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# Rights of children, adolescents, and young in the Brazilian state constitutions: comparative analysis towards doctrine of integral protection*

## *Os direitos de crianças, adolescentes e jovens nas constituições estaduais brasileiras: análise comparativa à luz da doutrina da proteção integral*

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**Abstract:**

In this article I aim to develop a comparative analysis of the state constitutions in Brazil, regarding the perspective of the integral protection doctrine, in order to identify how the legal guarantees of children, adolescents and young people were standardized. Based on documentary and bibliographic research, I carry out the analysis of three aspects: the textual structure of integral protection provided to children and adolescents; the forms of inclusion and exclusion of the youth category as subjects of rights; and, finally, an analysis of the categories and the language used in some constitutions to reproduce minorist ideas within the "new" rights. I conclude that state constitutions are legal documents that need to be better known and used by professionals in the legal field and the safety net, but that their contents bring both advances, in comparison with the 1988 Federal Constitution, and worrying measures that legitimize exclusion of rights and stigmatization of children, adolescents, and young people.
**Keywords:** Rights of children and adolescents. Youth`s rights. State constitutions. Doctrine of integral protection. Minorism

***Resumo:***

*No presente artigo objetivo desenvolver uma análise comparativa das constituições estaduais brasileiras à luz da doutrina da proteção integral, de modo a identificar de que modo foram normatizadas as garantias jurídicas de crianças, adolescentes e jovens. Com base na pesquisa documental e bibliográfica, realizo a análise de três aspectos: a estrutura textual da proteção integral assegurada às crianças e adolescentes; as formas de inclusão e de exclusão da categoria juventude como sujeitos de direitos; e, por último, uma análise das categorias e da linguagem usada em algumas constituições para reproduzir ideários menoristas por dentro dos "novos" direitos. Concluo que as constituições estaduais são documentos jurídicos que precisam ser melhor conhecidos e utilizados pelos profissionais do campo jurídico e da rede de proteção. No entanto compreendo que seus conteúdos trazem tanto avanços, em comparação com a Constituição Federal de 1988, quanto medidas preocupantes que legitimam a exclusão de direitos e a estigmatização de crianças, adolescentes e jovens.*
***Palavras-chave:*** *Direitos de crianças e adolescentes. Direitos das juventudes. Constituições estaduais. Doutrina da proteção integral. Menorismo.*

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## 1 Introduction

In 2019, Brazil and the world celebrated the 30th anniversary of the United Nations Convention on the Rights of the Child, which emerged in 1989 and was promulgated in the national territory via Decree No. 99,710/1990. This was also the year of celebration of the thirtieth anniversary of most Brazilian state constitutions, in force since the year after the promulgation of the Constitution of the Federative Republic of Brazil (CRFB), in 1988, with the exception of the states of Amapá and Roraima, which had their constitutions in force in 1991, in addition to the Federal District , which approved its Organic Law only in 1993.

This context of the late 1980s and early 1990s is historically marked in the political-legal field of the rights of children and adolescents[1] by the adoption at the international and national level of a new paradigm of socio-state and normative treatment for this social group, that of full protection, based on the idea of recognizing children and adolescents as subjects of rights and people in a peculiar condition of development.

However, more than 30 years after this historical movement, attention to the molding that such a paradigm assumes in the legal system needs to encompass a careful look at the configurations assumed in the constitutions of the 26 states of the federation and in the Organic Law of the Federal District. When jurists and other agents make use of the normative repertoire of full protection in Brazil, the common practice is to work with the dictates of the CRFB, the Statute of the Child and Adolescent (ECA – Law No. 8,069/1990), as well as the United Nations Convention on the Rights of the Child of 1989 (promulgated via Decree No. 99,710/1990) and, more recently, the Youth Statute (EJUVE – Law No. 12,852/2013). But almost never the analysis of the content present in the state constitutions.

And it is these state regulations, in addition to the specific one of the Federal District, that have a direct influence on the performance of state and municipal agents and institutions, including the Rights Guarantee System that brings together the different services for children, adolescents and young people. Therefore, in this work I seek to problematize what are the normative contents of the rights of children, adolescents and young people present in the state constitutions and how they are aligned or not with the doctrine of full protection in force in the CRFB.

[1]This is where juvenile rights come in, institutionally and normatively recognized in Brazil throughout the first decade of the twenty-first century, as I will delve into later in this article.

The focus of the analysis is the dogmatic aspect, that is, the normative text present in each state constitution, in addition to the Organic Law of the Federal District. To this end, in the first section, I made a methodological approach to data collection centered on documentary and bibliographic research, in order to gather the content of each legal document to proceed with the comparative analysis supported by the theoretical and normative dictates of the doctrine of full protection.

In the second section, I address the methodological basis for the analysis of normative texts based on the study of comparative law. In the third section, I address the theoretical and normative foundations of the Doctrine of Full Protection, with emphasis on the content present in the CRFB. In the fourth section, I discuss the comparative analysis of the full protection present in the state constitutions, related to the rights of children and adolescents. In the fifth section, I bring the reflection on the content that exists or not in relation to the rights of young people within the scope of state constitutions. And, in the sixth section, I discuss how the clashes between the philosophies of administration of the rights of children, adolescents and young people in the normative body of state constitutions, paying attention, above all, to the renewals of minorism and the problems for the applicability of rights. At the end, I present the final considerations with concluding observations on the elements dealt with throughout the article.

## 2 Comparative law as a method of analysis of normative texts

The exercise proposed in this article is to compare different normative texts based on the constitutional parameters in the doctrine of full protection. In addition to the documentary research itself, necessary for the gathering of legal documents, it was important to appropriate the comparative law method, so that, through comparison, it was possible to identify similarities and differences in each legal diploma, based on previously defined variables (Maia; Jacintho, 2018).

According to Heinen (2017), The method of comparative law has been used for the study of the foreign legal system in order to enable its knowledge and analysis, in addition to the comparative relationship with another legal system, almost always the national one of the jurist. Thus, it is a "way of producing knowledge from the comparison of two or more institutes or rules of different positive law, in order to clarify them through confrontation, or through it seek to offer legal solutions" (Heinen, 2017, p. 174).

However, as the aforementioned author rightly addresses, the method is not limited to application only in the relationship between the national and foreign legal systems, since the central issue here is the ability to offer subsidies for the analysis of two or more legal regimes, including the rights produced by different federated entities, especially between the federal and the state.

With this, I use the method known as *Common Core* (Dutra, 2016) to identify normative points that are similar (or not) in various legal documents of a state nature to prescribe the rights of children, adolescents and young people, and taking as variables the normative elements that make up the doctrine of full protection received by the CRFB, which is detailed in the next session.

This approach of the *Common Core* It focuses on a purely dogmatic analysis, without entering into issues related to the historical context of the production of the normative. Also, and for the specific case of the article, it does not aim to analyze the complete content of each constitutional text, but only those related to the main subject, and focusing on the identification of points that are shared or divergent between legal documents.

In this analysis process, it was essential to carry out a careful reading of the normative text of each state constitution, and of the Organic Law of the Federal District, aiming at the decomposition of the data and, subsequently, the confrontation between the objects. Thus, it is possible to identify the similarities and differences between the elements of the comparison, and, above all, the normative trends (or predominant standards), which are close to or diverge from the dictates of the CRFB. Afterwards, there was a categorization into three major nuclei (full protection, youth and minorism) that are addressed in topics 4, 5 and 6 of this article.

## 3 The integral protection of children, adolescents and young people in the CRFB: reference parameters for comparative analysis

The inscription of full protection in the CRFB, in Articles 227 and 228, has the historical mark of the protagonism of civil society in the formulation of popular amendments[2] which served as the basis for the normative text subsequently approved. This, of course, is immersed

[2] These are the Popular Amendment No. 01, presented on August 3, 1987; the Popular Amendment presented by three entities linked to the Catholic Church (National Conference of Bishops of Brazil; Catholic Association of Brazil; and, Caritas Brazil); and the Popular Amendment entitled *Child, National Priority* (Romão, 2016). The texts contained in these popular amendments were the basis of the content present in Article 227. This, too, taking into account the contribution of the amendments proposed within the *Subcommittee on the Family, Minors and the Elderly*.

in a context of social mobilization for the dispute over the constitutional text in the Constituent Assembly and, at the same time, for the sensitization of society and the State for the change in the legal treatment defined for children and adolescents, in order to break, even if formally, with the doctrine of irregular situation and its dictates present in the Minors Code. of 1979.

