

Advances in Sexual and Reproductive Rights of Adolescents in Brazil

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Abstract

The paper presents the incorporation of sexual and reproductive rights in the legislation of Brazil, considering the influence of the discussions that involved the United Nations conferences of Cairo and Beijing. Are described and analyzed the Federal Constitution and federal laws, as the Criminal Code and the Code of Child and Adolescent, besides other legal norms of Brazilian executive power bodies, like the Ministry of Health and Ministry of Education, particularly in the areas of health and citizenship. This process allowed the introduction of new health and education practices in public institutions, offered to the entire population -primarily benefiting women and teenage girls and, then, integrating people in situation of sexual diversity -although there are still problems, such as the occurrence of pregnancies and abortions in adolescence and the underreporting of sexual and gender violence. It is concluded that Brazil has incorporated into its laws the precepts of the sexual and reproductive rights more easily due to the proper moment, which coincided with the creation of new legal instruments and the organization of the national state. Nevertheless, it is still necessary translating these legal advances into practical advances in the public policies and policies focused on people's needs.

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Introduction

The right to health is adopted as a human right, associated to the right of human beings to dignity, in the XX century [1], as part of the Universal Declaration of Human Rights of the United Nations in 1948, the International Covenant on Economic, Social and Cultural Rights of 1966[2] and the Constitutional Charter of several countries. The protection of physical and mental integrity is a precondition of the right to health and dignity of human beings, as defined by the Law no. 8080/1990. [3]

In Brazil, the right to health, as part of the social rights achievements, is constitutionally set forth as result of political struggles for the democratization of the country after twenty-one years of Military Dictatorship (1964-1985), when the mobilization of different social segments influence the adoption of a new model of a Social Democratic State. [4] One of these is the 1988 Federal Constitution[13] that sets a new threshold for the development of a democratic State, by granting all citizens over 18 years of age (16 years at present) the right to choose executive representatives at federal, state and municipal levels. It also establishes new parameters for the legislative branch and includes the foundation in respecting the human rights, giving priority to the determinants of citizenship like health, living conditions and social organization factors. [1]

Starting with this moment, the Constitutional Charter includes the discussions held during the Congress of the Brazilian Association of Collective Health and the first National Conference on Health of 1986. This progress highlights the State's responsibility for developing social policies, that emphasize health as a social and individual public right [2], granted based on the current economic and social context [4], that State being now liable for its implementation and protection by using the strategies of health monitoring and promotion.

The new Brazilian Constitution from 1988 gives another step forward in the Brazilians' right to health by proposing to guarantee social and individual access to health through a public healthcare system [5], defining the SUS - Sistema Único de Saúde (U Single System of Health) [3]. The purpose of such a system is to provide health assistance to the Brazilian population, following the principles of the integrality of healthcare, universal access and equal distribution and to overcome regional differences, specifically considering the different epidemiological profiles. By the legislative, the Constitution assumes its implementation jointly with the executive branch, and the judicial branch must ensure its implementation; on short, the right to health for the Brazilian society and its citizens is guaranteed.

Regarding children and adolescents, in particular, the new Brazilian Constitution determines the following:

“ It is the duty of the family, the society and the State to ensure children and adolescents, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom and family and community life, as well as to guard them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.”. [5]

In order to promote this, the Brazilian State shall:

“...promote full health assistance programmes for children and adolescents” [5]

In 1990, the Estatuto da Criança e do Adolescente – ECA (The Child and Youth Statute) [4] is drawn up, aiming at creating a new civil regulatory framework for this social group. The Statute establishes its target audience, comprising individuals between 0 and 18 years of age uncompleted, establishing that the State must grant their right to health:

"The child and the adolescent have the right to protection of life and health through the implementation of social public policies that enable satisfactory conditions for births and for the health and harmonious development of children." [6] (Chap. I, art. 7).

