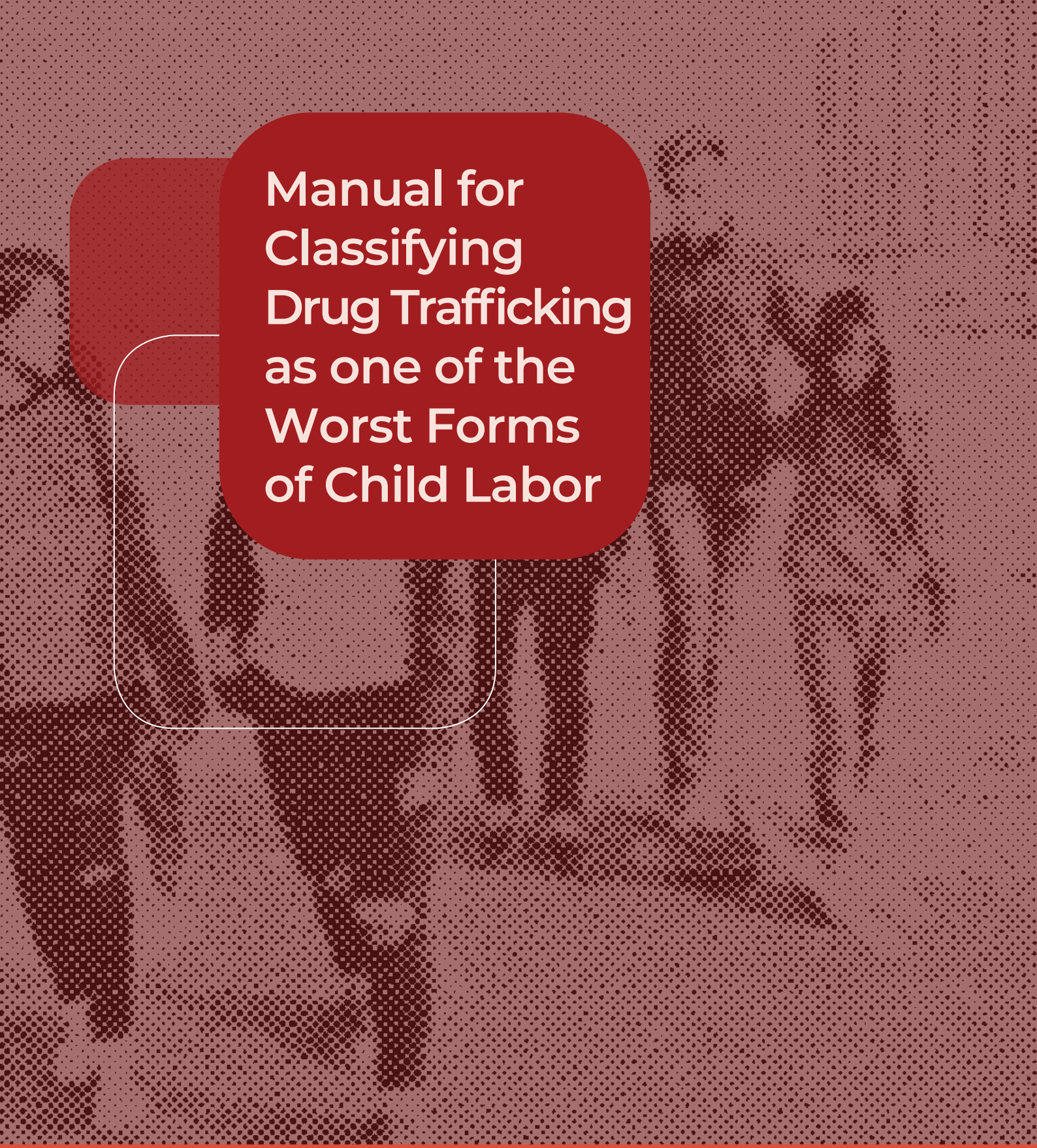
Manual for Classifying Drug Trafficking as one of the Worst Forms of Child Labor



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CONTENTS

PREFACE

The National Council of Justice (CNJ), in partnership with the Brazilian Ministry of Justice and Public Security (MJSP) and the United Nations Development Program (UNDP Brazil), jointly developed the Programa Fazendo Justiça (Doing Justice Program), which comprises a set of initiatives aimed at addressing systemic challenges related to deprivation of liberty throughout the Criminal and Juvenile Justice in Brazil.

The program aligns with the United Nations Sustainable Development Goals, specifically Goal 16 – Peace, Justice and Strong Institutions, to promote access to justice and strengthen institutions based on social inclusion.

The strategy proposes the creation or improvement of structures and services in the Brazilian Executive and Judiciary Systems, as well as the promotion of professional training, publication of knowledge products, and support in the production of regulations. There are 29 initiatives carried out simultaneously with different stakeholders, focusing on achieving tangible and sustainable results. Among them, the 'International Articulation and Protection of Human Rights' initiative seeks to promote the exchange of experiences between Brazil and other countries in the field of public policies on the Criminal and Juvenile Justice.

The program is currently in its third stage, which aims to consolidate the changes made and transfer the knowledge accumulated. The publications bring together the experiences developed and synthesize the knowledge produced during the first three stages, in addition to supporting professional training activities for a broad audience in the field.

Therefore, guides, manuals, researches and models were created in order to relate technical and normative knowledge to the reality observed in different regions of the country. These resources identified best practices and guidelines for the immediate and facilitated management of incidents.

To share its knowledge and communicate successful experiences to a wider audience, the program translated its main titles into English and Spanish. This strategy also involves promoting events, courses, and training in collaboration with international partners, as well as disseminating these translated knowledge products to spread good practices and inspire social transformation on a global scale.

Rosa Weber
President of the Federal Supreme Court and the National Council of Justice

PRESENTATION

The Brazilian Constitution is the basis of our aspirations as a society founded in the democratic rule of law, and it fosters social development with respect for fundamental rights and human dignity. In this sense, it is indelible duty of the institutions, especially in the judiciary, to ensure that our actions point to this civilizing north, not only rejecting deviations to this purpose, but acting to transform the present we crave.

In 2015, the Brazil's Supreme Court acknowledged that nearly 1 million Brazilians live on the margins of the country's maximum law within our prisons, with harmful effects for the degree of inclusive development to which we are committed through the 2030 United Nations Agenda. It is in this scenario that the program Fazendo Justiça ("Doing Justice") is inserted, based on a partnership between the National Council of Justice (CNJ) and the United Nations Development Programme, with the support of the Ministry of Justice and Public Security, in the figure of the National Penitentiary Department.

Even during the pandemic of Covid-19, the program has been carrying out structuring deliveries from collaboration and dialogue between different actors across the country. There are 28 actions developed simultaneously for different phases and needs of the criminal cycle and socio-educational cycle, which include facilitation of services, strengthening the normative framework and production and dissemination of knowledge. It is in the context of this last objective that this publication is inserted, now an integral part of a robust catalog that brings together advanced technical knowledge in the field of accountability and guarantee of rights, with practical guidance for immediate application across the country.

The present volume integrates the actions of the program Fazendo Justiça aimed at qualifying the entrance door of the Juvenile Justice, with the strengthening of the protective perspective in the care of adolescents who commit drug-trafficking related offenses as adolescents submitted to one of the worst forms of child labor. The thesis is based on international documents of which Brazil is a signatory, such as Convention 182 and Recommendation No. 190 of the International Labor Organization (ILO), and also included in recent decision of Brazil's Supreme Court, reported by Justice Edson Fachin.

This approach has as guidelines the principle of brevity and exceptionality of measures, as well as the understanding that deprivation of liberty should be applied only in cases involving the provisions of art. 122 of the Child and Adolescent Statute.

The international commitment to recognize child labor in its worst forms and the need for immediate actions to mitigate it and extinguish it mark the directions of this paradigm change, with control of conventionality as more an essential tool in the constitutional mission of integral protection of adolescent and young rights.

Luiz Fux
President of Brazil's Supreme Court and the National Council of Justice (2020-2022)

INTRODUCTION

INTRODUCTION

"Growth and market economy cannot thrive by supporting slavery and child trafficking. We cannot make this world better, more peaceful and fit to live with the weight of child slavery not on our backs, but right in front of us".

Kailash Satyarthi, Nobel Peace Prize (2014)

The program Fazendo Justiça is a partnership between the National Council of Justice (CNJ) and the United Nations Development Programme (UNDP) to face the historical challenges of the Brazilian deprivation of liberty systems, working with the perspective of rationalizing the application of this type of measure. One of the program's goals, developed through the actions of Pillar 2, refers to juvenile justice. As a way to affect the overcrowding of juvenile detention centers and guarantee the rights of adolescents deprived of liberty, numerous initiatives are being proposed, with the objective of reducing the application of the measure of deprivation and restriction of liberty for adolescents and young people.

The Manual for Classifying Drug Trafficking as one of the Worst Forms of Child Labour within the Juvenile Justice, focused on the performance of magistrates, is included in this proposal, as it seeks to qualify the gateway to juvenile justice through considering adolescents who commit an infraction analogous to drug trafficking as cases which must be treated fundamentally from a protective perspective. Given the above, it is extremely important that this issue is brought up by the National Council of Justice, given that child labour brings a series of damages not only to children and adolescents, but to society as a whole.

It is important to highlight two international documents that are basic for the present discussion: the Convention Nº. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO, 1999a), and the Recommendation Nº. 190, which deals with the Prohibition of the Worst Forms of Child Labour and Immediate Action for Their Elimination (ILO, 1999b). Both regulations are from the International Labour Organization (ILO) and were incorporated into Brazilian law through Decrees Nº. 6,481, of September 10, 2000[1] (consolidated in Decree Nº. 10,088, of November 5, 2019) and internally regulated by Decree Nº. 3,597, of June 12, 2008. These rules, as the titles themselves adduce, provide **for the prohibition of the worst forms of child labour and immediate action for its elimination**. In this sense, these documents aim to protect children and adolescents from child labour, especially in dangerous situations. In addition, ILO Convention Nº. 182 establishes, in its Art. 3,

[1] Enacted Convention Nº 182 (ILO, 1999a) and Recommendation Nº 190 (ILO, 1999b) of the International Labour Organization on the Prohibition of the Worst Forms of Child Labour and Immediate Action for Their Elimination were concluded in Geneva on 17 June 1999. In Brazil they were consolidated in Decree No. 10,088, which regulates normative acts issued by the Federal Executive Branch that provide for the enactment of conventions and recommendations of the ILO (BRASIL, 2019a), and internally regulated by Decree Nº 6,481, which regulates articles 3, paragraph "d", and 4 of ILO Convention Nº 182, which deals with the prohibition of the worst forms of child labour and immediate action for their elimination (BRASIL, 2008), approved by Legislative Decree Nº 178 (BRASIL, 1999), and enacted by Decree nº 3,597 (BRASIL, 2000).

that "The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs" is one of the worst forms of child labour. This means that the international community has long emphasized the importance of a special look at this type of violation of rights (ILO, 1999a). Furthermore, the Brazilian State, upon ratifying these documents, incorporates them into its legal system.

The year 2021 was established by the United Nations as the *International Year for the Elimination of Child Labour*, with the start of a countdown to the achievement of Goal 8.7 of the Sustainable Development Goals (SDGs) to "by 2025 eradicate working in conditions similar to slavery, human trafficking and child labour, especially in its worst forms" (UN, 2015). In this sense, the launch of this manual marks an important process of prioritization of the agenda for the eradication of child labour, especially by the Judiciary, represented here by the National Council of Justice.

Child labour impacts not only the development of children and adolescents, but also has consequences for the family, the State and society as a whole. Brazil has advanced a lot in recent decades in the fight against child labour, with the adoption of public policies, expansion of access and guarantee of rights, in addition to the increase in inspection actions. However, the consequences of the socioeconomic crises experienced in Brazil in recent years[2], with the increase in poverty and the deepening of social inequalities, aggravated by the COVID-19 pandemic, have increased situations of vulnerability, risks, lack of protection and violation of the rights of millions of Brazilian families.

According to the National Forum for the Prevention and Eradication of Child Labour (FNPETI, 2021)[3], this type of work still persists as a reality for children and adolescents, especially those who are black[4] and who come from families in situation of poverty and/or misery in Brazil. As data from the Continuous National Household Sample Survey (PNADC)[5] show, in 2019 there were 1.8 million children and adolescents aged 5 to 17 years in child labour, which represents 4.6% of the population (38.3 million) in this age group. Also, according to the PNADC, most child workers are boys[6] (66.4%); blacks (66.1%); 21.3% (337 thousand) are between 5 and 13 years old; 25% (442

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[2] According to the The Wolrd Bank (TWB, 2020), the number of Brazilians living on less than US$ 3.20 (R$ 17) a day increased from 14.3 million to 19.2 million between 2017 and 2018. Brazilian Institute of Geography and Statistics (IBGE, 2020) points to an increase in inequality, measured by the Gini index. According to the institute, in 2019, 1% of the population with the highest income received, on average, R$ 28,659 per month, while the half of the population with the lowest income earned R$ 850, a difference of 33.7 times. The Gini index (0.543) indicates that Brazil occupies the ninth place in the ranking of the most unequal country in the world. A study published by the Fundação Getúlio Vargas Social Policy Centre (FGV, 2019) shows that, between 2012 and 2019, the income of the poorest half of the population fell by 18%, while the richest 1% had an increase of almost 10% in their income. According to the Global Wealth Report (CS, 2021), in 2020, the concentration of income increased in Brazil during the pandemic, reaching the worst level in the last two decades.

[3] Available at: https://fnpeti.org.br/.

[4] See in this regard the UN International Convention on the Elimination of All Forms of Racial Discrimination (UN, 1965).

[5] Available at: https://www.ibge.gov.br/estatisticas/sociais/trabalho/9171-pesquisa-nacional-por-amostra-de-domicilios-continua-mensal.html?=&t=o-que- and.

[6] There are differences according to the type of activity. In domestic work, for example, the female gender is the majority; in the sale of illicit drugs, the male gender is more representative. For more details on this difference, in addition to the PNADC data, see the technical note (CEDECA CEARÁ, 2020), available at: http://cedecaceara.org.br/wp-content/uploads/2020/07/Nota-Tecnica-Infancia-Genero-e-Orcamento-Publico-no-Brasil.pdf and the report (FNPETI, 2013), available at: https://fnpeti.org.br/media/publicacoes/arquivo/O_Trabalho_Infantil_Domestico_no_Brasil.pdf.

thousand) are between 14 and 15 years old; and 53.7% are between 16 and 17 years old (950 thousand). Regarding the impacts of child labour on the lives of this public, the research finds greater damage to school attendance and greater difficulty in continuing with studies, which generates a vicious cycle of vulnerabilities, since they will hardly find better working conditions once they have low professional qualifications.

Child labour also has severe impacts on the health of children and adolescents. According to data from the Notifiable Diseases Information System (SINAN)[7], from the Ministry of Health, from 2018 to 2020 there were about 54 deaths as a result of child labour. However, due to underreporting, many cases may not have been properly registered (Brasil, 2020).

Another underreporting found in the records on child labour concerns those involving the work of children and adolescents in the illicit drug economy. Adolescents not only remain victims of this labour exploitation but are also punished when apprehended for committing a drug-trafficking related infraction. There is still no special attention from State bodies, especially those which are part of the Juvenile Justice, regarding this issue, which makes this manual even more necessary since "child workers who are exploited by drug trafficking must be protected since they are at personal risk due to violations of their rights" (Oliveira, 2020, p. 38).

Today, in Brazil, it is impossible to state the number of children and adolescents who work in the illicit drug market. The lack of official data on the subject reaffirms the little treatment given to the matter and imposes the urgency of bringing the issue to the center of the debate. Currently, only outdated national data are available on adolescents serving socio-educational measures of deprivation of liberty for a drug-trafficking related infraction. According to the Annual Survey of the National System of Socio-Educational Assistance (SINASE)[8], which analyzed data from the year 2017 (Brasil, 2019b), 26.5% of the closed environment measures, for example, applied to adolescents across the country, were related to offenses similar to the crimes provided for in Federal Law Nº. 11,343/2006 (Brasil, 2006). Even higher figures are found on the specific websites of the Socio-Educational Assistance Foundations of several states, such as São Paulo: according to the CASA Foundations[9] newsletter of July 16, 2021, 50.08% of the total number of adolescents in initial care, pre-trial detention, sanction, detention and semi-liberty were deprived of liberty or had their liberty restricted due to acts similar to the crime of drug trafficking (CASA, 2021).

The States Parties, signatories of ILO Convention Nº. 182[10] – like Brazil – must, therefore, apply protection measures to people under the age of 18 who are victims of these violations, above all, in order not to criminalize their life trajectories. Thus, the trade of illicit drugs, when practiced by adolescents, should be treated from the perspective of child labour in one of its worst forms – in line with international legislation adopted domestically. In this way, for the adolescent victim of the exploitation of child labour, it is more appropriate to apply protective measures and, in the case of application of any socio-educational measure, preferably those that do not deprive adolescents

[7] Available at: https://www.gov.br/mdh/pt-br/assuntos/noticias/2020-2/junho/ministerio-lanca-cartilha-sobre-as-consequencias-do-trabalho-infantil/Trabalhoinfantil_MS.pdf.

[8] Available at: https://prioridadeabsoluta.org.br/wp-content/uploads/2016/05/levantamentoanualdosinase2017.pdf.

[9] The complete bulletin can be found at the following address: https://fundacaocasa.sp.gov.br/index.php/boletins-2021/julho-2021/.

[10] It is important to highlight that ILO Convention Nº 182 was universally ratified in 2020 (ILO, 2020). Available at: https://www.ilo.org/brasilia/noticias/WCMS_752499/lang--pt/index.htm.

of their liberty (warning, obligation to repair the damage, community service or probation).

From this point of view, it is inferred that the interpretation given to Federal Law Nº. 8,069/1990 (Brasil, 1990a) – Statute of the Child and Adolescent (ECA) – must consider ILO Convention Nº. 182 and other international human rights treaties, notably the United Nations Convention on the Rights of Child (UN, 1989), at the time of evaluation of specific cases. It is of fundamental importance that the Brazilian Judiciary apply human rights treaties in the interpretation of legislation and jurisprudence in line with the parameters of international human rights law (Trindade, 2003; Sarlet, 2015). It is, therefore, up to the magistrate to assess the compatibility between the Statute of the Child and Adolescent and the treaties, guaranteeing a legal, family, social, and community situation of support for the adolescent involved in child labour, using the existing mechanisms to safeguard the adolescent, according to the protective measures provided for in the Statute (Oliveira, 2020; Brasil, 2019a). The statutory legislation itself presents a list of protective measures that can be applied in these cases, as we will see throughout this material.

Despite international treaties and national legislation on the subject of child labour in illicit drug markets, the approach given by the majority of the Brazilian Judiciary is far from conforming to existing regulations. An example of this is the survey carried out in 2018 by the National Forum for the Prevention of Child Labour (FNPETI), the International Labour Organization (ILO), and the Ministry of Social Development (MDS), entitled Perception of the Juvenile Justice on Child Labour in Drug Trafficking, which showed that 93% of the judges interviewed did not see a direct and formal relationship with drug trafficking as a form of exploitation of adolescents in their worst form of work, which is why they did not properly refer the adolescent to social protection and professionalization programs (Ramos, 2018). This data highlights the need to create an awareness strategy aimed at the members of the Juvenile Justice System on the international regulations that have been accepted in the Brazilian legal system, with the aim of impacting on the rationalization of the number of adolescents deprived of liberty for infractions similar to the crimes provided for in Federal Law Nº. 11,343/2006.

In order to provide the reader of this manual with a better understanding of the subject, this text is organized as follows: (i) contextualization of the international history of the rights of children and adolescents, with a more in-depth look at the international regulations of the United Nations and the International Labour Organization that specifically deal with the subject matter of this manual, in addition to the presentation of Brazilian legislation, notably the Constitution of the Federative Republic of Brazil of 1988 (Brasil, 1988), the Statute of the Child and Adolescent, of July 13, 1990, and Federal Law Nº. 12,594, of January 18, 2012, which established the National System of Socio-educational Assistance (Brasil, 2012). Still, in the first part, an overview is made of what the specialized literature says about conventionality control. Then, the (ii) presentation of the policy to combat illicit drugs in Brazil, specifically the drug law and its cost; (iii) a contextualization of adolescents in the illicit drug market based on a survey of literature and research that deals directly with the topic; (iv) the presentation of national jurisprudence regarding adolescents involved in the illicit drug market, with the main arguments used by members of the Judiciary; and (v) recommendation to apply possible workflows for the referral of adolescents exploited by the illicit drug trade in Brazil.

This manual contributes in a more comprehensive way, contemplating not only the objectives of Pillar 2 of

the CNJ's program Fazendo Justiça, but also of the Judiciary Branch itself, for the consolidation of the Democratic Rule of Law, respect and compliance with international human rights treaties ratified by the Brazilian State. Above all, to guarantee the human rights of children and adolescents, especially those who are in the worst situation of child labour in the illicit drug market.

LEGAL CONTEXT

1 LEGAL CONTEXT

This part of the manual aims to present the international and national legislation which takes care of the rights of children and adolescents. Working with adolescents to whom are attributed the practice of infractions similar to the crimes provided for in Federal Law Nº. 11,343/2006 is also to look at the historical constructions of the legislation, both international and Brazilian, which directly affect the elaboration of understandings about juvenile justice and, specifically, in cases related to drug trafficking.

In view of the above, we present the main legislation dealing with children and adolescents at the international level in a summarized way, which can contribute to a specialized treatment based on human rights for this part of the population. To this end, at first, we trace a historical path regarding international legislation. In addition, we also present the role of centrality that the International Labour Organization (ILO) has in terms of guaranteeing the rights of all children and adolescents.

In a second moment, the Brazilian legislations are brought, among them the Constitution of the Federal Republic of Brazil, which incorporates the parameters established by the international norms in its Art. 227, the Statute of the Child and Adolescent and Federal Law Nº. 12,594/2012, which establishes the National System of Socio-educational Assistance.

1.1. International History of the Rights of the Child and Adolescent

1.1.1. The international path of child protection

It was in the 20th century that a growing concern with the well-being of children and adolescents began. According to Jacob Dolinger (2003), this fact is expressed in a sequence of international documents, which will be seen below, focusing on those documents that focus on the juvenile justice and the situation of children and adolescents who are victims of the worst forms of child labour.

Initiatives to legally protect children's rights had their origins in the very emergence of the ILO in 1919. The Labour Commission, created under the Treaty of Versailles, was composed of representatives from nine countries: Belgium, Cuba, Czechoslovakia, France, Italy, Japan, Poland, United Kingdom and United States (ILO, n.d.)[11].

It is at that moment, based on the protests and demands for rights, that the first International Labour Conference approved its first conventions. The documents dealt with (i) limitation of working hours; (ii) maternity

[11] To learn more: https://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm.

protection; (iii) unemployment protection; (iv) prohibition of night work for people under 18 years old; and, finally, (v) definition of a minimum age of 14 years old to work in the industry.

Of all the conventions approved, two dealt exclusively with children and adolescents (prohibition of night work and definition of the minimum age to work), while one addressed maternity protection, which indirectly also protects child development.

The driving forces behind the creation of the ILO emerged from security considerations and humanitarian, political, and economic issues. The founders of the ILO recognized the importance of social justice to guarantee peace, in the context of the exploitation of workers in nations that were in the industrialization phase in a post-war period.

In parallel with the creation of the ILO, in 1924, the Geneva Declaration of the Rights of the Child[12] was adopted by the League of Nations. Emphasizing the responsibility of adults, the declaration recognizes, in five articles, and for the first time in an international human rights document, children's rights to development, assistance, aid, and protection.

Geraldine Van Bueren (1998) explains that the text of the Declaration aimed at simplicity and could be applied everywhere and at all times. Despite the limitation that children were perceived as objects[13] and not subjects of international law, the Geneva Declaration of the Rights of the Child is an important historical document, as it, for the first time, established the concept of the rights of the child internationally (Van Bueren, 1998).

In relation to this manual, part of Article 2 stands out, which states "[...] the delinquent child must be reclaimed [...]" (UN, 1924). Previously in 1924 and later in 1934, punishment was not aimed at children and adolescents, so-called delinquents. There was, on the contrary, an idea of recovery. In the French and English versions of the document, the terms used are, respectively, *ramené* – which means "bring back" (Le Robert, 2006) – and *reclaimed* (Pearson, 2004).

However, the recognition that motherhood and childhood should have the right to special attention was only affirmed when the Universal Declaration of Human Rights of 1948 was published (UN, 1948). And only eleven years later, the United Nations approved a specific document that dealt with children and adolescents.

The Declaration of the Rights of the Child (DRC) of November 20, 1959, consisted of a preamble and ten principles. The preamble describes the principles as enunciating rights and freedoms, which governments should observe through "legislative measures and other measures progressively taken" (UN, 1959). The DRC makes reference to the Charter of the United Nations (UN, 1945) and the Universal Declaration of Human Rights of 1948. It is an express reference to the Universal Declaration of Human Rights because States come to re-

[12] However, although this document addressed fundamental rights, it was not legally binding. The same happened with the reaffirmation of the Geneva Declaration of the Rights of the Child, approved in 1934 at the General Assembly of the League of Nations, in which the signatories committed to incorporate the principles of the document in their national laws but were not legally obliged to do so.

[13] Object is understood to be that recipient child or adolescent subject to rights, as opposed to active subjects in receiving rights, as explained by Dolinger (2003).

cognize “with the exceptions required by their age, that the child shares the human rights claims set out in that document” (Van Beuren, 1998, p. 9).

The UN, through the Declaration of the Rights of the Child of 1959, starts to recognize the child as a subject of rights, no longer an object of intervention. Jacob Dolinger explains that: “while the 1924 Declaration stated that ‘the child must be reclaimed’, in the 1959 Declaration children ceased to be mere passive recipients, to be recognized as subjects of international law, with certain rights and freedoms” (Dolinger, 2003, p. 83).

Clearly influenced by the Universal Declaration of Human Rights of 1948, the DRC still lacked binding force, being nothing more than a mere enunciation of rights. In any case, it is important to note that the DRC was unanimously approved by the United Nations General Assembly and, according to Dolinger (2003), has greater normative force compared to UN declarations of law in general. The international character of the Declaration is highlighted, considering that, from the beginning, it was a global initiative, with contributions from countries with a diversity of cultures and different degrees of economic development (Van Bueren, 1998).

Principle 9 of the DRC makes it clear that children are subjects with guarantees of protection against any form of neglect, cruelty, and exploitation and that they must never be trafficked in any form. It can be seen, in this context, that the first enunciation of UN rights that dealt exclusively with children's rights already addressed the particularities of childhood and adolescence through the protective perspective.

Furthermore, the Beijing Rules (UN, 1985) are noteworthy, which are the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and were adopted by the UN in preparation for the 7th United Nations Congress on Crime Prevention and Treatment of its author, in 1985. In this sense, they are the ones who begin to outline the international plan for the protection of adolescents to whom is attributed the practice of acts contrary to criminal law (Eilberg, 2016; 2018).

With a total of 30 rules, the document is quite complete and seeks to address a topic that had not yet been addressed at the international level. It contains the ideas that the United Nations promotes around the world in relation to specialized justice aimed at adolescents in the criminal sphere.

The third part of this document deserves special attention here, which concerns the judgment and decision in relation to acts contrary to criminal laws practiced by adolescents. The Beijing Rules foresee the need for a truly specialized justice “that looks and sees the subjects who are imbricated there, in order to guarantee them all the assistance” (Rule 22.2) (UN, 1985). The servants of the justice system must be professionalized and trained to work with these specific demands (Rule 22.1). In this sense, the process to which the adolescent is subjected must be fair and equitable (Rule 14.1), being conducted in an environment with an atmosphere of understanding in which they can participate and express themselves freely (Rule 14.2). A relevant fact to be considered is the possibility for the judicial authority to suspend the process of an adolescent at any time (Rule 17.4). According to Rule 17.1, in order to make a decision, it is necessary to observe: the proportionality of the circumstances and gravity of the infraction, the circumstances and needs of the adolescent, as well as the needs of society, that the decision to restrict the freedom of the adolescent is taken after careful study, always observing the adolescent's well-being (UN, 1985).

Such rules mean that the case will always be guided with the well-being of that adolescent or young

person in mind, and the deprivation of liberty will be applied in an exceptional way (Rule 19.1) and, even when it is understood by the need for its application, that it should be limited to the shortest possible time. Also, in the third part of the Beijing Rules, information is given on the impossibility of applying the death penalty and corporal punishment to persons under eighteen years of age (Rules 17.2 and 17.3).

The Rules, by providing for the measures that can be applied to adolescents who commit infractions, emphasize the need to avoid, as much as possible, the use of restriction or deprivation of liberty[14], in addition to valuing extrajudicial measures[15]. Furthermore, any procedure involving an adolescent must be carried out quickly (Rule 20.1). The document also informs that the background must be considered confidential and not communicated to third parties (Rule 21.1) and cannot be used when the adolescent is over eighteen years old (Rule 21.2)[16].

In summary, the Beijing Rules contain minimum principles that must be respected by juvenile justice in all countries, with regard to adolescents who are charged for committing an infraction, in addition to highlighting the exceptionality of the use of deprivation of liberty for this public. This is because adolescents are considered subjects to whom protection is owed, regardless of whether they have committed acts contrary to criminal law or not.

In the wake of the Universal Declaration of Human Rights of 1948, the International Convention on the Rights of the Child of 1989 (ICRC)[17] deals, in addition to economic, social, cultural, civil, and political rights, with humanitarian rights, and brings important concepts for the protection of childhood in the international field, adopting the so-called Doctrine of Integral Protection, founded on the recognition of the peculiar condition of children and adolescents as people in development, holders, therefore, of special protection, intended for all without any discrimination (Dolinger, 2003). Composed of 42 articles, the ICRC, in Article 1, states that **"every human being under eighteen years of age is considered a child"** (UN, 1989), that is, when talking about a child, here, adolescents are also considered as such. Although the United Nations Human Rights Committee has noted that the limits of "youth age" should be determined by "each State Party in the light of social, cultural conditions [...]", the Committee itself is of the opinion that "all individuals under the age of 18 must be treated as minors, at least in

[14] These issues are supported by other articles of the Beijing Rules, such as the need for the police authority or other competent professional upon apprehending the adolescents, for example, releasing them: "10.2 The judge, the official, or the competent body will immediately examine the possibility of releasing the juvenile" (UN, 1985).

[15] Regarding the judicial procedure, it is in this UN document that the idea of *diversion* appears, translated into Portuguese as "remission", that is, the possibility of extinction or suspension of the procedure before the trial of the case.