According to Romão (2016) and Vogel (2009), In this period of the 1980s and early 1990s, there is a clear confrontation between two interest groups that will engage in political-ideological clashes in the Constituent Assembly and during the elaboration of the ECA – and which, in fact, last until the present day. On the one hand, the so-called *Minors*, based on the defense of the maintenance of the 1979 Minors Code, and, with that, the Doctrine of Irregular Situation, only adapting the infra-constitutional document to the dictates of the new constitutional commandment. On the other hand, the *Statutory Staff*, which not only fought for the repeal of the Code, but for a radical change with the proposition of a new legal framework for the citizenship of children and adolescents, based on the paradigm, doctrine and/or theory of full protection (Veronese, 2015), although formally maintaining some measures inaugurated by the Minors Code, especially in relation to the legal-state treatment of adolescents who have committed infractions[3]. But, as I will detail later, the alleged victory of the statutory members in the CRFB and the ECA did not necessarily occur in its entirety within the states and the Federal District[4].

The constitutional content of full protection is embodied in Article 227 of the CRFB. In its textual form, this provision indicates, right at the beginning, that it is the only constitutional commandment of obligation (and not of right), or duty, to three instances: the family; society; and the State. There is no need to carry out an evaluation of the order of preference or the sequence of those responsible. What there is is the affirmation of the simultaneous co-responsibility of the three instances – and, in the ECA, added by the community, in Article 3. Nowadays, the reading of this precept poses the challenge of conceiving the family from the principles of pluralism of family arrangements and the democratic condition of intra-family

[3] According to Francisco, Lima and Groppo: "[i]t is important to emphasize the importance of the 1979 Minors Code – Law No. 6,697 – for this debate, as several provisions of this Law were maintained [in the ECA], especially in the special part, aimed at young people in conflict with the law. For example, the principles of psychosocial study of the lives of young people were maintained to support the judge in the application of a certain sentence, agility in the procedural investigation, in order to avoid the feeling of impunity of the offender, as well as the possibility of applying more lenient and more reasonable accountability measures, through the measures of Assisted Liberty and Semi-freedom" (2020, p. 13).

[4] There are different fronts, currently, of disputes between minors and statutory students. The classifications and modes of action are involved with different logics of appropriation of the norms related to children and adolescents, especially the ECA. On the subject, see: Fonseca (2001); Fonseca and Cardarello (1999); Miranda (2019, 2020); Oliveira (2014, 2016, 2018, 2019); Souza, Albuquerque and Aboim (2019); Schuch (2009).

relations (Dias, 2007; Moraes, 2013), being the basis of society, with prescriptions of rights (Art. 226) and duties (Art. 227, among others) in the constitutional text (Silva; Gonçalves; Fabriz, 2014). At the same time, to understand society as a myriad of agents and instances that need to be increasingly identified and summoned to think about ways to materialize the guarantees of the rights of children, adolescents and young people in their activities, such as companies, media and banks[5].

In a complementary way, Article 227 of the CRFB establishes the principle of absolute priority for the fulfillment of a non-exhaustive list of fundamental rights for children, adolescents and young people, which is embodied, as Cabral (2012), as the clearest face of the incorporation of the theory of full protection in the national legal system, in order to recognize such people as subjects of rights and to require the filtering of infra-constitutional norms. The purpose of the principle of absolute priority in the constitutional text is to achieve full protection by ensuring primacy that will facilitate the fulfillment of the fundamental rights of children and adolescents listed in the *Caput* of the article, and then renewed and detailed in Article 4 of the ECA[6] (Amin, 2010).

Well, after the analysis of the historical and referential content of the *Caput* of Article 227 of the CRFB and its developments in the ECA, what follows, whether in the eight paragraphs of the aforementioned constitutional provision, or in Article 228, is an agenda of measures that aim to detail the main rights to be ensured from the perspective of protection of the peculiar condition of development of children, adolescents and young people. Thus, this permeates: comprehensive health care (Par. 1, incs. I, II and III), including aspects related to accessibility for people with disabilities; special protection in relation to work (minimum age for work and the protection of the work of adolescents and young people), infractions and socio-educational measures, family life, care for drug and drug addicts, coping with sexual violence and specific measures for the juvenile public.

[5] In a complementary way, Romão observes that "society, as co-responsible for the realization of the rights of children and adolescents, can participate in this process of guaranteeing rights in two ways: in a diffuse way, without ownership, or, through participatory channels of the public power, in bodies that act in the System of Guarantee of Rights, such as the Rights Councils and the Guardianship Councils, whose members are elected by society to act in the protection of childhood and adolescence" (2016, p. 74).

[6] Regarding the content of Article 4 of the ECA, and more specifically of its sole paragraph, which delimits four lines of concrete application of absolute priority, Fonseca adds: "[t]he *guarantee* of absolute priority in the text of the Statute – Article 4, sole paragraph – a list of obligations that is merely illustrative, because eventually there may be some other hypothesis not listed that requires manifestation in absolute priority" (2011, p. 19).

## 4 Configurations of the standardization of full protection in the states and the Federal District

The 26 states and the Federal District have different forms of configuration of the normative text reserved for the rights of children, adolescents and young people within the scope of their political constitutions and, in the case of the Federal District, of its organic law.

In most of the federative entities, that is, in 15 of them[7], there is a literal reproduction of the text present in *the caput* of Article 227 of the CRFB, in order to reinforce the understanding of full protection with absolute priority and co-responsibility. In these constitutional texts at the state and Federal District levels, there are a few specific changes in the normative text that do not interfere with the foundations of the theory of full protection received in the CRFB.

As examples, it is important to note the inclusion of the term *municipalities*, along with State, in the *caput* of Article 171 of the Constitution of the State of Goiás[8], and, in the Organic Law of the Federal District, the expression *vexation* among the forms of rights violations to which children and adolescents must be protected. In the first example, the presence of municipalities reinforces the aspect of co-responsibility present in the theory of full protection, even though the term State does not necessarily refer only to the state government, since the most appropriate reading, based on the CRFB, is the inclusion of all state entities in terms of federative levels (Union, states, municipalities and the Federal District) and powers (Executive, Legislative and Judiciary). In the second example, the inclusion of the category of vexation does not stand out, but rather the fact that the normative document only mentions children and adolescents, excluding young people, as occurs in other normative documents, as we will analyze later. A second group of state constitutions presents almost the entire text of full protection existing in the *caput* of Article 227 of the CRFB – this without taking into account the category *of young people*, whose analysis we will analyze later – but fails in the fact that it attributes the responsibility for guaranteeing rights only to the State and, in some cases, to the family[9]. There are, in total, six state constitutions structured in this way, most of them (four of

[7] They are the following states: Acre (Art. 210); Amazonas (Art. 242, par. 4); Ceará (Art. 272); Federal District (Art. 267); Espírito Santo (Art. 199); Goiás (Art. 171); Maranhão (Art. 252); Mato Grosso do Sul (Art. 206); Pará (Art. 296); Paraíba (Art. 247); Paraná (Art. 216); Piauí (Art. 248); Rio de Janeiro (Art. 45); Rio Grande do Norte (Art. 157); and, Sergipe (Art. 253).

[8] "Article 171. The State, the Municipalities, society and the family shall ensure to the child and adolescent, with absolute priority, the realization of the rights to life, health, housing, leisure, protection at work, culture, family and community life, under the terms of the Constitution of the Republic [...]" (GOIÁS, 2019, n.p.).

[9] These are the following constitutions: Amapá (Art. 304); Bahia (Art. 283); Mato Grosso (Art. 13); Minas Gerais (Art. 222); São Paulo (Art. 277); and, Tocantins (Art. 121).

them) only indicating full protection as an exclusive duty of the State. This ends up weakening the idea of co-responsibility and the concentration of legal attributions. To the extent that one of the assumptions of the nationalization and constitutionalization of the theory of integral protection is the integration of the family and society, in addition to the community, as co-responsible in the task of guaranteeing rights, the omission of these agents in the text of the state constitutions reifies the centralization of the power instituted in the figure of the state entity, something striking in the Doctrine of Irregular Situation, and that with the Doctrine of Full Protection it was formally repealed.