In this sense, the Child and Youth Statute is fundamental in building up the rights of Brazilian children and adolescents. The Statute represents the first legal instrument referring to the children (defined by this law as individuals between 0 to 12 years of age, uncompleted) and adolescents (defined as an individual from 12 to 18 years of age, uncompleted) as citizens of rights. Until this moment, the Law in force in Brazil for this group was the Código do Menor (Minor's Code) of 1979 [7]. The Minor's Code addressed only the children and adolescents under 18 years of age, defining specifically as individuals "in irregular situations" (art.1, §1) such as: considered offenders or convicted of offense, deprived of freedom, victims of violence inflicted by their families or caretakers, in moral danger, without legal representation or assistance due to the lack of a parent or guardian, or not adapted to their families or community [7].

The guarantee of the fundamental rights established by the new Statute it is now based on the principle of human dignity, including not only the right to life and health, but also the right to freedom and respect, and aims the individual integrity of these subjects:

"The child and adolescent have the right to freedom, respect and dignity as human beings who are developing and as subjects of civil, human and social rights provided for by the Constitution and the laws" [6];

The Statute also reinforces that health is a part of the fundamental rights to dignity, under the principles of the right to freedom and respect:

"The right to respect consists of the physical,

psychological and moral inviolability of children and adolescents, including the protection of image, identity, autonomy, values, ideas and beliefs, personal space and belongings" [6].

To cover the entire group of Brazilian children and adolescents as subjects of health rights, ECA indicates general guidelines on how the healthcare treatment for this audience it should be attended:

"...medical assistance to children and adolescents by the Single System of Health (SUS) and the universal and equal access to actions and services for the promotion, protection and recovery of health" [6]

To ensure the democratic process of the State and prevent the concentration of power of some groups, the State's management model of the 1988 Brazilian Constitution defines several mechanisms of political participation at several levels, such as the mechanism of social control and access. [8] This guarantee establishes the integration of different social movements within the set of instruments of direct democracy like referendums, plebiscites and law proposals put forward by the people, as well as their inclusion in the Public Administration through the creation of participatory councils:

"Government actions in the area of social assistance shall be implemented with funds from the social welfare budget, as provided for in article 195, in addition to other sources, and organized on the basis of the following directives (...); participation of the population, by means of organizations representing them in the formulation of policies and in the control of actions taken at all levels". [5]

In the health area, in addition to the federal, state and municipal Health Councils set up to take part in the implementation of health policies, stands out the participation of the professional categories councils [8]. Among these, the Federal Medical Council (CFM) and the Federal Nursing Service Council (COFEN) play a fundamental role due to their technical specificities

required in the healthcare field. Besides these councils, which are directly involved in health management, several other councils, acting either directly or indirectly, also take part in the actions, due to their inter-institutional and broad nature, in order to enforce the right to health: councils related to the environment, infrastructure, etc.

Related to children and adolescents, the Child and Youth Statute (ECA) establishes, with an essential and deliberative role together with the State, the creation of CDCA - Council for the Children and Adolescents Rights, at federal, state and municipal levels. Furthermore, it is established the creation of participatory councils of children and adolescents with local representatives for social control: the Guardianship Councils [6].

Adolescents' Sexual and Reproductive Rights

The concept of reproductive rights starts to be adopted in Brazil after the conferences held by the United Nations in the '90s: the 1994 Cairo Conference on Population and Development [9] and the 1995 Beijing Conference on Women.[10] Both had their declarations ratified by the Brazilian government and have been established as legal landmarks in the area. [11]

The Cairo Conference [9] defined the reproductive health as:

"...a human right and a fundamental element of gender equality" (p.34)

For this reason, the Final Programme of Action agreed to in Cairo determines the following: [9]

"States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health. Reproductive health-care programmes should provide the widest range of services without any form of coercion. All couples and

individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information and education and means to do so" (principle 8).