[16] Although it is not a binding instrument *per se* and therefore does not have a monitoring body, there was an attempt to create a space to monitor the implementation of the Beijing Rules. Item 7 of the resolution to which the Beijing Rules are annexed invites States to report to the Secretary-General on the implementation of the Rules and to report regularly to the Committee on Crime Prevention and Control the results achieved. The regulation also provides, at the request of a State, assistance from the Secretary-General in adapting legislation and policies, as well as in developing alternatives to institutionalization. This service was made available because it is recognized in its preamble that existing legislation and policies may require revision and amendment in light of the standards enshrined in the Beijing Rules. States are also urged to provide the necessary resources to ensure the successful implementation of the Rules, and non-governmental organizations are encouraged to collaborate to implement the principles. In other words, the General Assembly tries, based on this, to overcome the disadvantage of the norms being adopted as recommendations, advising on implementation methods (Van Beuren, 2006).

[17] With more ratifications than any other Convention developed by the UN, the ICRC is considered "the human rights treaty for children" (Piovesan and Pirotta, 2014).

matters related to criminal justice" (Van Beuren, 2006, p. 7).

Furthermore, it deals with a series of rights, such as: the right to life and protection against capital punishment; the right to a nationality; protection in face of parents' separation; the right to leave any country and enter their country; the right to enter and leave any State Party for the purpose of family reunification; protection from being illegally taken abroad; the protection of their interests in the case of adoption; freedom of thought, conscience and religion; the right to access health services, whereby the State must reduce infant mortality and abolish traditional practices harmful to health; the right to an adequate standard of living and social security; the right to education, with States having to offer compulsory and free primary education; **protection against economic exploitation**, by setting a minimum age for admission to employment; **protection against involvement in the production, trafficking and use of drugs and psychotropic substances**; protection against sexual exploitation and abuse. For the purposes of this Manual, Articles 33, 37, and, especially, Article 40 of the 1989 ICRC are highlighted. Special emphasis is given to these articles because they relate, directly or indirectly, to juvenile justice. Considering the fact that Brazil is a signatory to the Convention and, therefore, received such a document in its domestic legal system through Decree Nº. 99,710 of November 21, 1990 (Brasil, 1990b), it is important to pay attention to some guidelines that deal with juvenile justice.

Firstly, it is highlighted in Article 33 of the ICRC:

> *States Parties shall take **all** appropriate measures, including legislative, administrative, social, and educational measures, to **protect** children against the illicit use of drugs and psychotropic substances as defined in relevant international treaties and to **prevent** children from being used in the production and illicit trafficking of these substances (UN, 1989).*

This means that, although Brazilian legislation defines it as a crime, in Federal Law Nº. 11.343/2006, several acts related to drugs and, in addition, defines that an infraction act is analogous to crimes or criminal misdemeanors, there is no indication, according to the ICRC, that adolescents should be punished when they commit such acts. Furthermore, the ICRC clearly mentions that the State must adopt all measures to protect and prevent children (and adolescents) from being used in the production and trafficking of narcotics.

It is noteworthy, at this point, that in addition to the States Parties striving to ensure the prevention of the use of children and adolescents in the production and illicit trafficking of narcotics, a joint agenda between the various UN agencies is necessary in order to protect adolescents involved in the narcotics trade (Barrett and Tobin, 2016).

Furthermore, Barrett and Tobin (2016) state that:

> *It follows from the wording of **Article 33 that the provision focuses on preventing the use of children in the illicit drug trade**. This does not mean that the obligation to prevent should be interpreted as excluding from its competence children who are already involved in illicit*

> *production or trafficking. This would lead to an absurd result. An interpretation of Article 33 that is consistent with the object and purpose of the Convention requires that the obligation to prevent requires all reasonable measures by a State* ***to prevent children from continually entering or becoming involved in the illicit drug trade*** *(Barrett and Tobin, 2016, p. 42).*

In this sense, it is important to mention that the International Convention on the Rights of the Child of 1989 must be read as a whole. Thus, still with attention to Art. 33, it is clear that the Convention requires States to take "all appropriate legislative, administrative, social, and educational measures" to prevent the use of children in the illicit production and trafficking of these drugs (UN, 1989).

Of course, States have significant discretion with regard to the measures they choose to take to prevent the involvement of children in the drug trade. But this must follow two rules: the measures must be effective, and second, they must be consistent with the remaining rights of the Convention and with international human rights law more generally. The general obligation in Art. 2 to respect and guarantee all rights listed in the Convention also requires States to take all reasonable steps in the light of available resources to ensure that State actors do not motivate or encourage, expose or facilitate the use of children and adolescents in the production and trade of narcotic substances – in order to respect and protect the rights of these children; in addition, States must ensure that the underlying reasons for the involvement of children in the illicit drug trade are addressed and that due to the involvement of these children, all appropriate measures must be taken to deal with any harm they may have suffered (Barrett and Tobin, 2016).

This fact demonstrates an important concern, as early as 1989, with the involvement and use of children and adolescents in the exploitation of the narcotics trade.

Article 37 of the ICRC reaffirms that no child shall be subjected to torture, nor to other cruel, inhuman, and degrading treatment or punishment, insisting, still in subparagraph “a”, that the death penalty or life imprisonment shall not be imposed without possibility of release for persons under the age of 18.

Following, in paragraph “b”, the principle of exceptionality and the principle of brevity of deprivation of liberty are exposed, that is, deprivation of liberty can only be used as a last resort and for the shortest possible time. Continuing what it says in the article, still on the deprivation of liberty, the ICRC states that each and every child must have their dignity respected, regarding of their peculiar condition of development, and must be separated from adults and guaranteed their right to family life, either through visits or correspondence.

It is worth mentioning that, in the case of Brazil, measures of deprivation of liberty are used quite frequently. Data collected by the Ministry of Women, Family, and Human Rights on the National Socio-Educational Assistance System indicate an increase of more than 600% in the number of adolescents deprived of their liberty between 1996 and 2016 (Brasil, 2019b).

Upon analyzing the infractions committed by adolescents, an increase can also be observed in the use of deprivation of liberty for acts related to the drug law and, in this specific case, to Art. 33 of that legislation. It so happens that, in Brazil, detention centers are mostly unhealthy, overcrowded establishments that provide precarious access to social and fundamental rights, which are more similar to prisons than to educational centers, as mentioned by the Supreme Court itself in the judgment of Habeas Corpus Nº. 143,988 (STF, 2020). Finally, item "d" of Art. 37 of the ICRC informs that the child deprived of liberty has the right to legal assistance, in addition to the right to a double degree of jurisdiction.

Van Bueren (2006) explains that international law embodies a number of basic principles on which juvenile justice must be based. The first purpose is to encourage the well-being of children and adolescents. Both the ICRC and the Beijing Rules emphasize child welfare as a central issue in juvenile justice. In addition, the basic right to maintain regular coexistence and direct contact with their parents, enshrined in Art. 9 of the Convention, is one aspect of helping the child achieve this sense of well-being. The Beijing Rules specifically highlight the importance of maintaining the relationship with the child's family so that the child is not treated in isolation from family members.

Another facet of promoting a child's sense of well-being is that in all cases where children are "alleged, accused or recognized as having infringed the criminal law", they must, according to the ICRC, be treated in a manner consistent with the promotion of their sense of dignity and worth, which would reinforce ICRC's zeal for the human rights of children and adolescents in all circumstances. Any treatment given to children, therefore, must take into account their age and the convenience of promoting their "reintegration" and their capacity as a builder of society (Van Bueren, 2006, p. 12).

It should be noted that, according to Art. 40, 2, subparagraph "a" of the ICRC, children, and adolescents shall not be accused of having infringed the criminal law for acts or omissions that were not prohibited by national or international law at the time they were committed, which is consistent with the principle of legality and the principle of non-retroactivity of criminal law. This is an important determination, which breaks with the hitherto hegemonic practices of deprivation of liberty of children and adolescents, even if they had not committed any infraction, as occurred in Brazil for most of the 20th century. In other words, there is a limit to the State's intervention in the individual freedom of children and adolescents.

Equally applicable to children, adolescents, and adults is the principle of presumption of innocence. All children and adolescents are considered innocent until proven guilty according to the law, as set out in Art. 40, item "b", I of the ICRC.

When children or adolescents are detained, the Beijing Rules recommend that their parents or guardians

be notified "immediately" or, if this is not possible, as soon as possible (Van Bueren, 2006, p. 13). The ICRC provides that the child "must be informed without delay and directly or, where appropriate, through their parents or legal representatives, of the charges against them, and be provided with legal or other assistance appropriate for the preparation and presentation of their defense" (UN, 1989).

When the case children and adolescents do not receive an alternative conflict resolution and are referred to juvenile justice, they have the right to have the case followed up by an "independent and impartial competent authority or judicial body". Art. 40 of the ICRC incorporates the phrase "judicial authority or body" to include all bodies of a judicial nature that have responsibility in the field of juvenile justice (Van Bueren, 2006, p. 15).

Besides, it is explicit that children and adolescents should not be forced to testify or plain guilt, as they could be pressured to do so. And this is especially important in the case of children, as research by Defense for Children International[18] pointed to several abuses that occurred while children were in police custody[19]. The laws of States Parties, therefore, must guarantee that any evidence of a violation of international human rights law must be considered inadmissible by the courts (Van Bueren, 2006, p. 21).

An important issue, especially in comparison to the Statute of the Child and Adolescent, is the fact that the ICRC imposes on States Parties to guarantee the right to privacy and respect at all stages of the procedure, including the pre-procedural phase. This is because, with the procedure open to the public – even under the guise of the best interests of the child and adolescent – the chances of their stigmatization would increase. However, Van Bueren informs that there is a danger in cases of violations of the human rights of this part of the population, since several issues can go unnoticed (2003). In addition, this right to privacy is extended to the procedural documents. There would, therefore, be a duty to keep the procedural documents secret and inaccessible (VAN BUEREN, 2003, p. 24)[20].

Another basic principle enshrined in international law, since the publication of the ICRC in 1989, is the fact that the concept of criminal liability must be related to the age of children. Thus, the ICRC seeks to promote the establishment of a minimum age below which children must be presumed not to have the capacity to infringe criminal law. In the case of Brazil, in accordance with the ICRC, the SCA establishes that until the age of 12, children cannot be held accountable for committing an offense. In this case, there is only the possibility of applying protective measures (BRAZIL, 1990a).

General Comment Nº. 24 on Children´s Rights in the Child Justice System says that: "More than 50 States Parties have raised the minimum age of criminal after the ratification of the Convention, and the

[18] Tomasevsky (ed.). Children in Adult Prisons: An International Perspective. London: Frances Printer, 1986.

[19] See, in this sense, When They See Us, a series available on the Netflix platform, produced by Ava Duvernay, which tells the story of the five in Central Park, New York.

[20] In this sense, it is worth mentioning the Bill 3779/20, pending in the Chamber of Deputies, which amends the Penal Code to determine that the application of socio-educational measures due to the practice of an offense be considered for the purpose of recidivism. To learn more, visit: <https://www.camara.leg.br/noticias/721346-projeto-determina-que-medida-socioeducativa-seja-computada-em-caso-de-reincidencia/>. Accessed on March 28, 2021.

most common at the international level is 14 years". In this case, it is possible to say that the minimum age in Brazil is below the international average (UN, 2019, n.p.)[21].

Although the 1989 International Convention on the Rights of the Child has more than 40 rights in its scope, it is important to note that it also deals with the practice of unlawful acts. Also, in 2019, General Comment No. 24[22], which defines how the Convention applies to the rights of the child in the juvenile justice, reflecting general guidelines and what it calls "effective practical experiences", such as restorative justice and alternative measures to deprivation of liberty.

Likewise, topics that are of concern to the Committee on the Rights of the Child are also addressed, such as attempts to reduce the age of criminal responsability and the recurrent use of deprivation of liberty. Finally, procedural principles and guarantees are presented and for the enforcement of deprivation of liberty measures, such as effective participation in all procedures, decisions without delay, that is, in the shortest possible time, as well as the **exceptionality and brevity of deprivation of liberty**.

Thus, considered one of the most important international legislation in the world, the ICRC of 1989 must always be taken into account during the application of national legislation because, as presented at the end of this chapter, such a norm, in force and ratified by Brazil, has the status of a supra-legal norm and, therefore, must be articulated for the protection of adolescents, in accordance with the Federal Constitution of Brazil.

Another important international reference is the United Nations Guiding Principles for the Prevention of Juvenile Delinquency, known as the Riyadh Guiding Principles, published by the United Nations General Assembly in 1990, through Resolution 45/112, of 14 December 1990, at the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders. In this sense, the rule, aimed at preventing the practice of delinquency by young people, presents a series of progressive measures. Comprising more than 60 articles, divided into seven major topics, the principles establish standards for the prevention of juvenile delinquency and include measures to protect young people who have been abandoned, abused or who are in a situation of marginalization or social risk.

Among its principles, it is highlighted that the UN considers that: (i) the prevention of juvenile delinquency is an essential part of the prevention of crime in society; (ii) that young people should play an active and participatory role in society; (iii) society and the State must create opportunities, in particular educational, and services and programs based on the youth's territory for the prevention of delinquency. In addition, it establishes that all prevention programs must focus on the well-being of young people, taking into account their protection and interests.

[21] In free translation: "More than 50 States Parties have raised the minimum age of criminal responsibility since the ratification of the Convention, with the international average being 14 years of age". https://www.camara.leg.br/noticias/721346-projeto-determina-que-medida-socioe-ducativa-seja-computada-em-caso-de-reincidencia/. Access on: March 28. 2021.

[22] Available in full at: https://undocs.org/en/CRC/C/GC/24. Accessed on: June 5 2021.

It is worth mentioning that all norms must be interpreted and applied in line with international human rights norms, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil Rights and Politicians, the Convention on the Rights of the Child, and in the context of the United Nations Minimum Rules for the Administration of Justice for Children and Youth, as well as other instruments and norms related to the rights, interests and well-being of all the children and youth.

Also, as a result of the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, through Resolution Nº. 45/113, the United Nations General Assembly adopted the United Nations Minimum Rules for the Protection of Juveniles Deprived of Liberty, known as the Havana Rules on December 14, 1990.

With more than 80 articles that pertain to the protection of institutionalized children and adolescents, the Havana Rules are designed to **encourage the use of alternatives to deprivation of liberty** and ensure that those in custody have their most basic rights protected.

Thus, defining youth as any person under the age of 18, they also define deprivation of liberty as any form of detention or imprisonment, or the placement of a person in a public or private place of custody, from which they are not authorized to leave of their own free will and only by order of any judicial, administrative or other public authority (Rule 11). The Havana Rules are intended to neutralize the harmful effects of deprivation of liberty, guaranteeing respect for the rights of children and adolescents.

The Havana Rules establish a series of fundamental principles that take into account the special condition of people under 18 years old. In this sense, it reiterates **that deprivation of liberty must be the last resort to be used and also for the shortest possible time** - in respect of the principles of exceptionality and brevity (Rules 1, 2 and 17). They regulate equality in the treatment of children and adolescents without any type of discrimination (Rule 4), in addition to establishing that deprivation of liberty must aim to promote the well-being of this part of the population (Rules 12 and 32), as well as that all basic procedural guarantees are safeguarded (Rules 18 and 70), with information on the right to confidentiality, adversarial rights and respect (Rule 19).

Next, the mandatory separation between adults and children and adolescents is addressed (Rule 29), in addition to encouraging that institutional facilities for young people are reduced and have open installations (Rule 30), as well as that they satisfy all the requirements of hygiene and human dignity (Rule 31). All young people must benefit from measures designed to help their reintegration into society, family life, education or work after being release (Rules 39, 79 and 80), and the contact with family and community must be maintained (Rule 59). Finally, the rules highlight the prohibition of corporal punishment or solitary confinement (isolation) (Rules 67 and 87) and the need for professional training for those who work with children and adolescents (Rules 81, 85 and 86).

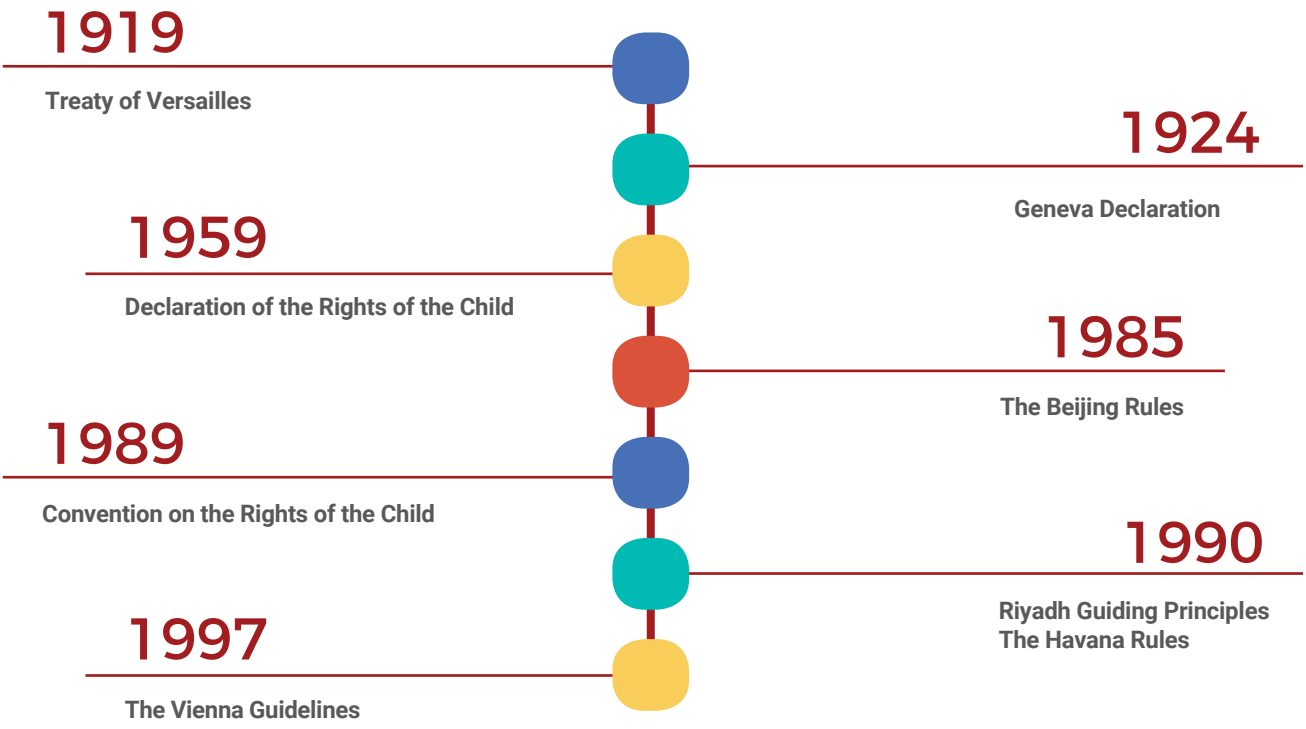
Therefore, the Havana Rules, by improving what was developed by the Beijing Rules, show the priority and specialized treatment that adolescents deprived of their liberty should receive.

The Vienna Guidelines, drafted in 1997 and adopted by the UN Economic and Social Council, are intended

to assist member states in the implementation of the ICRC, and in the use and application of juvenile justice standards and norms (paragraph 5). They are divided into: measures of general application (paragraphs 10 - 11); specific targets (paragraphs 12 - 25); measures to be adopted at the international level (paragraphs 26 - 29); mechanisms for the implementation of advisory and technical assistance projects (paragraphs 30 - 40); additional considerations in project implementation (paragraphs 41 - 42); and child victims and witnesses (paras. 43 - 53).

Among the Guidelines' provisions, we highlight the indication that the placement of children and adolescents in closed institutions should be reduced (paragraph 18), reaffirming the principles of exceptionality and brevity, as well as the prohibition of corporal punishment and the need to facilitate access for family members to places of deprivation of liberty (paragraph 20). Rule 21 indicates the existence of independent bodies to monitor conditions in places of detention and to prepare regular reports in this regard (paragraph 21). In addition, significant considerations are made regarding the need for prevention, with a view to overcoming the root causes of juvenile crime (paragraph 41), as well as the necessary intersectionality between public policies and collaboration between the various actors of the justice system and administrative authorities in this task (paragraph 42).

These are clearly not the only documents that can be applied to children and adolescents. Considering the specificity of the treatment that should be addressed to them, it was decided to list some of the international regulations which were elaborated within the United Nations that exclusively concern this part of the population. In general, the documents presented here are considered civilizational landmarks in the treatment of children and adolescents:



The International Covenant on Economic, Social and Cultural Rights of 1976 - ratified by Brazil[23] - states in its article 10 (3) that States Parties recognize the need to take special measures of protection and assistance on behalf of **all children and young people**, without any discrimination on grounds of affiliation or other conditions. **Children and youth must be protected from economic and social exploitation. Employment in activities that are harmful to morals or health, dangerous to life or that may impair their development normal behavior shall be punished by law**. States must also establish age limits below which the paid employment of child labour must be prohibited and punishable by law.

The Pact of San José (American Convention on Human Rights), in its Art. 19, informs that

[23] In this sense, the full text of Decree-Law Nº. 591 of 1990 can be accessed at: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0591.htm. Accessed on: July 14 2021.

every child has the right to the protection measures required by their condition of being under 18 years old on the part of their family, society and the State. The issue of effective abolition of child labour is also widely addressed in instruments adopted at regional level around the world. The establishment of a minimum age for admission to employment is provided for in the Inter-American Charter of Social Guarantees.

The Protocol of San Salvador[24], in its Art. 7 (f), informs that States Parties recognize the prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety or morals, for persons under the age of 18 years old. In the case of children under the age of 18, the working day must be subject to the provisions on compulsory education and, in no case, may it constitute an impediment to school attendance or a limitation to benefit from the instruction received.

Other documents at the regional level also account for the ban on child labour, such as the **European Social Charter** (Revised) (Article 7), the **African Charter on the Rights and Welfare of the Child** (1990, Article 15 (2) (a)), the **Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States** (Article 27(3)) and the **Arab Charter on Human Rights** (Article 34(3)). Specific provisions on the worst forms of child labour are inserted in the African Charter on the Rights and Welfare of the Child (Articles 15, 22 and 27 to 29) and in the Arab Charter on Human Rights (Article 34(3)).

Several recent initiatives in Asia are also worth mentioning: two conventions on the rights of

[24] The San Salvador Protocol can be found on the OAS website: http://www.cidh.org/basicos/portugues/e.protocolo_de_ san_salvador.htm. Access on: July 14, 2021.

the child were adopted in 2002 by the South Asian Association for Regional Cooperation (SAARC), one to prevent and combat the trafficking of women and children for prostitution, and the other addressing regional agreements to promote child well-being in South Asia; and within the framework of the Association of Southeast Asian Nations (ASEAN), a **Declaration Against Trafficking in Persons**, Mainly Women and Children, was adopted in 2004.

1.1.2. Back to the International Labour Organization

All the regulations presented here, together with several others that deal with human rights more broadly, make up the international apparatus for the protection of children's rights. It was a long historical period until children and adolescents were recognized as subjects of rights, who go through a fundamental stage of life, as they are in a peculiar condition of development, and this must always be taken into account when talking about children and adolescents that attend the juvenile justice, as it is for these reasons that a different system is applied to them, with a differentiated and individualized approach.

If in 1919, with the creation of the ILO and the approval of its first conventions, the institution already had an important role in the defense of children's rights, today it can be said that this role has become extremely relevant, especially considering the current context, as will be seen in chapters 2 and 3 of this manual. This means that at the international level, actions to combat the economic exploitation of children began even with the creation of the ILO. It was at the first session of the International Labor Conference (CWI) in 1919 that delegates from governments and employers' organizations, aware of the need to protect children against economic exploitation, adopted the first ILO rule governing the minimum age in the industry[25], namely Convention Nº. 138[26].

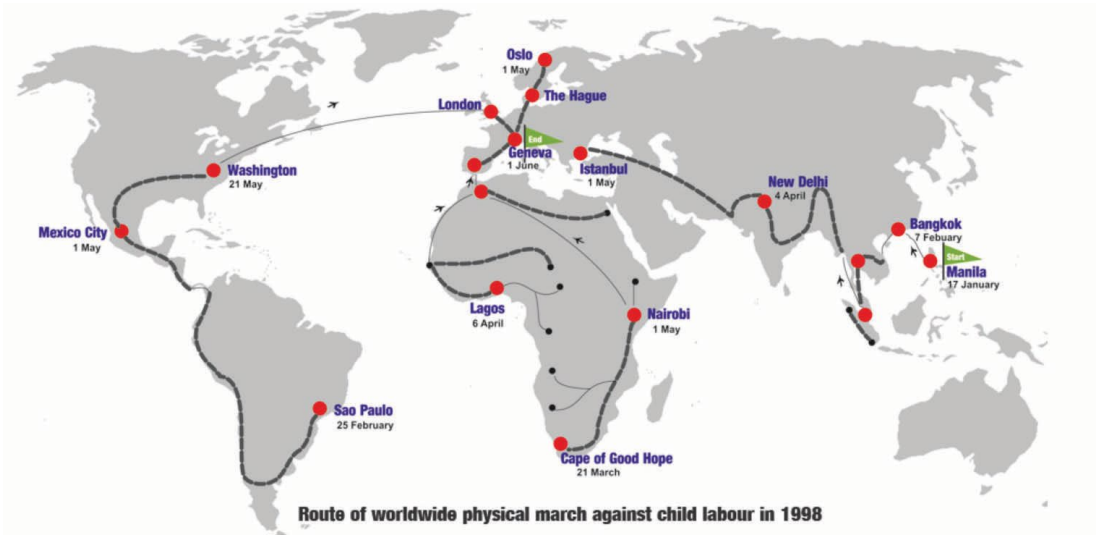
Prior to the adoption of Convention Nº. 138, the ILO instruments on the minimum age for admission to employment or work dealt only with specific sectors. Thus, the main objective of Convention Nº. 138 is the pursuit of a "national policy aimed at ensuring the effective abolition of child labor and progressively increasing the minimum age for admission to employment or work [...]" (ILO, 1973, n.p.). In addition, the Convention aims to protect children's ability to attend school, as well as regulate the types of economic activities they are permitted (also the conditions appropriate for such work), and protect their health, safety and morals. This Convention, together with the Worst Forms of Child Labor Convention 1999 (Nº. 182), according to ILO experts (ILO, 2008), is the most authoritative international normative framework for the elimination of child labour. The

[25] Convention Nº. 5 on Minimum Age for Work in Industry.

[26] Convention Nº. 138 on the minimum age for admission to employment was approved at the 58th meeting of the International Labor Conference (Geneva - 1973), entered into force internationally on June 19, 1976. Brazil ratified the Convention on June 28, 1976. June 2001. Available at: https://www.ilo.org/brasilia/convencoes/WCMS_235872/lang--pt/index.htm.

emphasis placed by both conventions on the abolition of child labor reflects the conviction of ILO constituents that **childhood is a period of life that should not be devoted to work, but to the full physical and mental development of children**.

Regarding the history of ILO Convention Nº. 182, it is worth mentioning, first of all, the **"Global March" movement**. This movement began with an 80,000 km long walk, when thousands of people marched together spreading the message against child labour. The march began on January 17, 1998, crossed 103 countries and generated a high level of participation from people and communities around the world, ending in Geneva on June 1, 1998, during the session of the ILO Conference. It became one of the biggest social movements of all time in favour of child victims of exploitation. The voice of the protesters, which included children and adolescents, was heard and reflected in the ILO Convention No. 182 draft on the Worst Forms of Child Labour. The following year, the Convention was adopted at the ILO Conference in Geneva[27].



Source: The Global March. Available at: https://globalmarch.org/about-us/our-story/.

As a result of the Global March against child labour, the ILO approved, a year later, the text of what would come to be known as Convention Nº. 182 of the International Labor Organization on the **prohibition and elimination of the worst forms of child labour, including on its list child trafficking, slavery and the use of children for illicit activities such as drug trafficking**.

As one of the eight Fundamental Conventions of the ILO, it basically confirms what the Organization has been advocating since its foundation. At that time, the first director of the ILO, Albert Thomas, stated that child labor "represents an exploitation of childhood and is the reflection of evil [...], the most unbearable for the human heart. Child protection is always the starting point for effective work on social legislation" (ILO, 2020, n.p.).

[27] Available at: https://globalmarch.org/

Eliminating the worst forms of child labor is an absolute universal goal, as stated by the ILO itself. In this sense, there is a need to take concrete and immediate measures, in order to activate the range of the most fundamental human rights.

The unanimous adoption of Convention Nº. 182 by the Conference in 1999 reflected the consensus and tripartite commitment among ILO constituents that certain forms of child labor required urgent and immediate action for their prohibition. This milestone was the culmination of an in-depth examination and numerous consultations aimed at creating a convention with universal applicability and guaranteed relevance.

According to Art. 1 of the regulation, each "Member that ratifies this Convention should take immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labor" (ILO, 1999, n.p.). According to the General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization[28] of 2012, the measures taken must ensure not only the prohibition of the worst forms of child labor in terms of legislation, but also their elimination in practice.

Also, according to the document, Convention Nº. 182 is unique, precisely because it emphasizes practical measures and actions to be taken, aiming to eliminate the worst forms of child labor, as highlighted in art. 7:

> *Convention Nº. 182 also highlights, in its Article 7, the need to adopt measures with fixed deadlines, an approach developed by the ILO_IPEC to make the execution of plans by member states more feasible, as highlighted by the General Survey (ILO, 2012, p. 188 – 189). Measures that require a certain period to enter into force include, in particular, measures relating to the prevention of the worst forms of child labor (under Article 7(2) (a) of the Convention), as well as measures for the rehabilitation and social reintegration of children removed from these worst forms of child labor (in accordance with Article 7(2)(b) of the Convention).* ***Measures with a specified timeframe must also be taken to ensure access to free basic education for children removed from the worst forms of child labour, to identify and reach children at special risk, and to take into account the special situation of girls, in accordance with Article 7 (2) (c), (d) and (e)****. (ILO, 2012, p. 191, without emphasis in the original).*

The incidence of child labor in the world, including its worst forms, decreased by almost 40% between 2000 and 2016 – data that can be found on the ILO website, as a result of the increase in the ratification rate of Conventions 182 and 138 (on the minimum age for admission to employment) and the adaptation of effective laws and policies in the countries which have signed them.

[28] In free translation: General survey on fundamental conventions on rights at work in light of the ILO Declaration on Social Justice for a Just Globalization.

The speed of ratification of the Convention which was universally adhered to in 2020 is unparalleled in the history of activities related to ILO standards. Undoubtedly, this reflects a strong political will to eradicate child labour, especially its worst forms.

As the General Survey (ILO, 2012) highlights, Convention Nº. 182 can be used for all children under 18 years of age. As can be seen in its art. 2, "the term 'child' applies to all persons under the age of 18". Thus, it is important to highlight that:

> *The Convention, therefore, applies equally to boys and girls, citizens and non-citizens, employed and self-employed children,* ***as well as to legal and illegal work****. Unlike Convention Nº. 138, which contains several flexibility clauses, Convention Nº. 182 does not allow exceptions (ILO, 2012). This is a reflection of the principle underlying the Convention that certain forms of child labor are so intolerable that there can be no exceptions (ILO, 2012, p. 189, no emphasis in original).*

In addition, the definitions of the worst forms of child labor outlined in Art. 3 are universal and apply uniformly in all countries that have ratified the Convention. According to Art. 4 (1), the determination of the types of hazards at work is carried out by each State, after consultation with the employers and workers concerned. Although Recommendation Nº. 190[29] provides guidelines on what types of work should be included in this determination, the types of hazardous work can vary from country to country, based on the determination of the competent authority. In this sense, work identified as hazardous (and therefore the worst form of child labor) in one country may not be defined as the worst form of child labor in another. This allows Member States to take into account national circumstances that may make certain types of work dangerous, and to adapt the scope of the Convention in line with local reality.

