

Harvard University Extension School

The Human Rights of Children and Youth as Citizens, Migrants, and Refugees
(LSTU E-116-a)

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TITLE:

The efforts in Brazil to implement the CRC
A case of success: Children and Young Adult's Cancer Hospital

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I – Introduction

Initially it is important to say that I had the opportunity to discuss a similar issue in another discipline that I studied at Harvard Extension School and, therefore, some of the arguments been used here are based on other papers that I developed¹.

¹ Geraige Neto, Zaiden. The efforts in Brazil to implement the ICESCR. A case of success: Barretos Cancer Hospital. *In International Human Rights, Harvard Extension School*, Prof. Diana Buttu, 2016; States as Enforcers: U.S. Civil Litigation (27 April). A real case: Alabama Sues U.S. Government Over Plans For Syrian Refugee Settlement. *In International Human Rights, Harvard Extension School*, Prof. Diana Buttu, 2016.

In this course I've already written that “It is useless to create laws or rules of child protection, either by the UN or by any organization, national or international, binding or not binding, if in practice things do not work. The changes must begin in each of us, culturally”².

So, considering this premise, I developed this study addressing what could be done in Brazil in legal terms and what has happened in practice, at least through a good example in the middle of an alarming scenario.

II – Brief Historical Aspect (refugees in the American Continent)³

To contribute to understand the situation of children in Brazil, it is necessary to say that we (most of the people who live in American Continent) are somehow refugees, because our parents, or grandparents, or great-grandparents came from other parts, running away from the war, mainly the First Great War (1914-1918) or the Second Great War (1939-1945). In my case, for example, my ancestors came from Lebanon and from Germany.

They were suffering and starving in Germany and in Lebanon and left their relatives there, running away from the war, bringing in their luggage only their hope and their dreams. Here in Brazil they built a new life, they worked a lot and now their great-grandchildren are very proud of them and carry in their blood the DNA of the brave.

Then, from a historical perspective, it does not take much thought to understand that we have a moral obligation to the current refugees. Indeed, we are all responsible for these human beings! And the responsibility of some countries is even greater than others, because somehow they also have liability in the merits of the war itself, in the historic quest for more power and wealth, even at

² Geraige Neto, Zaiden. Response#1_Response to Posting by Rodriguez_Samantha. *In The Human Rights of Children and Youth as Citizens, Migrants, and Refugees (LSTU E-116-a), Harvard Extension School, Professor Jacqueline Bhabha and Stacy Hannell (teaching assistant), 2017.*

³ As I said I have written this topic in other courses and papers at Harvard Extension School.

the cost of thousands of lives. Therefore, I think that the countries that contributed to the escape of these people have greater obligation to receive them.

But, regardless of these arguments above there is a legal system which provides several rules concerning about the issue of refugees. At the level of international law, there is a general rule recognized by States in the form of Article 14 of the UDHR (Universal Declaration of Human Rights), which provides the following sentence:

“1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.”.

Despite the UDHR is a non-binding instrument, Article 14 is implicit within the 1951 Convention and its 1967 Protocol and is ‘an important emerging norm of customary international law’ (the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Geneva, 13 Dec. 2001, recognizes ‘the importance of other human rights and regional refugee protection instruments).

Indeed, we can say that refugee children have already built nations like Brazil, because men/women who built this country, in the past came to Brazil even when they were children. Therefore, it is no exaggeration to affirm that children are the future and the hope of humanity and the planet.

So if they are children and refugees, they deserve our double respect and care.

III – The Convention on the Rights of the Child and its application in Brazil

The remote origin of the CRC is based on the values and principles contained in the Universal Declaration of Human Rights, of 1948, and, subsequently, in the Universal Declaration of the Rights of the Child, of 1959, which inspired the

elaboration of various international treaties that have established the United Nations Integral Protection Doctrine for Children, as well as the concept of the best interest of the child, providing that children and adolescents must be treated in a special way, as they present the peculiar situation of being still in development.