This approach comes from a consensus reached by the international community on the responsibility of nations for the sexual and reproductive health of their citizens, recommending objectives and action programmes to be adopted for such purposes. Therefore, the Final Programme of Action agreed to in Beijing defines the concept of reproductive rights as follows:

"(...) reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other relevant United Nations consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health (...) the promotion of the responsible exercise of these rights for all people should be the fundamental basis for government and community-supported policies and programmes in the area of reproductive health, including family planning". [10]

According to Nascimento [12], the inclusion of reproductive rights within the human rights, turns the factors associated to sexuality part of the women's health and rights, thus admits the need for public intervention in order to ensure reproductive and sexual health. This influence is perceived not only as an entitlement for the adult women, but also of adolescents, which, in most societies, have an active sexual life, as stated in the final document of the Cairo Conference: [9]

"The reproductive health needs of adolescents as a group have been largely ignored to date by existing

reproductive health services. The response of societies to the reproductive health needs of adolescents should be based on information that helps them attain a level of maturity required to make responsible decisions. In particular, information and services should be made available to adolescents to help them understand their sexuality and protect them from unwanted pregnancies, sexually transmitted diseases and subsequent risk of infertility. This should be combined with the education of young men to respect women's self-determination and to share responsibility with women in matters of sexuality and reproduction. (p.69)[16].

The following year, the Beijing Conference document reiterates the commitment to give full attention to the promotion of relations of mutual respect and equality between men and women and, particularly, to meet the needs of adolescents for information and assistance, in order "to enable them to deal in a positive and responsible way with their sexuality". [10]

The Federal Constitution, in article 5, § 2, states that the international human rights treaties that have been ratified by the Brazilian legislative branch have constitutional force. Thus, in the frame of the sexual and reproductive rights countersigned, Brazilian adolescents automatically become beneficiaries of these rights and the national legislation in force shall apply the new legislative understanding. Regarding the family planning, for example, despite the fact that adolescents are not explicitly mentioned in the Constitution, the group must be also considered as subject of International Law, within the constitutional paragraph on the subject:

"The rights of persons to decide freely and responsibly on the family planning is recognized (...). Based on the principles of human dignity and responsible parenthood, family planning is a free choice of the couple, it being within the competence of the State to provide educational and scientific resources for the exercise of this right, any coercion by official or private agencies being forbidden"(art.226, §71). [5]

Likewise, within the Child and Youth Statute, even without direct references to the terms "sexual and reproductive rights", the directives on general healthcare rights cited in the document should automatically incorporate the right to sexual and reproductive assistance and healthcare:

"(...) promote medical and dental assistance programs for the prevention of illnesses that ordinarily affect the young and campaigns of health education for parents, educators, and students"(chap.1, art.14). [6]

In order to prioritize the school action in the promotion of the children and adolescents' right to health, the Brazilian Constitution clearly mentions that the school must be seen also as a space of promotion of the sexual and reproductive rights integrated in the cited health:

"The duty of the State towards education shall be fulfilled by ensuring assistance to students in all stages of basic education, by means of supplementary programmes providing school materials, transportation, food, and health assistance". [5]

Using the same understanding, the subsequently elaborated Federal Law No. 9394/1996 – Law of Directives and Basis of the National Education [14], determines as responsibility of the schools not only the promotion and guarantee of children's and adolescents' right to health, but also, for the first time, includes in the school curriculum the transversal topics of sexual orientation (education) and gender [15], as follows:

"Sexual Orientation in school should be understood as a process of pedagogical intervention that aims to provide information and to discuss issues related to sexuality, including attitudes, beliefs, taboos and values associated with it. Such interventions occur in a collective environment, different from an individual psychotherapeutic one, and approach the sociological, psychological and physiological dimensions of sexuality. Differentiates itself of the education held by the family,

as it allows the discussions of different views associated with sexuality, without the imposition of certain values on others" (Ministério da Educação, 1997, p. 28).

In addition to educational initiatives, the topic of sexuality during childhood and adolescence in the Brazilian legislation aims to fight against sexual violence, to insure the sexual integrity and to empower the respect for sexual diversity and its manifestations, as well as to combat homophobia. These are fundamental laws, since, one way or another, they tackle the topic of sexuality, starting from the human dignity and physical integrity until the prevention of the different types of exploitation of/and violence against, children's and adolescents' sexuality, gender choices and homophobia. Regarding the prevention in the adolescents' healthcare, the initiative approach refers to the prevention of unplanned pregnancy and sexually transmitted diseases, including AIDS.