Although the Convention is implemented through national legislation and within national territories, the *General Survey* noted several underlying elements of territorial application. This includes the growing trend of countries enacting legislation that provides for the responsibility of national citizens who involve children and adolescents in the worst forms of child labor outside the national territory. The *General Survey* (ILO, 2012, p. 190) also provides examples of how Member states have implemented in their legislation the **immediate prohibition** of the worst forms of child labor (in accordance with articles 1 and 3 of the Convention), as in the cases from Côte d'Ivoire (from Law Nº. 2010-272[30] which prohibits trafficking and the worst forms of child labour), and from the Philippines (through Law Nº. 9231, 2003)[31].

ILO specialists, in the *General Survey*, point out that most Member States implement Art. 3 of Convention Nº.

[29] Recommendation nº 190 can be found, in Portuguese, in its entirety at the following address: https://www.ilo.org/brasilia/temas/trabalho-infantil/WCMS_242762/lang--pt/index.htm. It is a document that supplements ILO Convention No. 182 and should be applied together with it.

[30] Available at: https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/85243/95376/F693526342/CIV-85243.pdf.

[31] English translated version available at: https://www.chanrobles.com/republicactno9231.html#.YQwl04hKiM8

182 in its criminal law. This legislation is complemented both by regulations that deal especially with child trafficking, sexual crimes and crimes related to illicit drugs, as well as by child protection laws. Even so, the work highlights the little practical effort by countries to eliminate the worst forms of child labor (ILO, 2012, p. 190).

The General Survey also exposes the difficulties of implementing ILO Convention No. 182. In several countries, the prohibitions contained in the legislation implementing the Convention do not sufficiently cover the scope of activities defined as the worst forms of child labor in Art. 3 of the Convention (ILO, 2012). As an example, **in Brazil, the Statute of the Child and Adolescents[32] does not have a specific article on this, nor does the Constitution itself.**

In addition, the Expert Committee noted, for example, cases where the existing ban does not address the heart of the prohibited activity, such as legislation that prohibits "the possession or dissemination of child pornography, but not the use of a child for producing it, or legislation that prohibits the supply of drugs to minors but does not prohibit the use of children for the production or trafficking of such drugs" (ILO, 2012, p. 192). In relation specifically to drug trafficking practiced by children and adolescents, the ILO regulations make it clear, in its article 3, that the expression "the worst forms of child labor" includes (c) **the use, recruitment and supply of children for illicit activities, particularly for the production and trafficking of narcotics as defined in the relevant international treaties.**

The *General Survey* (ILO, 2012) points out that, as in Brazil, in Art. 244-B of the ECA, legislation in other countries also stipulates the use of children and adolescents for the purpose of producing and transporting drugs as a crime:

> *In some cases, the legislative provision simply reproduces Article 3 of the Convention, for example in countries such as Burkina Faso, the Central African Republic and Fiji, or is limited to the use, acquisition or supply of a child for the production and trafficking of drugs and does not prohibit the use of children for other types of illicit activities. For example, in China, the Criminal Law stipulates that anyone who uses or incites a young person to traffic, transport, manufacture or sell drugs to young people commits an offense (ILO, 2012, p. 226).*

Finally, the General Survey (ILO, 2012) highlights that:

> *A significant number of countries have adopted various measures to prevent the involvement of children in illicit activities or have provided direct assistance for the removal of children involved in or at risk of being involved in these types of activities. These measures may take the form of financial assistance to children from poor families, or they may consist*

[32] Senator Ciro Nogueira (PP/PI), in 2020, proposed Bill Nº. 234, in order to discipline civil liability in the event of submission of children and adolescents to the worst forms of child labor. Although the Senate is, in most cases, the reviewing house, in this case there was a legislative proposal. The project had its last progress in February 2021, in which it awaits - still – the designation of the rapporteur. More information about this can be found on the Federal Senate website: <https://www25. senado.leg.br/web/atividade/materias/-/materia/133280>. Accessed on: July 14 2021.

of the provision of day care services, such as housing, food or education, as well as family reintegration measures. An example of this is that since 2008, centers for children and adolescents to spend the day have been established in Lithuania, offering children at risk (from families with social, psychological or other problems) and their families a variety of social services without separating the children from their parents (ILO, 2012, p. 228).

As examples of these measures to prevent the involvement of people under the age of 18 in the illicit drug market, ILO experts highlight the case of a short-term program (ILO-IPEC) launched by the Philippines in 2003; the case of Indonesia, with the Memorandum of Understanding, which seeks to encourage an approach to the problem through restorative justice; and the case of South Africa, with a short-term pilot program. Finally, the Expert Committee, in the General Survey, highlighted the importance of this type of pragmatic initiative, together with the approval and application of legislation, for the effective prevention and eradication of the use of children in illicit activities.

1.2. National History of the Rights of Children and Adolescents

In addition to all the international norms for the protection of children presented in the previous topic, it is worth mentioning that Brazil has in its legal system specific norms to take care of this part of the population. In this part of the material, the national legislation that takes care of the Rights of Children and Adolescents will be exposed - such as the Federal Constitution of Brazil, the Child and Adolescent Statute, of 1990, and Federal Law Nº. 12,594 of 2012, which established the National Socio-Educational Assistance System.

The Constitution of the Federative Republic of Brazil of 1988 inaugurated the democratic opening of the country, after long years of a dictatorial regime. In addition to the constitutional text being a norm that guaranteed fundamental rights inherent to the human person, the text brought into its core the full protection of children and adolescents. It is in the Constitution that full protection – worked internationally since the publication of the Declaration of the Rights of the Child of 1959 (UN, 1959) and reinforced with the publication of the International Convention on the Rights of the Child – CIDC – (UN, 1989) – gains institutionalization in the country.

The constitutional provision states that, in addition to the State, the family and society must guarantee the child, adolescent and young person, with absolute priority[33], all fundamental rights and some specific rights, because they are in a peculiar situation of development. Furthermore, it states that it is the responsibility of these three entities to protect children, adolescents and young people from any negligence, exploitation, cruelty,

33 It is worth mentioning that it is only in art. 227 of the Constitution of the Republic of 1988 that the words "absolute" and "priority" appear together.

oppression, discrimination and violence (BRASIL, 1988).

The Federal Constitution of Brazil also deepened the principle of administrative decentralization, giving states and municipalities competencies and responsibilities in the implementation of public policies aimed at children and adolescents and, with that, the protection intended was also decentralized. That is, even though the Principle of Absolute Priority is stated in the Federal Constitution, states and municipalities are also responsible for implementing it in practice.

Source: https://crianca.mppr.mp.br/pagina-2174.html

Even though the Constitution has defined the fundamental rights of children and adolescents, it was up to the ECA to elaborate and systematize the "doctrine of integral protection". Thus, this new legislation no longer speaks of children and adolescents in an "irregular" situation, but rather in situations of potential social risk. This means that if a child or adolescent is in a situation of crime, poverty, violence or abandonment, it is not them who are in an irregular situation, but the institutions responsible for their well-being.

Published in July 1990, the Child and Adolescent Statute (ECA), Federal Law Nº. 8,069, became a legal framework for the protection of children's rights in the Latin American and Brazilian context. In a normative field, it is clear that it is a very complete legislation, considering that it deals with all spheres of children and adolescents' lives.

For explanatory purposes only, the ECA is divided into two books: one on the general part and one on the special part. In addition, each of these books is subdivided into titles and chapters, which makes the ECA have more than 250 legal provisions that govern the rights of children and adolescents in the country. In addition to addressing fundamental rights for children and adolescents, such as the right to life, freedom, respect, dignity, health, education, work, among others, it also deals with the types of family existing in Brazilian law, regulates adoption nationally and internationally, and it establishes guidelines for preventive public policies for the care of

children and adolescents, as well as specifies which entities should be responsible for providing this care. It recognizes measures to protect children and adolescents at risk, provides for the individual rights and guarantees of adolescents involved in the practice of offenses and establishes all judicial procedures that can and should be adopted, in addition to establishing which measures of accountability pertain to parents and guardians. Furthermore, it establishes the competence of the juvenile justice, in addition to defining crimes against this part of the population.

It is said in the legal sphere – mainly – that the shift from the "doctrine of the irregular situation" to the "doctrine of integral protection" did not happen only in the name, but it was a paradigmatic change, since it broke – normatively – with the standards established in previous legislation. Furthermore, it is often argued that because the ECA was the first Latin American legislation that brought into the normative scope the provisions contained in the 1989 CIDC, it is a civilizational landmark itself.

As explained by Cifali (2019), the issue of the juvenile offense was not central in the debates on the creation of the Statute. At that time, when discussions were focused on the need for a new law that would align with the 1988 Constitution, the main concerns revolved around child labor, children and adolescents living on the streets, and the situation of children in institutions. Juvenile delinquency was primarily seen as a consequence of the neglect of the State. That is why, at that time, issues related to prevention stood out from those that spoke of repression of adolescents who were attributed the practice of any act contrary to the criminal law. This becomes imperative to take into account for the present manual, since between the years 1989 and 1990, issues related to child labor were discussed in Brazil, therefore a decade before the publication of ILO Convention Nº. 182.

There were also many conflicts around the type of intervention that should be directed to adolescent offenders or other detainees. Memories of mistreatment and torture in detention centers under the aegis of the National Foundation for the Welfare of the Minor (FUNABEM) were still very much present in the collective memory[34]. In addition, the absence of limits given to judicial action and how this could be overcome were in many of the debates regarding this specific issue (CIFALI, 2019).

It is also worth noting that the ECA brought a very important innovation and that is the central theme of this manual: protective measures. Unfortunately, the debates around the ECA are still very much marked by the punitive aspects of the legislation. In this sense, it seems important to insist that the ECA clearly separates protective measures from Juvenile Justice measures – which have a primarily punitive nature. Today, fortunately, it is not possible to apply a deprivation of liberty measure to a child or adolescent who is in a situation of social risk. In the past, it was permissible to incarcerate a child in FEBEM for being poor, for living in a context of violence or

[34] Children and adolescents considered "abandoned", "needy", "marginal" and "delinquents" were, during the 20th century, summarily deprived of their liberty in government institutions, which, from 1964 onwards, were called the State Foundation for the Welfare of the Minor", under the responsibility of the central government in the Federal District, notably FUNABEM. However, due to the disorderly demographic growth from the second half of the 1970s onwards in urban areas, violence and the number of children and adolescents on the streets increased in the same proportion. During this period, the juvenile justice facilities (FEBEMs) sheltered thousands of boys and girls whose situation was considered irregular and various illegalities took over the headlines of the newspapers and revealed mistreatment, beatings, torture, corruption schemes and enticement of "minors", all articulated between employees and police officers (BOEIRA et al., 2017).

for being abandoned, since the judicial authorities believed this was in the child´s best (LOURENÇO; ALVAREZ; CHIES-SANTOS, 2021).

However, as already exposed, the centrality of the debate is always related to the punishment that it can be applied to this segment of the population. The ECA, however, will only begin to address this issue from art. 90. Prior to this, the focus of the legislation was on establishing guarantees and rights, as this is established as the structuring content of the doctrine of integral protection. And if the ECA first brings fundamental rights and guarantees for children and adolescents, it is not without reason. It is a message from legislators and from the disputes that have been fought in the political arena. Examples of this are: right to life, right to health, right to education, right to leisure, right to sport, right to family and community life, right to professionalization etc.

At the same time, it is known that these rights are far from being fulfilled given the scenario that is currently established in the Brazilian social reality. In the case of the right to life, specifically, 76.2% of victims of deaths resulting from police intervention are adolescents and young people between 12 and 29 years old (FBSP, 2021). In addition, the right to family life appears to be diminishing. This means that although the ECA guarantees the right to live with the natural family, there are countless decisions taking children from their parents when they are in deprivation of liberty (ITTC, 2017). Or still, children and adolescents serving a Juvenile Justice measure of deprivation or restriction of freedom are removed from family and community life.

Another important regulatory framework is Federal Law Nº. 12,594 of 2012, which established the National Juvenile Justice Assistance System. The Sinase Law, as it became known, is usually thought of as the "enforcement law" of Juvenile Justice measures. This is because the ECA is silent on several issues related to compliance and the principles that govern these measures. Originating from Resolution nº 119, published on December 11, 2006 by the National Council for the Rights of Children and Adolescents (Conanda), the discussions on a new legislation to deal specifically with Juvenile Justice measures date back, at least, to the end of the 1990s. 1990 (CIFALI, 2019).

Sinase, as the text of the law informs, stands for

> *the ordered set of principles, rules and criteria that involve the enforcement of Juvenile Justice measures, including, by adherence, the state, district and municipal systems, as well as all plans, policies and specific programs for the care of adolescents in conflict with the law (Brasil, 2012, np, free translation).*

In addition, it is at the beginning of the Sinase Law that we find the guiding objectives of Juvenile Justice measures, which are:

> *I - the responsibility of the adolescent regarding the harmful consequences of the offense, whenever possible, encouraging its repair;*

II - the social integration of adolescents and the guarantee of their individual and social rights, through the fulfillment of their individual care plan; and

III - the disapproval of the offense, making the provisions of the sentence effective as the maximum parameter of deprivation of liberty or restriction of rights, observing the limits provided by law (BRASIL, 2012, n.p).

Sinase, moreover, defines the competences of the Federal Government, the states, Federal District and municipalities, and is presented to the Brazilian legal system with the objective of reinforcing the pedagogical nature of Juvenile Justice measures.

The guarantee of rights and social protection represents the fundamental core of Juvenile Justice measures, according to Sinase. This means that without guaranteeing the fundamental rights of adolescents, there is no need to talk about Juvenile Justice. In this sense, as the law itself explains, "the principle of full protection proves to be a necessity in Juvenile Justice care" (BRASIL, 2012, np), which is effective in offering adequate conditions to guarantee the rights of adolescents. The educational aspect of Juvenile Justice measures is carried out through the guarantee of rights, through direct assistance and through the establishment of bonds, relationships and exchanges, that is, for what such elements are capable of fostering.

Furthermore, Juvenile Justice measures must follow the principles determined by Sinase, in its art. 35, namely: the legality, the exceptionality of judicial intervention and imposition of measures, proportionality in relation to the offense, the priority of practices or measures that are restorative and, whenever possible, meet the needs of the victims, brevity, individualization, considering the adolescent's age, abilities and personal circumstances, non-discrimination against adolescents, strengthening family and community ties in the Juvenile Justice process (BRASIL, 2012).

It is clear, therefore, that for the implementation of Juvenile Justice measures, the adolescents must be the target of a set of actions that are capable of assisting in their training, so that they become, as expressed in the legislation itself, autonomous and solidary citizens, who can relate better with themselves, with others and with their surroundings, without repeating the practice of offenses. Adolescents must develop the ability to make informed decisions, evaluating situations related to their interest and the common good, learning from their accumulated experience, all with the aim of enhancing their personal, relational, cognitive and productive competence.

It should also be noted that the Sinase Law itself raises relevant issues that were discussed when the 1985 Beijing Rules were published, that is, the need to find alternative paths to the judicialization of conflicts and deprivation of liberty, in order to resolve cases involving adolescents. This means that when proposing the exceptionality of judicial intervention and the imposition of sanctioning measures, the Sinase Law insists on the need for self-management of conflicts and the referral of adolescents to measures that actually restore the damage caused, such as restorative justice.

In relation to entities responsible for performing pre-trial detention and Juvenile Justice measures, they

must have parameters that guide pedagogical action and management to provide adolescents with access to rights and opportunities to overcome their situation of exclusion, reevaluate their values, as well as acquire new values for participation in social life - which unfortunately is not commonly observed in the current Brazilian context, notably in juvenile detention centers - as will be shown below[35].

Juvenile Justice actions should exert an influence on the lives of adolescents, contributing to the construction of their identity, in order to facilitate the formulation of a life project, their social belonging and respect for diversities (cultural, ethnic-racial, gender and sexual orientation), enabling them to assume an inclusive role in social and community dynamics - that is, the law does not have, at all, a simple punishment, nor does it deal with the deprivation of liberty as the first course of action to be taken.

In all Juvenile Justice measures, with the exception of the warning and the obligation to repair the damage, an Individual Assistance Plan (PIA) must be prepared, as stated in art. 41 of the Sinase Law. The elaboration of the PIA begins at the moment of reception of the adolescent in the service entity ,and the fundamental requirement for its development is conducting a multidimensional assessment through interactions between the adolescents and their families. The PIA must contain information regarding the following areas: (i) legal, in which the procedural situation and the necessary measures are noted; (ii) health, in which the physical and mental conditions of the adolescent are described; (iii) psychological, in which the professional will assess the difficulties, needs, potentialities, advances and setbacks; (iv) social, in which social, family and community relationships, the hindering and facilitating aspects of social inclusion will be exposed; and, finally, (v) pedagogical, with the establishment of goals regarding schooling, professionalization, culture, leisure and sport, workshops and self-care.

The PIA, in short, should focus on the adolescents' interests, potentialities, difficulties, needs, identities, advances and setbacks in dialogue with their family and with the community networks that make up their sociability. The instrument works as a guide to record the follow-up of the adolescent, in which the changes that occur during the implementation of the measure, both advances and setbacks, are described. These documents attached to the PIA are essential for the judge to understand the adolescent's journey during the compliance period of the Juvenile Justice measure.

The PIA, therefore, cannot be a mere document reassessing the measure to be sent to the childhood and youth court, since it constitutes an important tool to establish dialogue with adolescents, listening to these desires, fears and anxieties and, above all, it is essential to encourage them to think about their life projects and to guarantee access to services considered essential for their development.

In short, it is highlighted here how Brazilian legislation, considering the Federal Constitution of 1988, the ECA and the Sinase Law, are in line with the main international human rights treaties, especially those dedicated to dealing with the human rights of children and adolescents. This means that the Brazilian legal system already incorporates appropriate measures for addressing adolescents involved in the illicit drug market, who are considered by international treaties as victims of child labor. The use of these international treaties, therefore, can

[35] The conditions of the juvenile detention centers will be described in Chapter 4.2 of this Manual

be mobilized by magistrates who deal directly with this population, in order to prevent specific laws, which are hierarchically below international treaties, from violating the commitments that the country has assumed with the international community.

1.3. The Conventionality Control

Conventionality control is the analysis of compatibility between the internal acts (commissions or omissions) of a country in the face of international norms (treaties, international customs, general principles of law, unilateral acts, binding resolutions of international organizations) applicable to the respective country (MAZZUOLI, 2011; RAMOS, 2020; CHAVES; SOUSA, 2016).

In this sense, such control takes place at the international and national levels. As summarized by Ramos (2020), control of an international nature is generally attributed to international bodies composed of independent judges instituted through treaties. Within the scope of the International Labor Organization, there are two mechanisms for supervising its standards, that is, two ways in which the ILO examines the application of its conventions and recommendations: i) periodic: In this process, the ILO examines periodic reports submitted by countries detailing the measures taken to comply with each of the conventions they have ratified. and ii) special procedures: This involves the ILO reviewing complaints filed by workers' or employers' organizations, complaints submitted by a State, or complaints initiated by the ILO's Governing Board itself. Additionally, there is a special procedure focused on assessing freedom of association (MADRID, 2008).

Regarding to periodic control, reports[36] are requested every three years on conventions classified as fundamental or governance and every six years on other conventions. It should be noted that Convention Nº. 182 is included among the eight conventions considered fundamental by the ILO Governing Board (ILO, 2019, p. 23). The Committee of Experts for the Application of Agreements and Recommendations, consisting of twenty jurists appointed by the ILO Governing Board, analyzes the reports submitted by the countries and requests additional information they deem relevant. This commission consolidates an annual report that is examined by the

[36] Regarding the analysis of the reports sent by Brazil on the application of Convention Nº. 182, observations and direct requests for additional information from the Committee of Experts made in the years 2004, 2007, 2009, 2011, 2015 and 2018 are available. The observations for 2004 refer to the first two Brazilian reports on Convention Nº. 182, with no mention of actions to eliminate the use of children and adolescents in the production and trafficking of narcotics, requiring additional information on the application of legislation. In the following observations, in 2007, 2009 and 2011, the request for information on the use, recruitment or offering of children and adolescents to carry out illicit activities is reiterated, in view of the absence of any information on this matter. Informes: i) CEACR/OIT. Solicitud directa - Adopción: 2004, Publicación: 93 a reunión CIT (2005). Available at: https://www.ilo.org/dyn/normlex/es/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2237109. Access on: 08 Oct. 2021; ii) CEACR/OIT. Solicitud directa - Adopción: 2007, Publicación: 97a reunión CIT (2008). Disponível em https://www. ilo.org/dyn/normlex/es/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2276900. Access in: 08 out. 2021; iii) CEACR/OIT. Solicitud directa - Adopción: 2009, Publicación: 99a reunión CIT (2010). Available in: https://www.ilo.org/dyn/normlex/es/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2308516. Access on: 08 Oct. 2021; iv) CEACR/OIT. Solicitud directa - Adopción: 2011, Publicación: 101a reunión CIT (2012). Available in: https://www.ilo.org/dyn/normlex/es/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2700549. Access on: 08 Oct. 2021.

Commission on the Application of Standards of the International Labor Conference.

At the national level, conventionality control is carried out by judicial authorities and other public authorities in the exercise of their attributions (RAMOS, 2020, p. 372), and is highly recommended the interaction of national authorities with the provisions and understandings of agencies responsible for supervising the application of norms and recognition of state responsibility at the international level.

Over the years, several international treaties and conventions have been incorporated into the Brazilian legal system. Considering, therefore, the abundance of different sources that may affect a specific case, it is necessary to incorporate a mechanism into the hermeneutic interpretation, with a view to reconciling domestic regulations and those of international origin (TORRES; SABOYA, 2017).

In the specific case of this manual, this means that an inter-jurisdictional dialogue is inevitable, which is raised from the understanding that domestic law alone cannot resolve multifaceted issues. As a consequence of the need for this inter-jurisdictional dialogue, the concept of conventionality control was born in France.

As explained by Mazzuoli (2011), Ramos (2013), Guerra (2018) and by Chaves e Sousa (2016), the expression "conventionality control" was used for the first time by the French Constitutional Council, notably in Decision Nº. -54 DC, of January 15, 1975, which dealt with the analysis of the constitutionality of a law related to the voluntary interruption of pregnancy. The French Constitutional Court understood that this was not a specific case that could be resolved based on the pure and simple control of the constitutionality of a given law, but there was a need for normative control with "different object, hierarchy and mode of application" (CHAVES; SOUSA, 2016, p. 91). This means that there was an insufficiency of the traditional methods of resolving normative conflicts through domestic law.

In this way, and still using the example of the decision of the Constitutional Court of France, it is understood that respect for international human rights treaties is, above all, respect for the Political Charter itself, since it ensured treaties an important place in the domestic legal system (CHAVES; SOUSA, 2016). It is noteworthy, therefore, that "if the Judicial Branch of a country omits or refuses to carry out the control of conventionality, it is, in the final analysis, abstaining from exercising, also, the constitutional justice" (CHAVES; SOUSA, 2016, p. 97).

So:

> *It is not a legislative technique for making the work of Parliament compatible with the human rights instruments ratified by the government, nor an international mechanism for investigating the acts of the State in relation to the fulfillment of its international obligations, but a judicial means of declaring invalidity of laws incompatible with such treaties, either through exception (diffuse or concrete control) or through direct action (concentrated or abstract control) (MAZZUOLI, 2011, p. 82).*

Thus, it is not enough for the provisions of Brazilian law to be compatible only with the Federal Constitu-

tion. More is needed. The Brazilian legal system needs to comply with international treaties, in order to be part of the international legal system, not being able to violate any of its precepts (MAZZUOLI, 2011, p. 131). Since the enactment of the 1988 Constitution, more and more international treaties (global and regional) have been ratified with the aim of protecting human rights, adding new rights and guarantees to the domestic legal system (MAZZUOLI, 2011, p. 26).

From the decision of the French Constitutional Court, Guerra (2018), and Chaves and Sousa (2016) identify that the control of conventionality found considerable development within, mainly, the Inter-American Court of Human Rights[37].

In order to understand how this is applied in the region's national legal systems, it is worth noting that the Constitution of Mexico establishes the incorporation of human rights norms of international treaties into the internal constitutionality block, conferring constitutional hierarchy to human rights standards, similar to international treaties (Article 1). In this sense:

> *Article 1. In the United Mexican States, all persons shall enjoy the human rights recognized in this Constitution and in the international treaties of which the Mexican State is party, as well as the guarantees for their protection, whose exercise cannot be restricted or suspended, unless the cases and under the conditions that this Constitution establishes (no emphasis in the original) (MEXICO, 1917, np)[38].*

Guerra (2018) also shows in his work that in the case of Mexico, there was a decision handed down by the country's Supreme Court determining that Mexican judges have the *ex officio* obligation to base their decisions always considering international human rights treaties, in addition to determine a system of diffuse constitutional control. This means that the Supreme Court of the Mexican Nation has incorporated into its internal dynamics the human rights defined in international treaties to which Mexico is a party (GUERRA, 2018).

According to the author, there are other important decisions in this regard in countries within the region, such as Colombia. In that case, articles 93 and 94 of the country's Constitution state that:

> *Article 93. The international treaties and conventions ratified by the Congress, which recognize human rights and which prohibit their limitation in the states of exception, prevail in the internal order. The rights and duties enshrined in this Charter shall be interpreted in accordance with the international treaties on human rights ratified by Colombia.*

[37] In this sense, it is worth reflecting on research developed on the doctrine and jurisprudence of the IACHR, which comes to the conclusion that there is a growing claim to constitutionalization of the human rights court (TORELLY, 2017).

[38] The full text of the Mexican Constitution can be found at: http://www.diputados.gob.mx/LyesBiblio/pdf_mov/Constitucion_ Politica.pdf. Accessed on: 17 Jul. 2021.Free translation.

> *Article 94. The enunciation of the rights and guarantees contained in the Constitution and in the current international agreements should not be understood as the negation of others that, being inherent to the human person, are not expressly included in them. (No emphasis in the original) (COLOMBIA, 1991, np).*

Therefore, there are already examples in the region that establish a relevant hermeneutic criterion to define the meaning of international and constitutional norms on fundamental rights (GUERRA, 2018). In addition, it is noted that:

> *By ratifying an international human rights treaty, the State is bound by it. Thus, it is the State's duty to guarantee mechanisms at the domestic level that are in tune with international standards, which become part of the State's internal legal system (GUERRA, 2018, p. 473).*

The idea here is for judges to mobilize, in addition to domestic legislation, the most protective international norms of international law, notably ratified by the country. All this, also in accordance with the Vienna Convention on the Law of Treaties - ratified by Brazil through Decree Nº. 7,030 of 2009 - establishes, in its art. 27, that "a party cannot invoke the provisions of its domestic law to justify the breach of a treaty" (BRASIL, 2009).

According to Mazzuoli (2011, p. 28), the Brazilian Constitution of 1988, even before Constitutional Amendment nº 45/2004, instituted new legal principles in the country to support the entire domestic regulatory system, so that, its art. 5, §2 made it clear that: "The rights and guarantees expressed in the Constitution do not exclude others arising from the regime and principles adopted, or from international treaties to which the Federative Republic of Brazil is a party" (BRASIL, 1988, np). Mazzuoli, based on this device, understands that in addition to following the trend of contemporary constitutional systems, human rights treaties in Brazil acquire a constitutional level and character. This means that the Constitution itself starts to consider that these treaties are 'written' in its text, allowing that, in addition to being a parameter for conventionality control, they are also a parameter for constitutionality control according to the procedures extensively regulated in the national legal system.

Thus, from the constitutional text itself, it is possible to perceive that the Constitution protected the recognition of rights and guarantees arising from international treaties to which the Brazilian State is a party. In cases where a conflict arises between express internal norms and norms expressed in international human rights treaties ratified by Brazil, the interpreter must "preferably choose the source that provides the most favorable norm for the protected person (*pro homine* international principle), as it aims to the optimization and maximization of systems (internal and international) for the protection of individual rights and guarantees" (MAZZUOLI, 2011, p. 30).

Mazzuoli explains that, due to the different possibilities of interpreting the status of human rights treaties in Brazil, the Brazilian Congress edited Constitutional Amendment nº 45/2004, with the objective of putting an end to the discussions held in the doctrinal and jurisprudential scope (2011, p. 33):

> *Art. 5. All are equal before the law, without distinction of any nature, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms:*
>
> *Paragraph 3. The international treaties and conventions on human rights that are approved, in each House of the National Congress, in two rounds, by three-fifths of the votes of the respective members, will be equivalent to the constitutional amendments.*

It is noteworthy that the edition of Constitutional Amendment Nº. 45/2004, known as the amendment of the Reform of the Judiciary, represented a historic milestone in the recognition of international human rights treaties in the domestic legal system. However, Mazzuoli (2011) believes that this is an incongruous device, since in addition to not having put an end to the discussions, the legislator lacked goodwill to recognize the *ipso jure* binding of every human rights treaty ratified by a country.

However, in the judgment of Extraordinary Appeal nº 466.343[39], in 2008, by Brazil's Supreme Court, there was a change of understanding on the part of the Ministers of the Brazilian Supreme Court, becoming, therefore, the most emblematic example of conventionality control in the country. In addition to not simply considering human rights treaties as 'ordinary infra-constitutional' norms, if ratified before EC nº 45/2004, the Brazilian Supreme Court granted them 'supra-legal' status. In that judgment, there was a change in the position of the STF regarding to the hierarchy of international human rights treaties that were not incorporated through the procedure outlined in art. 5, §3 of the 1988 Constitution. Thus, in our country, what we can call the double statute of international human rights treaties, and thus they are considered, at least, as supra-legal, being in a higher hierarchy than ordinary laws, which indicates a great advance in the Court's understanding on this matter (MAZZUOLI, 2011, p. 39).

In addition, it is worth remembering the judgment of two collective *Habeas Corpus* by the Brazil's Supreme Court which, although they do not exactly address the issue of conventionality control, mention the importance of looking at the international regulations ratified by Brazil to interpret concrete cases - especially those concerning human rights. In collective *Habeas Corpus* nº 143.641/SP, presided over by Supreme Court Minister Ricardo Lewandowski, in which house arrest was granted to mothers, there is express mention in several parts of the vote to the Bangkok Rules, which are the Rules of Nations United Nations for the Treatment of Women Prisoners and Custodial Measures for Women Offenders[40]. Within the ruling, the following passage is included:

> *Incidence of broad international regulations on Human Rights, in particular the Bangkok Rules, according to which a judicial solution that facilitates the use of criminal alternatives to incarceration should be prioritized, especially for cases in which there is still no final conviction. (STF, 2018, n.p.)*

[39] Access to the full decision at: http://www.stf.jus.br/imprensa/pdf/re466343.pdf. Accessed on: 17 Jul. 2021.