Among this list of state constitutions, there is a group that, despite reducing the range of co-responsible agents, expands the range of subjects to be ensured to absolute priority in the fulfillment of rights. This is the case of the Constitution of the State of São Paulo, which establishes in Article 277, *caput*, that "[t]he Government and the family are responsible for ensuring that children, adolescents, young people, the elderly and the disabled are guaranteed absolute priority [...]" (São Paulo, 2020, s./p.), then reproduces the same text present in the *caput* of Article 227 of the CRFB regarding the rights to be promoted and the protection against forms of rights violations. As can be seen, in addition to the fact that it does not mention society, restricting the relationship to the State and the family, there is the inclusion of two social groups in the list of recipients of the absolute priority of the fulfillment of rights: elderly people and people with disabilities. This is reproduced in other state constitutions, such as those of Amapá (Art. 304), Paraná (Art. 216), Rio de Janeiro (Art. 45) and Rondônia (Art. 141).

With the exception of the Constitution of the State of Rondônia, which we will analyze in detail later, the other four state constitutions mentioned above constituted or updated their normative texts dialoguing with the absolute priority standardized at the infra-constitutional level for the elderly (Art. 3, Paragraphs 1 and 2 of Law No. 10,741/2003, known as the Statute of the Elderly). On the other hand, it goes beyond what is established by the regulations related to the rights of persons with disabilities, since none of them – and, in particular, Law No. 13,145/2015 (Statute of Persons with Disabilities) and the Convention on the Rights of Persons with Disabilities (enacted via Decree No. 6,949/2009) – determines absolute priority as a legal principle for the interpretation and application of the rights of persons with disabilities. As a result, these state constitutions expanded the range of subjects with rights to full protection, in order to enable an instrumental use of the legal paradigm originally circumscribed to children and adolescents, to contemplate, with its foundations, other social groups recognized as vulnerable and able to special protection of their rights.

The third group of state constitutions has as a common point the distinction of the normative text from that present in the CRFB, even without accepting the theory of full protection. They can be classified in two ways. One of them is configured in the Constitutions of the States of Roraima (Art. 172) and Santa Catarina (Art. 187), since both do not support in their normative texts the paradigm of full protection under the terms received in the CRFB, but refer to the fact that it must be observed as "provided for by the Federal Constitution and defined by law" (Roraima, 1991, p. 99). Thus, and even if the express content does not address full protection, the co-responsibility of the agents and absolute priority, among other aspects, it refers to the CRFB to indicate that what is contained therein is also observed as content indirectly incorporated into the state constitutions.

A second subgroup, within the third group of state constitutions, are those that disagree with the text of the full protection of the CRFB. These are five state constitutions[10] which have a legal content that, in addition to not mentioning the central categories of the theory of full protection, work on the legal paradigm from another perspective. The most emblematic case is that of the Constitution of the State of Rondônia, whose normative text reserves the reception of the co-responsibility for protection and support only to the elderly (Art. 141), without any mention of the same measure to children, adolescents and young people. In the other state constitutions, the presence of the obligation for the State to develop comprehensive care programs for children and adolescents, sometimes, as in Alagoas (Art. 230) and Tocantins (Art. 122), restricted to health, is the element that interconnects them with the theory of integral protection. Finally, there is the case of the Constitution of the State of Rio Grande do Sul, which establishes, in Article 261, Item I, a priority of access to programs of a social nature for a specific age group within the group of children and adolescents, that is, under 14 years of age, in order to generate a priority of priority that differs from that established in the CRFB and the ECA.

## 5 Rights of youth: between absences, hermeneutics and affirmations

Only 12[11] of the 27 federative entities included in their state constitutions legal guarantees aimed at the youth public. This represents less than half of the states, and even in the Federal

[10] The constitutions of the states of Alagoas, Pernambuco, Rio Grande do Sul, Rondônia and Tocantins.

[11] These are the states that contemplate youth in their state constitutions: Espírito Santo; Maranhao; Stop; Paraiba; Paraná; Pernambuco; Piaui; Rio de Janeiro; Rio Grande do Norte; Rio Grande do Sul; Santa Catarina; and, São Paulo. Note that there is no representative from the Midwest region, and from only one state in the North region, while the South region has all the states. The Northeast is the region with the most representatives, a total of five.

District the rights of young people are absent in the Organic Law. But, after all, what is this situation due to? Although it is important to analyze each context to understand the correlations of power in the legislative houses, and the possibilities and limits of political incidence of youth movements and partner agents, one issue seems to be objectively present: the difficulty of capillarizing/distributing the institutionality of the national youth policy among the federated entities, especially after the Lula-Dilma administration in the federal government.

This had already been noted by Freitas (2019), Castro and Macedo (2019) and Oliveira (2020a), emphasizing, on the one hand, the importance of the formation of the legal framework for youth, with emphasis on Constitutional Amendment No. 65/2010, through which young people were included as subjects of rights covered by the Doctrine of Full Protection, in view of the insertion of the youth category along with that of children and adolescents in Article 227 of the CRFB. On the other hand, the existence of the legal framework and institutionality in the[12] federal government had greater diffusion among the federative entities during the 10 years (2005-2015) of administrative conduct by the governments of the Workers' Party (PT) (Lula and Dilma), but even so, not achieving the same capacity for institutional capillarization as the rights and public policies of children and adolescents. And this is also reflected in the low number of state constitutions that have started to expressly include the youth category .

It can be argued that the constitutional framework for the rights of children and adolescents has already been in existence for 32 years, while that for the rights of young people has just completed 10 years, which certainly influences the capacity for institutional capillarization. In any case, other elements must be analyzed. One of these aspects is precisely the political-ideological association between the youth agenda and left-wing governments, which generates resistance to the implementation of measures when the political agents are from center, right, or far-right governments.

The second aspect is the low requirement of compliance with the main infra-constitutional frameworks of youth, that is, the Youth Statute (EJUVE – Law No. 12,852/2013) and the National Youth System (Sinajuve – Decree No. 9,306/2018), as they were regulated. In the case of the EJUVE, in none of its 48 articles is there mention of full protection and/or the principle of absolute priority of compliance with these rights, as occurs in the ECA, in Article 4, and even in the Statute of the Elderly, in Article 3. On the other hand, Sinajuve, the mechanism

12 This institutionality emerged in 2005 with the creation of the National Youth Secretariat and the National Youth Council. And, in the same year, the creation of the National Youth Inclusion Program (Projovem). From 2008 onwards, the National Youth Conference was also held, with new editions in 2011 and 2015. Finally, in 2018 there was the creation of the National Youth System (Sinajuve).

created to ensure the integration between the different federated entities and civil society for the management of public policies for youth, reduces the potential for enforceability of its normative text due to the voluntary, rather than mandatory, nature of the adhesion of the federated entities, see Article 2 of the Decree, and repeating the voluntary nature of the transfers of resources from the federal government for the funding of public policies for youth, see Article 16 of the aforementioned legal diploma (Castro; Macedo, 2019; Oliveira, 2020a). The problem with working on the standardization of these measures from the perspective of voluntary compliance is that their implementation or continuity becomes totally dependent on the liberality of interests of the public manager or public manager, which, even for this reason, generates legal uncertainty for young people, since there is no guarantee of continuity, nor of enforceability for compliance.

And there is still a third motivating aspect: that of the social, economic and political crisis in which the Brazilian State has been immersed since 2014, with greater aggravation from 2016 onwards. In this context, Constitutional Amendment (EC) No. 95/2016, the so-called Spending Ceiling, a supposed remedy to the fiscal problem, became a measure of progressive strangulation of the State's ability to fund social demands, given the limitation of the growth of the budget of the year after the inflation limit of the previous year, as prescribed by the aforementioned EC, specifically in Article 107 of the CRFB. With a State increasingly limited in its ability to expand expenses to meet social demands, several agendas, such as that of youth, were affected by the decrease in public investment.

In any case, the fact that 15 of the 27 federative entities have constitutions or, in the case of the Federal District, an organic law that does not expressly mention the rights of young people, even after 10 years of the constitutional change brought about by EC No. 65, does not necessarily mean that its normative texts cannot be interpreted in a way that is more consistent with the dictates of the CRFB. Firstly, because a constitutional filter must be made, that is, of hermeneutics of state constitutions based on the hierarchical primacy of the CRFB, which generates a control of the constitutionality of the normative texts and, consequently, the possibility of compatibility between the provisions of Article 227 of the CRFB and the texts of the state constitutions. The most appropriate thing would be to hermeneutically provide the same list of rights offered to young people in the CRFB to those present (or not) in the state constitutions, to children and adolescents, given the mandatory nature of absolute priority. This would also apply to the Constitutions of Espírito Santo (Articles 198 and 199) and Santa Catarina (Article 187), which promoted constitutional amendments to include the rights of

youth, but apart from the full protection recognized only for children and adolescents, that is, in a divergent manner from what the CRFB outlined, with the constitutional filter being applicable.