"The duty of the State to provide public school education will become effective through guaranteed offer of fundamental education to all students, by means of supplementary programs of school teaching materials, transportation, meals and health care". [14]

"Some of the principles of integral education, in the Further Education Programme are: affirming a human rights philosophy, structured in diversity, and in the promotion of ethno-racial, religious, cultural, territorial, generational, gender and sexual orientation, political stand, and nationality equality, by including the theme of human rights in teacher formation, school curriculums and the development of teaching materials". [16]

Prevention of Violence that Affects the Sexuality of Children and Adolescents

The Federal Constitution, article 227, §4 [5], explicitly mentions the need that State and family assumes the responsibility to combat violence against

children and adolescents. The Child and Youth Statute also encompasses this theme, describing several situations representing crimes against the sexuality of children and adolescents. [6] After the year 2000, several changes were included in the amendments, mainly combating sexual voyeurism, malicious seduction, sexual abuse and violence, and prostitution of children and adolescents.

"To produce, reproduce, direct, photograph, film or register, by any means, an explicit sex or pornographic scene involving a child or adolescent. (...) To sell or offer for sale, a photograph, video, or any other means that contains an explicit sex or pornographic scene involving a child or adolescent. (...) To offer, exchange, make available, transmit, distribute, publish, or publicize by any means a photograph, video, or any other source that contains an explicit sex or pornographic scene involving a child or adolescent. (...) To acquire, possess or store, by any means, a photograph, video, or any other source that contains an explicit sex or pornographic scene involving a child or adolescent. (...) To simulate the participation of child or adolescent in an explicit sex or pornographic scene, by means of adulteration, montage, or modification of video or any other format of visual representation. (...) To entice, harass, instigate, or constrain, by any means of communication, of a child, with the purpose of practicing with the child lustful acts. (...) For the purpose of the crimes described in the Child and Adolescent Statute, the expression "an explicit sex or pornographic scene" encompasses any situation that involves a child or adolescent in explicit sexual activities, real or simulated, or the exhibition of the sexual organs of a child or adolescent for sexual purposes.. (...) Art. 244-A. To subject a child or adolescent, as defined in the caput of the art. 2 of this Law, to prostitution or sexual exploitation" [6]

Before this moment, the Brazilian Criminal Code, including all its amendments up to 2009 [17], in the

articles 213, 215 and 216, describes the sexual crimes, establishing three basic sexual crimes that can be committed against any individual, which obviously includes adolescents: the threat of physical contact with libidinous purposes, forced physical contact and sexual favoritism by hierarchical superiors harassment.

Art. 213. To coerce someone through violence or serious threat, to have sexual intercourse or to perform or allow him to practice other lewd acts: (Writing amended by Law No. 12,015, 2009)

Art. 215. Having carnal knowledge or carrying out other lewd acts with someone, by fraud or other means to prevent or hinder the victim's free will manifestation: (Writing amended by Law No. 12,015, 2009)

Art. 216-A. Embarrass someone with the intention of obtaining sexual advantage or favor, whichever is the agent of its superior condition or ascendancy inherent in the exercise of employment, position or function." (Included by Law No. 10.224, 15 2001)

Besides these, three other articles focus on the crime of sexual contact with adolescents under the age of 14, a group considered particularly vulnerable, defining as illegal the sex, manipulation or voyeurism with these individuals: [24]

Art. 217-A. Have carnal knowledge or carrying out other lewd acts with less than 14 (fourteen) years: (Included by Law No. 12,015, 2009)

Art. 218. Inducing someone under 14 (fourteen) years to satisfy the lust of another: (Writing amended by Law No. 12,015, 2009)

Art. 218-A. Practice in the presence of anyone under fourteen (14) years, or induce him to witness, sexual intercourse or other lewd acts in order to satisfy itself or others lust: (Included by Law No. 12,015, 2009)

Regarding the gender violence, also a highlight theme of the Cairo and Beijing conferences, Brazilian

authorities integrates mechanisms, including the prevention of sexual violence, within those related to violence against dignity, physical integrity and mental health, including the respect towards the sexual diversity. This point is fundamental in the protection of adolescents' healthcare, because in several cases, studies show that sexual contact and practices start in the adolescence period [21], when this group represents a target for repression, inclusively in the school space [32].

