseen in the Brazilian legal system, such a right should be considered as a fundamental right, which will be explained in the first topic, in addition to explaining why such individuals deserve additional protection due to their vulnerability. In addition, it is intended to discuss the forms of violence that can be committed against minors in the virtual environment. The type of research used in this paper corresponds to the data survey on laws and institutions that protect the rights of children and adolescents in Brazil, as well as using a systematic review of the literature on human rights and the right to the internet for this group.

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<sup>3</sup> Data retrieved on 24/03/2021, related to the publication of the "National Survey by Sample of Households Continuous - Information and Communication Technology" made in 2018, carried out by the Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística - IBGE).

<sup>4</sup> Data retrieved on 25/03/2021, related to the publication of "TIC KIDS ONLINE BRAZIL - Survey on the Use of the Internet by Children and Adolescents in Brazil" conducted by the Internet Steering Committee (Comitê Gestor da Internet - CGI) in Brazil and published in 2020.

Finally, this article also aims to present the protection of these individuals in the digital environment in the country, by presenting national protection laws - and ratified treaties and incorporated into Brazilian legislation -, as well as the institutions and public policies that promote the safe use of internet and the defense of the interests of minors, also analyzing the challenges that must be overcome by the Brazilian government for the realization of to a healthy internet access by children and adolescents. It was decided to approach the theme through the critical theory of human rights, as it is understood as the most viable theory for the proposed debate, around the protection of the vulnerable and the discussion of other dimensions of human rights.

## **2 THE RIGHT TO HEALTHY INTERNET ACCESS AS A FUNDAMENTAL RIGHT**

One of the most misconceptions about human rights concerns to its positivation. From the moment when human rights are celebrated in international documents, such as the Universal Declaration of Human Rights (1948), it is created a myth that from this moment on, all individuals will enjoy them, simply because of their condition as human beings. The mistake is due to the fact that, yes, all humans will have the right to this set of rights, however, it does not mean that everyone will have access (or equal access), since many people end up not exercising human rights due to the lack of material conditions for their enjoyment (FLORES, 2009, p. 27).

When human rights are conceived from their abstract perspective, it ends up preventing unforeseen rights from being claimed, that is to say, as the dimensions of rights already positivated by the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, it becomes difficult to insert the protection of new rights, although it is not impossible, since authors like Paulo Bonavides, even discuss the existence of other dimensions such as the third (of diffuse and collective rights, among which there is the right to a healthy environment), and the fourth dimension, which includes the right to information, democracy and pluralism (BONAVIDES, 2006, p. 571-572).

In this context, based on the assumption that human rights are built on a daily basis, the great problem with these rights is that they are built precisely in the light of the dominant economic, social, and political values, and not in the struggles of groups marginalized by society, for which human rights are only a concept, having little form and concreteness. It is imperative, therefore, that society strives for the rights to be accessible, since the core lies in the effectiveness of human rights, that is, in the access to these rights, which, although foreseen in their universalist perspective, are not guaranteed equitably around the globe, in other words, once again we are faced with the issue of material equality. So, regarding the degree of abstraction of the universalist perspective and the construction of human rights, the following can be said:

In this manner, the conceptual debate on human rights finds, as a theoretical foundation, a path guided by human action organized in the process of emancipation. Thus, human rights return to the domain of human action, so that it is understood that they are effectively constructed and deconstructed, recognized and denied, made effective and violated in the dialectic of history. It should be noted that, in this way, some of the defining elements of human rights fall under the scope of abstract theories, in particular, their absolute condition and their universal validity. (ESCRIVÃO FILHO, SOUSA JÚNIOR, 2016, p. 31).<sup>5</sup>

How is it possible to speak, therefore, of equality and universality of human rights, if during the pandemic inequalities between classes were once again evident? How many children, who depend on meals provided in daycare centers and schools, have been left without an existential minimum? How many children and adolescents, who do not have internet access in their homes - or even have computers and mobiles -, have been deprived of the right to education?