The Convention has not been adopted, until now, just by Somalia and the United States.

The International Convention on the Rights of the Child was adopted at the United Nations General Assembly on November 20, 1989, signed by Brazil on January 26, 1990, ratified on September 24, 1990, and entered into force in the Brazilian legal system on November 22, 1990, through Presidential Decree No. 99,710.

The principles of the Convention are contained in the International Declaration on the Rights of the Child, but the initiative for its edition was drafted in 1979 by the United Nations Commission on Human Rights.

The Convention establishes the concept of a child as a human being under the age of 18, but leaves States Parties free to define, by law, minor age limits. In Brazil, the civilian majority reaches the age of 18, according to the Convention. The Convention also establishes guidelines and political action to its signatories for the implementation of its principles, to ensure a healthy individual and social development of childhood

The main focus of the Convention is the special protection of children, insofar as they are in the peculiar situation of being human in development, thereby establishing the principle of the Integral Protection of children and adolescents, as commented above.

Coincidentally, from the 1980s, the thesis of the Integral Protection paradigm gained strength in Brazil, culminating in being established at a constitutional

level, in accordance with the provisions of Article 227, caput, of the Brazilian Federal Constitution, promulgated on October 5, 1988:

"It is the duty of the family, the society and the State to ensure to the child and the adolescent, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community coexistence, and to safeguard them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression."

The Statute of the Child and Adolescent - Law No. 8,069 of July 13, 1990 - details article 227 of the Brazilian Federal Constitution and contains practically all the principles and provisions listed in the International Convention on the Rights of the Child.

The most recent domestic legislation aimed at ensuring the application of the International Convention on the Rights of the Child (Articles 19 and 40.2, b, VI) in Brazil is Law 13.431 of April 4, 2017, which establishes the rights and guarantees of children and adolescents who are witnesses or victims of violence.

This Law establishes that Brazilian federal entities - Municipalities, Federal District, States and Union -, jointly, practice policies to guarantee the human rights of children and adolescents "in the context of domestic, family and social relations", to protect them "of all forms of negligence, discrimination, exploitation, violence, abuse, cruelty and oppression" (Article 2, Sole Paragraph, of Law 13.431 / 2017), establishing procedures, for this purpose, that these entities and the Judiciary, together, practice actions in the areas of public safety, social assistance and health.

This new law foresees that, from time to time, awareness-raising campaigns be launched to publicize the rights and services for the protection of children and adolescents, as well as to identify, as soon as possible, the practice of any kind of violence against children and adolescents. The law also orders the

establishment of a care service, by all telematics means, especially for reports of abuse and sexual exploitation of children.

Furthermore, the law establishes special testimony for children and adolescents who are victims of violence, assuring them the right to be heard in an appropriate place, in complete privacy, with the assistance of professionals specialized in public safety, social assistance and health.

Also included in the new law are various forms of violence, such as institutional violence (which may be practiced by private or public institutions), physical, sexual and psychological.

Finally, the new law provides that the unlawful breach of procedural secrecy in proceedings about the practice of violence against children and adolescents may result in crimes of imprisonment, in addition to the payment of a fine, with a term of up to one year and four months of imprisonment.

IV - A case of success: Children and Young Adult's Cancer Hospital

As I have already written in other paper⁴, I think it is important to give an example like that because the texts of UDHR and CRC address the issue of health and education. Also because of the fact that the original sources of the International Human Rights (on its legal aspect, as treaties, customary law, general principles and others) have not been enough to mitigate (or to solve) the suffering of millions of underprivileged human beings, and it has increasingly been noted individuals actions (private), in various sectors, in order to comply only with the provisions of the Universal Declaration of Human Rights.