Secondly, there is the interesting case of the Constitutions of Ceará (Art. 276, par. 2, item IV), Mato Grosso (Art. 234) and Mato Grosso do Sul (Art. 207) that since their promulgation have used the term young people – and, in the case of Ceará, young women – even if in a literal sense of semantic similarity with adolescent. For Abramo (2011), this linguistic practice of encompassing youth in the period of adolescence or of working both as similars, was one of the reasons for the late recognition by the State of the importance of youth policies and of subjects who self-recognize themselves as young people[13]. However, it is necessary to pay attention, as Veronese (2020) does, that after the formation of the legal framework for youth, the categories of subjects of adolescent and young people's rights should no longer be treated as similar. The exception is the *young-adolescent* category, used by the EJUVE to regulate legal measures aimed at people between 15 and 18 years of age (Art. 1, paragraph 2).

It is worth noting, as Yrigoyen Fajardo (2009) does – when analyzing the constitutional and international rights of indigenous peoples and the partial infra-constitutional adoption of the new legal paradigm of differentiated citizenship – when identifying the most common use by managers and servants of the State of infra-constitutional norms that are not consistent with the new constitutional and international paradigms of indigenous peoples, that the same also occurs with the scenario of youth rights. The construction of arguments and decisions based on the constitutional hermeneutics of infra-constitutional rights is still something quite restricted to the universe of professionals in the Justice System and jurists in general, while public administration agents tend to resort more to the literal use of the rules, even for fear of suffering administrative or judicial punishments if they "extrapolate" the legal precepts. Certainly, this scenario has changed in the field of services and professionals that make up the protection network for children, adolescents and young people, especially due to continuing education initiatives. Even so, it is still a challenge to raise awareness and technical qualification of agents

[13] Koerich and Vidal also comment that "[i]n terms of the political agenda, the theme of youth appears with emphasis as early as the 1990s from the 'efforts of researchers, international organizations, youth movements and municipal managers who emphasized the uniqueness of the social experience of this generation of young people' (Brasil 2006). However, as most of the discussions on the subject in this period focused efforts on the construction of the Statute of the Child and Adolescent, actions and policies aimed at youth were restricted to serving young people up to 18 years of age" (2020, p. 7).

of public power, and of civil society itself, on topics such as: constitutional hermeneutics of rights; controls of constitutionality and conventionality.

On the other hand, based on the analysis of the 12 state constitutions that expressly ensure young people the condition of subjects of rights, five of them[14] basically insert the word *youth* into the pre-existing constitutional text, without adding new legal guarantees specific to the youth field, as the CRFB does, in Article 227, paragraph 8.

At the same time, five other state constitutions[15] ensure rights expressly defined as economic, social and cultural, the so-called ESCR. The normative design of these five state constitutions that ensure specific ESCR for young people does not find reciprocity in the CRFB or in the EJUVE. The first welcoming such rights in the *caput* of Article 227, but together with children and adolescents. The EJUVE, on the other hand, does not exhaustively express a designation of ESCR, and even so it has between Articles 7 and 34 a set of rights that can be classified in this way. It seems that the normative design of these state constitutions is more closely related to that observed in the Ibero-American Convention on the Rights of Young People (hereinafter the Convention), the only international treaty in this segment and which came into force in 2008, but Brazil only ratified it in 2014. In this Convention there is an express delimitation of the ESCR, in its Chapter III (Articles 22 to 34), which provides a unique – and so far unique – adaptation of the contents contained in the International Covenant on Economic, Social and Cultural Rights, of 1966, and other legal documents of the Inter-American Human Rights System, to the specificities and demands of Ibero-American youth (Mancisidor, 2013).

It is worth emphasizing, as Cruz Martínez (2018) and Mancisidor (2013) do, that ESCR is among the main demands of youth movements in Latin America and the Iberian region of Europe, with emphasis on issues such as *university education* and *access to employment*, which are directly related to the demand for "*effective creation of conditions that allow them to have a dignified life*" (Cruz Martínez, 2018, p. 226). In addition, the prioritization of ESCR in state constitutions that recognize them to the youth public can be noted, while the omission of treatment of legal aspects related to civil and political rights can be indicated.

This does not prevent us from understanding the normative design of the recognition of youth ESCR as a fundamental measure to promote the rights of young people and to expand the normative legacies established in the text of the CRFB for the youth public. Among the

14 These are the constitutions of: Espírito Santo (Art. 198); Paraíba (Art. 247); Rio de Janeiro (Art. 45); Rio Grande do Norte (Art. 157); and, São Paulo (Art. 277).

15 In the following states: Maranhão (Art. 252-A); Pará (Art. 296, par. 8); Paraná (Art. 225-A); Pernambuco (Art. 234-A); and, Rio Grande do Sul (Art. 260, item VIII).

ESCR prescribed in the state constitutions, most of them are related to: professional training; access to the first job; education; leisure; and, social security. Therefore, these are measures that find reciprocity of content in the EJUVE and in the Convention – in these two, inclusive, with greater detail of the measures to be adopted to realize the rights – and reinforce the obligation to contemplate the specificities of youth in the ESCR.

## 6 Minorism and "new" rights[16]

The reformist movement of the socio-legal-state treatment of children and adolescents in Brazil, existing since the 1980s, has always coexisted and conflicted with the agents who conceive, explicitly or implicitly, this same treatment from a minorist perspective, and even in the internal contradictions of the reformist movement to reify minorism. As Londoño (1991) and Miranda (2019) point out, the social imaginary about the figure of the minor cannot be conceived only from the normative bias that materialized it from the 1927 Minors Code and the other legal-institutional instruments that succeeded it. Rather, as a movement, formally constituted at the end of the nineteenth century[17], which was "winning the minds and hearts of the common citizen [...] based on discursive practices that grounded (and still underlie today) the daily experiences of those who reproduce – consciously or unconsciously – a way of perceiving being a child and being an adolescent" (Miranda, 2019, n.p.).

Oliveira (2020b) develops a critique of the time frame of the nineteenth century as the beginning of minorism. For the author, minorism is forged in an earlier period and interspersed in the history of the colonization of Latin America and in the relations unleashed between European colonizers and peoples classified as racially inferior to justify economic, political and sexual exploitation, such as indigenous and black peoples, including their children. Therefore, the minorist movement is part of the colonial/modern machinery of adultcentrism[18] placed at

16 According to Wolkmer (2003), the "new" (with quotation marks) rights are the infra-constitutional norms that emerged after the promulgation of the CRFB in 1988. And so, "even if the so-called 'new' rights are not always entirely 'new', in fact, sometimes, the 'new' is the way of obtaining rights that no longer passes through the traditional channels – legislative and judicial – but comes from a process of specific struggles and conquests of plural collective identities to be recognized by the State or by the constituted public order" (2003, p. 20). In this article, in addition to this conception of the "new" addressed by the author, I also add another, that of questioning the extent to which certain legal contents are, in fact, new or whether they are renewing old legal paradigms.

17 For Londoño "[i]n the end of the nineteenth century, looking at their own country, Brazilian jurists discovered the 'minor' in poor children and adolescents in the cities, who, because they were not under the authority of their parents and guardians, were called abandoned by jurists" (1991, p. 135)

18 Adult-centrism can be characterized as the power relationship between subjects classified as adults and those defined as non-adults (children, adolescents and young people), with material, legal and symbolic implications. On the subject, see: Amador (2013); Duarte (2015); and Oliveira (2021).

the service of the new pattern of power established with the invasion of Latin America. For this reason, Oliveira (2020b) conceives the social imaginary of minorism as part of the coloniality of adult-centric power, precisely to emphasize the historical character prior to the nineteenth century, and which began at the end of the fifteenth century, and which was and continues to be fundamental to shape the practice and ideology still in force today from a minorist perspective, even in the uses of the "new" rights.