[40] The Bangkok Rules are a resolution of the United Nations General Assembly, a soft law source of International Human Rights Law.

Similarly, Justice Edson Fachin, when judging collective *habeas corpus* 143.988/ES, which concerned the guarantee of the principle of *numerus clausus* in juvenile detention centers to whom the practice of offenses is attributed, refers both to the Convention on the Rights of the Child of 1989, as well as the jurisprudence of the Inter-American Court of Human Rights. Two excerpts from the vote stand out here:

> *It is known that this international regulation treats every individual under the age of 18 (eighteen) as a child, but also regulates that domestic legislation must stipulate an age threshold below which there is no liability for acts similar to crimes (art. 40, 3, a, of the Convention on the Rights of the Child).*
>
> *It is unequivocal that this set of principles and rules structure the norms provided for in the Child and Adolescent Statute, so that the overcoming of the previous model of the "irregular situation", with a tutelary and punitive bias, must be translated into full respect for these theoretical premises and values [...] also at the time of interpretation (STF, 2020, np).*
>
> *In fact, the Inter-American Court, in Advisory Opinion nº. 17/2002, interpreting provisions of the International Convention on the Rights of the Child, established the understanding that the guarantee of these rights implies "la existencia de medios legales idóneos para la definición y protección de aquéllos, con intervención de un órgano judicial competente, independiente e imparcial, cuya actuación se ajuste escrupulosamente a la ley, en la que se fijará, conforme a criterios de oportunidad, legitimidad y racionalidad, el ámbito de los poderes reglados de las potestades discrecionales" (STF, 2020, n.p).*

In addition to the specific cases mentioned above, in a recent judgment of the Direct Action of Unconstitutionality (ADI) Nº. 3,446, reported by Justice Gilmar Mendes, there was, in the vote of the rapporteur, express mention of several international regulations, as follows:

> *After a thorough examination of the case files, I verify, at the outset, that the edition of the ECA (Law 8.069/1990) was the result of a claim by civil society, during and after the Constituent Assembly, for the incorporation of greater legal protection for children and adolescents.* ***This topic, incidentally, was under discussion at the United Nations for a decade, during the process of drafting the Convention on the Rights of the Child, which became the most ratified international convention on the planet, with only one country refusing to do so (the United States)*** *(no emphasis in the original). (STF, 2019, n.p).*

By mentioning article 5, caput, items XXXV, LVI, LXI and article 227 of the Federal Constitution, Justice Gilmar Mendes teaches:

> *It should be noted that these rules are* ***closely linked to rules of the Universal Declaration***

of Human Rights (UDHR), the Convention on the Rights of the Child, the Beijing Rules for the Administration of Juvenile Justice and the American Convention on Human Rights.

In this sense, ***art. 1 of the UDHR provides that all human beings are born free and equal in dignity and rights****, and discrimination based on race, color, sex, language, religion, political opinion, national or social origin, wealth, birth or any other reason is prohibited (art. 2).*

In turn, the ***Convention on the Rights of the Child*** *was adopted by the UN in 1989, effective in Brazil from 1990, standing out as the international treaty for the protection of human rights with the highest number of ratifications – 193 states- parties until May 2011 (PIOVESAN, Flávia. Human Rights and International Constitutional Law. p. 281).*

The aforementioned treaty reinforces, in its preamble, the principle of freedom, proclaimed in the United Nations Charter, ***establishing in its art. 16.1 that no child will be the object of arbitrary or illegal interference in his private life, having the right to the protection of the law against such interference or attacks*** *(art. 16.2).*

The art. 19 of the ***American Convention on Human Rights*** *provides that "every child has the right to the measures of protection that his condition as a minor requires on the part of his family, society and the State".*

The ***United Nations Minimum Rules for the Administration of Juvenile Justice*** *are guided by several principles and rights discussed in this action, such as the promotion of the well-being of the minor and his family (item 1.1), the right to be notified of the accusations (item 7.1), the use of extrajudicial means for conflict resolution (item 11) and the brevity of measures restricting freedom (item 13), with the application of measures of insertion in institutions as a last resort (item 19).*

The interpretative guidelines of the norms will determine the present case *(no emphasis in the original) (STF, 2019, n.p).*

Justice Edson Fachin, still in the vote on ADI nº 3,446, refers not only to the International Convention, but also to the Beijing Rules:

This is what is extracted, again, from the International Convention on the Rights of the Child, which, in art. 37, prescribes the exceptionality of custodial measures and "only as a last resort". Currently, there is still rule 17.1.c, of the Beijing Rules: "c) Deprivation of individual liberty is only imposed if the minor is found guilty of a serious fact involving violence against

another person or of recidivism in other serious crimes, and if there is no other suitable solution."

This rule is precisely in line with the contested rule (STF, 2019, n.p).

In turn, Justice Luiz Fux also refers to the Beijing Rules in the judgment of ADI nº 3,446:

Finally, the fact that the contested restrictions on the application of a custodial measure are in strict compliance, including with UN Resolution 40/33, signed by Brazil, known as the Beijing Rules, which establishes, in its item 17.1, c, that "deprivation of personal liberty will not be imposed unless the juvenile has committed a serious act, involving violence against another person or for recidivism in the commission of other serious offenses, and unless there is another appropriate measure". (STF, 2019, n.p).

Justice Ricardo Lewandowski also did not shy away from referring to international norms when judging ADI Nº. 3446. In this sense, when mentioning the Beijing Rules, he stressed that:

When presenting the translation to the aforementioned Rules, I had the opportunity to state that:

"As defined in art. 3 of Law Nº. 8,069/1990, all children and adolescents 'enjoy all the fundamental rights inherent to the human person, without prejudice to the full protection provided for in this law, assuring them, by law or by other means, of all opportunities and facilities, in order to provide them with physical, mental, moral, spiritual and social development, in conditions of freedom and dignity'.

Aiming to ensure the means for the realization of the primacy of integral protection, for some years now the National Council of Justice has been developing projects, whose scope is to improve the densification of this constitutional premise.

And it couldn't be different!

However, even though there is a law providing maximum protection for these individuals 'in the process of development', inspections carried out by the National Council of Justice, in centers of detention and compliance with Juvenile Justice measures, in recent years, have found a reality quite different from that idealized by the legislator.

Children and adolescents were found fulfilling Juvenile Justice measures in overcrowded

establishments, exposed to precarious and dirty structures, without access to education, professionalization or pedagogical assistance plan, with security carried out by military police.

Worse: it was also noted that physical or psychological aggression was a constant practice in several of these inspected centers.

Even though assistance programs for young people have been gradually leveraged from initiatives by the Brazilian Judiciary, always thinking of more effective ways to optimize the social reintegration of children and adolescents in conflict with the law, this entrepreneurial effort is not being enough.

We need to shed 'more' lights on the problem!

The United Nations has presented, since 1985, minimum rules for the administration of juvenile justice. Although they are not legally binding (soft laws), ***these rules must be complied with as part of an important international commitment assumed by Brazil****." (No emphasis in the original) (STF, 2019, n.p).*

According to the examples presented, it is feasible to speak of the so-called movement of conventionalization of Brazilian law, since international norms and even their advisory opinions are objects of daily use by interpreters of legislation and the Constitution.

Furthermore, Heeman (2017) states that Brazilian higher courts have already exercised conventionality control on several occasions. One of the examples that can be analyzed is the case involving the arrest of the unfaithful trustee, who would be in disagreement with the American Convention on Human Rights (ACHR), when the STF rejected an original constitutional norm to the detriment of the ACHR. A second example that can be studied was the judgment of RE 511,961, in which the rapporteur, Justice Gilmar Mendes, understood that higher education was not required for professional work as a journalist. In this specific case, when considering Advisory Opinion Nº. 5/85 of the Inter-American Court of Human Rights (IACHR), Justice Gilmar Mendes understood that the mandatory diploma would violate art. 13 of the ACHR. Then, when judging the guarantee of detention control hearings as constitutional[41], in ADI 5,240, the STF made express reference to the control of conventionality. In this sense, the Rapporteur Justice Teori Zavascki, when speaking in his vote on the status of the ACHR, mentioned

[41] It should be noted that custody hearings are a procedure that derives directly from a right recognized in the International Covenant on Civil and Political Rights (Article 9.3) and in the American Convention on Human Rights (Article 7.5), namely, that of every person. detained or detained be brought before a judicial authority without delay. In this sense, it is possible to classify the publication of CNJ Resolution No. 213, of December 15, 2015, as an exercise in conventionality control to adapt the criminal procedural system to international human rights treaties ratified by the Brazilian State, which subsequently was incorporated into ordinary legislation with Law 13,964/2019.

the need to assess compatibility between a supra-legal norm and a legal norm.

In addition to the examples brought by Heeman (2017) in the case of conventionality control exercised by the STF, the case of conventionality control exercised by the Superior Labor Court (TST) should be highlighted. In this case, the TST, when judging the Review Appeal, in case records Nº. 1072-72.2011.5.02.0384, in 2014, recognized the material incompatibility of art. 193, §2 of CLT[42] with Conventions Nº. 148 on Air Pollution, Noise and Vibrations and Nº. 155 on Workers' Health and Safety, both of the ILO. In this sense, it is worth highlighting part of the vote of the Rapporteur, Minister Cláudio Mascarenhas Brandão, of the 7th Panel of that Court:

> *Another factor that supports the inapplicability of the CLT precept is the introduction, into the domestic legal system, of International Conventions Nºs. 148 and 155, with materially constitutional or, at least, supra-legal status, as decided by the STF (TST, 2014, n.p).*

Furthermore, regardless of the rite through which a particular treaty passed, Mazzuoli argues that:

> *All international human rights treaties ratified by the Brazilian State and in force among us have a level of constitutional norms, whether it is a merely material hierarchy (what we call "constitutional legal status"), or such a material and formal hierarchy (which we call it "equivalence of a constitutional amendment") (MAZZUOLI, 2011, p. 71).*

Thus, the human rights treaties ratified by the country should serve as a model for controlling the production and interpretation of national rules (MAZZUOLI, 2011, p. 71). In this way, the compatibility of domestic law with that of international human rights law is done through conventionality control, which is complementary and adjunct (never subsidiary) to constitutionality control, since its objective is, as already exposed, to reconcile the internal norms with the international treaties ratified and in force in the country. So:

> *[...] it is understood that the control of conventionality (or that of supra-legality) must be exercised by the organs of national justice in relation to the treaties to which the country is bound. It is about adapting or conforming the acts or domestic laws to the international commitments assumed by the State, which create for these duties at the international level with practical reflexes at the level of its domestic law. Henceforth, not only international (or supranational) courts must carry out this type of control, but also domestic courts. The fact that international treaties (notably those on human rights) are immediately applicable within the scope of domestic law, guarantees the legitimacy of conventionality and supra-legal controls of laws in Brazil (MAZZUOLI, 2011, p. 133).*

In summary, Guerra explains that the judge will use the conventionality control:

[42] The CLT Article, analyzed in this vote, says that: Art. 193 (...): Paragraph 2 - The employee may opt for the unhealthy work additional that may be due to him.

[...] by means of an examination of normative confrontation (material) in a concrete case and elaborates a judicial decision that protects the rights of the human person. In this case, it corresponds to the control of a diffuse nature, in which each judge applies this control according to the specific case that will be analyzed (2018, p. 471).

It is also worth noting that:

[...] to carry out the control of conventionality (or that of supra-legality) of the norms of domestic law, local courts do not require any international authorization. Such control will henceforth also have a diffuse character, such as the diffuse control of constitutionality, in which any judge or court can (and must) express its opinion on the matter. From a single judge (state or federal) to state courts (State Courts of Justice) or regional courts (e.g. Federal Regional Courts) or even higher courts (STJ, TST, TSE, STF, etc.), all of them can (and they must) control the conventionality or supra-legality of laws through incidental means (MAZZUOLI, 2011, p. 134).

By applying the conventionality control, the court of origin will give the internal norm under discussion a paralyzing effect, that is, the effectiveness of a norm declared to be unconventional, even if it continues to exist in the domestic legal system, is paralyzed. In this regard, it is worth mentioning an excerpt from the vote of Justice Gilmar Mendes, when discussing RE 466.343/SP:

In this sense, it is possible to conclude that, given the supremacy of the Constitution over international normative acts, the constitutional provision of the civil imprisonment of the unfaithful depositary (article 5, item LXVII) was not revoked by the act of adhesion of Brazil to the International Covenant on Civil and Political Rights (art. 11) and the American Convention on Human Rights - Pact of San José (art. 7, 7), but it ceased to have applicability due to the paralyzing effect of these treaties in relation to the infra-constitutional legislation that governs the matter, including art. 1,287 of the Civil Code of 1916 and Decree-Law Nº. 911, of October 1, 1969 (STF, 2009).

The exercise of conventionality control by Brazilian courts and judges is an imposing measure in the light of the framework of international law and domestic law, as explained throughout this manual, whose purpose is to give effectiveness to human rights, guaranteeing the already known *pro persona* principle, which aims to impose a more favorable interpretation to the individual in the exercise of conventionality control. For this reason, there is a need to "convene Brazilian judges and courts to review their roles in building society and protecting human rights" (CHAVES; SOUSA, 2016, p. 105). In addition, it is worth mentioning that there is already a certain 'conventionalization' of Brazilian law, especially if we look at some legal diplomas that were directly influenced by human rights conventions, such as the Child and Adolescent Statute itself, which was inspired by the International Convention on the Rights of the Child 1989.

Therefore, Justice Edson Fachin, when judging the Regimental Appeal in habeas corpus 202,574/SP, last August 17, 2021, pronounced himself on ILO Convention Nº. 182, in the following terms:

> *Furthermore, we cannot forget that Convention 182 of the International Labor Organization (ILO) identifies the "use, recruitment and supply of children for illicit activities, particularly for the production and trafficking of narcotics as defined in the relevant international treaties" as one of the worst forms of child labor, along with sexual abuse and slavery.*
>
> *Undoubtedly,* ***children and adolescents involved in drug trafficking are, in fact, victims of crime and the inefficiency of the State, family and society in protecting them and assuring them of their fundamental rights.*** *The fact that they become adults who persist in illicit conduct makes evident the inability of these actors to act and the vulnerability of these young people at the time when they were unaccountable.*
>
> *In this way, I reiterate that the practice of past offenses should not affect the dosimetry of the agent's reprimand, under penalty of subverting the integral protection system by stigmatizing the adolescent as a habitual criminal, disrespecting his peculiar condition of person in development and subject of law. (No emphasis in the original) (STF, 2021, np).*

Finally, it is worth mentioning that ILO Convention Nº. 182 refers to human rights, has binding force and its provisions must be interpreted as obligations of States Parties, such as Brazil, especially considering the duty of non-regression, that is, the duty of progressivity, since human rights are interdependent and indivisible. Article 7 of the aforementioned Convention, already reproduced in this manual, explains the measures that must be taken in relation to children and adolescents engaged in the worst forms of child labor, focusing on their rehabilitation and social insertion, education and professional training, being the judicial authority responsible for its observance in decision-making with respect to adolescents used in illicit drug trafficking.

CONTEXTUALIZATION OF THE POLICY AGAINST DRUGS IN BRAZIL

2.1. The Drug Law in Brazil

THE POLICY AGAINST DRUGS IN BRAZIL

2 Brazil currently adopts an anti-drug policy based on a legal-criminal view combined with a medical-psychiatric perspective, so the issue is considered either a "police case" or a "mental illness" (CAMPOS, 2015; SILVA, 2008)[43]. The Federal Law Nº. 11.343/2006 does not punish the user with imprisonment, as happened in the previous legislation – Federal Law 6.368/1976 (BRASIL, 1976). Therefore, it seeks to treat it based on knowledge derived from the field of public health. However, the legislation did not decriminalize the use, and the user is still criminally liable for possession for personal use, according to art. 28 of the current legislation.

With regard to the production and sale of drugs, the current law increased the minimum penalty from three to five years and the pecuniary penalty, which increased from 50 to 360 fine-days to 500 to 1,500 fine-days, pursuant to art. 33 of Federal Law Nº. 11,343/2006. It also brought a series of different classifications for "professional traffickers" and "occasional traffickers". In its art. 33, paragraph 4, the law provided the possibility of reducing the sentence by one-sixth to two-thirds for "primary agents, with a good record and who do not engage in criminal activities or form part of a criminal organization" (BRASIL, 2006). On this last point, in 2016, Brazil's Supreme Court, in the judgment of *habeas corpus* nº 118,533, signaled that Brazil must begin to follow the global trend of drug policy review. Thus, by eight votes to three, the Ministers voted not to equate privileged trafficking[44] with heinous crimes.

Although the differentiation of treatment for users and traffickers is considered an advance in relation to the previous drug legislation, it did not represent a decrease in the number of people arrested. On the contrary, the data show that after 2006 there was an exponential increase in prisoners for this type of crime[45], something also noted in the Juvenile Justice system regarding adolescents apprehended for a drug-trafficking related offense (CAMPOS, 2015). According to Infopen data, in 2006 Brazil had 31,520 people arrested for drug trafficking. In December 2019, this number increased to 200,583, an increase of 536%[46]. In relation to the numbers of the Juvenile Justice, it is no different. **From 1996 to 2017, we saw an increase of more than 600% of adolescents deprived of their liberty and the main increase was in relation to offenses analogous to crimes provided for in the drug law** (SINASE, 2017).

As highlighted by the specialized literature, in Brazilian drug legislation, the criteria for distinguishing and classifying people for drug trafficking or drug use are ambiguous and problematic, especially because the law

[43] These changes indicate two different treatments brought about by the current legislation: one directed at the "user", who should no longer be punished with imprisonment, but is now seen as a subject who needs health care; and another for the person accused of "drug trafficking", who receives harsher sentences and more rigorous treatment from the criminal justice system. These two legal treatments reflect the parliamentary discussions and debates present in the processing of this bill (CAMPOS, 2015).

[44] Privileged trafficking occurs when the defendant is a first-time offender, has a good background and is not part of a criminal organization. Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=11677998. Accessed on: 16 Jul. 2021.

[45] As pointed out in studies by Boiteux and Wiecko (2009), Boiteux (2015) and Campos (2015).

[46] Data from the Infopen National Penitentiary Information Survey - December 2019. DEPEN- MJ. Available at: https:// app.powerbi.com/view?r=eyJrIjoiYWY5NjFmZjctOTJmNi00MmY3LThlMTEtNWYwOTlmODFjYWQ5IiwidCI6ImViMDkwNDIwLTQ0NGMtN-DNmNy05MWYyLTRlOGRhNmJmZThlMSJ9. Accessed on: 16 Jul. 2021.

itself, in art. 28, paragraph 2[47], establishes that "social and personal conditions" must be taken into account when defining the crime, which contributes to socioeconomic factors influencing the definition of the criminal offense (CAMPOS, 2013; BATISTA, 2003a; 2003b; CARVALHO, 2013).

In addition, it is necessary to consider that the classification of who is a "user" or "trafficker" is the result of police actions, which are the first to define the crime[48]. In this sense, there is great bargaining power and negotiation for the police – especially the military police who do repressive and ostensible street work (GRILLO *et al*., 2011; TEIXEIRA, 2012; CAMPOS, 2015; BOITEUX; WIECKO, 2009; CARVALHO, 2013; JESUS, 2020)[49]. Police officers are responsible for carrying out in *flagrante delicto* arrests and creating narratives in order to incriminate the person apprehended as a user or trafficker, describing "the circumstances of the arrest", the place known as a drug sales point, indicating who was with the drug or to whom it belongs, claiming the "informal confession" of the accused person, among other elements considered by the judges in their manifestations (JESUS, 2020). According to the research by Jesus (2020), these acts are not investigated, that is, nothing else is produced in terms of clarification of the facts, being limited to the copy of the arrest records in the act (JESUS *et al*., 2011; JESUS, 2020; SEMER, 2020). Police officers provide legal professionals with the terminology and language necessary to conduct legal proceedings (JESUS, 2020).

Lawyers tend to believe the word of the police officers who carried out the in **flagrante delict** arrest, with justifications that this public agent has "public faith" and is endowed with "presumed veracity" (JESUS, 2020; 2019; SEMER, 2020). In the case of Rio de Janeiro, Precedent 70 of the Rio de Janeiro Court of Justice allows the statements of police officers to be the basis for convictions[50].

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[47] "Paragraph 2" To determine whether the drug was intended for personal consumption, the judge will consider the nature and quantity of the substance seized, the place and conditions in which the action took place, the social and personal circumstances, as well as the conduct and background of the agent" (BRASIL, 2006).

[48] It is worth mentioning Extraordinary Appeal 635,659, which may focus on the issue of drug policy in the country, with general repercussions for the decision. "This is an extraordinary appeal filed by the Public Defender-General of the State of São Paulo against the judgment of the College of Appeal of the Special Civil Court of Diadema/SP which, as it understands art. 28 of Law 11,343/2006, maintained the conviction for the crime of possession of drugs for personal consumption. In this extraordinary appeal, based on art. 102, item III, item a, of the Federal Constitution, it is alleged a violation of article 5, item X, of the Federal Constitution. It is argued that the crime (or offense) provided for in article 28 of Law 11,343/2006 offends the principle of intimacy and private life, a right expressly provided for in article 5, X of the Federal Constitution and, therefore, the principle of harmfulness, fundamental value of criminal law. (page 153)". Available at: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=1804565. Accessed on: 16 Jul. 2021.

[49] For Teixeira, extortion and institutional violence are part of an organizing principle for the management of illegalities, whose role of the police is central, especially the Military Police (PM). The PM is increasingly taking on roles in the management of illegalities in São Paulo, a process that the author calls "militarization" (TEIXEIRA, 2012, p. 322). In the interview he conducted with 19 adolescents from Fundação Casa, Teixeira had access to narratives of the most varied situations of extortion practiced by police officers. As they do not have many means to "negotiate" their freedom, many adolescents end up being arrested for drug trafficking. Sintia Soares Helpes (2014) also heard reports of police extortion and violence in interviews she conducted with women arrested for drug trafficking. The narrative of "forged flagrant" was common among them, in which they were accused without having committed the crime (HELPS, 2014).

[50] See the website: http://portaltj.tjrj.jus.br/web/guest/sumulas-70. Accessed on: 16 Jul. 2021.

A survey carried out by the Public Defender's Office of Rio de Janeiro[51] revealed that 62% of the sentences related to drug trafficking cases, handed down from June 2014 to June 2015, were based only on police testimony. In São Paulo, research by the Center for the Study of Violence at the University of São Paulo identified a similar scenario in 74% of arrests *in flagrante delicto* sent to judges for drug trafficking between 2010 and 2011 (JESUS *et al*., 2011).

Another highlight of the current policy to combat drugs pointed out by research is that police action focuses a large part of its energies on combating the small retail market for illicit drugs, which significantly reflects the country's incarceration rates, and little in the effective disruption of this economy[52]. People apprehended and imprisoned are quickly replaced by new labor. As a result, there is a clear misunderstanding of the illicit drug market by the State apparatus, especially by the justice system itself (PAIVA; CARLOS, 2019). In the processes, the speeches mobilized by the operators make "small trafficking" the worst risk to society, which is equivalent to "big" and "small trafficking". This results in the representation that expresses only one drug trafficking model (RAUPP, 2009). Judicial decisions tend to take as a reference for the functioning of the illicit drug market what the police take to the system, and understand this as the totality of the phenomenon to be primarily repressed:

> *After all, for the gears to work, everyone needs to be really convinced that that barefoot and ragged defendant, arrested in flagrante delicto, unarmed, with 40g of marijuana, is a great drug dealer whose freedom jeopardizes the well-ordered society and its citizens (PAIVA; CARLOS, 2019, p. 4).*

The actors of the justice system tend to make their manifestations and decisions believing that prison is a way to solve the trafficking issue, focusing on incarceration the priority of their actions, even in cases where a non-custodial sentence could be applied (PAIVA; CARLOS, 2019; JESUS, 2020; SEMER, 2020). It is therefore necessary to understand better the forms of organization, formation of networks and recruitment of criminal organizations founded and managed from within the prisons[53].

Added to this is the characterization of illicit drug markets, which has a wholesale branch and another related to the retail sale of narcotics. The wholesaler, for example, works as a "closed and covered market", whose contacts are made by a network of trusted people, with secure and often virtual transactions. The retailer, on the other hand, is characterized by being an open and uncovered market, mainly because it needs to have a fixed and easily accessible environment, which makes it vulnerable to territorial disputes from other groups and to police violence. These differences in composition make such markets more or

[51] Available at: https://defensoria.rj.def.br/uploads/arquivos/23d53218e06a49f7b6b814afbd3d9617.pdf. Accessed on: 16 Jul. 2021.

[52] According to the literature on the subject, there are several scenarios in which the drug trade takes place. Big, medium, small or micro, their variety is not represented in the criminal justice system. For an approach to this issue, see: Adorno (2002), Adorno and Pedroso (2002), Alba Zaluar (1994, 1999a, 1999b, 2004), Michel Misse (1997, 1999, 2003, 2006), Guaracy Mingardi (2001), Angelina Peralva (2015), among others.

[53] There is a vast literature in the field of Brazilian social sciences that addresses the issue of criminal organizations formed in prisons, see: Adorno and Salla (2007), Biondi (2010), Biondi and Marques (2010), Dias (2011; 2013), Zaluar (2019), Siqueira and Paiva (2019), Chies and Rivero (2019), Feltran (2018), Manso and Dias (2018), among others.

less violent (NOGUEIRA JÚNIOR, 2019; MAY; HOUGH, 2004) According to the literature, when a retailer is arrested, he/she is automatically replaced (KERR, SMALL; WOOD, 2005; CAULKINS; MACCOUN, 2003, MAY; HOUGH, 2001). Thus, it can be said that "closed and covered markets" are "safer", while "open and uncovered markets" are more exposed to violence. Research shows, therefore, that there is a relationship between police repression and externalities motivated by drug markets, especially when this repression focuses more on retail than on wholesale (NOGUEIRA JÚNIOR, 2019; DAUDELIN; RATTON, 2017; GALENIANOS *et al*., 2012; PINOTTI, 2015; LÓPEZ, 2015).

However, there is also a difference in the composition of illicit drug markets based on the social position occupied by their members. Those who make up a middle-class retail market, for example, have the means to operate in a "closed and covered" way, something that the poorer classes of this market do not have as much access to (DAUDELIN; RATTON, 2017). According to the authors, when they are caught by police actions, the treatment given to this wealthier public is different from that which the daily public of the justice system undergoes. In this sense, the differentiated performance of police and justice system actors in different markets has different impacts on the social groups that make up this economy (AZEVEDO, 2005; GRILLO, 2008; DAUDELIN; RATTON, 2017). The "dealers" in the retail markets in poor neighborhoods are severely punished by the justice system, which ends up imprisoning "small non-violent drug dealers and, invariably, residents of poor urban areas" (MALVASI, 2013, p. 689).

Police action and what is brought to the criminal justice system (retail trafficking) hide the functioning of the drug economy (JESUS, 2020), which involves various social actors, including businessmen, politicians, public agents, etc.[54]. The illicit drug market corresponds, therefore, to a network of connections that goes beyond the small retailer – usually referred to as a "trafficker" and targeted by the police, but also involves people who are rarely prosecuted by the criminal justice system for trafficking (Peralva et al., 2010; 2012). The focus on retail brings to the justice system a group with a specific and marginalized profile, whose imprisonment has little or no impact on the functioning of the illicit drug market. This selectivity demonstrates that the criminalization of drugs is historically associated with discrimination against poor and black populations.

According to the NEV-USP survey (2011), the profile of people arrested for drug trafficking is composed of young people (75.6% of prisoners were between 18 and 29 years old), with up to completed elementary school (80%), who performed precarious and informal work activities (62.17%) and who depended on the Public Defender's Office for their defense (84%) (JESUS et al., 2011). This data aligns with information from other surveys regarding the characteristics of individuals arrested on drug trafficking charges[55].

[54] A study by Angelina Peralva, Jacqueline Sinhoretto and Fernanda de Almeida Gallo (2010, 2012) describes, based on the analysis of the CPI Report on Drug Trafficking, the economic dynamics mobilized by drug trafficking and the network involving different sectors of society. From businessmen and politicians to state officials and merchants. That is, a network of connections that involves more than just the small seller, generally known as "the drug dealer" and a targeted target in police repression. It involves people who are rarely prosecuted by the criminal justice system on charges of trafficking. See also: Gallo (2012), Sinhoretto (2014), Gallo (2014).

[55] See: Carlos (2012, 2015), Campos (2015), Toledo et al (2017), Paiva, (2019), among others.

l out by Luciana Boiteux and Ela Wiecko (2009), the legislation has not been effective in reaching g drug dealers nor those who are middle-class sellers, since the selectivity of the the criminal justice d public security fall mainly on small drug dealers[56]. The justice system, both criminal and juvenile, thus access consumers, or small and medium-sized traffickers, "who do not enjoy a private system of protection and immunities against the action of justice" (ADORNO, 1998, p. 38)[57]. It therefore fails to contain both the production and distribution of drugs and the forms of violence embedded in this market.

Prohibitionist policies to combat drugs, based on police repression, especially militarized, have been rethought in recent years.The Latin American Commission on Drugs and Democracy[58] and the Global Commission on Drug Policy[59] assess that the policy implemented in the countries of the region is a "war"[60]. Not only that, there is a recognition that the policy of fighting drugs has generated devastating consequences for the whole world[61]. Currently, several countries have revised their drug control laws and policies[62], questioning those that are still guided by the prohibitionist line and repressive combat.

The debate on drug policies[63] in Brazil comprises multiple areas, from academic to political, legal and media fields. This is because, it is understood not to be a matter of single cause or consequence, but multifaceted. Some advocate a greater tightening of the existing law, others discuss the decriminalization and possible regulation of some drugs, or even all of them. However, from the indications produced based on scientific evidence, it is possible to perceive that this policy has generated harmful consequences and that they do not contribute to the reduction of trade in such substances. An example of this is the profile of the incarcerated and the adolescent

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[56] The actors of the justice system will also not have access to cases in which there were "rights" and everything that is mobilized by these agents in the criminal economy of drugs (TEIXEIRA, 2012).

[57] In fact, rarely does a "big drug dealer" make it into the criminal justice system. According to the NEV/USP research (JESUS et al., 2011).

[58] See document produced by the Latin American Commission on Drugs and Democracy. Available at: http://www.globalcommissionondrugs.org/wp-content/uploads/2016/07/drugs-and-democracy_book_EN.pdf. Accessed on: 16 Jul. 2021.

[59] See document produced by the Global Commission on Drug Policy. Available at: http://www.globalcommissionondrugs.org/. Accessed on: 16 Jul. 2021.

[60] The focus of a war on drugs policy was initiated by President Richard Nixon in 1971, as a strategy propagated around the world. On this topic, see: Adorno and Pedroso (2002), Karam (2009), Herz (2002), Pereira (2009), Jojarth (2009), Rosa del Olmo (1990), Carvalho (2013), Batista (2003a, 2003b)), Santos (2004), among others.