As one of the categories of the ICESCR and CRC, the health issue is obviously related to the life's history of a hospital specialized in cancer treatment,

⁴ Geraige Neto, Zaiden. The efforts in Brazil to implement the ICESCR. A case of success: Barretos Cancer Hospital. In International Human Rights, Harvard Extension School, Prof. Diana Buttu, 2016.

prevention and research, located in Brazil and maintained by a private foundation, which was established on 1967, by a couple of rich physicians who founded the hospital.

Love, humanism and idealism to build a dream were the ingredients that led the couple of physicians to almost spend its rich personal assets. The dream was to offer to poor people, completely free, the same treatment of cancer that had the rich people.

In 1988, initially concerned about the family assets, the son of those physicians embraced his parent's idea and began to operate (manager) the hospital, where nowadays 6.000 (six thousand) poor people are assisted each day, from almost 2.000 (two thousand) cities, from all 27 states of Brazil, by 400 (four hundred) doctors (physicians) and more than 3.500 (three thousand and five hundred) other employees, who work exclusively and full time to care for patients.

The main unit is located in Barretos - a city of the state of São Paulo -, there are scattered units for whole Brazil and the hospital operates in a built-up area of more than 120.000 m².

Today, with the credibility gained by hard and serious work, the hospital has many partners around the World, as St. Judes Children Hospital (Memphis/USA), MD. Anderson Hospital (Houston/USA), IRCAD (Strasbourg/France) and others relevant institutions, acting against cancer, utilizing not only the combat itself, but also prevention and research. Of course, the research produced by these partners together is extremely important for all human beings in whole World.

The hospital also maintains a Research and Postgraduate Program, so, beyond the combat and the prevention the Hospital has an Institute of Learning and Research, intelligence and technology, called CPOM (Molecular Oncology Research Center), and the cytogenetic and molecular tests are conducted for a more precise diagnosis of hematologic neoplasia (leukemia) and of pediatric areas. And also important is the telemedicine area, providing discussions with

up groups around the World, by web conferences, including the American Partners of the Hospital: MD Anderson and Saint Judes.

In 2012 the Children and Young Adult's Cancer Hospital was opened in a separate built-up area, equipped with the best equipment of the World and as provisioned in the legislation and the Statute of Children and Teenagers, the Hospital Class Project offers educational assistance and allows further education to patients during the period of treatment.

Of course the unit counts on a multi-professional team composed of doctors, nurses, physiotherapists, psychologists, nutritionists, pharmacists, phonoaudiologists, occupational therapists, musical therapists, social assistants, spiritual assistants, toy room supervisor and teachers.

And the best thing is that the hospital has as its scope the treatment of poor children for free.

To maintain high expenses with this medicine of excellence and gratuitous the hospital receives permanent donations of the private sector, through different forms of collection, besides constantly winning international prizes. The Government helps almost nothing in the face of daily needs. The building of this hospital was constructed by means of fiscal renunciation, but it is something small in front of the great necessities.

V – Conclusion

As I wrote *ab initio*, there already exists in Brazil a legal system appropriate to the CRC. The problem is not in the laws themselves, but in their effectiveness and applicability on the part of the State.

In the example we present (Children and Young Adult's Cancer Hospital) what we perceive is that the private sector is replacing the functions of the State, because the state is inefficient and corrupt.

The main formula of the success of this hospital is portrayed in the book “Love Above All”, wrote by Henrique Duarte Prata, focusing in the system of single cashier, exclusive dedication of staff and the more recognized humanitarian treatment in this area.

Therefore, if someone wants to stay working at the hospital, this person must be integrated to the principles of the institution, which has the following characteristics and other principles: Transparency, compliance, law anti-corruption, independent auditors (national and international), accountability to the public and donors, permanent supervision of the Public Ministry, ombudsman, strict rules against employees not complying legislation and the spirit of hospital work.

That's why this private institution offers – 100% FREE AND ONLY FOR POOR PEOPLE – the best treatment (combat), prevention and research in Latin America, and one of the World's best, besides offering classes to children and adolescents patients, and finally offering cultural mechanisms for the patients and for all employees (social-cultural institute).

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