Some countries, such as Canada, have already officially recognized the right to high-speed broadband internet as a basic and fundamental right (Common Dreams, 2016). The Internet Rights & Principles Dynamic Coalition, together with the United Nations, launched the Charter of Human Rights and Principles for the Internet, which not only reiterates the right to expression and opinion (under the terms of Article 19 of the Universal Declaration), but also

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<sup>5</sup> Translated by the author. Original version in Portuguese.

celebrates: universality and equality in rights and dignity; social justice; accessibility, assuring that everyone must have universal, open access, and safe use of the internet, whose rules must be standardized, so that it is possible to guarantee equality, complete interoperability, as well as digital inclusion and equality in opportunity for all; the freedom of association; the right to privacy and data protection; as well as the right to life, freedom and security. Such principles and rights must be consolidated under legal and normative grounds based on human rights and social justice and must occur in a transparent and inclusive manner (Internet Rights & Principles Dynamic Coalition, 2014, p. 7).

If the history of human rights has shown us that, through empathy - and consequently the change in the thought of a particular society at a given historical moment -, was and is possible to add new rights (HUNT, 2007, p. 32-33), hence, it is also possible to broaden the list of rights conferred on children and adolescents, given that, evidently, the internet not only shows itself as a tool for accessing other rights (such as education, information, dignity, leisure and culture, for example), as it has also become a human right, and that due to the integrality and interdependence of these, it cannot be conceived dissociated from the others, especially before an ultra-technological society, that is, before an information society.

In Brazil, beyond being a tool for the realization of rights that provides avenues for digital inclusion, the right to internet access contributes to the improvement of the population's social conditions, reducing the social gap between social classes, and even allowing that Justice works more quickly and effectively, through the Electronic Judicial Petitioning system (*Peticionamento Judicial Eletrônico - PJe*), a electronic system that allows petitioning causes that deal with the rights of the child and adolescents, which require quick decisions and less bureaucratic processes.

## 2.1 THE VULNERABILITY OF CHILDREN AND ADOLESCENTS

According to the Cambridge dictionary, vulnerability can be defined as "the quality of being vulnerable, able to be easily hurt, influenced, or attacked, or something that is vulnerable" (Cambridge Dictionary). In other words, vulnerable is someone who needs additional protection from the State, due to his condition, which places him in an unequal position with non-vulnerable people or groups.

Vulnerable people are naturally people exposed to the risks of exploitation, abuse, neglect, and other types of violence, either because of their being condition or individual factors, or because society itself has relegated them to such a category. They are people who, in addition to human rights - here understood as a standard or a minimum set of rights essential to a dignified life (RAMOS, 2017, p. 29) - demand from the State, through public policies and institutions, means to become able to acquire equality in access and enjoyment of the existing rights, or to acquire rights that have not yet been foreseen, but which allow them to live a dignified life.

Children and adolescents, in this sense, are beings who are in a situation of factual, technical, economic and legal under-sufficiency, they are individuals who demand that the State allocate budgets for public policies and public services, and expand the care, attention, protection and preventative measures over them, so that they enjoy a dignified life, free from any type of violence, and with full access to human rights, which are part of their human development and personality. The OECD definition precisely describes their vulnerability as:

Child vulnerability is the outcome of the interaction of a range of individual and environmental factors that compound dynamically over time. Types and degrees of child vulnerability vary as these factors change and evolve. Age, for example, shapes children's needs while also exposing them to potential new risks. Infants, who are completely dependent and require responsive and predictable caregiving, are particularly sensitive to parents' health and material deprivation. Young children under three years old are especially affected by family stress and material deprivation because of the rapid pace of early brain development. Young children can benefit from early childcare and education (ECEC) interventions and time away from the home environment. The independence of older adolescents makes them more susceptible to opportunities and risks in the community, making the presence of supportive adults, school quality, and local economic opportunities important for well-being. (OECD, 2019).

Furthermore, it should be stressed out that "Childhood is arguably the most vulnerable period of human life. Children are highly dependent on others to satisfy their basic needs, and this makes them particularly vulnerable." (BAGATTINI, 2019, p. 211). The classification of children and adolescents as vulnerables, however, does not exclude the existence of subgroups

of vulnerable people among them, that is, there are examples of even more vulnerable individuals: street children; children in dangerous or unhealthy work activities, or activities that do not respect the legal age; child soldiers; disabled children; children with serious illnesses; between others.