It is about the fluid and transformational character of minorism or, in my view, the coloniality of adult-centric power, that we need to pay attention to when analyzing discourses and practices, including normative ones, that seek to construct new meanings and processes of rupture with previous movements. In the specific case that we deal with in this article, the political clash that occurred between minorists and reformists to dispute the normative text of the CRFB and the infra-constitutional norm that would become the ECA. These clashes, of course, were not restricted to the federal/national level of the standardization of rights, but took shape in the other spaces created to legislate on such measures, including in the state constitutions and in the organic law of the Federal District.

The normative texts of these legal documents present the legal synthesis of the political clashes. Among the questions that could be analyzed to understand these clashes, the one that most caught my attention were the categories used to construct the meanings about being a child and being an adolescent. This is because, if the formal rupture with the *minor-child/adolescent dichotomy* is one of the main arguments to legitimize the legislative production developed from the CRFB, and which marks the legal-philosophical basis of the Doctrine of Full Protection, the consequence of this is the change in the categories worked to symbolize children and adolescents. Thus, the objective is to discard the use of terms such as "irregular situation", "minor", "illegitimate child", etc., seen as repressive and discriminatory (Schuch, 2009), as they become politically incorrect and legally illegal post-CRFB.

However, when we analyze the state constitutions[19], in nine of them there is the use of some category that refers to the values attributed to minorism – or to the terms present in the 1979 Minors Code, to be more precise – to prescribe the "new" rights. It is words and terms such as "irregular situation", "antisocial conduct", "abandoned minors", "risk situation", "needy minors", among others, that explain the evaluative permanences used to establish the semantics

19 These are the constitutions of the following states: Amazonas; Bahia; Ceará; Goias; Mato Grosso do Sul; Rio de Janeiro; Rio Grande do Norte; Santa Catarina; and, Tocantins.

of the "new" rights. And, with this, the possible reifications of a paradigm formally derogated with the advent of the CRFB, but culturally in force in our society, until the present day.

The most emblematic case is, without a doubt, that of the Constitution of the State of Amazonas. In Articles 243 and 244 there is a discursive-normative organization – to a certain extent ambiguous, or paradoxical – because at the same time that it emphasizes the Doctrine of Full Protection and the observance of the legal guarantees provided for in the CRFB for children and adolescents, not including young people, it uses terms/words that violate the philosophical, symbolic and legal precepts of this Doctrine, As you can see in the excerpts highlighted below:

> "Article 243. The State and Municipal Policy for the care of children and adolescents shall be developed in compliance with the principles and guarantees provided for in Arts. 227, 228 and 229, of the Constitution of the Republic, and the following precepts:
> I - the care provided to needy children and adolescents *will be* carried out, preferably, in their homes, through government social assistance programs;
> II - care for needy or irregularly occurring children and adolescents may be provided by a carefully selected family, which will keep them in the form of custody, or by an institution that produces, with greater similarity, environments and patterns of family life;
> III - comprehensive health care program for children and adolescents, giving priority to the prevention of diseases;
> IV - attendance in vocational schools, with a regime of eight hours a day, to needy children and adolescents *with anti-social behavior*;
> [...]
> ARTICLE 244. The State and the Municipalities shall promote, in joint action with the family and private entities, programs of assistance to maternity, childhood, adolescent, the elderly, the disabled, with priority to low-income families and large offspring, with the aim of:
> [...]
> II - education of *abandoned minors* in vocational schools;
> III - the *protection of minors*, incapable dependents and the elderly against all forms of negligence, discrimination, exploitation, violence and oppression" (Amazonas, 1989, p. 141-142. Italics added).

The use of terms/words that reinforce the discriminatory imaginary of children and adolescents ends up legitimizing the maintenance of forms of socio-state care that reify the *minor-child/adolescent dichotomy* within the "new" rights, and, at the limit, against these rights, especially thinking about the conflicts with the CRFB.

In fact, the content of some measures established in the Constitution of the State of Amazonas is likely to be questioned, given the potentially repressive-corrective content of the socio-state policies and interventions to be adopted and based on them. For example: why the inclusion in professional courses only for "abandoned minors", "needy child/adolescent" and/or "antisocial behavior"? And what is the objective and method of action of a vocational education with such a cut? What standards of family coexistence will be offered to "needy

children/adolescents" or in an "irregular situation"? Moreover, what is being defined by "irregular situation" and "antisocial conduct", and what is the potential for this to justify repressive-corrective actions with the use of the "new" rights? In short, questions that foster a problematization beyond the normative content of the measures and the terms/words adopted, but how they materialize in the practices of the agents of the protection network and in the socio-state treatment offered to children and adolescents in this state.

The minor-child/adolescent *dichotomy* is expressly regulated in the Constitution of the State of Mato Grosso do Sul. In Article 206, first paragraph, the legal document prescribes that "[t]he State shall encourage, through legal assistance, tax incentives and subsidies, under the terms of the law, the reception, in the form of custody, of children, adolescents or *abandoned*" (Mato Grosso Do Sul, 1989, p. 49. Italics added). The measure of safeguarding family life presents an explicit distinction between the representation of child, adolescent and abandoned, the latter being a form of renewal of the minorist – and, I would say, colonial/modern ideology of adultcentrism – of classifying people excluded from attachment to ideal values to support repressive-corrective treatment.

On the other hand, the terms "irregular situation", "risk situation", "antisocial conduct" and "irregular social conduct" are sometimes used in these state constitutions in a generalist way, as present in Amazonas, and sometimes with the delimitation of which situations can be classified in this way, as does the Constitution of the State of Ceará[20]. In both cases, the reckless issue is the margin open for "paternalistic discretion" in the[21] practical-institutional application of these rights[22]. And, with this, in the reinforcement of the unequal treatment between "minor problem subjects" and children/adolescents as subjects of rights, acting "in the reproduction and a stigmatized and stigmatizing perception of children and adolescents, contributing to the

20 "Article 279. The State should assume, as a priority, the support and protection of children and adolescents at *risk*, ensuring that the programs meet the local cultural and socioeconomic characteristics. Sole Paragraph. Children and adolescents are considered to be at *risk* : I – deprived of the *essential conditions* for survival with regard to food, hygiene, health, housing and compulsory education; II – professionally exploited in the world of work; III – involved in illicit activities such as: robbery, drug trafficking, *begging* and prostitution; IV – *forced to* make the street their work and living space; V – involved with the use of drugs; VI – confined in institutions" (Ceará, 2018, 68. Italics added). All terms in italics bring some risk to the Doctrine of Full Protection when interpreted by the agents.

21 An expression used by Emílio García Mendez (2020), pointing out the concern with the fact that never, as today, are we more immersed in a positive valuation of paternalistic discretion in the use of the rights of children and adolescents. And, as he rightly pointed out, against which it was sought to confront and point out the ECA and the Doctrine of Integral Protection as disruptive innovations to the "old" model.

22 And Diniz, Camurça and Melo Neto remember that "[i]n the perspective of the Doctrine of Irregular Situation, children and adolescents are the object of protection, considered from their incapacity and protected in a non-universal way, from a set of open categories, defining the 'irregular situation'" (2018, p. 349). Therefore, the open use of such categories reinforces a legislative and hermeneutic technique present in the 1979 Minors Code, and which is reproduced in some state constitutions in Brazil.

production of mistaken public policies and objectifying judicial decisions" (Diniz, Carmuça; Melo Neto, 2018, p. 353).

Evidently, one can attribute to the strength and normative hierarchy of the CRFB the possibility of hermeneutic or judicial derogation of the terms/words that refer to the minorist ideology present in the state constitutions. However, this does not generate an expectation of social change, quite the contrary. The maintenance of these terms in state constitutions, even after 30 years of the Doctrine of Integral Protection, demonstrates the strength of minorism (or the coloniality of adult-centric power) within the aegis of "new" rights and integral protection. Therefore, more than normative changes, what we need, in fact, is a civilizational transformation in Brazilian society, in order to refound the conditions for the effective exercise of the absolute priority of the fulfillment of the rights of children and adolescents.

## 7 Final considerations

In the more than 30 years of Brazilian state constitutions, the question remains: how many of us have read the constitution of the state where we live? How many use its normative bases for institutional and/or social action with the rights of children, adolescents and young people? More than questioning the devaluation, certainly evident, of the legal content of these documents, my intention throughout this article was to point out the need for them to be better known and used by professionals in the legal field and the protection network.

Certainly, the constitutionalization of the Doctrine of Full Protection, in Articles 227 and 228 of the CRFB, represented a paradigm shift in the citizenship of children and adolescents in Brazil. The condition of subjects of rights and the co-responsibility of different socio-state entities for the fulfillment of these rights with absolute priority are, to date, legal achievements resulting from a lot of social pressure and articulation of civil society during the period of the Constituent Assembly to dispute the normative text of the CRFB.