[61] According to the Report of the UN Office on Drugs and Crime (UNODC), both the cultivation and production of drugs reached historic highs, which shows the ineffectiveness of repressive policies to combat the trade in illicit substances adopted as measures to contain the trafficking, which only resulted in increased incarceration and the spread of extermination policies. See World Drug Report 2019, available at: https://wdr.unodc.org/wdr2020/index.html. Accessed on: 16 Jul. 2021.

[62] In the United States, for example, the 2020 elections marked a milestone in the changes in drug policies adopted by several American states, including the country's own capital (Washington DC), which already allows the production and sale of marijuana for personal use. adult. Twenty of the fifty US states already approve the production, sale and use of cannabis for medical purposes. For more details on the US legalization landscape after the 2020 election, see https://www.esquire.com/lifestyle/a21719186/all-states-that-legalized-weed-in-us/. Accessed on: 16 Jul. 2021. The same has happened in Uruguay since 2013 and in Canada since 2018. In Portugal, Federal Law No. 30/2000 decriminalized the consumption of all drugs, establishing a minimum amount for the average individual consumption for the period of 10 days. Portugal has drug consumption levels slightly below the average of European countries (Quintas, 2014, p.73).

[63] The legislation defines drugs as "substances or products capable of causing dependence, as specified by law or listed in lists periodically updated by the Executive Power of the Union" (BRASIL, 2006).

deprived of liberty today in Brazil: he is a man, young, black, unschooled and inhabitant of the peripheries of large and medium Brazilian urban centers (SISDEPEN, 2021; SINASE, 2019)[64].

Although male adults and adolescents are the majority in the population deprived of their liberty in Brazil, research shows that the number of women and adolescents in the same condition has increased significantly in recent years, mainly due to the policy to combat drugs. According to Infopen data (2019)[65], the number of women incarcerated increased by approximately 675% from 2000 to 2017. The numbers represent a growth in the rate of female incarceration 5.4 times greater than the 2000 data, 64% of them were in prison for drug trafficking. According to data from the Sinase Survey (2019), the offense similar to drug trafficking has a higher percentage in females. Important research shows the context of deprivation of liberty to which these adolescents are subjected, revealing the need for a specific look at the hospitalization of adolescents for an offense analogous to drug trafficking (ARRUDA, 2011; DINIZ, 2017).

2.2. How much does it cost to criminalize young people in the illicit drug market?

The policy of combating drugs with a focus on repressing retail trade also has a very high cost to the public coffers and is not very effective in combating the trade in these substances. A survey carried out by the Center for Security and Citizenship Studies (CESEC) shows that, in 2017, São Paulo and Rio de Janeiro spent around R$5.2 billion in this fight, whose focus is the retail of the illicit drug trade in the favelas and peripheries (CESEC, 2021). The study refers exclusively to the expenses of state institutions, without counting the expenses from the National budget and municipal institutions to combat drugs. According to the research, the resources used to combat drugs could be invested in other areas, such as in care networks for dependent users (CESEC, 2021).

The social costs of the policy to combat drugs are also enormous, especially regarding the young, poor and black population. According to the Anuário Brasileiro de Segurança Pública (2021)[66], 78.9% of the people killed in Brazil by police interventions, mainly justified by the fight against drugs and crime, were black. In Rio de Janeiro, blacks and browns accounted for almost 80% of those killed in police actions in 2019, according to the

[64] Available at: https://www.gov.br/depen/pt-br/sisdepen. Accessed on: 16 Jul. 2021.

[65] National Survey of Prison Information – Infopen, 2019. Available at: http://antigo.depen.gov.br/DEPEN/depen/sisdepen/infopen. Accessed on: 16 Jul. 2021.

[66] To learn more: https://forumseguranca.org.br/wp-content/uploads/2021/07/infografico-2020-v6.pdf. Accessed on: 16 Jul. 2021.

Instituto de Segurança Pública (ISP-RJ)[67]. Data from the Atlas of Violence (2020)[68] show that there was a high preponderance of young people among the victims of murders that occurred in the decade from 2008 to 2018. Altogether, 30,873 young people aged between 15 and 29 were killed in this period, which is equivalent to 53.3% of the records. In the analyzed decade, there was an increase of 13.3% in the total number of cases of young deaths. Homicides were the main cause of deaths among young men, representing 55.6% of deaths among young people between 15 and 19 years old; 52.3% among the group aged 20 to 24 years; and 43.7% of those aged between 25 and 29 years. The Violence Monitor (2021)[69] also shows similar data to the studies cited: 78% of those killed in police interventions in 2020 were black. It is noteworthy that in the recent Brazilian Public Security Yearbook, released on July 15, 2021, the data are unequivocal in showing that, in addition to the 0.3% increase in the number of deaths in police interventions between 2019 and 2020 (year that Brazil stopped due to the pandemic caused by the SARS-COV-2 virus), 98.4% were male, 76.2% of the victims were adolescents and young people between 12 and 29 years old, and 78.9% were black and brown.

Indeed, the numerous costs associated with Brazil's drug policy are noteworthy. These costs extend beyond public security and encompass the lives of thousands of children and adolescents, particularly those residing in areas where violent interventions are frequent practices.

. ADOLESCENTS IN THE ILLICIT DRUG MARKET

[67] Data reports from the Rio de Janeiro Public Security Institute are available at: http://arquivos.proderj.rj.gov.br/isp_imagens/Uploads/SegurancaemNumeros2019.pdf. Accessed on: 16 Jul. 2021.

[68] Available at: https://www.ipea.gov.br/atlasviolencia/download/24/atlas-da-violencia-2020. Accessed on: 16 Jul. 2021.

[69] The survey was carried out by G1, in partnership with the Brazilian Forum of Public Security and the Center for the Study of Violence at USP, based on clashes with civilians or unnatural injuries with intentionality involving active police officers. Available at: https://nev.prp.usp.br/projetos/projetos-especiais/monitor-da-violencia/

ADOLESCENTS IN THE ILLICIT DRUG MARKET

3 It is important to locate the present discussion around the characteristics of the Brazilian social structu- support the illicit drug market to seek its daily gains from the most vulnerable workforce. The tip of this market is occupied by people who are looking for work and income, because they are in situations of poverty, lack of resources for their survival and that of their family, lack of access to public policies, low professional qualification or educational training that provides them with options of future projects. As explained by Malvasi, "[...] trafficking is one of the most accessible jobs for young people with little education", in addition to "a possibility to earn money" (2013, p. 675).

In a structurally racist society like the Brazilian one, the population most affected by social inequality has been the black and brown population, especially young people. Ethnographic works carried out in the field of social sciences characterize and reveal these challenges. In one of these studies, Vera Telles and Daniel Hirata (2007) narrate the paths of a small drug dealer in a peripheral neighborhood in the city of São Paulo. The young resident of the community needs to balance the illicit business and the risks involved in this activity. He may have other jobs, equally precarious and informal, and at night he works selling drugs or rolling up papers "without therefore considering himself (and being seen as) committed to criminal activities" (TELLES, 2010, p. 40).

The use of the "trafficker" category to define him does not allow revealing his trajectory, nor his survival strategies (TELLES; HIRATA, 2007; PERALVA, 2015). Being named as a "trafficker" does not distinguish him from his position in the illicit drug market. His apprehension and imprisonment can in no way change the functioning of this economy, as he will be immediately replaced by another person. Especially in cases of prosecution for drug trafficking, adolescents end up being represented as "dangerous traffickers" (CESEC, 2021), when, in fact, they represent only the retail end of this illicit market – something that had already been indicated by specific research from the 1990s (BATISTA, 1998).

Adolescents who find themselves on these edges of the illicit drug market actually make up another set of workers who are linked to this work activity to survive and often support their families (GALDEANO; ALMEIDA, 2018; MALVASI, 2012; 2013; FELTRAN, 2017; PEREIRA JÚNIOR; BERETTA, 2020). The taboo around the drug issue and the focus given to the small dealer obscures this criminal economy, which works and expands, even with all the police repression and ostensible state investment in this market (JESUS, 2020).

Research carried out in several states of Brazil (NAPOLIÃO; MENEZES; LYRA, 2020; GALDEANO; ALMEIDA, 2018; RODRIGUES; RIBEIRO; FRAGA, 2017; WILLADINO; NASCIMENTO; SOUZA E SILVA, 2018) corroborate the report by Telles and Hirata (2007) and point out that adolescents involved in the illicit drug market, especially those who work in retail and are most targeted by police actions, are mostly in a situation of vulnerability, lacking of protection and facing various social and personal risks on multiple fronts.

From the family point of view, research shows that these adolescents come from very poor families, with low education and difficulty in accessing jobs with adequate remuneration. Most family members work in the informal market, providing services in civil construction activities, selling goods (street vendors) or domestic service. In addition to the little stable income that families are able to guarantee, there is also exposure

to other forms of vulnerability: most of these families live in areas of high violence, which is why many adolescents report having a close relative who is a victim of fatal violence.

Galdeano and Almeida (2018), for example, showed how incarceration impacts the lives of families and children in these hyper-policed and poorly socially protected areas: most adolescents involved in the illicit drug market had parents or other family members arrested or killed, forcing a restructuring of the family and new forms of survival, such as joining groups of friends, many of whom are involved in the illicit drug trade, which facilitates the entry of new members as well. This scenario was also pointed out in qualitative research carried out in Rio Grande do Sul, in which adolescents are the second or third generation in conflict with the law (CHIES-SANTOS, 2018; CHIES-SANTOS; VINUTO, 2020). Living with violence and, above all, with violent deaths are some of the elements indicated by research that prevent the construction of links with references from outside the illicit world and impose an obstacle to the right to a healthy adolescence, with the guarantee of family and community ties, as recommended by constitutional and infra-constitutional legislation (BRASIL, 1988, 1990).

Research also shows that the scarcity[70] of job opportunities affects adolescents themselves. Whether due to the low level of education, the low job offers in the young apprentice modality, or even the discrimination that society shows against adolescents from vulnerable communities, the few jobs available for this public end up being informal and very precarious, such as assisting in civil construction[71], in car washes or even in delivery. Contrary to common sense, research has shown that adolescents involved in drug retailing work in licit activities both before entering drug sales and continuing to engage in these activities after entering illegal activities and markets. For this reason, some researchers claim that what happens to adolescents who enter the drug market is a continuation of the exploitation[72] of their workforce (FEFFERMAN, 2008; GALDEANO; ALMEIDA, 2018; PEREIRA JUNIOR; BERETTA, 2020), being one of the worst forms of child labor (BRASIL, 2000; ILO, 1999).

An important point highlighted by the surveys is the age at which adolescents enter the illicit drug market. Research carried out in Rio de Janeiro shows that, on average, adolescents have experienced it earlier and earlier, with reports pointing to entry at 10, 9 and even 8 years of age (DOWDNEY, 2003; FERNANDES; RODRIGUES, 2009).

[70] The low supply of jobs reported in research on young people in the illicit drug market is part of a national scenario of precarious working conditions and inequalities in access to jobs. The diagnosis made by the ILO in 2015 points out that young blacks have a higher unemployment rate than young whites, and that this disparity has been increasing over the years. In addition, there is an important relationship between low education and unemployment, showing that young people with less education are less likely to get a job. The survey also highlights the high rates of informality among young people aged 15 to 17. (CORSEUIL and FRANCA, 2015).

[71] These works are also included in the list of Worst Forms of Child Labor (ILO, 1999; BRASIL 2008).

[72] Diagnósticos elaborados no país apontam que crianças e adolescentes em situação de trabalho infantil são em sua maioria meninos e moradores de áreas urbanas. Boa parte trabalha até mesmo sem remuneração, e provém de famílias que não são consideradas para os programas de transferência de renda, como o Bolsa Família, tornando ainda mais difícil a eliminação das diversas formas de trabalho infantil (OIT, 2015).

The entry of young people into the illicit drug market is also influenced by the feeling of belonging to a peer group (LYRA, 2013). Dowdney's (2003) research, for example, has shown that adolescent involvement begins with everyday interactions with traffickers in the community. Because children grow up around drug dealers, dealers get to know them and end up giving them small tasks. "Walking" with drug dealers becomes a form of selection, of creating trust between the drug dealer and the child before inserting him or her into the drug economy hierarchy.This indirect entry into the illicit drug trade was reported in the survey from the age of 8, starting to enter the trade more actively around the age of 13.

According to this literature, coexistence with actors in the illicit drug market makes young people see drug retailing as a normalized and accessible form of work, especially in places with a strong presence of organized crime (RODRIGUES; RIBEIRO; FRAGA, 2017). Dowdney's (2003) research highlights how the arrival of cocaine to the hills of Rio de Janeiro played a key role in the restructuring of factions, which began to use child labor more due to splits and territorial disputes. **With regard to the structure of the illicit drug trade, the research identified that children are mainly used in the lowest positions in the hierarchy, who have lower remuneration and are more exposed to the risks of armed confrontation – therefore, at greater risk to their lives**.

Drug retail has its own organization and different functions. As explained earlier, children and adolescents are left with the lowest roles in the market hierarchy, which refer to dangerous activities and which yield the lowest gains. That is, the big drug dealer, in general, is not the adolescent apprehended by the police in large or small operations.

In general, considering regional differences, drug retailers need and provide the following positions: packer[73] (the person responsible for dividing and packaging the drug for retail sale); scout (responsible for alerting the entry of police or rivals); steam or seller (the one who actually sells to the user); drug den (*boca*) manager (the one who is responsible for supervising sellers and reporting any problems to the owner); soldier (responsible for inspecting the vicinity of the "bocas" and for the active defense of drug sales spaces) and the owner (the person who runs the drug sales point and employs the others). The nomenclature of positions may vary in each state or city, as well as there may be more functions in places where there is a stronger and more centralized organization, but in general these are the positions found in the retail of illicit drugs (DOWDNEY, 2003; WILLADINO; NASCIMENTO; SOUZA E SILVA, 2018).

The work in the drug den (*boca, biqueira ou lojinha*), also allows a quick rise to the positions with higher incomes, a fact that encourages the permanence of the adolescent in the activity. The search for better remuneration becomes the goal to be achieved by the adolescent, who will invest his/her time in creating a good relationship of trust with the owner, in addition to making himself/herself available for more functions and even higher risk activities aiming at promotion (DOWDNEY, 2003; FERNANDES; RODRIGUES, 2009). What research shows, however, is that the possibility of rapid rise in the hierarchy stems from the high turnover of employees, since the occupational

[73] It should be noted that although this activity involves less risk of violent interactions with the police or rival groups, it is dangerous due to the handling of toxic products, an activity also included in the list of the worst forms of child labor.

risk is extremely high and can result in both arrests and death[74]. For this reason, research also shows that much of the money earned by working in the drug retail market is quickly spent on consumer items, making it impossible to create a reserve that allows exiting the illicit drug trade and finding other work (DOWDNEY 2003; FEFFERMAN, 2008; GALDEANO; ALMEIDA, 2018; WILLADINO; NASCIMENTO; SOUZA E SILVA, 2018).

According to a recent survey carried out in Rio de Janeiro (NAPOLIÃO; MENEZES; LYRA, 2020), adolescents report receiving from one to three minimum wages per month, in activities that demand a 12-hour day, at least six days a week. The research estimates that each hour worked in the retail drug trade earns between R$ 3.20 and R$ 9.60, depending on the position. Regardless of whether work in drug retailing seeks to help pay the family's household bills, to "pay for an addiction", or simply to guarantee a minimum level of consumption common to young people of that age from other social classes, the fact is that the average remuneration in this market is not exorbitant, but it is still higher than that of the legal roles available to this public – roles that are generally informal, dangerous and do not allow the construction of a long-term professional career.

It is also worth considering that the nature of the activity, which involves a total availability to protect the boca and the community, as well as the constant risk of police intervention, makes the activity in the illicit drug trade something more than a job, since it is not possible to disengage from it at any time of the day (DOWDNEY, 2003). More than that, depending on how the drug economy is structured in the region, children and adolescents who work in retail for a certain faction cannot travel through certain territories without running the risk of suffering a violent death[75]. Thus, children and adolescents in the illicit drug trade are exposed to violence from superiors, police, militias and rival factions at all times, even when they decide to exit this economy. This reality is independent of the location: the research by Galdeano and Almeida (2018), carried out in São Paulo, listed armed violence, conflicts with the police, exposure to constant violence, exposure to drugs, in addition to strenuous work hours (12-hour shifts and a total availability in emergency situations that makes the activity practically constant) as the main risks of working in the illicit drug market for children and adolescents in development.

The work structure and functions available to children and adolescents in the illicit drug market, combined with the lack of legal work, access to educational and/or learning training and the low living conditions of families, make it even more difficult for adolescents to leave this type of work. Research, in general, highlights that the fear of being recognized by members of rival factions or even by the police is one of the main factors for adolescents not being able to leave their own community and seek other forms of work (SOUZA E SILVA; URANI, 2002; FEFFERMAN, 2008; WILLADINO; NASCIMENTO; and SOUZA E SILVA, 2018).

Both international law and Brazilian legislation recognize that “drug trafficking” is one of the worst forms of child labor. However, such recognition has not permeated public policies to combat the exploitation of children and

[74] The research by Dowdney (2003) shows how, in Rio de Janeiro, children between 13-14 years and 15-17 years are more likely to die from a firearm than adults.

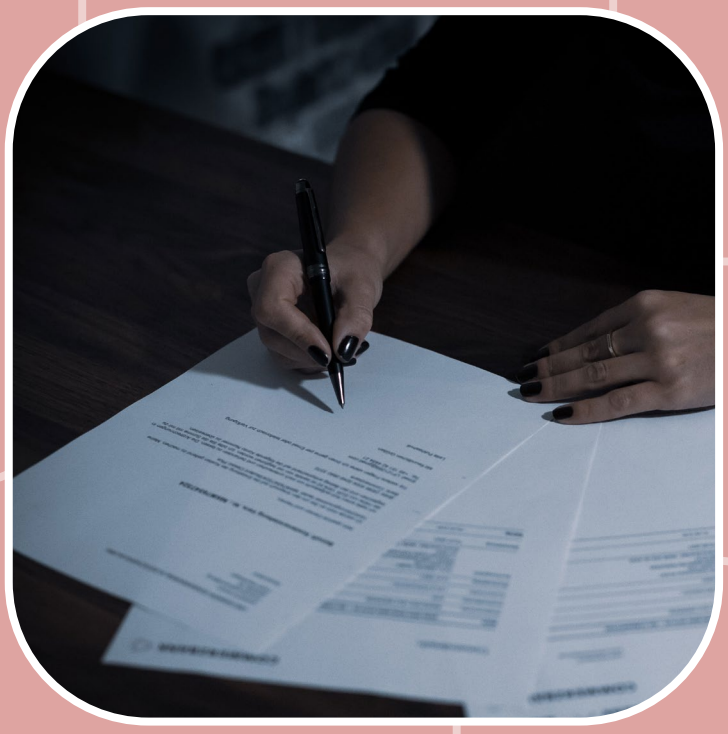
[75] This situation is clear in the case of the city of Rio de Janeiro, where several groups control drug trafficking and, therefore, there is an intense territorial dispute. In these cases, adolescents and residents in general (even those not involved in any faction or illicit activity) are prevented from moving beyond the borders of the dominant faction, which makes it difficult to access institutions such as schools and health centers, in addition to harming the basic right to come and go. See Willadino, Nascimento, Souza and Silva (2018).

adolescents by the illicit drug market, as well as judicial decisions regarding adolescents apprehended on charges of committing an offense analogous to the crimes provided for in Federal Law Nº. 11.343/2006.

As mentioned by the studies described and research referenced in this material, adolescents occupy the most vulnerable and subordinate positions in the criminal drug economy, and are more exposed to violence and deprivation of all kinds, especially those excluded from rights (FELTRAN, 2017). Even so, the **effort made here to better contextualize the intersection between youth and the illicit drug market presented a few researches that look at the issue of the illicit drug market and child labor as dimensions of the same problem**.

As with any other situation of child labor, it is undeniable that early work interferes directly and drastically in all dimensions of the development of children and adolescents, since it affects health and physical-biological development, compromises emotional development and harms social development (MEDEIROS NETO; MARQUES, 2013). **Finally, it is noteworthy that without public policies for social protection, work and income for families and children – as indicated in the ILO Convention Nº. 182 and in the General Survey of the ILO experts presented in chapter 1, repression actions towards drug trafficking, including the punishment measures adopted against this population – will not be effective in removing these adolescents from the illicit drug market, nor in putting an end to the sale and use of these substances**.

JUDGMENT OF ADOLESCENTS IN CASES ANALOGOUS



JUDGMENT OF ADOLESCENTS IN CASES ANALOGOUS TO CRIMES UNDER FEDERAL LAW Nº. 11.343/06

4 TO CRIMES UNDER FEDERAL LAW Nº. 11,343/06

As highlighted in chapter 1 of this manual, the Federal Constitution of 1988, in its art. 227, §3, item V, enshrines the principles of exceptionality, brevity and respect for the peculiar condition of development of children and adolescents in cases where there is provision for the application of a measure of deprivation of liberty. The caput of this article establishes the rights to freedom and to family and community life as fundamental rights, which must be guaranteed, with absolute priority, by the State, society and the family (BRASIL, 1988). The Child and Adolescent Statute reaffirms such rights, especially in paragraph 2 of art. 122, in which it is established that **"in no circumstances will detention be applied, there being another appropriate measure"** (BRASIL, 1990a), thus highlighting the exceptional character of the deprivation of liberty of adolescents, reiterating the fundamental principle of the Doctrine of Integral Protection - that had already been established by international norms on the human rights of children and adolescents, as seen in chapters 1 and 2.

Despite all these precautions mentioned, whether by the Federal Constitution, by the ECA and by the Sinase regulations, as well as by the international treaties ratified by Brazil, the judicial treatment of cases in which adolescents are apprehended on charges of a drug-trafficking related offense shows that such precepts are often not properly observed. Many are the judges who still apply Juvenile Justice measures of detention in these cases, with some exceptions[76]. According to research by the National Council of Justice (CNJ) National Panorama: The implementation of Juvenile Justice Detention Measures (2012), cases considered analogous to crimes under Federal Law Nº. 11.343/2006 of detention in Brazil, representing 24% of the hospitalizations of adolescents, behind only the offense analogous to theft, with 36% (BRASIL, 2012). More serious cases, such as the one mentioned in the introduction to this work, indicate that the state of São Paulo, for example, has more than 50% of adolescents in deprivation of liberty for offenses similar to drug trafficking (SÃO PAULO, 2021).

[76] Although rare, there are already some decisions in Brazil that follow the understanding that adolescents apprehended in working conditions in the illicit drug market are in one of the worst forms of child labor, according to Convention Nº. 182 of the ILO. For example, in one of his decisions, judge Siro Darlan argues that child labor and the illegal market advance in places where there is no protection or public policies to meet the demands of children and society, with the State responsible for such context: "It is known that children and adolescents, especially those in poverty, end up being inserted into the job market early. Qualitative studies by the International Labor Organization have shown that sexual exploitation and drug trafficking most often absorb the workforce of adolescents from communities in Brazil in situations that lead to personal damage, often irreparable (moral, physical, psychological)." Decision available at: https://www.conjur.com.br/dl/jovem-vende-droga-nao-comete-ato.pdf. Judge Karla Aveline de Oliveira also mobilized ILO Convention No. not to accept the representation of the Public Prosecution against the adolescent, making referrals in line with what is being proposed in this manual. See: https://www.migalhas.com.br/quentes/350678/a-vida-e-loka--juiza-inicia-sentenca-de-trafico-de-drogas-com-poema. Accessed: Aug. 8, 2021.

The research carried out by Feitosa and Souza (2018) in 796 judgments of Courts of Justice of the Brazilian States and the Federal District and Territories indicates that 66.1% of these decisions determined the application of custodial measures, revealing that the deprivation of liberty would represent the main measure applied by the Juvenile Justice in cases similar to the crimes provided for in Federal Law No. 11,343/2006. Only 7% applied Juvenile Justice measures in an open environment, 5% of which were assisted probation and 2% provided services to the community (FEITOSA; SOUZA, 2018, p. 463).

In view of this scenario, especially the systematic application of a custodial measure adopted by most judges of first and second instance in Brazil, specifically in cases similar to the crimes provided for in Federal Law nº 11.343/2006, the Superior Court of Justice (STJ) edited Precedent nº 492, published on August 13, 2012, which establishes that: **"The offense analogous to drug trafficking, by itself, does not necessarily lead to the imposition of a Juvenile Justive measure of internment on the adolescent"[77], as it is understood that such situation does not present violence or serious threat to the person, making it impossible to apply item I of art. 122 of the ECA in these cases (FERREIRA, 2012).**

In addition, the ministers understood that the application of a custodial measure is an extreme decision, and can only be adopted in cases of reiteration and within the hypotheses provided for by law. As pointed out by Ferreira (2012), this Precedent established clear limits to the possibility of detention of adolescents for "an offense analogous to drug trafficking". Therefore, **the mere argument of the abstract gravity of trafficking or even of its "hideousness" could not be mobilized to support the application of a custodial measure to the adolescent.**

The balance of the literature that analyzes juvenile justice jurisprudence on the trial of adolescents in cases similar to the crimes provided for in Federal Law Nº. 11,343/2006 shows two extremely relevant data. The first is that, despite STJ Precedent Nº. 492, judges continue to apply the custodial measure to cases of adolescents apprehended for situations considered analogous to the crimes provided for in Federal Law Nº. 11,343/2006 (FEITOSA; SOUZA, 2018; MORO, 2013; FERREIRA, 2012; NEIVA, 2019; RODRIGUES; FRAGA, 2020, FANFA; QUARESMA JUNIOR, 2017; CORNELIUS, 2014; CORCIOLI FILHO, 2018; ROCHA, 2013)[78]. The second is that practically none of these studies mention ILO Convention No. 182, that is, none of the researched decisions

[77] Precedent 492, THIRD SECTION, judged on: 08 Aug. 2012, DJe 13 Aug. 2012

[78] The research by Feitosa and Souza (2018) was carried out from the analysis of the jurisprudence of the 26 Courts of Justice of the states and the Court of Justice of the Federal District and Territories in decisions referring to cases similar to drug trafficking, in the period of January from 2012 to December 2014; that of Corcioli Filho (2018) was carried out at the São Paulo Court of Justice in decisions referring to cases similar to drug trafficking in the period between May 2015 and May 2016; the one by Rodrigues and Fraga (2020) was carried out in the processes of the Regional Court for Children and Youth in Petrolina, a city in the State of Pernambuco, referring to cases similar to drug trafficking, in the period 2011-2014; and that of Fanfa and Quaresma Junior (2017) at the Court of Justice of Rio Grande do Sul in decisions referring to cases similar to drug trafficking, from January 2015 to April 2017, that of Cornelius (2014) was carried out in the jurisprudence of the Superior Court of Justice (STJ) and the Court of Justice of Rio Grande do Sul (TJRS) referring to cases similar to drug trafficking from January 2012 to December 2013.

mobilized this Convention to define **the activity of adolescents in the illicit drug trade not only as a form of work, but as one of the worst forms of child labor.**

The surveys bring some relevant data to deconstruct preconceived ideas in the legal environment that impose barriers to adopting the perspective of "drug trafficking" as one of the worst forms of child labor. Before getting into this issue properly, it is necessary, initially, to bring the diagnosis found in these productions on the jurisprudence of decisions related to cases similar to the crimes provided for in Federal Law Nº. 11,343/2006.

4.1. General diagnosis presented by researches

According to the research by Feitosa and Souza (2018), these decisions mobilize discourses on the fight against the "War on Drugs", combined with the "Menorist Doctrine"[79]. A similar diagnosis found in other studies highlighted that the decisions present subjective criteria and with little legal basis, especially referring to art. 122 of the Child and Adolescent Statute (NEIVA, 2019; CORCIOLI FILHO, 2018; RODRIGUES; FRAGA, 2020; FANFA; QUARESMA JUNIOR, 2017; CORNELIUS, 2014; ROCHA, 2013; FERREIRA, 2012). This scenario is illustrated by the data presented by Feitosa and Souza (2018, p. 463-464), which show that, in 54% of the decisions analyzed in their research, the judges applied the custodial measure without reference to any of the items of art. 122 of the ECA. These researches reveal that there seems to be in Brazil today a scenario of decisions with intense mobilization of extra-legal arguments that indicate the application of the custodial socio-educational measure beyond its legal premise of exceptionality.

However, this conclusion is not recent. The research by Minahim and Sposato (2011)[80], carried out a decade ago, already indicated a similar scenario: "In plan, it could be seen that the custodial Juvenile Justice measure is systematically imposed with low legal grounds, and in many cases without due consideration of the legal requirements demanded by the Child and Adolescent Statute" (MINAHIM; SPOSATO, 2011, p. 278).

From these studies, based on jurisprudential surveys, it is observed that a significant part of the support of judges' decisions on the application of custodial socio-educational measures in cases in which adolescents are apprehended for situations similar to the crimes provided for in Federal Law Nº. 11.343/2006 does not align with legal regulations.

Given this scenario, it is essential for the present manual to indicate the legal grounds frequently found in these decisions, seeking, in this way, to contribute to the establishment of parameters in line with national

[79] Minors Code of 1927 and Minors Code of 1979.

[80] Research carried out on childhood and youth jurisprudence in the State Courts of Justice, from January 2008 to July 2009.

legislation and with the Brazilian social reality that guarantees the judiciary arguments of legal and sociological reliability that drives the decision-making of magistrates on the subject.

4.1.1. Arguments of the "War on Drugs"

Research shows that the argument repeatedly used in decisions that apply the custodial Juvenile Justice measure to cases of adolescents apprehended in situations analogous to the crimes provided for in Federal Law Nº. 11.343/2006 refers to the discourse of the "war on drugs", with arguments such as the "abstract gravity of the crime of trafficking", the "social reprehensibility of trafficking", the "protection of society and public order" and the "heinousness" of trafficking (FEITOSA; SOUZA, 2018, p.453).

When considering "trafficking" a heinous crime[81], the jurisprudence studies indicated in some decisions argue that the "best measure for the adolescent and for society" would be the application of a measure considered "exemplary". In addition to mobilizing the argument of drug trafficking as a heinous crime, the judgments mentioned "public order" and "society protection" to justify the application of the custodial measure, a basis not supported by art. 122 of the ECA (FEITOSA; SOUZA, 2018, p. 465), as endorsed by Precedent Nº. 492, published on August 13, 2012. It is important to highlight that the adoption of this argument implies an interpretative broadening of the scope of art. 122, as can be seen in the excerpt of this decision: "It is neither reasonable nor proportionate to interpret the provisions of article 122 of the Child and Adolescent Statute literally, excluding from the scope of the norm an extremely serious crime that demands prompt state intervention" (CORCIOLI, 2018, p. 356).

According to the research by Feitosa and Souza (2018), in about 41% of the judgments analyzed, the argument presented in the decision is based on the abstract gravity of trafficking to apply the custodial Juvenile Justice measure, which is in disagreement, therefore, with Precedent nº 718 of Brazil's Supreme Court, which states that "the opinion of the judge on the abstract gravity of the crime does not constitute a suitable motivation for imposing a more severe regime than what is permitted according to the penalty applied" (STF, 2018)[82].