Seeking to fight against the gender violence in physical, psychological and behavioral incidents arising from a scarce understanding of the sexual diversity, the Federal Government launches in 2007 the National Public Security and Citizenship Programme [19]. One year later, in 2008, the Second National Plan of Policies for Women [20] emphasizes the right to respect and the need to refer the gender violence issue not only against women but also against diversified expressions of homoeroticism. The debate on establishing a law referring specifically to the homophobic crimes is still ongoing [21], but the topic is gaining social visibility aiming the prevention of violence that affects health and is closely associated with the sexual and reproductive rights of the mentioned minorities. This type of crimes inevitably affects adolescents but also children, since several cases of transsexualism manifests themselves as sexual identity during childhood.

Besides the central Government, can be mentioned that several Brazilian states follow the precepts of combating the gender and homophobic violence, even the most populous ones, São Paulo [22] and Rio de Janeiro [23], that established specific laws (2001 and 2002, respectively); The states practice is followed by numerous Brazilian municipalities [24].

Discussion

In Brazil, the new legislation that followed the 1988 Constitution modernized social efforts in that they

brought the State to take on the role of duty bearer of social rights, including the right to health. This permitted that some public agencies like the Ministry of Health and the Ministry of Education, with their specific attributions, produced federal legislation that included sexual and reproductive rights as a reference framework for objectives to be reached, deriving from the fact that constitutional treaties that deliberate on human rights, when ratified by the government, automatically have constitutional force. These laws are followed by regulations on each area that gain, in conformity with the attribution of the executive branch to care for the right to health, the force of paralegal deliberations, which support their enforcement in the country. The result of this is a complex system of laws that complement one another to provide guidelines for the actions of the State, which, according to the Constitution will be the main conductor of the public health policies.

As to adolescents, the Statute of the Child and Adolescent [6], which regulates the rights of children and adolescents, introduced, for the first time in the Brazilian legislative scenario, the notion of children and adolescents as subjects of civil, human and social rights. This awareness resulted from a historical construction produced by the Brazilian social movements [25] and other social segments, which advanced with their demands on the democratic process, and reached its peak in the 1980's. The result of all these achievements was a reordering of the social space occupied by the so-called social "minorities", previously politically excluded [26], forming political conditions that have become concrete legal changes in the country. The same modernization took place in the reform of the 2006 Civil Code [27], which, in search of gender equality to women, included a series of changes on the moral and structure of the family, taking out old articles that reflected a patriarchal society, founded on the defense of the patriarchal honor by the sexual repression of women. These gains show the Brazilian effort to

promote justice and equality of sexual and reproductive rights, including sexual and gender diversity.

The expansion of the notion of rights to other social groups, has led to the inclusion of the demands of adolescents in the Brazilian legal organization. Taking into consideration the importance of sexual and reproductive rights for the exercise of human rights in general, they have been advocated for the integrity of children and adolescents.

Actually, the Unified Health System was implemented all over the country based on the regulations of the 1990 Law. [3] There is an extensive network of primary healthcare through public health centers, working in the majority of districts of every Brazilian town. For secondary and tertiary assistance, there are reference systems of different complexity according to each area, organized in bipartite commissions, where state and municipal representatives sit, as determined by the law. This free public system is the major provider of healthcare in the nation and is founded on the principles of social welfare, being in the process of expanding its influence to the areas of health monitoring and cofactors associated to health. However, it still needs to grow bigger to be able to cope with all the demands of the population.