By analyzing the rights of children, adolescents and young people contained in the state constitutions and in the light of the Doctrine of Full Protection, we conclude that most of them received the full protection of children and adolescents at the same level or with expanded access to rights, in comparison with the text of the CRFB. However, if, on the one hand, there is a small group of state constitutions that centralize the duty to comply with these rights only to the State, undermining the constitutional precept of co-responsibility; On the other hand,

most legal documents do not include young people as subjects of rights, even after 10 years of their enrollment in full protection.

However, there are state constitutions that have not explicitly incorporated full protection in their normative texts and, even if they do incorporate it, they end up using terms and words that refer to the minorist ideology (or the coloniality of adult-centric power), in order to reproduce hierarchical dichotomies and unequal treatment within the "new" rights and, therefore, against the legal precepts of full protection present in the CRFB. What I observe is that this is not only a matter of dispute for a normative text more adequate to the precepts of the Doctrine of Integral Protection, but of making visible the continuities of minorism that exist in the rights of children, adolescents and young people; correlated to the need to fight for more inclusive, democratic and plural social projects.

Therefore, although my research was based on a dogmatic analysis in a comparative perspective and, implicitly, also critical and historical, I consider that there is a need for new research on the subject in a qualitative approach, in which it is possible to understand the forms of appropriation by agents of the Rights Guarantee System, in addition to analyzing how they influenced (or not) the design of public policies and public budgets.

## References

ABRAMO, Helena Wendel. Juvenile condition in contemporary Brazil. *In*: ABRAMO, Helena Wendel; BRANCO, Pedro Paulo Martoni (ed.). **Portraits of Brazilian youth:** analysis of a national survey. São Paulo: Editora Fundação Perseu Abramo; Porto Alegre: Instituto da Cidadania, 2011. p. 37-72.

ACRE. [Constitution (1989)]. **Constitution of the State of Acre.** Rio Branco: Governo do Estado do Acre, [2007?]. Available at: http://www.al.ac.leg.br/wp-content/uploads/2014/10/constitui%C3%A7%C3%A3o_atualizada.pdf. Accessed on: 10 mar. 2020.

ALAGOAS. [Constitution (1989)]. **Constitution of the State of Alagoas, 1989:** promulgated on October 5, 1989: updated until amendment no. 38/2010. 3 ed. rev. and ampl. Maceió: Government of the State of Alagoas, 2013. Available at: http://www.procuradoria.al.gov.br/legislacao/constituicao-do-estado-de-alagoas/Livro%20da%20Constituicao%20do%20Estado%20de%20Alagoas%20sem%20Capa.pdf. Accessed on: 10 mar. 2020.

AMADOR, Juan Carlos. Juvenile conditions in adult-centric societies. **Tendências & Retos**, [*s.l.*], v. 18, n. 2, p. 141-156, jun./dez. 2013. Available at: https://dialnet.unirioja.es/descarga/articulo/4929328.pdf. Accessed on: 25 Feb. 2022.

AMAPÁ. [Constitution (1991)]. **Constitution of the State of Amapá.** Macapá: Government of the State of Amapá, 2003. Available at:

https://www.tjap.jus.br/portal/images/stories/constituicao_amapa.pdf. Accessed on: 10 mar. 2020.

AMAZONAS. [Constitution (1989)]. **Constitution of the State of Amazonas.** Manaus: Government of the State of Amazonas, [2013]. Available at: http://www.ale.am.gov.br/wp-content/uploads/2013/08/Constituicao-do-Estado-do-Amazonas-atualizada-2013.pdf. Accessed on: 10 mar. 2020.

AMIN, Andréa Rodrigues. Guiding principles of the rights of children and adolescents. *In*: MACIEL, Kátia Regina Ferreira Lobo Andrade. **Child and adolescent law course:** theoretical and practical aspects. 4. ed. Rio de Janeiro: Lumen Juris, 2010. p. 19-30.

BAHIA. [Constitution (1989)]. **Constitution of the State of Bahia, 1989:** updated until EC n. 25/2018. Salvador: Legislative Assembly of Bahia, 2018. Available at: https://www.al.ba.gov.br/fserver/:imagensAlbanet:upload:Constituicao_2018_EC_251.pdf. Accessed on: 10 mar. 2020.

BRAZIL. [Constitution (1988)]. **Constitution of the Federative Republic of Brazil.** Brasília: Presidency of the Republic, [2020]. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 10 mar. 2020.

BRAZIL. **Law No. 8,069, of July 13, 1990 (Statute of the Child and Adolescent).** Provides for the Statute of the Child and Adolescent and provides for other provisions. Brasília: Casa Civil, [2020]. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8069.htm. Accessed on: 12 jan. 2020.

CABRAL, Johana. **Family, society and the State in the promotion and defense of the human rights of children and adolescents:** a study of the theory of integral protection. Criciúma: Unesc, 2012.

CASTRO, Elisa Guaraná de; MACEDO, Severine Carmen. Statute of the Child and Adolescent and Statute of Youth: interfaces, complementarity, challenges and differences. **Revista Direito e Práxis**, Rio de Janeiro, v. 10, n. 2, p. 1214-1238, apr./jun. 2019. DOI: https://doi.org/10.1590/2179-8966/2019/40670. Available at: https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/40670. Accessed on: 25 Feb. 2022.

CEARÁ. [Constitution (1989)]. **Constitution of the State of Ceará, 1989:** updated until Constitutional Amendment No. 94 of December 17, 2018. Fortaleza: INESP, 2018. Available at: https://al.ce.gov.br/index.php/atividades-legislativas/constituicao-do-estado-do-ceara. Accessed on: 11 mar. 2020.

CRUZ MARTÍNEZ, Mario. **The human rights of young people.** Mexico City: Tirant lo Blanch, 2018.

DINIZ, Juliana Campos; CAREÚÇA, Eulália Emília Pinho; MELO NETO, Carlos Roberto Cals de. The word in the interpretation of childhood: an analysis of the hermeneutic legacy from the Federal Constitution. **Revista de Pós-Graduação em Direito da UFC**, Fortaleza, v. 38, n. 2, p. 345-261, jul./dez. 2018. Available at: http://periodicos.ufc.br/nomos/article/view/33626. Accessed on: 25 Feb. 2022.

DUARTE QUAPPER, Claudio. **Adultcentrism as a paradigm and system of domination. Análisis de la reproducción de imaginarios em la investigación social chilena sobre lo juvenil.** Thesis. (PhD in Sociology) - Universitat Autònoma de Barcelona, Barcelona, 2015. Available at: https://www.tdx.cat/bitstream/handle/10803/377434/cdq1de1.pdf?sequence=1. Accessed on: 25 Feb. 2022.

DUTRA, Deo Campos. Method(s) in comparative law. **Journal of the Faculty of Law – UFPR,** Curitiba, v. 61, n. 3, p. 189-212, set./dez. 2016. DOI: http://dx.doi.org/10.5380/rfdufpr.v61i3.46620 Available at: https://revistas.ufpr.br/direito/article/view/46620. Accessed on: 25 Feb. 2022.

ECA Virtual SEMINAR at 30 years: historical balance and current challenges in the rights of children and adolescents. Speaker: Josiane Rose Petry Veronese. [*S.l.*]: Absolute Priority, 16 Jul. 2020. Live Youtube (179 min). Available at: https://www.youtube.com/watch?v=Q26RUnR67ac. Accessed on: 25 Feb. 2022.

ESPÍRITO SANTO. [Constitution (1989)]. **Constitution of the State of Espírito Santo, 1989:** updated until Constitutional Amendment No. 114/2019. Vitória: Legislative Assembly of Espírito Santo, 2019. Available at: http://www.al.es.gov.br/appdata/anexos_internet/downloads/c_est.pdf. Accessed on: 11 mar. 2020.

FEDERAL DISTRICT. **Organic Law of the Federal District, of June 8, 1993.** Brasília: Government of the Federal District, [2020]. Available at: http://www.fazenda.df.gov.br/aplicacoes/legislacao/legislacao/TelaSaidaDocumento.cfm?txtNumero=0&txtAno=0&txtTipo=290&txtParte=. Accessed on: 11 Mar. 2020.
FONSECA, Antonio Cezar Lima da. **Rights of children and adolescents.** São Paulo: Atlas, 2011.