In this sense, as concluded by Feitosa and Souza (2018)

Indeed, in the case of adolescents accused of committing acts analogous to drug trafficking, there is evidence of the construction of an arbitrary and retributive discourse, capable of undermining the paradigm of the Doctrine of Integral Protection and consolidating a genuine practice of hyperincarceration currently in Brazil. (FEITOSA; SOUZA, 2018, p. 471).

[81] Heinous Crimes Law (BRASIL, 1990b)

[82] Precedent nº 718. Available at: http://www.stf.jus.br/portal/jurisprudencia/menuSumarioSumulas.asp?sumula=2545. Accessed on: 8 Aug. 2021.

By mobilizing the discourses of the “War on Drugs”, research indicates that the judicial authority adopts poorly founded arguments on the subject of this criminal economy, reducing a complex reality to an abstract gravity and that underlies the consequences of applying extreme measures to adolescents, as is the case of deprivation of liberty, by choosing the custodial Juvenile Justice measure as the most appropriate one, instead of adopting protective ones, as recommended by international human rights treaties and national regulations, or even Juvenile Justice measures in an open environment - in view of the best interest of the adolescent.

Undoubtedly, the aforementioned research reveals fundamental diagnoses to understand the way in which the actors of the juvenile justice have been deciding in relation to adolescents apprehended and tried for cases similar to the crimes provided for in Federal Law Nº. 11,343/2006. Therefore, it is necessary to seek other ways of dealing with this issue and that are aligned with the international commitments assumed by Brazil, such as the fight against child labor and its forms of exploitation.

4.1.2. Arguments from the Minorist Doctrine

The decisions that refer to the discourse of the doctrine still attached to "minorist" precepts, that is, based on instruments prior to the Child and Adolescent Statute, mobilize arguments that tend to place the custodial measure as more adequate for the adolescent, with a rationale that is based on the idea that the aforementioned measure reverts to a protective character, presenting a "flexibilization of the taxing role of art. 122 of the ECA". The fact to note is that this view opens gaps for the application of the custodial measure (FEITOSA; SOUZA, 2018, pp 453) in order to ignore the constitutional principles of exceptionality and respect for the peculiar condition of a person in development[83], since hides the fact that such a measure requires the deprivation of liberty of the adolescent in a center that may present poor conditions of habitability, structure and/or be overcrowded[84].

There is, in this argument, the idea that the custodial measure in cases similar to the crimes provided for in Federal Law nº 11.343/2006 involving adolescents would be a means of protecting them either from trafficking, or from the street, or from coexistence “with crime”, or the “disintegrated family”, or poverty; finally, this measure of deprivation of liberty is seen as a way of guaranteeing them a list of rights that had been denied until then. In this sense, the measure is conceived almost as a “rehabilitation program”, disregarding the limits for the intervention of state power in the adolescent's life (CORCIOLI, 2018, p. 354). As highlighted

[83] Art. 227, paragraph 3, item V of the Federal Constitution/88.

[84] As pointed out by the reports of the National Mechanism for the Prevention and Combat of Torture (https://mnpctbrasil.wordpress.com/relatorios/), the State Mechanism for the Prevention and Combat of Torture of Rio de Janeiro (http://mecanismorj.com.br/relatorios/), and research by the National Council of Justice “National Panorama: Enforcement of Custodial Juvenile Justice Measures” of the Justice for Youth Program (2012), available at: https://www.cnj.jus.br/wp- content/uploads/2011/02/panorama_nacional_doj_web.pdf, in addition to what was exposed in the Sinase Evaluation Report (2021). Accessed on: 8 Aug. 2021.

by Corcioli (2018), the mobilization of these arguments paves the way “for any and all broad interpretations of intervention hypotheses on adolescent freedom” (2018, p. 355).

Research indicates that the recurrent use of these arguments by the actors of the juvenile justice is not supported by reality and regulations, since the withdrawal of adolescents has no impact on the functioning of the drug market, nor does it reduce the number of users, it only harms the adolescent and provides opportunities for other young people to be recruited to replace the one who is deprived of liberty (ROCHA, 2013; SOARES, 1998).

Considering that this adolescent is in one of the worst forms of child labor, it is up to the State to promote not a punishment disguised as rights and protection, but incisively adequate protective measures, with insertion in social policies, decent work, quality education, leisure and culture. Finally, a list of rights that this young person can access outside the detention centers, without their freedom having to be suppressed to be inserted in this grammar of human rights.

Considering that drug trafficking corresponds to one of the worst forms of child labor, it is suggested that the custodial socio-educational measure is not applicable, but rather protective measures that not only help this particular adolescent, but contribute to the broader scenario of eradication of the worst forms of child labor, in accordance with international treaties ratified by Brazil (ILO, 1999).

4.2. Juvenile detention centers

The application of a custodial measure in Brazil today implies the recognition of the placement of adolescents in places, most of the time, inappropriate for a better and adequate care for these boys and girls, who would need a series of other measures, especially protective ones, to leave the illicit drug market.

According to reports from civil society organizations and government agencies that carry out inspections in these centers, they range from structural problems, such as unsanitary, overcrowded facilities, often similar to prisons, to the frequent practice of physical aggression, sexual abuse and torture, therefore not being a safe place as it should be. The fact is that Brazil has been responding to numerous cases of violations of rights in spaces of deprivation of liberty of adolescents in the Inter-American System of Human Rights[85], in addition to daily complaints made by human rights organizations (JESUS et al., 2020; DUARTE, 2021), which reveals a worrying scenario that requires articulated policies and the participation of all actors in the protection system recommended by the Child and Adolescent Statute, which is also integrated by the judiciary.

Brazil has serious problems in its systems of deprivation of liberty. In the judgment of the Argument of Noncompliance with Fundamental Precept (ADPF) nº 347, Brazil's Supreme Court (STF) recognized, in 2015, the "unconstitutional state of affairs" of Brazilian prisons. On the occasion, the Justices of the Supreme Court assumed that the "unbearable and permanent situation of violation of fundamental rights demanded an intervention by the Judiciary of a structural and budgetary nature". Several inspection reports by public institutions and civil society, as well as the National Mechanism for the Prevention and Combat of Torture (MNPCT) have pointed to these problems for a long time – as already indicated.

In the Juvenile Justice system, however, this situation is no different. The juvenile detention centers present, in great part, a generalized picture of bankruptcy, overcrowding and structural conditions that configure a cruel and degrading treatment to the adolescents deprived of liberty. This generates a series of violations of rights, including illegal constraint, especially since they are people in development who, constitutionally, must have their rights guaranteed with absolute priority and full protection by the State, the family and society.

[85] In 2017, Brazil received a visit from the Rapporteur on the Rights of Children and Adolescents and the Country Rapporteur of the Inter-American Commission on Human Rights to monitor the functioning of the National System of Socio-educational Assistance (Sinase). In the conclusion report of the visit, numerous violations of rights were pointed out in the juvenile detention centers visited (https://www.oas.org/pt/cidh/prensa/notas/2017/209A.asp). In addition, he highlighted that Brazil responds to a series of complaints in the Inter-American human rights system, including precautionary measures that are being monitored by the Commission: Resolution 71/2015 IACHR "Adolescents deprived of liberty in male juvenile detention centers in the state of Ceará", available at: https://www.oas.org/es/cidh/decisiones/pdf/2015/MC60-15-PT.pdf; and Resolution 43/2016 IACHR Precautionary Measure No. 302-15 "Adolescents deprived of liberty in the Centro de Atención Socioeducativo del Adolescents (CASA) Cedro del Estado de San Pablo respecto de Brasil", available at: https://www. oas.org/es/cidh/decisiones/pdf/2016/MC302-15-ES.pdf.

It is worth noting, in this context of overcrowding, that in August 2020, in the judgment of HC 143.988[86], Justice Gilmar Mendes, in his vote, indicated that the *unconstitutional state of affairs* of prisons could be extended to the Juvenile Justice system. In this sense, when adopting the numerous clausus theory, the Justices of the 2nd Panel of the Supreme Court stated that judges must (i) adopt a limit number for the capacity of the centers, after which it will be necessary to release a detained adolescent to accept new admissions; (ii) reassess cases in which adolescents were detained for offenses without violation or serious threat, even if there is a recurrence; and, (iii) transfer of adolescents to centers that do not have a capacity greater than the projected limit of the establishment[87] - provided that the new detention center is close to the place where the young person's family lives - in guarantee of the fundamental right of family and community coexistence provided for in the Constitution of the Republic of 1988.

This decision was extremely important and had a considerable impact, with the emptying of detention centers that were operating above capacity[88]. This type of decision shows how fundamental the Judiciary's performance is for the fulfillment of the fundamental principles established in the Federal Constitution of 1988, in the Child and Adolescent Statute and in all international treaties that account for the human rights of children and adolescents.

At the time of the historic decision handed down by the Supreme Court (2020), nine Brazilian states had juvenile detention centers that were operating above capacity. They were Acre (153% occupancy); Bahia (146%); Ceará (112%); Espírito Santo (127%); Minas Gerais (115%); Pernambuco (121%); Rio de Janeiro (175%); Rio Grande do Sul (150%); and Sergipe (183%)[89]. The National Council of the Public Prosecutor's Office (CNMP) had already pointed out this scenario in a survey carried out in 2019 (BRASIL, 2019). Pernambuco, for example, operated with a capacity of 209.3%, while Acre operated with a capacity of 193%, and Rio de Janeiro with a total capacity of 160% above maximum capacity. More extreme examples are the states of Maranhão (458.9%) and Mato Grosso do Sul (354%).

Overcrowding is a serious violation of fundamental rights. This is because, in addition to emptying the Juvenile Justice character of the custodial measures, all other rights – such as health, education and family and

[86] Understanding present in Minister Gilmar's vote: Minister Gilmar Mendes, affirmed in vote the understanding that "(...) without a doubt, such an unconstitutional state of affairs, described in relation to the Brazilian penitentiary system in general, can also be verified in several places for the detention of adolescents" (STF, 2020, p. 58).

[87] It is important to highlight here Resolution No. 367/2021, which provides for guidelines and general rules for the creation of the Vacancy Center in the State System of Socio-Educational Assistance, within the scope of the Judiciary. It is an initiative of the CNJ to operationalize HC 143,988 and qualify the management of vacancies in the State System of Socio-Educational Assistance.

[88] Another important measure that contributes to the emptying of juvenile detention centers was CNJ Recommendation Nº 62/2020, which recommended that Courts and magistrates adopt preventive measures to the spread of infection by the new coronavirus - Covid-19 within the scope of criminal and socio-educational justice systems. Article 2 of the recommendation is highlighted, which imposes the importance of competent magistrates for the knowledge phase in the investigation of offenses in the Childhood and Youth Courts, the adoption of measures with a view to reducing epidemiological risks and in compliance with the local context of spread of the virus, with emphasis on the preferential application of socio-educational measures in an open environment and the review of the decisions that determined the pre-trial detention. Available at: https://atos.cnj.jus.br/atos/detalhar/3246.

[89] Data cited in HC 143,988. Available at: http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/HC143988liminar.pdf. Accessed on: 8 Aug. 2021.

community living – are made impossible due to the material and human resources incapacity of the centers. Juvenile Justice is not carried out in overcrowded centers.

A recent survey carried out in Rio de Janeiro (NAPOLIÃO; MENEZES; LYRA, 2020) highlighted that juvenile detention centers have similar structures to prisons, with restricted movement of adolescents. In addition, in the male centers, adolescents do not have access to items for shaving their beards and hair and nail clipping, making it difficult to perform adequate hygiene, which is necessary for the prevention of diseases. A good part of the adolescents declared having contracted contagious diseases at the unit, especially dermatological ones. They also stated that they did not have access to psychological treatments, inside or outside the unit; despite this, some adolescents reported the use of antidepressant medications, indicating the practice of medicalization without medical recommendation (NAPOLIÃO; MENEZES; LYRA, 2020).

The survey also indicated that at least 25% of detained adolescents did not attend the unit's school; 68% "did not attend any professional, sports or artistic course at the unit, but 58% of them said they would like to attend" (NAPOLIÃO; MENEZES; LYRA, 2020, p. 25).

These data indicate that the nature of the Juvenile Justice measure has been repeatedly disregarded, leaving only the punitive role and the consequent separation of these adolescents from their family and community ties at a relevant moment in their development. Despite the scarcity of data on Brazilian Juvenile Justice care (GISI; VINUTO, 2020), which makes it difficult to carry out a diagnosis of the situation, the annual Sinase surveys identify, in a way, the excessive use of the measure of deprivation of liberty by the judges responsible for judging adolescents involved in the practice of offenses, given the continuous growth of this application, which has increased by 515% from 1996 to 2017.

Unfortunately, disaggregated data are not available to understand how the rate of detention for cases similar to the crimes provided for in Federal Law nº 11,343/2006 has behaved over the years, but it can be noted that in 2017 (most recent data), more than 21% of the adolescents in detention centers were detained for the practice, in theory, of this type of illicit conduct and, in the case of São Paulo, the state with the highest absolute number of adolescents deprived of their liberty, almost 50% were in these conditions due to the practice, in theory, of offenses similar to Federal Law No. 11,343/2006.

These data allow us to infer that both art. 122 of the ECA and the Precedent nº 492 of the STJ have been little considered in decision-making regarding adolescents involved in the illicit drug market. In this context, the importance of research entitled "Drug trafficking among the worst forms of child labor: markets, families and social protection network" by the Brazilian Center for Analysis and Planning (GALDEANO; ALMEIDA, 2018) is highlighted, which indicates that the professionals of the institutions through which the adolescents, including the Judiciary, end up reinforcing the social construction of the "criminal adolescent", instead of contributing to break with this stigmatization, which can have perverse consequences for their lives.

Thus, in addition to dealing with the structural issues of the juvenile detention centers, it is necessary to consider how the professionals who make up the bodies of the Rights Guarantee System, especially actors of the juvenile justice, look at this public, welcome and answers them.

THE REFERRAL FLOWS TO THE SOCIAL PROTECTION NETWORK

5 THE REFERRAL FLOWS TO THE SOCIAL PROTECTION NETWORK

So far, the manual has brought (i) the national and international legal framework, which supports the understanding of drug trafficking as one of the worst forms of child labor, in addition to presenting the institute of conventionality control as a way of incorporating in the interpretation of the cases the international norms ratified by the country; (ii) the contextualization of the drug policy adopted by Brazil and its consequences, (iii) the description of studies that show the conditions in which adolescents apprehended for a drug-trafficking related offense live and how the juvenile justice decides on these cases. **In order to provide judges with possibilities for referring these adolescents, this chapter presents suggestions for referral flows that seek to operationalize the points raised so far and offer judges practical options to deal with cases of adolescents in child labor in the illicit drug market.**

Thus, five assistance flows were proposed, which bring options based on the regulations exposed so far, as well as the possibilities of referral to other services and programs of the social assistance services available in Brazil. The referral flows to the protection system were designed to offer judges alternative or subsidiary possibilities for the application of socio-educational measures, especially those depriving and restricting freedom, in cases of apprehension of adolescents who work in the illicit drug sales market, instead of that such occurrences need to be analyzed in light of ILO Convention Nº 182. This document, as already explained, understands this activity as one of the worst forms of child labor. For this, it is essential to mobilize the control of conventionality of domestic normative acts in face of the conventions ratified by the Brazilian State, exposed in the first part of this manual. As highlighted by Oliveira:

The judicial body has the power and duty to assess the compatibility between the provisions of the ECA and the treaties that are superior to it, guaranteeing a legal, family, social, community situation of support for child workers, that is, using the existing mechanisms to protect the adolescent, according to the protective measures of the ECA previously exposed. (OLIVEIRA, 2020, p. 14)

Furthermore, there are a series of legal provisions that judges can use to make decisions, with a focus on expanding the protective capacity of the State. The Child and Adolescent Statute itself offers other possibilities for measures, notably those of protection, and which have an arsenal aimed at guaranteeing rights and expanding access to citizenship for these adolescents, with a focus on expanding the possibilities of life trajectories that distance them from the contexts of lack of protection and violence to which they are subjected.

According to Medeiros Neto and Marques (2013), it is important to highlight that action focused on children and adolescents must always assume a protective dimension, starting with their removal from work

situations, combined with referrals to social, educational, professionalizing and learning programs, (after the age of 14) and, in cases of risk, to protection programs, such as the Program for the Protection of Children and Adolescents Threatened with Death (PPCAAM).

It is worth mentioning that one of the major discussions when the Child and Adolescent Statute was drafted was the separation between protection measures and Juvenile Justice measures (CIFALI, 2019; PASSETTI, 1995; RIZZINI; RIZZINI, 1996). Thus, when the practices of offenses are differentiated from those of adolescents in situations of extreme social vulnerability and/or risks, violence and other forms of violations of rights, the integral protection designed in

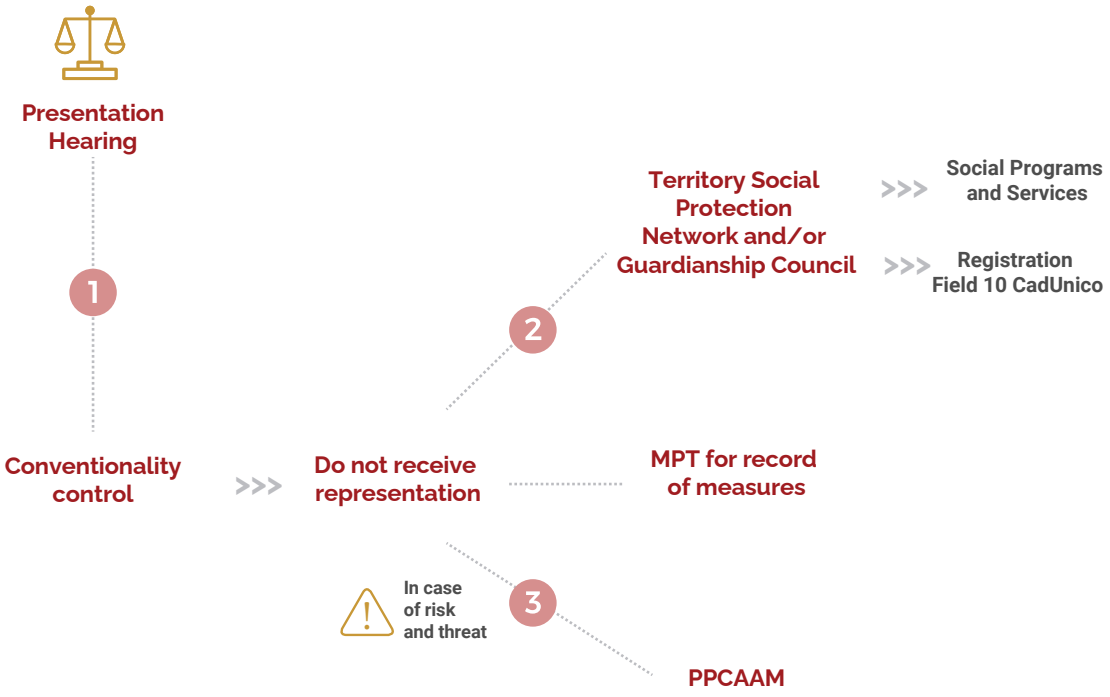
The Program for the Protection of Children and Adolescents Threatened with Death (PPCAAM) was created in 2003 and instituted in 2007 by the Federal Government to tackle the lethality of threatened children and adolescents (Decree 6,231/07, and amended by Decree 9,371/18). This program aims to preserve the lives of children and adolescents threatened with death, with an emphasis on integral protection and family life. It is carried out in different states, through agreements between the Ministry of Women, Family and Human Rights, State Governments and Non-Governmental Organizations. The identification of the threat and inclusion in the PPCAAM are carried out through the Judiciary, the Guardianship Councils, the Public Prosecut and the Public Defender's Office. Available at: https://www.gov. br/mdh/pt-br/navegue-por-temas/crianca-e-adolescente/protecao-a- criancas-e-adolescentes-ameaca- dos-de-morte-ppcaam.

Thus, it is important to consider that judges have at hand several legal instruments that can replace institutionalization. Therefore, once drug trafficking is considered one of the worst forms of child labor, it is also necessary to reflect on the path most adopted in classifying this activity as an offense, especially because this approach requires a reading that takes into account that the adolescent may be being victimized within a certain context and, not necessarily, being the author – pure and simply – of an offense. As explained in chapter 3 of this manual, children and adolescents are being recruited and used in the drug market to carry out the most varied activities. However, it is also known that they are on the extremities of this economy, that is, they are more vulnerable to police actions, exposure to unhealthy work, among other dangerous situations.

Therefore, the proposal presented in this section of the manual seeks to support judges to provide them with legal and argumentative instruments to reinforce the application of adequate measures to protect and guarantee the rights of adolescents to the detriment of the application of measures that not only punish them, but also that greatly affect their life trajectories. In addition, these protective measures not only protect adolescents, but also incorporate international norms for the protection of human rights into the judicial practices of the Brazilian Judiciary, combined with the domestic legal system, such as the Federal Constitution and ECA.

Thus, five flows will be suggested here for the referral of adolescents who experience situations of child labor in the illicit drug market. The effort to indicate different possibilities of flows aims to instrumentalize the Brazilian Judiciary in its different realities and possibilities of networking, given the multiplicity of situations that judges face in specific cases. Certainly, such flows are suggestions for referrals, which can be combined according to the understanding of the magistrates and the structuring of the system for the protection of children's rights in the territories.

FLOWCHART 1



1 ACTIVATE CONVENTIONALITY CONTROL

As explained in point 1.3 of this manual, it is up to state judges to exercise conventionality control, as a way of making internal norms and practices compatible with international treaties signed by the Brazilian State. Therefore, the first step suggested in this flow is to recognize the supra-legal character of Convention No. 182 of the ILO of 1999 and of the International Convention on the Rights of the Child of 1989 to implement protective actions for adolescents involved in offenses similar to the crimes contained in Federal Law No. 11,343/2006.

It is an opportunity, therefore, for the Brazilian Judiciary to be involved in the possibility of interpreting the law in its entirety. This means that, from an interjurisdictional perspective, Brazilian judges can recognize international law on human rights at the domestic level, in line with the understanding already given by the Brazilian Supreme Court.

2 ACTIVATE SOCIAL PROTECTION NETWORK OF THE TERRITORY AND/OR GUARDIANSHIP COUNCIL

It is then recommended that the magistrate activate the social protection network of the territory in which the adolescent is inserted, to give the proper referral to the case. The Unified Social Assistance System (SUAS), through its territorialized and decentralized organization90, has equipment and services capable of offering social assistance to adolescents in situations of child labor. In this context, we highlight the Strategic Actions of the Child Labor Eradication Program (AEPETI), which involves the inclusion of adolescents and their families in income transfer programs; professionalization, employment and income generation programs; in addition to the articulation with other social public policies such as education, health, sports, culture and leisure.

The Unified Social Assistance System (SUAS) is a public system that organizes services in Brazil, based on a participatory management model that articulates the three levels of government: municipalities, states and the Union, for the execution and financing of the National Policy (PNAS), directly involving national, state, municipal and Federal District regulatory frameworks and frameworks. Available at: http://mds.gov.br/assuntos/assistencia-social.

AEPETI involves the inclusion of this public in services, with emphasis on the Service for Coexistence and Strengthening of Bonds - SCFV, which works in conjunction with the Service for the Protection of Families and Individuals - PAIF and/or Specialized Protection Service for Families and Individuals – PAEFI, which promote a wide range of actions to guarantee rights and give new meaning to unprotected trajectories.

[90] Materialized to a large extent by the Social protection Reference Centers (CRAS) and by the Specialized Social protection Reference Centers (CREAS).

The Child and Adolescent Statute determined that each Brazilian municipality must have at least one guardianship council, responsible for ensuring compliance with the rights of children and adolescents. According to art. 136 of the ECA, are attributions of the Guardianship Council: I - assist children and adolescents in the cases provided for in arts. 98 and 105, applying the measures provided for in art. 101, I to VII; II - assist and advise parents or guardians, applying the measures provided for in art. 129, I to VII; III - promote the execution of its decisions, being able to do so: a) request public services in the areas of health, education, social service, social security, work and security; b) represent before the judicial authority in cases of unjustified non-compliance with its resolutions. IV - forward to the Public Prosecutor's Office news of fact that constitutes an administrative or criminal offense against the rights of children or adolescents; V - forward to the judicial authority the cases within its competence; VI - provide the measure established by the judicial authority, among those provided for in art. 101, from I to VI, for the adolescent who committed an offense; VII - issue notifications; VIII - request birth and death certificates for children or adolescents when necessary; IX - to advise the local public institution in the elaboration of the budget proposal for plans and programs to attend to the rights of children and adolescents; among other assignments. Available at: https://www.gov.br/mdh/pt-br/assuntos/noticias/2018/mai/conselhos-tutelares-tem-importancia-central-na-defesa-de-criancas-e-adolescentes.

The AEPETI are structured around five axes of action: (i) training and mobilization; (ii) identification; (iii) protection[91]; (iv) advocacy support and accountability and (v) monitoring. According to the ILO survey, in partnership with FNPETI and MDS (2018), each of these axes contains a specific look at the issue of child labor in drug trafficking, with strategies that aim to encompass the multiple dimensions of this problem. These strategies emphasize the importance of social work with families and the strengthening of community bonds as a fundamental element for the prevention and monitoring/intervention of child labor situations involving drug trafficking.

The inclusion of adolescents in Apprenticeship Programs is also a fundamental strategy for greater attention to adolescents in child labor in the illicit drug market. It is necessary to remember, in this sense, of Recommendation Nº 61 of February 14, 2020 (BRASIL, 2020, p. 01) and Recommendation Nº 86 of January 12, 2021 of the CNJ, which "recommends that Brazilian courts implement programs of learning aimed at the methodical technical-professional training of adolescents and young people, from the age of 14, in the form of articles 428 to 433 of the Consolidation

[91] AEPETI axis III involves articulated actions between Basic Social Protection and Special Social Protection services. The Coexistence and Strengthening of Bonds Service (SCFV) is particularly important in assisting adolescents in child labor situations, as it develops social protection work of a preventive and proactive nature through group activities, based on the defense and affirmation of rights. and in the development of users' capacities and potential, with a view to reaching emancipatory alternatives to face social vulnerabilities and give new meaning to their trajectories. Focusing on the right to coexistence, protagonism, autonomy and social participation. All these services share the responsibility of guaranteeing the inclusion of these families in the Single Registry and in the Bolsa Família Program, considering the profile of the Bolsa Família Program (PBF); marking the situation of child labor in the Electronic Medical Record, in the SUAS Census and, finally, in the other Information Systems that make up the SUAS Network.

of Labor Laws - CLT" (BRASIL, 2021, np)[92]. In this sense, judges can refer adolescents in child labor in the illicit drug market to programs that already exist in the Courts of Justice. If not, it is important to highlight the need to raise the possibility of creating policies for these adolescents in the Courts.

It is important that the adolescent is referred to the Guardianship Council so that the agency can monitor the service offered by the Rights Guarantee System, guaranteeing the right to health, food, education, social protection, leisure, sport, culture, housing, family and community living and, in the case of adolescents over 14 years of age, referral to apprenticeship and professionalization programs. However, if some of these programs are not available in the municipalities, it is essential to point to the responsibility of the Public Power, in the sense of providing such public policies that aim to offer basic services, for the benefit of this part of the population in a situation of violation of rights. These referrals comply with art. 7, number 2, of ILO Convention Nº. 182:

> *Each Member shall, taking into account the importance of the elimination of child labor, take effective and timely measures to: a) prevent the employment of children in the worst forms of child labor; b) provide the necessary and adequate direct assistance to remove children from the worst forms of child labor and ensure their rehabilitation and socialinclusion; c) ensure access to free basic education and, where possible and appropriate, to professional training for all children who have been removed from the worst forms of child labor; d) identify children who are particularly exposed to risks and come into direct contact with them; and, e) take into account the particular situation of girls (ILO, 1999, art. 7, without emphasis in the original).*

a) Request registration of the case as child labor in Field 10 of the Single Registry (Cadastro Único)

The Single Registry (CADÚnico) is an instrument that identifies and characterizes lowincome families, allowing the government to better understand the socioeconomic reality of this population. It records information such as: characteristics of the residence, identification of each person, education, work status and income, among others. Available: https://www.gov.br/cidadania/pt-br/acoes-e-programas/cadastro-unico.

Once the social protection network is activated, it is suggested that there be an articulation between magistrates and the network's management bodies to register the case as an occurrence of child labor in Field 10 of the Single Registry for Social Programs of the Federal Government (CADÚnico). CADÚnico has a fundamental role in showing who they are, where they are and what are the needs of the most vulnerable families in the country (BRASIL, 2017). It consists of a register that allows access to fundamental public policies to guarantee rights. The CADÚnico form collects a series of information that guides the referral to services, benefits and social programs at the federal, state and municipal levels.

[92] Supported by Decree-Law Nº. 5,452, of May 1, 1943 (Consolidation of Labor Laws - CLT); Law Nº. 8069, of June 13, 1990 (Child and Adolescent Statute - ECA); Decree Nº. 9,579, of November 22, 2018; Decree Nº. 4,134, of February 15, 2002.

In particular, Field 10 of CADÚnico identifies the occurrence of child labor, that is, work performed by people under the age of 16 (sixteen) years, except for those between 14 (fourteen) and 16 (sixteen) years old who work in the condition of apprentice. In this sense, it is important to ensure that the "Child Labor" field is marked in the register of families that experience child labor situations in the illicit drug market, so that these adolescents are referred to social protection services and social programs.

The registration of these cases as child labor in CadÚnico is important to enable and improve the understanding of the phenomenon of child labor in the country. As highlighted by Galdeano and Almeida (2018), when this information is recorded by the state bureaucracy, it becomes more visible and important in the implementation of policies appropriate to the different realities. Thus, data recording is also useful to produce diagnoses and guide public policies, allowing to adapt, expand and regionalize programs and services to adequately serve the target population. Therefore, it is suggested that in this field, in addition to the occurrence or not of child labor in the family, the type of work should be qualified, that is, the occurrence of child labor in the illicit drug market should be recorded.

3 ACTIVATE THE PUBLIC LABOR PROSECUTION OFFICE TO REGISTER THE OCCURRENCE AS CHILD LABOR AND OTHER MEASURES AND REFERRALS

Once the social protection network is activated and the appropriate protective measures are guaranteed for adolescents in child labor in drug trafficking, it is also recommended to liaise with the Public Labor Prosecution Office (MPT), for the proper registration of the occurrence and other referrals.

The MPT[93] is one of the fundamental bodies to act on the issue of the eradication of child labor, being one of the institutions that has advanced the most in terms of works and productions on this topic[94]. Among the agency's initiatives, the MPT created in 2000 the National Coordination to Combat the Exploitation of Child and Adolescent Labor – Coordinfância[95], through Ordinance nº 299, of November 10, 2000. Coordinfância aims to promote, supervise and coordinate actions to prevent and eradicate child labor (MEDEIROS NETO; MARQUES, 2013, p. 85). It is also important to highlight that, in 2020, the Coordinfância paid special attention to the issue of drug trafficking as one of the worst forms of child labor, being a fundamental partner for juvenile justice in addressing these cases[96]. It is worth mentioning that the National Council of the Public Prosecutor's Office (CNMP) also presents a Manual for the Eradication

[93] According to the study by Cabistani (2017), the MPT plays a central role in combating child labor, and it is important to highlight the need to advance the issue of drug trafficking as one of the worst forms of child labor.