According to data from the Internet Steering Committee in Brazil (2018), children and adolescents in the country have used the internet for a series of activities, including: schoolwork; download music, movies and series, or watch online; read and/or watch news; read books; use social networks and instant messaging applications; write emails; play online games alone or in a group; etc. It is noted, therefore, that the internet becomes an essential right to the well-being of children and adolescents, who use it for the most diverse activities, from leisure to information and education. Therefore, it is essential that the State not only guarantees the right to the internet access for these individuals, but it is necessary that governments guarantee a safe digital environment, so that they can exercise their rights without embarrassment and free from violence.

## 2.2 FORMS OF VIOLENCE AGAINST CHILDREN AND ADOLESCENTS IN THE DIGITAL SPACE

One of the most important points to be considered regarding internet access by children and adolescents, are the good practices in the virtual space, and the recognition that the absolute control of the information sources in this space is difficult and complex, therefore, the internet becomes a stage for the emergence of cyber crimes, or for planning or attempting other crimes.

In this way, human rights education for children and adolescents becomes essential, so that these individuals can not only identify and report bad practices and conduct, and crimes, but also become able to defend themselves and prevent against all forms of violence in the digital environment.

In Brazil, according to the indicators of the National Cyber Crime Reporting Center (SAFERNET, 2020) between 2006 and 2020, almost 2,000,000 anonymous reports involving child pornography were recorded, from pages hosted in more than 101 countries, on 6 continents. However, the indicators do not account for the occurrence of cyber-bullying, doxing, and other cyber-crimes against children and adolescents, which would rise in millions of cases

annually that occurred not only in Brazil, but throughout America. Therefore, it is essential that countries provide not only protection for these individuals, through their laws and institutions, but also promote digital education in human rights, guiding children and adolescents on how to identify inappropriate practices in the digital environment, how to prevent, and how to proceed in case of cyber-crime.

Before entering into the forms of virtual violence recognized in Brazil, it is necessary to highlight that there are those that are considered as a crime and are foreseen either in the Brazilian Penal Code or in the special legislation, as well as there are also those that are considered as improper practices – or misconduct – in a virtual environment, which are not yet typified or prescribed in Brazilian criminal law. Thus, to present such practices, both forms will be discussed.

Firstly, on the misconduct, we highlight the guide prepared by Safernet Brasil, for the education and strengthening of protection and support networks against online violence, entitled "Meninas em Rede" (here translated as "Online Girls"), which lists some of the practices against children and adolescents committed in the virtual space, such as: 1-) cyber-stalking, which consists of the practice of chasing / watching and harassing someone, following all the victim's movements, that is, monitoring their preferences, leaving them intimidated and afraid; 2-) doxing, which consists of the unauthorized disclosure of data to threaten the victim, which can constitute a threatening crime (Art. 147, of the Penal Code); 3-) cyberbullying, which consists in the practice of humiliating (or exposing the victim to vexing situations), intimidating, embarrassing the victim on the internet; 4-) cancellation, which arose from the culture of "canceling" someone, in order to censor, reject or exclude them from the digital medium, for something that the victim has said or done, without the right to defend themselves, being also related to cyberbullying or virtual lynching (which can configure the crimes of slander, defamation and / or injury, provided for in the Brazilian Penal Code, in articles 138, 139 and 140, respectively); 5-) exposing, which is the practice that exposes the victim in his privacy, either through sharing photos or conversations, which can affect his reputation, and open the way for "cancellation". (SAFERNET, 2020, p. 5-7).

About the cyberbullying, it should be noted that Law nº 13.185, of November 6th, 2015, which institutes the Program to Combat Systematic Intimidation, defines bullying and its virtual modality as:

Art. 2 Systematic intimidation (bullying) is characterized when there is physical or psychological violence in acts of intimidation, humiliation or discrimination, and also: I - physical attacks; II - personal insults; III - systematic comments and pejorative nicknames; IV - threats by any means; V - derogatory graffiti; VI - prejudiced expressions; VII - conscious and premeditated social isolation; VIII - jokes.

Single paragraph. There is systematic intimidation on the world wide web (cyberbullying), when using the instruments that are appropriate to depreciate, incite violence, adulterate photos and personal data in order to create means of psychosocial constraint<sup>6</sup>

There are still other bad conduct on the internet (such as misogyny and mansplaining, for example), however, these are motivated by other factors such as gender, sexual orientation, ethnicity, religion, and the like, therefore, respecting the thematic proposed in this topic, these will not be presented, since the intention is to present the forms of violence against children and adolescents on the internet, simply because of their condition of being considered as such, due to age.