FONSECA, Claudia; CARDARELLO, Andrea. Rights of the more and less human. **Horizontes Antropológicos**, Porto Alegre, year 5, n. 10, p. 83-121, May 1999. DOI: 10.1590/S0104-71831999000100005. Available at: https://www.scielo.br/j/ha/a/5ywdBJsqVzrznh4PJYJgBRz/?lang=pt&format=pdf. Accessed on: 25 Feb. 2022.

FRANCISCO, Julio Cesar; LIMA, Agnaldo Soares; GROPPO, Luís Antonio. Processing and approval of the Statute of the Child and Adolescent in the National Congress (1989-1990). **Emancipação,** Ponta Grossa, v. 20, p. 1-21, 2020. DOI: https://doi.org/10.5212/Emancipacao.v.20.2015252.019. Available at: https://revistas2.uepg.br/index.php/emancipacao/article/view/15252. Accessed on: 25 Feb. 2022.

FREITAS, Felipe da Silva. For the Right to a safe life: a study on black mobilization for the approval of the Youth Statute in the National Congress. **Revista Direito e Práxis**, Rio de Janeiro, v. 10, n. 2, p. 1335-1355, apr./jun. 2019. Doi: https://doi.org/10.1590/2179-8966/2019/40701 . Available at: https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/40701 Accessed on: 25 Feb. 2022.

GOIÁS. [Constitution (1989)]. **Constitution of the State of Goiás.** Goiânia: Government of the State of Goiás, [2019]. Available at: http://www.gabinetecivil.goias.gov.br/constituicoes/constituicao_1988.htm. Accessed on: 11 mar. 2020.

HEINEN, Juliano. Method of comparative law: development and contemporary perspectives. **Journal of the Graduate Program in Law at UFBA,** Salvador, v. 27, n.2, p. 165-192, jul./dez. 2017. Available at: https://periodicos.ufba.br/index.php/rppgd/article/view/25147. Accessed on: 25 Feb. 2022.

KOERICH, Bruna Rossi; VIDAL, Alex da Silva. Between ruptures and continuities: the path of legislation for adolescents and young people in Brazil. **Conversas & Controversies**, Porto Alegre, v. 7, n. 1, p. 1-11, jan./jun. 2020. DOI: https://doi.org/10.15448/2178-5694.2020.1.35319. Available at: https://revistaseletronicas.pucrs.br/ojs/index.php/conversasecontroversias/article/view/35319/26209. Accessed on: 25 Feb. 2022.

LONDOÑO, Fernando Torres. The origin of the minor concept. *In*: PRIORE, Mary del (ed.). **História da criança no Brasil.** São Paulo: Contexto, 1991. p. 129-145.

MAIA, Eduardo Gomes Ribeiro; JACINTHO, Jussara Maria Moreno. Research and comparative law: an evolutionary panorama and the challenges faced in Brazil. **Journal of Research and Legal Education**, Salvador, v. 4, n. 1, p. 54-70, jan./jun. 2018. DOI: http://dx.doi.org/10.26668/IndexLawJournals/2525-9636/2018.v4i1.4353. Available at: https://indexlaw.org/index.php/rpej/article/view/4353. Accessed on: 25 Feb. 2022.

MANCISIDOR, Mikel. Economic, social and cultural rights in the Ibero-American Convention. *In*: ORGANISMO IBEROAMERICANA DE JUVENTUD. **Ibero-American Convention on the Rights of Youth:** Five Years From Its Entry into Force. Madrid: OIJ: UNFPA, 2013. p. 63-78.

MARANHÃO. [Constitution (1989)]. **Constitution of the State of Maranhão, promulgated on October 5, 1989 with the amendments adopted until Constitutional Amendment No. 081/2019.** São Luís: Legislative Assembly of the State of Maranhão, [2020]. Available at: http://legislacao.al.ma.gov.br/ged/cestadual.html. Accessed on: 11 mar. 2020.

MATO GROSSO DO SUL. [Constitution (1989)]. **Constitution of the State of Mato Grosso do Sul.** Campo Grande: Government of the State of Mato Grosso do Sul, [2020]. Available at: http://aacpdappls.net.ms.gov.br/appls/legislacao/secoge/govato.nsf/0a67c456bc566b8a04257e590063f1fd/dfde24a4767ddcbf04257e4b006c0233?OpenDocument . Accessed on: 11 mar. 2020.

MATO GROSSO. [Constitution (1989)]. **Constitution of the State of Mato Grosso, promulgated on October 5, 1989:** updated until EC No. 89, D.O. 08 Apr. 2020. Cuiabá: Legislative Assembly of the State of Mato Grosso, [2020]. Available at: https://www.al.mt.gov.br/legislacao/?tipo=10&restringeBusca=e. Accessed on: 11 mar. 2020.

MINAS GERAIS. [Constitution (1989)]. **Constitution of the State of Minas Gerais, 1989: updated until Amendment to the Constitution n. 103.** 28 ed. Belo Horizonte: Legislative Assembly of the State of Minas Gerais, 2021. Available at:

https://www.almg.gov.br/export/sites/default/consulte/legislacao/Downloads/pdfs/ConstituicaoEstadual.pdf. Accessed on: 25 Feb. 2022.

MIRANDA, Humberto. Fundamentalist adultcentrism is the right of a child to live childhood. In: **Empório do Direito**, São Paulo, 01 nov. 2020. Available at: https://emporiododireito.com.br/leitura/adultocentrismo-fundamentalista-e-o-direito-de-uma-crianca-viver-a-infancia. Accessed on: 25 Feb. 2022.

MIRANDA, Humberto. Our everyday minorism. **Empório do Direito**, São Paulo, 01 out. 2019. Available at: https://emporiododireito.com.br/leitura/o-menorismo-nosso-de-cada-dia. Accessed on: 25 Feb. 2022.

MORAES, Maria Celina Bodin de. The new family, again – Structures and function of contemporary families. **Pensar**, Fortaleza, v. 18, n. 2, p. 587-628, maio/ago. 2013. DOI: https://doi.org/10.5020/23172150.2012.588-629. Available at: https://periodicos.unifor.br/rpen/article/view/2705. Accessed on: 25 Feb. 2022.

OLIVEIRA, Assis da Costa. Coloniality of adult-centric power and/or the rights of children and young people. **Culturas Jurídicas**, [*s.l.*], v. 8, n. 20, p. 950-979, May/Aug. 2021. DOI: https://orcid.org/0000-0003-3207-7400. Available at: https://periodicos.uff.br/culturasjuridicas/article/view/52396/30560. Accessed on: 25 Feb. 2022.

OLIVEIRA, Assis da Costa. From the exposed children to the hypervisible children, reflections and concerns about the "Adoption on the Walkway" event. **Justificando**, [*s.l.*], 16 jun. 2019. Available at: https://www.justificando.com/2019/06/16/das-criancas-expostas-as-criancas-hipervisiveis-reflexoes-e-inquietacoes-sobre-o-evento-adocao-na-passarela/. Accessed on: 25 Feb. 2022.

OLIVEIRA, Assis da Costa. **Indigenous children, indigenous children: perspectives** for the construction of the doctrine of plural protection. Curitiba: Juruá, 2014.

OLIVEIRA, Assis da Costa. **Indigenous youth: mobilizations for rights in a decolonial perspective.** 2020. Thesis (Doctorate in Law) - University of Brasilia, Brasília, 2020b.

OLIVEIRA, Assis da Costa. Reflections on the ethnic consequences of protective discourses. **Justifying,** [*s.l.*], 7 nov. 2018. Available at: http://www.justificando.com/2018/11/07/reflexoes-sobre-as-consequencias-etnicas-dos-discursos-protetivos/ . Accessed on: 25 Feb. 2022.

OLIVEIRA, Assis da Costa. Sexual violence, childhood and indigenous peoples: Intercultural resignification of protection policies in the context of indigenous children. **Revista Latinoamericana de Ciencias Sociales, Niñez y Juventud**, Manizales, v. 14, n. 2, p. 1177-1190, 2016. Doi: https://doi.org/10.11600/1692715x.14220041115. Available at: http://www.scielo.org.co/pdf/rlcs/v14n2/v14n2a21.pdf. Accessed on: 25 Feb. 2022.