[94] On publications and campaigns promoted by the Public Labor Prosecution Office, see: https://mpt.mp.br/

[95] About Coordinfância see: https://mpt.mp.br/pgt/areas-de-atuacao/coordinfancia

[96] In the months of June, July and September, the Coordinance, together with other organizations such as the ILO and FNPETI and the Public Labor Prosecution Office, held 5 Dialogues on child labor in drug trafficking. See: 1st Dialogue on Child Labor in Drug Trafficking: https:// www.youtube.com/watch?v=11PzV1jj1FY; 2nd Dialogue on Child Labor in Drug Trafficking: https://www.youtube.com/watch?v-=xgxrGZZN7uU; 3rd Dialogue on Child Labor in Drug Trafficking: https://www.youtube.com/watch?v=KI4qWINISHE; 4th Dialogue on Child Labor in Drug Trafficking: https://www.youtube.com/watch?v=HIRwUXC0nVk.

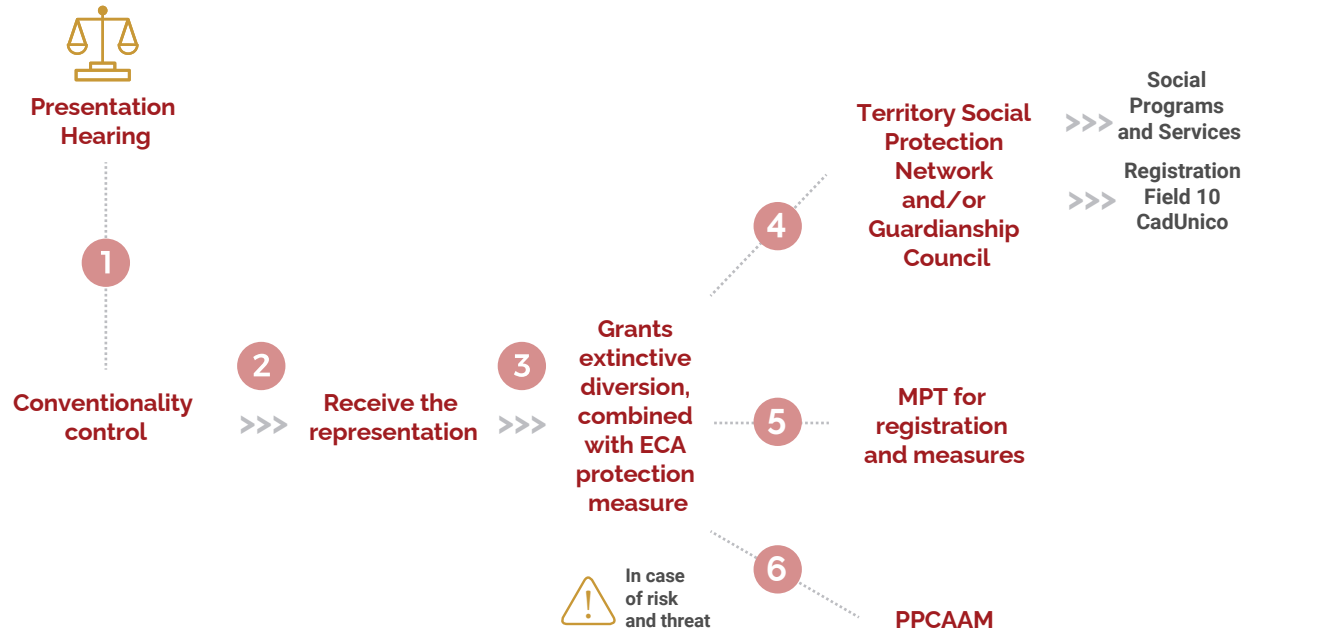
of Child Labor (MEDEIROS NETO; MARQUES, 2013)[97], which has as one of its guidelines the greater articulation with the Judiciary to tackling the worst forms of child labor, including drug trafficking. That is, the judge can make this referral to the MPT because the organization itself presents institutional guidelines to deal with this issue.

In 2019, the MPT in cooperation with the ILO launched the Observatory for the Prevention and Eradication of Child Labor: comprehensive data-driven protection. Through the platform, in digital format, it is possible to access detailed information on the subject, such as the total number of children and adolescents who were victims of work accidents[98]. In this sense, it is also important that the Judiciary refer cases of child labor in the illicit drug market to the Public Labor Prosecution Office, so that it enters their records. In addition, the MPT may have other referrals for these adolescents, such as, for example, directing them to learning and professionalization programs.

4 FORWARD TO PROTECTION PROGRAMS, IN CASES OF RISK AND THREAT

If the judge identifies a situation of risk and threat to the lives of adolescents, it is important that there is a referral to protection programs, such as the Program for the Protection of Children and Adolescents Threatened with Death (PPCAAM). If this type of program does not exist in the state, it is important to activate the federal program so that the necessary measures are taken to guarantee the safety and preservation of the life of this adolescent.

FLOWCHART 2



[97] Available at: https://www.cnmp.mp.br/portal/publicacoes/245-cartilhas-e-manuais/6001-manual-de-atuacao-do-ministeriopublico-na-erradicacao-do-trabalho-infantil -2013

[98] Available at: https://smartlabbr.org/

1 ACTIVATE THE CONVENTIONALITY CONTROL, ACCORDING TO ITEM 1 OF THE FLOWCHART

2 RECEIVE THE REPRESENTATION

In case the judge understands that there is a need to receive the representation prepared by the member of the Public Prosecutor's Office, it is indicated that, in the specific case, in compliance with art. 126, sole paragraph of the ECA and the Beijing Rules 1985, judges may grant extinctive diversion, as will be seen below.

3 GRANTING EXTINGUISHING RELIEF, COMBINED WITH ECA PROTECTION MEASURE

Once the representation has been received, the granting of extinctive remission is suggested. Diversion, as set out in the Beijing Rules of 1985 and in the ECA itself, is one of the possible responses on the part of the State to adolescents who are suspected of committing an offense. Considering, in this case, that the representation was received and, therefore, the process of investigation of the offense had started, this diversion can be cumulated with the offer of protective measures, which are set out in art. 101 of ECA.

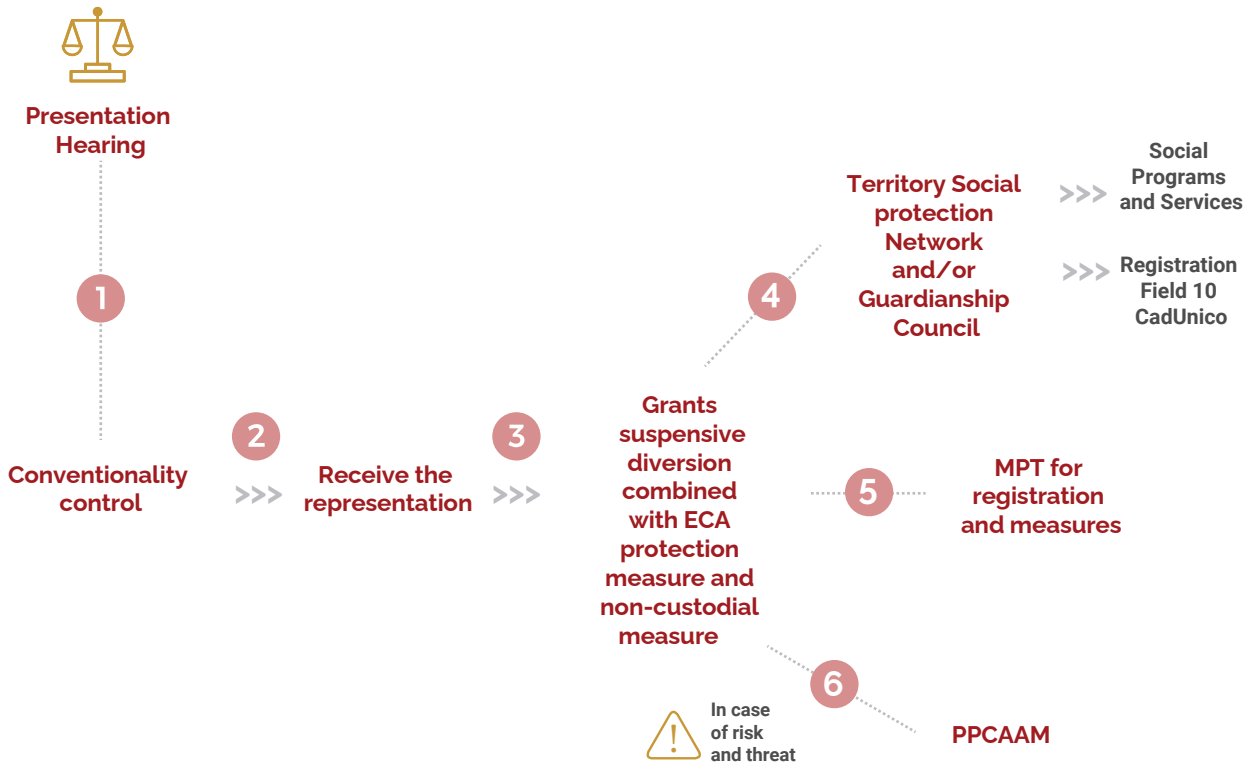
4 REFERRAL TO THE SOCIAL PROTECTION NETWORK AND GUARDIANSHIP COUNCIL, ACCORDING TO ITEM 2. OF FLOWCHART 1

a. Request the registration of the case as child labor in Field 10 of the Cadastro Único, according to item 3. of Flowchart 1.

5 ACTIVATE THE PUBLIC LABOR PROSECUTOR'S OFFICE TO REGISTER THE OCCURRENCE AS CHILD LABOR AND OTHER MEASURES AND REFERRALS, ACCORDING TO ITEM 4. OF FLOWCHART 1.

6 REFERRAL TO PROTECTION PROGRAMS, IN CASES OF RISK AND THREAT, ACCORDING TO ITEM 5. OF FLOWCHART 1.

FLOWCHART 3



1 ACTIVATE THE CONVENTIONALITY CONTROL, ACCORDING TO ITEM 1 OF THE FLOWCHART

2 RECEIVE THE REPRESENTATION, ACCORDING TO ITEM 2 OF FLOWCHART 2

3 GRANT SUSPENSIVE DIVERSION COMBINED WITH A PROTECTIVE MEASURE FOR THE ECA AND JUVENILE JUSTICE NON-CUSTODIAL MEASURE

If the judges consider the need to accept the representation and prefer to grant suspensive diversion, the combination of the protection measure and the application of a non-custodial Juvenile Justice measure is suggested. In this way, the Beijing Rules of 1985, the International Convention on the Rights of the Child of 1989 and the ILO Convention 182 of 1999 are respected, with regard to the exceptionality of the measure of deprivation of liberty.

4 REFERRAL TO THE SOCIAL PROTECTION NETWORK AND GUARDIANSHIP COUNCIL, ACCORDING TO ITEM 2 OF FLOWCHART 1

a. Request the registration of the case as child labor in Field 10 of the Cadastro Único, according to item 3. of Flowchart 1.

5 ACTIVATE THE PUBLIC LABOR PROSECUTOR'S OFFICE TO REGISTER THE OCCURRENCE AS CHILD LABOR AND OTHER REFERRAL MEASURES, ACCORDING TO ITEM 4 OF FLOWCHART 1.

6 REFERRAL TO PROTECTION PROGRAMS, IN CASES OF RISK AND THREAT, ACCORDING TO ITEM 5 OF FLOWCHART 1.

FLOWCHART 4

1 ACTIVATE THE CONVENTIONALITY CONTROL ACCORDING TO ITEM 1 OF FLOWCHART 1

2 RECEIVE THE REPRESENTATION, ACCORDING TO ITEM 2 OF FLOWCHART 2

3 GRANT EXTINCTIVE DIVERSION, ACCORDING TO ITEM 3 OF FLOWCHART 2 AND REFER THE ADOLESCENT TO SOME CONFLICT SELF-MANAGEMENT PROGRAM

In conjunction with extinctive diversion, the judge may choose to refer the case to Restorative Justice (JR). The JR has been developed within the scope of juvenile justice in some regions of the country[99],

[99] Mapping of Restorative Justice programs (BRAZIL, 2019). See website: https://www.cnj.jus.br/wpcontent/uploads/conteudo/arquivo/2019/06/8e6cf55c06c5593974bfb8803a8697f3.pdf

enabling other forms of referral to cases of adolescents in child labor in the illicit drug market. Restorative Justice corresponds to a set of principles, methods, techniques and activities, which aim to consider the relational, institutional and social factors involved in conflicts, seeking mediation based on respectful, responsible and cooperative dialogue (BRASIL, 2018). This is another approach in the way of dealing with offenses, which highlights not only the offense, but the needs of those involved and the repair of the damage.

The National Council of Justice has been striving to implement this model of justice in Brazil. On May 31, 2016, the CNJ published Resolution Nº. 225/2016, which provides for the National Restorative Justice Policy within the scope of the Judiciary and other provisions. On December 31, 2019, the Council edited Resolution Nº. 300, which amends the National Policy, giving deadlines for the Courts of Justice and the Federal Regional Courts to organize the implementation of Restorative Justice. In this sense, the CNJ has played a sugnificant role in the implementation of this experience of conflict resolution, especially by the Restorative Justice Centers that serve the criminal justice, penitentiary, and juvenile justice systems, whose main goal has been to collaborate for the peaceful resolution of conflicts and the reduction of overcrowding of the population deprived of liberty in Brazil.

The National System of Juvenile Justice Assistance (Sinase) advocated the incorporation of restorative practices within the Juvenile Justice system under the terms of art. 35, item III, in which "priority is given to practices or measures that are restorative" (BRASIL, 2012). In this sense, within the scope of juvenile justice, the JR came to be considered a mechanism capable of contributing to alternative responses to conflicts involving adolescents, bringing experiences of informal conflict resolution methodologies that focus on the participation of the people involved in the case (RODRIGUES, 2021).

Thus, Flowchart 4 brings the possibility for judges to compose Restorative Justice as an interesting and timely alternative in the specific case and in regions where this model is already implemented in the Juvenile Justice scope.

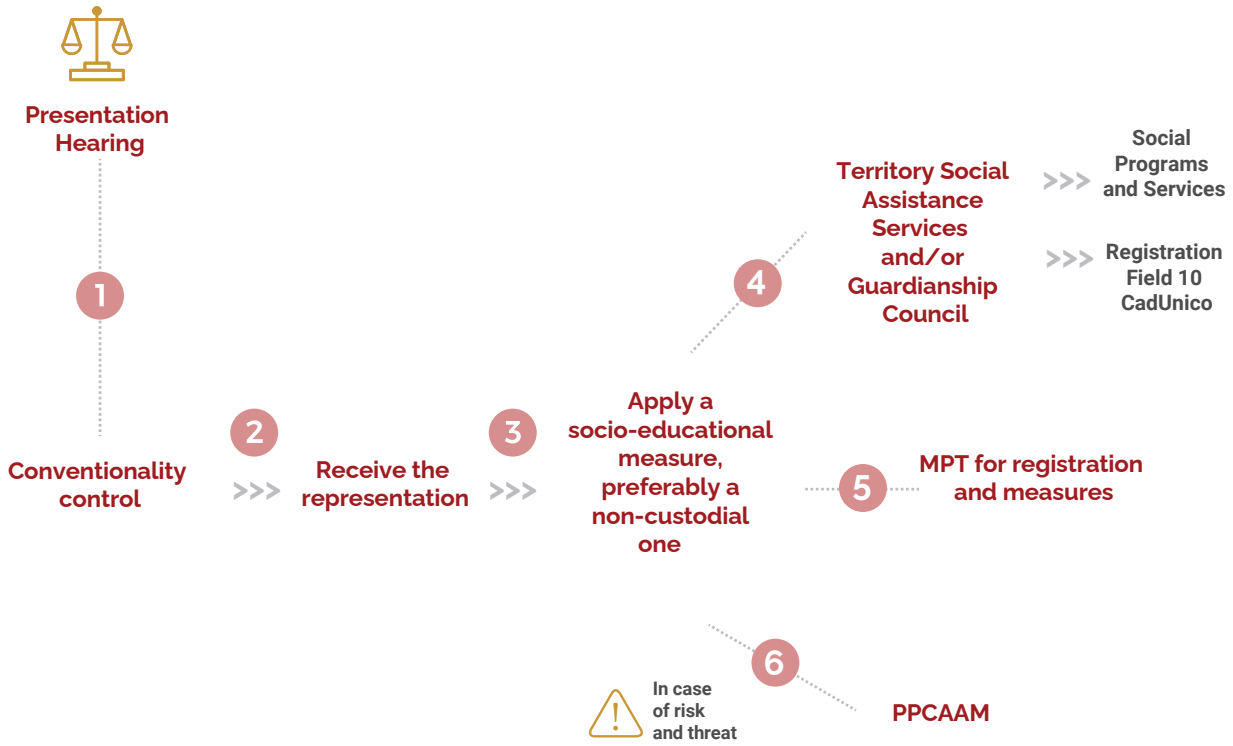
4 REFERRAL TO THE SOCIAL PROTECTION NETWORK AND GUARDIANSHIP COUNCIL, ACCORDING TO ITEM 2 OF FLOWCHART 1

a. Request the registration of the case as child labor in Block 10 of the Cadastro Único, according to item 3. of Flowchart 1.

5 ACTIVATE THE PUBLIC LABOR PROSECUTOR'S OFFICE TO REGISTER THE OCCURRENCE AS CHILD LABOR AND OTHER REFERRAL MEASURES, ACCORDING TO ITEM 4 OF FLOWCHART 1.

6 REFERRAL TO PROTECTION PROGRAMS, IN CASES OF RISK AND THREAT, ACCORDING TO ITEM 5 OF FLOWCHART 1.

FLOWCHART 5



1 ACTIVATE THE CONVENTIONALITY CONTROL, ACCORDING TO ITEM 1 OF FLOWCHART 1

2 RECEIVE THE REPRESENTATION, ACCORDING TO ITEM 2 OF FLOWCHART 2

3 APPLY A SOCIO-EDUCATIONAL MEASURE, PREFERABLY A NON-CUSTODIAL ONE, IN STRICT COMPLIANCE WITH THE HYPOTHESES OF ART. 122, OF THE ECA

In cases in which the judge considers it necessary to receive representation and apply a Juvenile Justice measure in the sentence, the use of non-custodial measures is recommended, in compliance with the principles of exceptionality enshrined in the Rules of 1985, by the Convention on the Rights of the Child of 1989 and in recognition of Convention Nº. 182 of the ILO of 1999. Furthermore, it is suggested that the judges justify the decision strictly on the basis of the art. 122 of ECA.

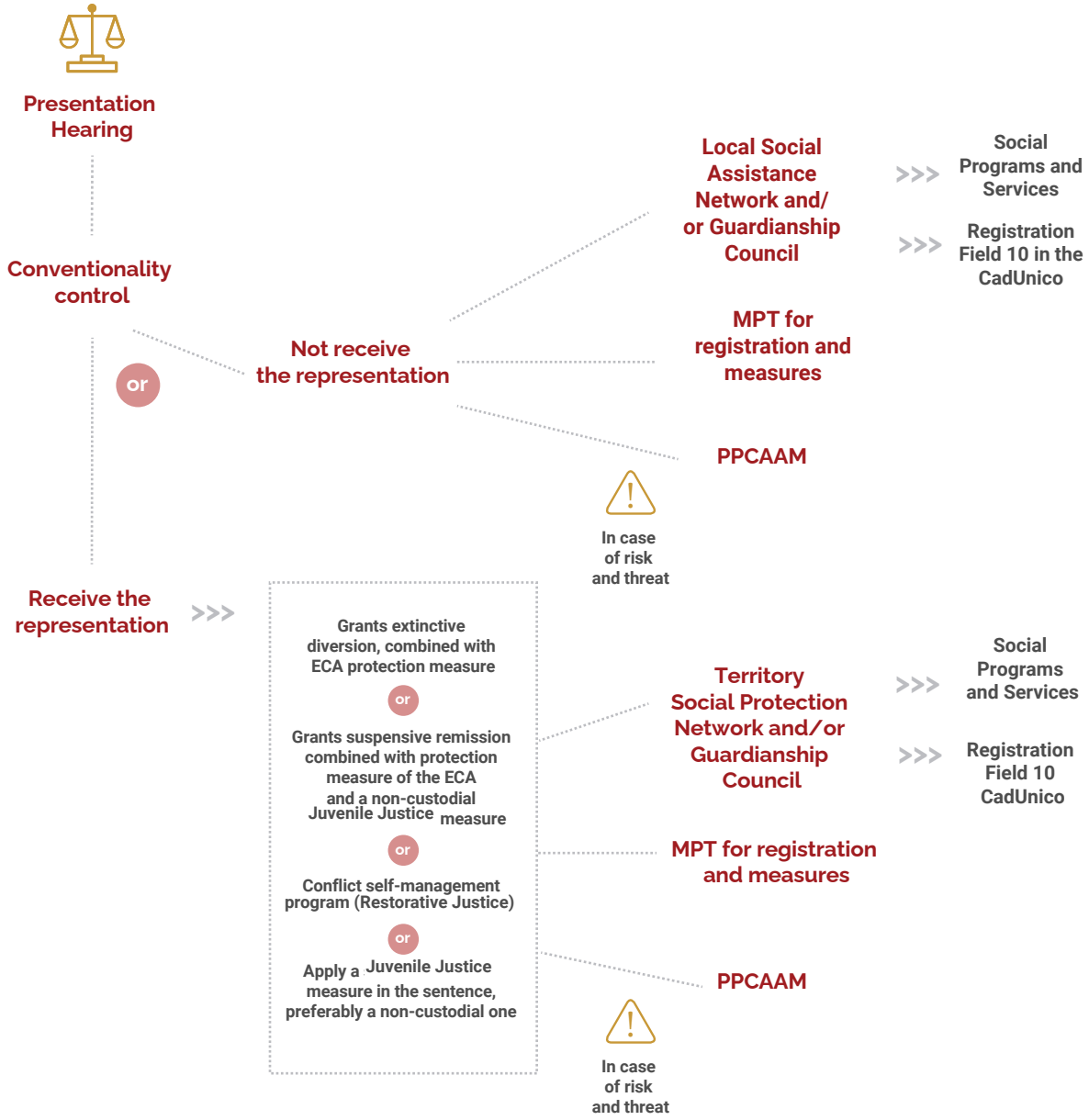
4 REFERRAL TO THE SOCIAL PROTECTION NETWORK AND GUARDIANSHIP COUNCIL, ACCORDING TO ITEM 2 OF FLOW CHART 1

a. Request the registration of the case as child labor in Block 10 of the Cadastro Único, according to item 3. of Flowchart 1.

5 ACTIVATE THE PUBLIC LABOR PROSECUTOR'S OFFICE TO REGISTER THE OCCURRENCE AS CHILD LABOR AND OTHER MEASURES AND REFERRALS, ACCORDING TO ITEM 4 OF FLOWCHART 1.

6 FORWARD TO PROTECTION PROGRAMS, IN CASES OF RISK AND THREAT, ACCORDING TO ITEM 5 OF FLOWCHART 1.

GENERAL FLOWCHART



FINAL CONSIDERATIONS

FINAL CONSIDERATIONS

This manual sought to provide an ov erview of the national and international legal system regarding the activity of adolescents in drug trafficking as one of the worst forms of child labor, in order to contribute to support the decisions of judges in their daily professional performance. It also points out possibilities for more adequate care flows for adolescents working in the illicit drug market, in addition to other propositions so that public institutions as a whole and together can act in the eradication of the worst forms of child labor - commitment assumed by Brazil before the international community.

Considering the national and international legal framework, added to the academic reflections on the topics exposed here, it is understood that child labor in the illicit drug market should not, by itself, lead to the application of custodial measures, since the conduct does not presuppose violence or serious threat to the person, as recommended in art. 122 of the Child and Adolescent Statute (ECA), in addition to the fact that the topic already has a precedent from the Superior Court of Justice – as explained in this manual. Still, this type of offense is directly related to socioeconomic vulnerabilities, indicating the need to improve public policies aimed at reducing socioeconomic inequalities as the best strategy for confronting them, instead of repressive actions that do not act on the cause of the problem, ignoring the multiple potentialities that adolescents – who are in development – have.

This manual is an important tool to instruct the judges on the adolescents' trajectory and the effects that their decisions have on their lives. It is important to support them with legal instruments that make it possible to decide to deal with adolescents involved in the illicit drug market through full protection and from the perspective of the worst forms of child labor, bringing not only the existing framework, but jurisprudence and normative understandings. that can support decisions.

ECA itself brings, in arts. 98 and 10, possibilities for protection measures for these adolescents that can be applied by the judges without prejudice to measures being applied in the open environment, which in addition to valuing non-institutionalization, in some cases manage to carry out an effective and protective monitoring of these adolescents and promote greater compliance with the principle of family and community coexistence. In short, this manual endorses the legal orientation of the application of custodial measures as brief and exceptional measures.

In order to guarantee, promote and protect the human rights of children and adolescents, it is essential that all bodies that make up the Rights Guarantee System (SGD) establish permanent dialogue and institutional articulations. On the topic of child labor, the III National Plan for the Prevention and Eradication of Child Labor and Protection of Working Adolescents (2019 - 2022)[100] advocates the actions that need to be carried

[100] Available at: https://www.gov.br/mdh/pt-br/assuntos/noticias/2018/novembro/lancado-3o-plano-nacional-de-prevencao-eerradicacao-do-trabalho-infantil/ copy_of_PlanoNacionalversosite.pdf. Accessed on: 8 Aug. 2021.

out by the various government and civil society actors for the eradication of labor children in Brazil, based on cross-cutting, intersectoral and interinstitutional policies.

In this sense, a permanent dialogue between the Justice System is necessary, especially with institutions responsible for the application of protection measures and referral to the social protection service network. It is important to improve the relationship between the Unified Social Assistance System and the Juvenile Justice to improve referral flows and protocols to the service networks (ILO, 2018; GALDEANO; ALMEIDA, 2018; PEREIRA JÚNIOR; BERETTA, 2020; OLIVEIRA, 2020).

In addition, ILO Recommendation Nº. 190 on the Prohibition of the Worst Forms of Child Labor and Immediate Action for Their Elimination, in item 9, states that "Member States should ensure that the competent authorities, which are in charge of enforcement of national provisions on the prohibition and elimination of the worst forms of child labor, cooperate with each other and coordinate their activities" (ILO, 1999). In this sense, greater dialogue between the bodies that make up the SGD is essential for the eradication of child labor to be effective.

Another fundamentally important dialogue would be between the bodies of the Labor Court and the Public Labor Prosecutor's Office (MPT) and the state justice bodies (2020, p. 37), is essential since they establish guidelines for their work, based on the international norms from the ILO and the UN and Brazilian legislation that prioritize the human rights of children and adolescents. A joint action between the Labor Court and Juvenile Justice in the cases of adolescents in child labor in the illicit drug market represents a great advance in facing this type of violation of rights.

It is necessary to reinforce the legal and constitutional duty of the State in the development of public policies to eradicate all forms of child labor, especially in its worst forms, as is the case of adolescents working in the illicit drug market. The Judiciary, as the guarantor of the fundamental right not to work before the minimum age, has an important role in triggering the competent bodies when they are being silent or negligent in complying with the implementation of public policies that guarantee the rights of children and adolescents, by the enforceability of the corresponding state obligations (MEDEIROS NETO; MARQUES, 2013).

The Judiciary can also direct adolescents to apprenticeship programs aimed at methodical technical-professional training of adolescents and young people, from the age of 14, in the form of articles 428 to 433 of the Consolidation of Labor Laws - CLT in their own Courts. It is worth remembering the CNJ Recommendation Nº 61/2020 and the CNJ Recommendation Nº. 86/2021 that recommend to the Brazilian courts the implementation of learning programs aimed at the methodical technical-professional training of adolescents and young people, from the age of 14, in the form of the articles 428 to 433 of the Consolidation of Labor Laws - CLT[101]. These recommendations allow judges to refer adolescents apprehended in a situation of child labor in the illicit drug market to apprenticeship programs of the Courts of Justice themselves.

Another crucial point is that judges should familiarize themselves with international regulations and apply

[101] A Supported by Decree-Law Nº. 5,452, of May 1, 1943 (Consolidation of Labor Laws - CLT); Law Nº. 8069, of June 13, 1990 (Child and Adolescent Statute - ECA); Decree Nº. 9,579, of November 22, 2018; Decree Nº. 4,134, of February 15, 2002.

them in concrete cases, exercising conventionality control. Oliveira's research (2020) shows that many judges fail to apply this legal framework due to lack of knowledge of these rules. Or, when they are aware of them, they refrain from applying them because they understand that such regulations are not part of the domestic legislation. Therefore, it is important that such matters are included in the training of judges, through their Judicial Schools, in order to train new magistrates in these specific issues of international human rights law.

The protective international norms of human rights that have been internalized by Brazilian law need to be mobilized. In this sense, it is necessary that the Judiciary begin to use them, based on the control of conventionality, and be able to honor the commitments assumed by Brazil with the international community and promote the protection of adolescents and young people exploited by the illicit drug market.

REFERENCES

ADORNO, Sérgio. Conflitualidade e violência: reflexões sobre a anomia na contemporaneidade. **Tempo Social** (Revista de Sociologia da USP), v. 10, n. 1, p. 19-47, 1998.

ADORNO, Sérgio; PEDROSO, J. Políticas de controle e repressão ao tráfico internacional de drogas: Estudo Comparativo Brasil e Portugal (1980-1990). *In:* PUREZA, José Manuel; FERREIRA, António Casimiro. (org.). A Teia Global: movimentos sociais e instituições. Porto, Afrontamento, 2002

ADORNO, Sérgio; SALLA, Fernando. Criminalidade organizada nas prisões e os ataques do PCC. São Paulo: Dossiê Crime Organizado. Estudos Avançados, v. 21, n. 61, p. 7-29, 2007.

ALMEIDA, Bruna Gisi de. **A racionalidade prática do isolamento institucional:** um estudo da execução da medida socioeducativa de internação em São Paulo. 241 f. (Tese) Doutorado em Sociologia. São Paulo, Universidade de São Paulo, 2016.