Concerning the crimes committed against children and adolescents on the internet, as provided for in the Brazilian Penal Code, there are the following: 1-) crimes of sexual disturb (Art. 215-A, in Portuguese "*Importunação sexual*") and sexual harassment (Art. 216-A, in Portuguese "*Assédio sexual*"), both crimes against sexual dignity, which may consist of sending unwanted pornographic images, or sexually-content messages (or sexting), which fill in the crime type; 2-) crime of exposure or unauthorized registration of sexual intimacy (Art. 216-B); 3-) corruption of minors (Art. 218), lustful satisfaction in the presence of a child or adolescent (Art. 218-A), favoring prostitution or other forms of sexual exploitation of children or adolescents or the vulnerable (Art. 218-B), and disclosure of the rape scene or the rape scene of the vulnerable, sex scene or pornography (Art. 218-C), the latter of which may have the penalty increased from 1/3 to 2/3 , if the crime is committed against a victim for whom the

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<sup>6</sup> Translated by the author.

agent has an intimate relationship of affection or if it is committed for the purpose of revenge or humiliation.

Unfortunately, the practice of these crimes is common, especially in online discussion forums, or through social networks or instant messaging applications, and sexual predators often take advantage of the naivete of children and adolescents to obtain what they want. In addition to these crimes, the practice of extortion crimes is common (Art. 158), which in the virtual space appears especially in the form of sextortion, that is, when the agent embarrasses and threatens to divulge intimate photos and videos of the victim, to obtain for himself or another economic advantage, or for the victim to do or let a certain thing be done; swindle or embezzlement (Art. 171, in Portuguese "*Estelionato*"), which is a modality whose practice is very frequent against the disabled, since the understanding, experience and reasoning of a child or adolescent are reduced, causing them to be victims of illegal schemes -or scams-, and this a crime is commonly practiced along with the crime of abuse of the disabled (Art. 173), with the difference that despite the result of the abuse of the disabled produces legal effects, these effects will not always generate an illicit advantage for the agent – as it happens in the swindle –, but rather the victim's or third party's own loss.

Plausible to point out that the crimes presented here do not exclude the occurrence of other crimes, such as the hacking of a computer device (Art. 154-A), the inducement to speculation (Art. 174), and the favoring of prostitution or otherwise of sexual exploitation (Art. 228). In reality, it is very common that in cases of cyber-crimes committed against children and adolescents multiple-offense (crimes) occurs, and it may even happen that the conduct of the crime begins in a virtual environment, and later on, it continues in a physical environment, as occurs in cases of prostitution and trafficking in minors (Art. 149-A, II), for example, whose agents use the internet to attract the attention of these individuals and deceive them until the final result. Furthermore, the Penal Code provides as an aggravating factor when the crimes provided for therein are committed against children (Art. 61, II, h).

It urges to highlight that the Statute of Children and Adolescents (Law nº 8.069, of July 13rd, 1990), still establishes as a crime those who produce, reproduce, direct, photograph, film or record, by any means, an explicit sex scene or pornographic, involving a child or adolescent

(Art. 240); also incurring in crime those who sell or exhibit the sale of such material (Art. 241); or whoever offers, exchanges, makes available, transmits, publishes, distributes or discloses (Art. 241-A); and whoever acquires, owns, or stores these materials (Art. 241-B), except for the purpose of reporting to the authorities. The same provision also foresees as a crime that the simulation of child or adolescent participation in an explicit or pornographic sex scene (Art. 241-C), as well as whoever entices, harasses, instigates or constrains the child by any means of communication, in the intention to practice a libidinous act (Art. 241-D).

### **3 THE PROTECTION OF CHILDREN AND ADOLESCENTS IN THE DIGITAL ENVIRONMENT**

The protection of children and adolescents on the Internet must therefore be integral, recognizing the vulnerabilities of these individuals, especially regarding their intellectual limitations, since they are more susceptible to become victims of cyber-crimes. However, protection should not be restricted only to the issue of crimes or misconduct, but should also include other points such as data protection, access to adult content available on the internet, as well as advertising in the digital environment.

The General Data Protection Law (Law nº 13.709, of August 14th, 2018) provides, in its article 14, on the treatment of the personal data of children and adolescents, respecting the best interest of these individuals, whose treatment of the data collected must have the consent of the parents or legal guardians, and the information on the treatment of these data, must be provided in a simple, clear and accessible manner (§6), suitable for the understanding of children and adolescents, and their guardians, respecting their limitations intellectual, mental, sensory, perceptual and physical-motor.