OLIVEIRA, Assis da Costa. Youth, state and indigenous peoples in Brazil in the XXI Century. **Revista Latinoamericana de Ciencias Sociales, Niñez y Juventud**, Manizales, v. 18, p. 1-25, 2020a. DOI: https://doi.org/10.11600/1692715x.18105. Available at:

http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S1692-715X2020000100093. Accessed on: 25 Feb. 2022.

PARÁ. [Constitution (1989)]. **Constitution of the State of Pará.** Belém: Government of the State of Pará, [2020]. Available at: https://www.sistemas.pa.gov.br/sisleis/legislacao/228. Accessed on: 11 mar. 2020.

PARAÍBA. [Constitution (1989)]. **Constitution of the State of Paraíba, 1989:** updated until Constitutional Amendment No. 44/2019. João Pessoa: Legislative Assembly of the State of Paraíba, [2020]. Available at: https://tce.pb.gov.br/legislacao/constituicao-estadual. Accessed on: 11 mar. 2020.

PARANÁ. [Constitution (1989)]. **Constitution of the State of Paraná.** Curitiba: Casa Civil, [2020]. Available at: https://www.legislacao.pr.gov.br/legislacao/exibirAto.do?action=iniciarProcesso&codAto=9779&codItemAto=97151. Accessed on: 12 mar. 2020.

PERNAMBUCO. [Constitution (1989)]. **Constitution of the State of Pernambuco.** Recife: Legislative Assembly of Pernambuco, [2020]. Available at: https://legis.alepe.pe.gov.br/texto.aspx?tiponorma=12&numero=1989&complemento=0&ano=1989&tipo=&url=. Accessed on: 12 mar. 2020.

PIAUÍ. [Constitution (1989)]. **Constitution of the State of Piauí:** 24 years - revised and adapted to the Federal Constitution/1988 - 25 years. 2. ed. Teresina: Legislative Assembly of Piauí, 2013. Available at: http://www.cge.pi.gov.br/legis/legislacao/constituicao-do-estado-do-piaui-2013.pdf. Accessed on: 12 mar. 2020.

RIO DE JANEIRO. [Constitution (1989)]. **Constitution of the State of Rio de Janeiro.** Rio de Janeiro: Legislative Assembly of the State of Rio de Janeiro, [2020]. Available at: http://alerjln1.alerj.rj.gov.br/constest.nsf/PageConsEst?OpenPage. Accessed on: 12 mar. 2020.

RIO GRANDE DO NORTE. [Constitution (1989)]. **Constitution of the State of Rio Grande do Norte, 1989:** updated according to Amendment to the State Constitution No. 19/2019, and earlier. Natal: Legislative Assembly of the State of Rio Grande do Norte, 2019. Available at: http://www.adcon.rn.gov.br/ACERVO/gac/DOC/DOC000000000256723.PDF. Accessed on: 25 Feb. 2022.

RIO GRANDE DO SUL. [Constitution (1989)]. **Constitution of the State of Rio Grande do Sul, 1989:** with amendments adopted until Constitutional Amendment No. 78/2020. Porto Alegre: Legislative Assembly of Rio Grande do Sul, [2020]. Available at: http://www2.al.rs.gov.br/dal/LinkClick.aspx?fileticket=IiPguzuGBtw%3d&tabid=3683&mid=5358. Accessed on: 11 mar. 2020.

ROMÃO, Luís Fernando de França. **The constitutionalization of the rights of children and adolescents.** São Paulo: Almedina, 2016.

RONDÔNIA. [Constitution (1989)]. **Constitution of the State of Rondônia, 1989:** updated until Constitutional Amendment No. 136/2019. Porto Velho: Legislative Assembly of the

State of Rondônia, [2020]. Available at: https://www.al.ro.leg.br/institucional/constituicao-do-estado-de-rondonia/constituicao-estadual/ce1989_ec139.pdf. Accessed on: 12 mar. 2020.

RORAIMA. [Constitution (1991)]. **Constitution of the State of Roraima.** Boa Vista: Legislative Assembly of the State of Roraima, [2020]. Available at: https://www.tjrr.jus.br/legislacao/phocadownload/ce%20ate%20ec%2073.pdf. Accessed on: 12 mar. 2020.

SANTA CATARINA. [Constitution (1989)]. **Constitution of the State of Santa Catarina of 1989:** updated to EC 076, of 2019. Florianópolis: Legislative Assembly of Santa Catarina, [2020]. Available at: http://leis.alesc.sc.gov.br/html/constituicao_estadual_1989.html. Accessed on: 12 mar. 2020.

SÃO PAULO. [Constitution (1989)]. **State Constitution of October 5, 1989:** updated until Constitutional Amendment No. 49, of March 6, 2020. São Paulo: Legislative Assembly of the State of São Paulo, [2020]. Available at: https://www.al.sp.gov.br/repositorio/legislacao/constituicao/1989/compilacao-constituicao-0-05.10.1989.html. Accessed on: 12 mar. 2020.

SCHUCH, Patrice. **Anthropology of the modes of government of childhood and youth in the post-ECA context.** Porto Alegre: UFRGS, 2009.
SERGIPE. [Constitution (1989)]. **Constitution of the State of Sergipe.** Aracajú: Legislative Assembly of Sergipe, 2005. Available at: http://pm.se.gov.br/wp-content/uploads/2013/08/2-Constitui%C3%A7%C3%A3o-Estadual-de-Sergipe.pdf . Accessed on: 12 mar. 2020.

SILVA, Heleno Florindo da; GONÇALVES, Suelen Florindo; FABRIZ, Daury César. The full and priority protection of children as a fundamental duty of parents: an analysis based on the relationship between smoking parents and their children. **Revista de Pós-Graduação em Direito da UFC**, Fortaleza, v. 34, n. 1, p. 109-125, jan./jun. 2014. Available at: http://www.periodicos.ufc.br/nomos/article/view/1190/1156. Accessed on: 25 Feb. 2022.

SOUZA, Luanna Tomaz; ALBUQUERQUE, Fernando Silva; ABOIM, Josilene Barbosa. The Children's Convention and the limits in the accountability of children and adolescents: ruptures and permanences. **Law and Praxis Journal**, Rio de Janeiro, v. 10, n. 2, p. 1214-1238, 2019. DOI: https://doi.org/10.1590/2179-8966/2019/39120. Available at: https://www.e-publicacoes.uerj.br/index.php/revistaceaju/article/view/39120/29530. Accessed on: 25 Feb. 2022.

TOCANTINS. [Constitution (1989)]. **Constitution of the State of Tocantins**: updated until Constitutional Amendment No. 43/2021. Palmas: Legislative Assembly of Tocantins, 2022. Available at: https://www.al.to.leg.br/arquivos/documento_57777.PDF#dados. Accessed on: 25 Feb. 2022.

VERONESE, Josiane Rose Petry. The Statute of the Child and Adolescent: a new paradigm. *In*: VERONESE, Josiane Rose Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo (ed.). **Statute of the Child and Adolescent:** 25 years of challenges and achievements. São Paulo: Saraiva, 2015. p. 21-40.

VOGEL, Arno. From the State to the Statute: proposals and vicissitudes of the policy of care for children and adolescents in contemporary Brazil. *In*: RIZZINI, Irene; PILOTTI, Francisco

(ed.). **The art of governing children:** the history of social policies, legislation and child care in Brazil. São Paulo: Cortez, 2009. p. 287-322.

WHAT IS THE DOCTRINE of Full Protection?. **Speaker:** Emílio García Mendez. [*S.l.*]: Unisal Extension, June 19, 2020. Youtube (94 min). Available at: https://www.youtube.com/watch?v=_oR_tSVgRDg&feature=youtu.be&fbclid=IwAR2HTzC6BmStEIaDmwemy5R3nc6sRVxM-Jh53jyZ6n3z8jiEYikZACyHXVM. Accessed on: 25 Feb. 2022.

WOLKMER, Antonio Carlos. Introduction to the foundations of a general theory of the "new" rights. *In*: WOLKMER, Antonio Carlos; LEITE, José Rubens Morato (ed.). **The "new" rights in Brazil:** a basic view of the new legal conflicts. São Paulo: Saraiva, 2003. p. 12-25.

YRIGOYEN FAJARDO, Raquel. On the 20th anniversary of ILO Convention 169: balance and challenges of the implementation of indigenous peoples' rights in Latin America. *In*: VERDUM, R. (ed.). **Indigenous peoples:** constitutions and political reforms in Latin America. Brasília: INESC, 2009. p. 23-45.

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