Children have preference in the primary assistance segment of SUS, followed by reproductive health assistance offered to women in gynecology, guided by specific programmes for women care. The inter-area communication with Education, Justice and Public Security has not yet been developed as regulations that can serve as organizers of specific actions with clear cut attributions in each sector. Thus, much needs to be done towards sexual and reproductive rights in Brazil and towards the data that reveal the problems: there is a large number of incidents caused by the lack of proper attention to children and adolescents; sexual abuse, particularly in the family, is still largely unreported and frequently unauthorized by the

institutions that deal with children and adolescents, including schools [29]; pregnancy, childbirth and puerperium. These are the main cause of the hospitalization of girls aged 15 to 19 years, answering for 550.283 occurrences among 10 to 19-year-olds, in 2012 alone; abortion in adolescence represents 15% of all abortion cases in the country. [30]

Such data show the wide sexual practice of adolescents without the proper guidance of health and contraception education programmes, which is the major public health problem in the adolescence age range surveyed by the Youth National Plan. [31]

As to physical and/or psychological abuse cases against children and/or adolescents who present evidence of sexual diversity or attributed to them, studies have shown that it is one of the most common types of violence, or bullying, in schools. It occurs in a large number of schools –over 40% of those questioned on the subject, dealing with the adolescents aged between 15 and 18 years [32]. At the same time, records show that homophobic prejudice is one of the main causes of domestic violence, referred to by 72% of the homosexual population. [33]

This reality testifies that the legal framework of the country is more advanced than the implementation programmes. For this reason, constant efforts are made to defend actions supporting public practices, since a large part of the population is assisted by state health and education services. Concerning children and adolescents health and reproductive problems, the country has produced a new instrument to conduct national public policies: on August 5, 2013, Brazil's Parliament enacted the Estatuto da Juventude (Youth Statute), through Law No. 12,852. [34]

The Youth Statute stipulates the creation of the National Youth System to establish the study of the variables that weakened the public rights of adolescents aged between 15 and 25 years and of the factors that led

to this situation. The references to the subject of sexual and reproductive rights in this document are textual, specific and a priority, besides the creation of the youth councils that have deliberative powers, together with state authorities, to devise goals and action plans to solve the vulnerabilities of the existing system. These changes seem to emphasize the topic of sexual and reproductive rights, treated in a more general way in the Statute of the Child and Adolescent, encouraging the participation of representatives of the organized civil society with the State to find solutions at national, state and municipal levels.

Final Comments

The impact of statements on health and reproductive rights of the Conferences of the United Nations was substantial because it coincided with the reorganization of the State and the civil society's movements for participation, which incorporated such guidelines as principles and targets to be achieved. Brazil yielded many advancements for the incorporation of such rights into its public policies, in particular the health policy.

Despite such advancements, the Brazilian society jointly with the State and its set of public services still need to assert such rights in programs and projects conforming to the legislation in effect. In public safety, to prevent domestic violence associated with gender and sex abuse by giving information to the authorities and punishing the perpetrators and separating them from their victims in an attempt to deter them from committing other crimes. In education, to take actions to clarify the community of parents, teachers and students on how to detect such abuses and take the applicable measures. In health, aiming the identification and alert processes to identify risk situations and occurrences.

A huge effort is still required to allow access to guidance for a reproductive planning to support the adolescent sexual practice, and to allow access to

information on the use of contraceptives and condoms to prevent pregnancies, STDs/AIDS, to be provided by health assistance services, schools, community works, or civil organizations. This way, the social conquests that already benefit the adult population will be truly effective and will become social advancements for the enforcement of the rights of the Brazilian children and adolescents.

The initiatives to solve problems related to sexual and reproductive issues in Brazil will be more efficient if inter-area and inter-institution efforts are exerted and if priorities are reestablished. The creation of the Youth Councils and National Youth System, as tools for performance and surveillance respectively, may be a landmark for more coordinated actions of the society towards the State, actions which were not being performed by the Councils for the Children's and Adolescents' rights only. Twenty years after the Cairo Conference, Brazil, in this 21st century, should put the significant advancements of the legislation related to social and health actions into practice.

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