As for the theme of advertising in a digital environment, the Consumer Protection Code establishes that it must be conveyed in an easy and clear manner to consumers (Art. 36), in addition, it is forbidden the advertising considered to be misleading or abusive (Art. 37), discriminatory or inciting violence, exploiting fear or superstition, taking advantage of the child's impaired judgment and experience, disrespecting environmental values or inducing consumers to behave in a way that is harmful to themselves (§ 2nd). In this sense, it is clear

that the legislator is concerned about the vulnerability and lack of discernment of the child, who, like adults, is also entitled to the right to protection and education, under the terms of Article 6 of the Consumer Protection Code.

Although there are no absolutely effective means of preventing children and adolescents from accessing adult content on the Internet, nor are there indicative classification systems - since the number of sites hosted on the Internet is astronomical-, Law No. 12,965, of April 23, 2014, known as the "Internet Civil Framework" (in Portuguese "*Marco Civil da Internet*"), attributes to parents the exercise of parental control of content that they perceive as inappropriate, however, it is up to the Public Power, together with internet providers, and civil society, to promote education and information on the use of computer programs, and for the definition of good practices for the digital inclusion of these individuals (Art. 29).

### 3.1 CHILD AND ADOLESCENT PROTECTION LAWS IN BRAZIL

Although there is no specific mention regarding the use of the internet by children and adolescents, there are a number of legal provisions, found in the Brazilian Federal Constitution, as well as in the infraconstitutional legislation, which are essential to the protection of these individuals in the digital environment, as well as reinforcing the need digital inclusion.

Thus, the starting point is the Article 5, of the Brazilian Federal Constitution, which guarantees a set of fundamental rights to all, without distinction, including children and adolescents, coinciding with the rights provided for in the Convention on the Rights of the Child (right to life, freedom, education, health, etc.). The same article reiterates, in item XIV, that everyone is guaranteed access to information, safeguarding the confidentiality of the source (when necessary).

The Federal Constitution also extends social assistance for the protection of children and adolescents (Art. 203, II), in addition to the guarantee of basic, compulsory and free education, and early childhood education in daycare centers and preschools (Art. 208, I and IV), and stipulates that it is the duty of the family, the State and society, to guarantee children and adolescents the fundamental rights already mentioned, as well as to place them safe from any and all forms of negligence, exploitation, violence, cruelty and oppression (Art. 227). It also considers minors under eighteen years of age can't be criminally liable, but subject to the rules

of the special legislation, in short, to the infractions and penalties provided for in the Statute of the Child and Adolescent (Art. 228), and reiterates the duty of assistance, parenting and education of parents towards their minor children (Art. 229).

It is necessary to underline that Art. 227 is a milestone in the protection of children and adolescents, as it recognizes them as subjects of rights, respecting their condition of development, and seeking to ensure the best interest of these individuals, as well as the realization of the fundamental rights provided for in Constitution.

Beyond the aforementioned constitutional provisions, the most important law for the protection of children and adolescents is Law nº 8.069, of July 13rd, 1990, known as the Child and Adolescent Statute, which enshrines the provisions of the Convention on the Rights of the Child (1989), and adds important protection mechanisms and institutions.

Moreover, the Statute distinguishes children and adolescents, considering as children individuals up to 12 years old, and as adolescents those between 12 to 18 years old. It reaffirms the attribution of fundamental rights (Art. 4), guaranteeing them absolute priority in the scope of policies, budget and public services, in order to guarantee their full physical, mental, moral, spiritual and social development. And it also determines the responsibility of all, in ensuring the dignity of children (Art. 18), establishing the principle of preventing threats or violations of the rights of children and adolescents (Art. 70).

Finally, the Statute also regulates the policy of assistance to children and adolescents, of the entities providing this service, in addition to the inspection of this service, establishing a set of protection measures, in the face of the action, omission or abuse of the State, the society, or parents or legal guardians; prescribe crimes and administrative infractions committed by adults against children and adolescents, in addition to infractions committed by them, and the socio-educational measures to be applied; and provides for the establishment of the Guardianship Council (in Portuguese, "*Conselho Tutelar*") - which is a permanent, autonomous and non-judicial organ -, in charge of ensuring the guarantee and access of the rights provided in Brazilian law.

Another important law for the protection of children and adolescents is Law nº. 13.010, of June 26th, 2014, known as the "Menino Bernardo" Law, incorporated into the Statute of

Children and Adolescents, which seeks to restrain the use of physical punishment, cruel or degrading treatments, in the education of these individuals, subjecting parents or guardians to the sanctions and measures provided for by law.

Also worth mentioning: the Youth Statute, which includes adolescents and young adults (people between 15 and 29 years of age), instituted by Law nº 12.852, of August 5th, 2013; the Legal Framework for Early Childhood, which gathers public guidelines and policies related to child protection in the period of the first six years of life (or 72 months of the child's life), instituted by Law nº 13.257, of March 8th, 2016; the Law on Parental Alienation, instituted by Law nº 12.318, of August 26th, 2010, which combats this practice, which seriously interferes in the psychological formation of children and adolescents; and the system of guarantees for the rights of children and adolescents, victims or witnesses of violence, which creates mechanisms for the prevention of violence, and reiterates the duty of full protection for these individuals, instituted by Law nº 13.431, of April 4th, 2017.

Once the main laws for the protection of children and adolescents were presented, it is essential to point out that the list in question is exemplary, so that there are other laws that made significant changes to the Statutes and Codes mentioned here, as well as laws that received international treaties, which contain important protection devices for children and adolescents, such as: the Convention on the Rights of the Child (1989) and its three optional protocols (the first two of 2000, and the third of 2011); the Universal Declaration of Human Rights (1948); the Convention on the Civil Aspects of International Child Abduction (1980); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the American Convention on Human Rights (1969); the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974); the Declaration on the Social and Legal Principles relating to the protection and welfare of children, with particular reference to placement at foster institutions, at the national and international levels (1986); the Additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (2000); between others.

### 3.2 MAIN INSTITUTIONS FOR THE DEFENSE OF THE INTERESTS OF THE CHILD

There are several regulatory institutions that provide services and collaborate with the realization of the fundamental rights of children and adolescents, that is, the protection of the interests of these individuals in the country is extensive, complex and fragmented, therefore, the present research will be limited only the presentation of the main national protection institutions, which ensure the protection and growth of children and adolescents, with emphasis on the following: the National Council for the Rights of Children and Adolescents (CONANDA - in Portuguese "*Conselho Nacional dos Direitos da Criança e do Adolescente*"); the Guardianship Council - institution foreseen in the Statute of the Child and Adolescent -; the Ministry of Women, the Family, and Human Rights; the Ministry of Citizenship; the Prosecutor's Office (in Portuguese "*Ministério Público*"); and the Internet Steering Committee in Brazil.

As for CONANDA, created by Law nº 8.242, of October 12nd, 1991, it is said that this is the body responsible for deliberating and controlling policies for the promotion, protection and defense of the rights of children and adolescents in the country. Among its resolutions, Resolution nº 113, which established the System of Guarantees for the Rights of Children and Adolescents, which has the function of articulating cooperation between the State, civil society and families in favor of the realization of rights, deserves mentioning, provided for in the Statute of Children and Adolescents, through its three areas of action: defense, promotion and control of the realization of human rights (CONANDA, 2006, p. 3).

Another primary body for the protection of the rights of children and adolescents is the Guardianship Council, responsible for ensuring compliance with the provisions contained in the Statute of the Child and Adolescent, and for responding to complaints and requests made by these individuals, their families and communities, providing them with guidance and advice. In addition, the Guardianship Council can also apply the protective measures provided for in the Statute, and request other institutions to provide support for the performance of its functions, assist in the formulation of public policies in favor of better service to the population.

The Public Prosecutor's Office, under the terms of Article 127, of the Brazilian Federal Constitution, is considered the competent institution for ensuring the social and individual interests, which is also responsible for the defense of the legal order and the democratic

regime. Among its areas of competence, there is the area of Childhood and Youth, so that the institution seeks to safeguard the right to development, amongst other rights, and best interest of children and adolescents in the causes in which it advocates or intervenes.

On the other hand, the Ministry of Women, Family and Human Rights gathers, monitors and provides information and indicators on human rights in the country, having a database on matters concerning the protection of children and adolescents (institutional and family reception, adoption, child and adolescent pregnancy, child health and death, child labor, violence against children and adolescents, etc.), through its National Secretariat for the Rights of Children and Adolescents, which coordinates governmental actions and measures concerning children and adolescents, as well as actions to strengthen the Guarantee and Rights System, and public policies aimed at protecting these individuals, as in the National Social and Educational Service System, as well as in the fight against sexual exploitation and abuse.

Similarly, the Ministry of Citizenship, responsible for social assistance in the country, also formulates public policies, services and assistance programs, which contemplate the welfare, child development and guarantee of the rights of children and adolescents, such as the "Bolsa Família" program, which aims to combat extreme poverty, by supplementing the income of families most in need, and which can be extended to depend on the number of dependents who have children and adolescents; or as the Happy Child Program, implemented in the registered municipalities, within the framework of the Early Childhood Framework, with the objective of supporting pregnant women and nursing mothers, as well as children up to 6 years of age, through public actions and policies aimed at expanding rights of this target audience.

It is also worth highlighting the role of the Internet Steering Committee in Brazil, an institution responsible for the allocation of guidelines and strategies on the use and development of the internet in the country and the promotion of research and reports on internet security procedures, and which includes protection of the rights of children and adolescents, through actions and initiatives such as the "Safe Internet" (in Portuguese "*Internet Segura*") initiative, which has sought to raise the awareness of children and adolescents about

the safe use of the Internet, through tips, guides and educational games, together with the Ponto BR- NIC.br Information and Coordination Center.

Finally, it is plausible to point out that the institutions mentioned here do not work only to achieve their objectives, that is, they often work together or with other institutions and organizations - national and international, governmental or non-governmental -, formulating public policies and plans for the realization of the rights of children and adolescents (as in the case of the National Plan to Fight Sexual Violence against Children and Adolescents), creating tools for denouncing cyber-crimes and other crimes (such as "Dial 100" or "Dial Human Rights"), fully monitoring and assisting these individuals.

#### **4 FINAL CONSIDERATIONS**

From what has been discussed so far, it is clear that Brazil still needs to overcome several challenges to fully guarantee the rights of children and adolescents, especially with regard to quality and safe internet access. Its legislation currently confers the primacy of human rights - and of the dignity of the human person -, and the Statute of the Child of Adolescents is the major legal framework for the protection of these individuals, however, it is clear that both the Internet Civil Framework and the General Data Protection Law failed to contain sufficient provisions to promote safe, universal and equal use of the internet by children and adolescents.

Only with true digital inclusion will it be possible to reduce the legal and social gaps between the guarantee and access to human rights, and the enjoyment of the rights -currently undermined- that can be effectively guaranteed, such as those already mentioned: access to information, freedom of expression, and the right to education. Therefore, it is clear that the discrepancies between the rule and the practice end up consisting in violation of the rights of children and adolescents, that is, even though the right to internet access is not formally recognized in the Federal Constitution, the Brazilian State has been acting, through the strengthening of its laws, institutions and public policies, in order to guarantee it, however, it

fails to solve the problem of equal access, which has directly affected the rights of the most vulnerable populations, as it was found during the pandemic.

"Network life", although reduces distances to a click, reminds us at all times that we live in a global village, in a way that what happens in one country, directly reflects in another. It is essential that countries cooperate with each other and increasingly strengthen legal systems, in order to fight cybercrime, either by expanding monitoring or promoting human rights education. Thus, it will be possible not only to tackle structural inequalities, but also to refrain misconduct in a digital environment, which risks the psychological and physical integrity of children and adolescents around the globe.

Even though Brazil has not ratified the Budapest Convention on Cyber Crime (2001), the country has committed itself to meeting the Sustainable Development Goals contained in the UN Agenda 2030, as in the case of Objective 9 - Industry, Innovation and Infrastructure , in point 9.c, which foresees increasing access to new information and communication technologies; and Objective nº 16 - Peace, Justice and Strong Institutions, in point 16.2, which establishes the fight and end to abuse, exploitation, trafficking and all forms of violence and torture against children.

Human rights are not just letters on paper, they are endowed with meaning and sense, however, they must always be endowed with effectiveness, so that it is possible to promote the welfare and development of all, regardless of their condition of being, recognizing vulnerabilities and particularities, and seeking to treat equals equally, and unequals unequally in proportional to their inequality.

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