ALVAREZ, Marcos César, LOURENÇO, Luiz Claudio; CHIES-SANTOS, Mariana. Jovens internados em São Paulo (1934-1950): notas para uma análise genealógica das instituições disciplinares e de controle social. Revista Brasileira De História & Amp; Ciências Sociais, v. 13, n. 25, p. 175–199, 2021. https://doi.org/10.14295/rbhcs.v13i25.11964. Access in: 08 nov. 2021

ARRUDA, Jalusa Silva de. **"Para ver as meninas"**: um estudo sobre as adolescentes em cumprimento de medida socioeducativa de internação na CASE /Salvador. 243 f. (Dissertação) Mestrado em Estudos Interdisciplinares sobre Mulheres, Gênero e Feminismo. Salvador, Universidade Federal da Bahia, 2011. Available at: https://repositorio.ufba.br/ri/bitstream/ri/6281/1/Disserta%C3%A7%C3%A3o%20-%20Jalusa%20Silva%20de%20Arruda.pdf. Access in: 08 nov. 2021

AZEVEDO, Rodrigo. Criminalidade e justiça penal na América Latina. Sociologias, v. 7, n. 13, p. 212-241, 2005.

BANCO MUNDIAL. REVERSALS OF FORTUNE. Poverty and Shared Prosperity, THE WORLD BANK, 2020. Available at: https://www.worldbank.org/en/publication/poverty-and-shared-prosperity. Access in: 08 nov. 2021

BARRET, Damon; TOBIN, John William. Article 33: Protection from Narcotic Drugs and Psychotropic Substances. *In:* TOBIN, John; ALSTON, Philip (org.). A Commentary to the United Nations Convention on the Rights of the Child. Oxford University

Press (Forthcoming), U of Melbourne Legal Studies Research Paper No. 727, 2016. Available at: SSRN: https://ssrn.com/abstract=2741907. Access in: 08 nov. 2021

BATISTA, Vera Malaguti. **Difíceis ganhos fáceis:** drogas e juventude pobre no Rio de Janeiro. Rio de Janeiro: Freitas Bastos, 2003a.

BATISTA, Vera Malaguti. **O medo na cidade do Rio de Janeiro**: dois tempos de uma história. Rio de Janeiro: Revan, 2003b.

BIONDI, Karina. **Junto e Misturado:** uma etnografia do PCC. São Paulo: Terceiro Nome/Fapesp, 2010.

BIONDI, Karina; MARQUES, Adalton. Memória e historicidade em dois "comandos" prisionais. Lua Nova, São Paulo, v. 79, p. 39-70, 2010.

BOITEUX, Luciana. Drogas e cárcere: repressão às drogas, aumento da população penitenciária brasileira e alternativas. In: SHECAIRA, Sérgio Salomão (org.). **Drogas:** uma nova perspectiva. São Paulo: IBCCRIM, pp. 83 – 103, 2014.

BOITEUX, Luciana; WIECKO, Ela (Coord.). Relatório de Pesquisa "Tráfico de Drogas e Constituição". Universidade Federal do Rio de Janeiro/Universidade de Brasília. Rio de Janeiro;Brasília: **Série Pensando o Direito**, 2009.

BRASIL. Conselho Nacional de Justiça. Mapeamento dos programas de Justiça Restaurativa./ Conselho Nacional de Justiça. Brasília: CNJ, 2019.

BRASIL. Conselho Nacional de Justiça. **Panorama Nacional – A Execução das Medidas Socioeducativas de Internação.** Brasília CNJ, 2012.

BRASIL. Conselho Nacional de Justiça. **Pilotando a Justiça Restaurativa:** o papel do Poder Judiciário. *In:* ANDRADE, Vera Regina Pereira de. (Coord.). Brasília: CNJ, 2018.

BRASIL. Conselho Nacional do Ministério Público. **Panorama da execução dos programas socioeducativos de internação e semiliberdade nos estados brasileiros**/ Conselho Nacional do Ministério Público.Brasília: CNMP, 2019.

BRASIL. Conselho Nacional de Justiça. Recomendação nº 86 de 12 de janeiro de 2021 do CNJ. Altera a Recomendação CNJ no 61/2020.

BRASIL. Conselho Nacional de Justiça. Recomendação Nº 61 de 14/02/2020. Recomenda aos

tribunais brasileiros a implementação de programas de aprendizagem voltados à formação técnico-profissional metódica de adolescentes e jovens, a partir dos 14 anos, na forma dos artigos 428 a 433 da Consolidação das Leis do Trabalho – CLT.

BRASIL. Constituição. **República Federativa do Brasil de 1988**. Brasília, DF: Senado Federal, 05 out. 1988.

BRASIL. **Decreto nº 6.481**, de 12 de junho de 2008. Lista das Piores Formas de Trabalho Infantil., 2008.

BRASIL. **Decreto nº 99.710**, de 21 de novembro de 1990. Promulga a Convenção sobre os Direitos da Criança, Diário Oficial da União, Brasília, DF, 22 nov. 1990.

BRASIL. **Decreto nº 6.481**, DE 12 DE JUNHO DE 2008. Regulamenta os artigos 3o, alínea "d", e 4o da Convenção 182 da Organização Internacional do Trabalho (OIT) e dá outras providências. Diário Oficial da União, Brasília, DF, 2008.

BRASIL. **Lei nº 6.368**, de 21 de outubro de 1976. Dispõe sobre medidas de prevenção e repressão ao tráfico ilícito e uso indevido de substâncias entorpecentes ou que determinem dependência física ou psíquica, e dá outras providências. Diário Oficial da União, Brasília, DF, 21 out. 1976.

BRASIL. **Lei nº 8.069**, de 13 de julho de 1990. Dispõe sobre o Estatuto da Criança e do Adolescente e dá outras providências. Diário Oficial da União, Brasília, DF, 16 jul. 1990a.

BRASIL. **Lei nº 8.072**, de 25 de julho de 1990. Dispõe sobre os crimes hediondos, nos termos do art. 5º, inciso XLIII, da Constituição Federal, e determina outras providências. Diário Oficial da União, Brasília, DF, 26 jul. 1990b.

BRASIL. **Lei nº 11.343/2006**, de 23 de agosto de 2006. Institui o Sistema Nacional de Políticas Públicas sobre Drogas - Sisnad; prescreve medidas para prevenção do uso indevido, atenção e reinserção social de usuários e dependentes de drogas; estabelece normas para repressão à produção não autorizada e ao tráfico ilícito de drogas; define crimes e dá outras providências. Diário Oficial da República Federativa do Brasil, Brasília, DF, 24 ago. 2006.

BRASIL. **Manual do Entrevistador.** Cadastro Único para Programas Sociais. Ministério do Desenvolvimento Social e Agrário (MDSA). Secretaria Nacional de Renda de Cidadania (Senarc). Brasília: MDSA, 2017.

BRASIL. Ministério da Mulher, Família e Direitos Humanos. **Levantamento anual do Sinase 2017**. Brasília, DF: MDH, 2019.

BRASIL. **Caderno de Orientações Técnicas para o aperfeiçoamento da gestão do Programa de Erradicação do Trabalho Infantil** – PETI. Brasília: Ministério do Desenvolvimento Social, 2018.

BRASIL. **Perguntas e Respostas**: o Redesenho do Programa de Erradicação do Trabalho Infantil. 2ª Versão. Brasília: Ministério do Desenvolvimento Social e Combate à Fome, 2014.

BRASIL. **Plano Nacional de Prevenção e Erradicação do Trabalho Infantil e Proteção ao Adolescente Trabalhador**. Segunda Edição (2011-2015). Abril, 2011.

BRASIL. **Sistema Nacional de Agravos de Notificação Consequências do Trabalho Infantil:** os acidentes registrados nos Sistema de Informação em Saúde. Brasília: Ministério da Saúde, 2020.

CABISTANI, Luiza Griesang. **Trabalho infantil e tráfico de drogas:** uma análise sobre a atuação da Procuradoria Regional do Trabalho da 4ª região. Porto Alegre: UFRGS, p. 1-91, 2017. Available at: http://hdl.handle.net/10183/174564. Access in: 08 nov. 2021

CAMPOS, Marcelo. Drogas e justiça criminal em São Paulo. **Sistema Penal & Violência**, v. 5, n. 1, p. 120-132, 2013.

CAMPOS, Marcelo. **Pela metade**: as principais implicações da nova lei de drogas no sistema de justiça criminal em São Paulo. 313 f. (Tese) Doutorado em Sociologia. São Paulo, Universidade de São Paulo, 2015.

CARLOS, Juliana. (coord.) **Prisões em flagrante na cidade de São Paulo**. Instituto Sou da Paz: São Paulo, 2012.

CARLOS, Juliana. **Política de drogas e encarceramento em São Paulo, Brasil.** [*s. l.*]: International Drug Policy Consortium, jun. 2015.

CARVALHO, Salo. **Política Criminal de Drogas no Brasil** - Estudo Criminológico e Dogmático. São Paulo: Saraiva, 2013.

CAULKINS, Jonathan. P.; MACCOUN, Robert. Limited rationality and the limits of supply reduction. **Journal of Drug Issues**, SAGE Publications Sage CA: Los Angeles, CA, v.

33, n. 2, p. 433–464, 2003.

CHAVES, Denisson Gonçalves; SOUSA, Mônica Teresa Costa. O Controle de Convencionalidade e a autoanálise do poder judiciário brasileiro. **Revista da Faculdade de Direito – UFPR,** Curitiba, v. 61, n. 1, jan./abr. 2016, p. 87 – 113.

CHIES, Luiz Antônio; RIVERO, Samuel. Facções e cena criminal na Zona Sul do Rio Grande do Sul. **Revista da Sociedade Brasileira de Sociologia** - SBS, Porto Alegre, v. 7, n. 17, 2019.

CHIES-SANTOS, Mariana. **Resistentes, Conformados e Oscilantes**: um estudo a respeito das resistências produzidos pelos adolescentes privados de liberdade no Brasil e na França. 311 f. (Tese) Doutorado em Sociologia. Porto Alegre, Programa de Pós-Graduação em Sociologia da Universidade Federal do Rio Grande do Sul, 2018. Available at: https://www.lume.ufrgs.br/handle/10183/188296. Access in: 08 nov. 2021.

CIFALI, Ana Claudia. **As disputas pela definição da justiça juvenil no Brasil:** atores, racionalidades e representações sociais. 229 f. (Tese) Doutorado em Ciências Criminais, Porto Alegre, Pontifícia Universidade Católica do Rio Grande do Sul, 2019. Available at: http://tede2.pucrs.br/tede2/handle/tede/8884. Access in: 08 nov. 2021.

CIFALI, Ana Claudia; CHIES-SANTOS, Mariana; ALVAREZ, Marcos César. Justiça Juvenil no Brasil: continuidades e rupturas. Tempo soc. [*online*]. 2020, v.32, n. 3, 2020.

CIFALI, Ana Claudia; CHIES-SANTOS, Mariana. **Sistema de Justiça Juvenil e Socioeducativo**. No prelo. Emais Editora: Florianópolis, 2021.

COLOMBIA. Constitución Política de la República de Colombia. 1991.

COMISSÃO LATINO-AMERICANA SOBRE DROGAS E DEMOCRACIA. **Drogas e Democracia**: Rumo a uma mudança de paradigma. Available at: http://www.globalcommissionondrugs.org/wp-content/uploads/2016/07/drugs-and-democracy_book_PT.pdf. Access in: 08 nov. 2021

CORCIOLI FILHO, Roberto Luiz. Voluntarismo judicial a internação de adolescentes por tráfico de drogas no TJSP. **Revista brasileira de ciências criminais**, n. 142, p. 341-372, 2018.

CORNELIUS, Eduardo G. O controle jurídico-penal de adolescentes: o exemplo da internação provisória na jurisprudência do STJ e do TJRS em casos de tráfico de drogas. **Revista de Estudos Empíricos em Direito**, v.1, n. 2, 2014.

CORNELIUS, Eduardo Gutierrez. **O pior dos dois mundos?** A construção legítima da punição de adolescentes no Superior Tribunal de Justiça. São Paulo: IBCCRIM, 2018.

CORSEUIL, Carlos Henrique L.; FRANCA, Maíra A. P. **Inserção dos jovens no mercado de trabalho brasileiro:** evolução e desigualdades no período 2006-2013. Brasília: OIT, 2015.

DAUDELIN, Jean; RATTON, José Luiz. Mercados de drogas, guerra e paz no Recife. **Tempo Social**, revista de sociologia da USP, v. 29, n. 2, pp. 115-133, 2017.

DIAS, Camila. Estado e PCC em meio às tramas do poder arbitrário nas prisões. **Tempo Social**, Revista de Sociologia da USP, v. 23, n. 2, p. 213-233, 2011.

DIAS, Camila. **PCC**: hegemonia nas prisões e monopólio da violência. São Paulo: Saraiva, 2013.

DINIZ, Debora. **Meninas fora da lei**: a medida socioeducativa de internação no Distrito Federal. Brasília : Letras Livres, 2017.

DOLINGER, Jacob. **Direito Internacional Privado** - a Criança no Direito Internacional. Rio de Janeiro: Renovar, 2003.

DOWDNEY, Luke. **Crianças do tráfico:** um estudo de caso de crianças em violência armada organizada no Rio de Janeiro. Rio de Janeiro: Sete Letras, 2003.

DUARTE, Thais Lemos; GOMES, Mayara de Souza; JESUS, Maria G. M. de; MARTINO, Natalia. **O presente supera o passado?** Dilemas da tortura no Brasil. Relatório Nacional de Direitos Humanos. NEVUSP/Comissão ARNS de Direitos Humanos, 2021. Available at: https://nev.prp.usp.br/wp-content/uploads/2021/07/2021.07.05_NEV_RelatorioDireitosHumanos_Texto2_Tortura.pdf. Access in: 08 nov. 2021

EILBERG, Daniela Dora. **Das Violações na Justiça Juvenil à Perspectiva de Proteção:** Sobre o impacto das decisões e recomendações do Sistema Interamericano de Direitos Humanos no Estado Brasileiro. Trabalho de Conclusão de Curso - Faculdade de Direito - Universidade Federal do Rio Grande do Sul, 2016.

EILBERG, Daniela Dora. **"O que lhes oferece a voz do sistema"**: Reflexos do Sistema

Interamericano de Direitos Humanos na proteção dos adolescentes privados de liberdade nos Estados-parte do Mercosul. 209 f. Dissertação (Mestrado em Ciências Criminais) – Pontifícia Universidade Católica do Rio Grande do Sul, 2018. Available at: http://tede2.pucrs.br/tede2/handle/tede/8539. Access in: 08 nov. 2021.

FANFA, Andreia Maria; QUARESMA JÚNIOR, Arnaldo França. A responsabilização penal juvenil diante da prática de ato infracional análogo ao tráfico de drogas, equiparado a crime hediondo no âmbito penal. **Revista de Direito**, v. 2, n. 1, 2017.

FBSP. **Anuário Brasileiro de Segurança Pública**. Fórum Brasileiro de Segurança Pública 2021. Available at: https://forumseguranca.org.br/wp-content/uploads/2021/02/anuario-2020-final-100221.pdf. Access in: 08 nov. 2021

FEFFERMANN, Marisa. O cotidiano dos jovens trabalhadores do tráfico. **Segurança Urbana e Juventude**, v. 1, n. 2, 2008.

FEITOSA, Gustavo. R. P.; SOUZA, Acássio P. de. Justiça juvenil, guerra às drogas e direitos humanos: a efetividade do princípio da excepcionalidade da medida socioeducativa de internação. **Espaço Jurídico Journal of Law** [EJJL], v. 19, n. 2, p. 449–474, 2018. https://doi.org/10.18593/ejjl.v19i2.16250 . Access in: 08 nov. 2021

FELTRAN, Gabriel. Choque de ordens: drogas, dinheiro e regimes normativos em São Paulo. **Drogas, Saúde & Contemporaneidade**. BIS, Bol. Inst. Saúde (Impr.), v. 18, n. 1, p. 25-40, 2017.

FELTRAN, Gabriel. **Irmãos**: Uma história do PCC. São Paulo: Editora Companhia das Letras, 2018.

FERREIRA, Felipe Miranda. A Medida de Internação e o Tráfico de Drogas. **ANIMA**: Revista Eletrônica do Curso de Direito das Faculdades OPET. Curitiba PR - Brasil. Ano III, n. 8, p. 97-126, 2012.

FGV - FUNDAÇÃO GETÚLIO VARGAS. A Escala da Desigualdade. Qual foi o impacto da crise sobre a distribuição de renda e a pobreza? Rio de Janeiro: FGV Social, ago. 2019.

FONSECA, Claudia; SCHUCH, P. (org.). **Políticas de Proteção à Infância**: um olhar antropológico. Porto Alegre: Editora da UFRGS, 2009.

GALDEANO, Ana Paula; ALMEIDA, Ronaldo (coord.) **Tráfico de drogas entre as piores formas de**

trabalho infantil: mercados, famílias e rede de proteção social. São Paulo: CEBRAP, 2018.

GALENIANOS, Manolis; PACULA, Rosalie L.; PERSICO, Nicola. A search-theoretic model of the retail market for illicit drugs. **The Review of Economic Studies**, Oxford University Press, v. 79, n. 3, p. 1239–1269, 2012.

GALLO, Fernanda de Almeida. Eléments pour une méta-analyse: le rapport de la Commission parlementaire d'enquête sur le narcotrafic au Brésil. **L'Ordinaire des Amériques** [*online*], 2014. Available at: http://orda.revues.org/1191. Access in: 08 nov. 2021

GALLO, Fernanda de Almeida. La filière caipira: trafic de drogue à l'intérieur de l'État de São Paulo. **Caravelle** [*online*], 2012. Available at: http://caravelle.revues.org/364. Access in: 08 nov. 2021

GISI, Bruna; VINUTO, Juliana. Transparência e garantia de direitos no sistema socioeducativo: a produção de dados sobre medidas socioeducativas. **Boletim do IBCCRIM**, ano 28, n. 337, 2020.

GRILLO, Carolina C. O "morro" e a "pista": Um estudo comparado de dinâmicas do comércio ilegal de drogas. **DILEMAS**, v.1, n.1, p. 127-148, 2008.

GRILLO, Carolina. C.; POLICARPO, Frederico; VERÍSSIMO, Marcos. A "dura" e o "desenrolo": efeitos práticos da nova lei de drogas no rio de janeiro. **Rev. Sociol. Polít**., v. 19, n. 40, p. 135-148, 2011.

GUERRA, Sidney. O Supremo Tribunal Federal e o Controle de convencionalidade: um estudo em comemoração aos 30 anos da Constituição de 1988. **Revista Jurídica**, Curitiba, v. 4, n. 53, 2018. Available at: 10.6084/m9.figshare.7628972. Access in: 08 nov. 2021.

HEEMANN, Thimotie Aragon. O exercício do controle de convencionalidade pelo membro do Ministério Público. **Revista Jurídica do Ministério Público do Estado do Paraná**, Curitiba, ano 4, n. 7, dez., 2017.

HELPES, Sintia S. **Vidas em jogo:** um estudo sobre mulheres envolvidas com o tráfico de drogas. São Paulo: IBCCRIM, 2014.

HERZ, Monica. Política de segurança dos EUA para a América Latina após o final da Guerra Fria. **Estudos Avançados**, São Paulo, v. 16, n. 46, p. 85-104, 2002.

IBGE. Pesquisa Nacional por Amostra de Domicílios Contínua de 2012 a 2019. Instituto Brasileiro de Geografia e Estatística, 2020.

IPEA. **Atlas da Violência.** Rio de Janeiro: Instituto de Pesquisa Econômica Aplicada, 2020. Available at: https://www.ipea.gov.br/atlasviolencia/download/24/atlas-da-violencia-2020. Access in: 08 nov. 2021

INSTITUTO TERRA TRABALHO E CIDADANIA. **Mulheres em prisão**: desafios e possibilidades para reduzir a prisão provisória de mulheres, 2017. Available at: http://ittc.org.br/wp-content/uploads/2017/03/relatorio_final_online.pdf. Access in: 08 nov. 2021

JESUS, Maria Gorete; OI, Amanda H.; ROCHA, Thiago T. da; LAGATTA, Pedro. **Prisão provisória e lei de drogas:** um estudo sobre os flagrantes de tráfico de drogas na cidade de São Paulo. São Paulo: Núcleo de Estudos da Violência, 2011.

JESUS, Maria Gorete M. de; SILVESTRE, Giane; DUARTE, Thais Lemos. **Tortura como Marca Cotidiana:** Narrativas Sobre os Serviços de atenção às vítimas de tortura desenvolvidos no Rio de Janeiro e em São Paulo. DIGNITY/NEV-USP/CRISP-UFMG, 2021.

JESUS, Maria Gorete. Verdade policial como verdade jurídica: narrativas do tráfico de drogas no sistema de Justiça. **Revista Brasileira de Ciências Sociais** [online], v. 35, n. 102, 2020.

JOJARTH, Christine. **Crime, war, and Global Trafficking:** designing international cooperation. Cambridge: University Press, 2009.

KARAM, Maria Lucia. **Proibições, riscos, danos e enganos:** as drogas tornadas ilícitas. Escritos sobre a Liberdade, vol.3, Rio de Janeiro: Editora Lumen Juris, 2009.

KERR, Thomas; SMALL, Will; WOOD, Evan. The public health and social impacts of drug market enforcement: A review of the evidence. **International journal of drug policy**, v. 16, n. 4, p. 210–220, 2005.

LEMGRUBER, Julita (coord.). **Um tiro no pé**: impactos da proibição das drogas no orçamento do sistema de justiça criminal do Rio de Janeiro e São Paulo. Drogas: quanto custa proibir. Centro de Estudos de Segurança Pública - CESEC, 2021.

LÓPEZ, Leonardo R. **Law enforcement and drug trafficking networks:** a simple model. [s. l.], 2015.

LYRA, Diogo. Conflitos de lealdade e princípios de coesão social entre jovens traficantes do Rio de Janeiro: algumas considerações. In: CUNHA, Neiva & Feltran, Gabriel (org.). **Sobre periferias:** Novos conflitos no Brasil contemporâneo. Rio de Janeiro: Lamparina, 2013, p. 51 – 70.

MEXICO. Constitución Mexicana, 1917.

MALVASI, Paulo Artur. A 'mente' e o homicídio: A gestão da violência no tráfico de drogas em São Paulo. **DILEMAS**: Revista de Estudos de Conflito e Controle Social, v. 6, n. 4, pp. 675-69, 2013.

MALVASI, Paulo Artur. **Interfaces da vida loka:** Um estudo sobre jovens, tráfico de drogas e violência em São Paulo. Tese (doutorado), Faculdade de Saúde Pública, Universidade de São Paulo, 2012.

MANSO, Bruno; DIAS, Camila. **A Guerra:** a ascensão do PCC e o mundo do crime no Brasil. [s. l.]: Editora Todavia SA, 2018.

MAY, Tiggey; HOUGH, Mike. Drug markets and distribution systems. **Addiction Research & Theory,** v. 12, n. 6, p. 549–563, 2004.

MAY, Tiggey; HOUGH, Mike. Illegal dealings: The impact of low-level police enforcement on drug markets. **European Journal on Criminal Policy and Research**, v. 9, n. 2, p. 137–162, 2001.

MAZZUOLI, Valerio de Oliveira. **O Controle jurisdicional da convencionalidade das leis**. São Paulo: Editora Saraiva, 2011.

MEDEIROS NETO, Xisto Tiago; MARQUES, Rafael Dias. **Manual de Atuação do Ministério Público na Prevenção e Erradicação do Trabalho Infantil**/ Conselho Nacional do Ministério Público. Brasília: CNMP, 2013.

MINAHIM, Maria Auxiliadora. **ECA**: Apuração do ato infracional atribuído a adolescentes. Série Pensando o Direito, n. 26. Brasília: Ministério da Justiça;PNUD, 2010.

MINAHIM, Maria Auxiliadora; SPOSATO, Karyna Batista. A internação de adolescentes pela

lente dos tribunais. **Revista Direito GV**, São Paulo. v. 7. n. 1, p. 277-298, 2011.

MORO, Mateus Oliveira. Adolescente "internável" e comércio de drogas: análise de processos, discursos, decisões e violações de direitos. Revista Brasileira Adolescência e Conflitualidade. **DILEMAS**: Rev. Bras. Adolescência e Conflitualidade, v. 7, p. 92-113, 2013.

NAPOLIÃO, Paula; MENEZES, Fernanda; LYRA, Diogo. Ganhar a Vida, Perder a Liberdade: Tráfico, Trabalho e Sistema Socioeducativo. **Boletim Segurança e Cidadania**, ISSN 1807-528 2. 2020.

NEIVA, Sofia Augusta. **A medida de internação e o tráfico de drogas praticado por menores no DF:** análise da jurisprudência do Tribunal de Justiça do Distrito Federal e Territórios - TJDFT. 2019. Monografia (Graduação em Direito) – Faculdade de Ciências Jurídicas e Sociais, Centro Universitário de Brasília, Brasília, 2019.

NOGUEIRA JÚNIOR, Gilberto José. **Mercado de drogas e repressão**: efeitos da intervenção governamental sobre a violência gerada pelo mercado de drogas numa rede verticalmente relacionada. Dissertação (Mestrado) – Universidade Federal de Pernambuco – UFPE – Recife/PE, 2019.

OLIVEIRA, Karla Aveline de. **Racismo institucional, trabalho infantil no narcotráfico e a magistratura sul-rio-grandense:** branquitude brasileira em silêncio [livro eletrônico] Porto Alegre : Ed. da Autora, 2020.

OLIVEIRA, Nathália; RIBEIRO, Eduardo. O massacre negro brasileiro na guerra às drogas. Sur: **Revista Internacional de Direitos Humanos**, v. 15, n. 28, p. 39, 2018. Available at: https://sur.conectas.org/wp-content/uploads/2019/05/sur-28-portugues-nathalia-oliveira-e-eduardo-ribeiro.pdf. Access in: 08 nov. 2021

OLMO, Rosa del. **A face oculta da droga**. Rio de Janeiro : Revan, 1990.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Convenção Internacional dos Direitos da Criança**, 1989.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Convención sobre los Derechos del Niño**. Comité de los Derechos del Niño Observación general núm. 24 (2019) relativa a los derechos del niño en el sistema de justicia juvenil, 2019.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Declaração dos Direitos da Criança,** 1959.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Declaração Universal dos Direitos Humanos**, 1948.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Diretrizes de Viena**, 1993.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Pacto Internacional dos Direitos Econômicos, Sociais e Culturais**, 1976.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Regras Mínimas das Nações Unidas para a Administração da Justiça da Infância e da Juventude**, 1985.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Regras Mínimas das Nações Unidas para a Proteção dos Menores Privados de Liberdade,** 1990.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. **Convenção sobre a proibição das piores formas de trabalho infantil e ação imediata para sua eliminação.** 1º de junho de 1999. Available at: https://www.ilo.org/brasilia/convencoes/WCMS_236696/lang--pt/index.htm. Access in: 08 nov. 2021

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. **General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization**, 2012.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. **Juventude e trabalho informal no Brasil**. OIT Escritório no Brasil; Instituto de Pesquisa Econômica Aplicada (IPEA). Brasília: OIT, 2015

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. **Recomendação 190** Sobre Proibição das Piores Formas de Trabalho Infantil e Ação imediata para sua Eliminação, 1999. Available at: https://www.ilo.org/brasilia/temas/trabalho-infantil/WCMS_242762/lang--pt/index.htm. Access in: 08 nov. 2021

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. Organização Internacional do Trabalho. SÁ, Clara Carolina. **Estratégias para acelerar o ritmo da erradicação das piores formas de trabalho infantil**. SÁ, Clara Carolina.(coord.). OIT, FNPETI, Ministério do Desenvolvimento, 2018.

PAIVA, Luiz Guilherme; CARLOS, Juliana. Decidindo sobre miragens: a incompreensão do sistema de justiça sobre mercados ilícitos de drogas. **Journal of Illicit Economies and Development**, v. 1, n. 2, 2019. Available at: https://doi.org/10.31389/jied.36. Access in: 08 nov. 2021

PAIVA, Luiz Guilherme. Drug Policy, Therapeutic Jurisprudence and Criminal Justice in Brazil. In: COLLING, John; AGNEW-PAULEY, Winifred e SODERHOLM, Alex (org..) **Rethinking Drug Courts: international experiences of a US policy export**.INTERNATIONAL DRUG POLICY UNIT – LSE, pp. 75 - 97, 2019.

PAOLI, Letizia. The illegal drugs market. **Journal of Modern Italian Studies**, v. 9, n. 2, p. 186–207, 2004.

PASSETTI, Edson *et al*. **Violentados**: crianças, adolescentes e justiça. São Paulo: Imaginário, 1995.

PERALVA, Angelina. Questão de drogas e de mercados. **Contemporânea** – Revista de Sociologia da UFSCar, v. 5, n. 1, pp. 19-36, 2015.

PERALVA, Angelina; SINHORETTO, Jacqueline; GALLO, Fernanda de Almeida. Economia da droga, instituições e política: os casos de São Paulo e Acre na CPI do Narcotráfico. **34º Encontro Anual da ANPOCS**, 25 a 29 de outubro – Caxambu –MG. ST37: Violência, criminalidade e justiça criminal no Brasil, 2010.

PERALVA, Angelina; SINHORETTO, Jacqueline; GALLO, Fernanda de Almeida. Economia da droga, instituições e política no Brasil: a CPI do narcotráfico. *In*: AZAÏS, Christian; KESSLER, Gabriel; TELLES, Vera da Silva. **Ilegalismos, cidade e política**. Belo Horizonte: Argumentum, 2012.

PEREIRA, Paulo J. R. Crime Transnacional e segurança: aspectos recentes do relacionamento entre Estados Unidos para a América Latina. *In*: AYERBE, Luis Fernando (org.). **De Clinton a Obama: políticas dos Estados Unidos para a América Latina**, São Paulo: Ed. Unesp, 2009.

PEREIRA JUNIOR, Luciano Aparecido; BERETTA, Regina Célia de Souza. O trabalho infantil e o tráfico de drogas: uma relação de violação de direitos. *In*: **Processos de subjetivação no serviço social 4** [recurso eletrônico] / Organizadora Thaislayne Nunes de Oliveira.– Ponta Grossa, PR: Atena, 2020.

PILATI, Rachel Cardoso. **Direito penal do inimigo e política criminal de drogas no Brasil: discussão de modelos alternativos**. Dissertação apresentada ao Curso de Mestrado da Universidade Federal de Santa Catarina. Florianópolis, 2011.

PINOTTI, Paolo. The causes and consequences of organised crime: Preliminary evidence

across countries. **The Economic Journal,** v. 125, n. 586, p.158–174, 2015.

PIOVESAN, F.; PIROTTA, W. R. B. (2014) A Proteção dos Direitos Reprodutivos no Direito Internacional e no Direito Interno. *In*: PIOVESAN, F. Temas de Direitos Humanos. 7 Ed. São Paulo: Saraiva, 2014.

QUINTAS, Jorge. Estudos sobre os impactos da descriminalização do consumo de drogas em Portugal. *In*: SHECAIRA, Sérgio (org). **Drogas**: uma nova perspectiva. São Paulo: IBCCRIM, p. 105-130, 2014.

RAMOS, Cyntia. **Percepção da Justiça da Infância e da Adolescência sobre o Trabalho Infantil no Tráfico de Drogas**, FNPETI, 2018.

RAMOS, André de Carvalho. **Teoria Geral dos Direitos Humanos na Ordem Internacional.** Editora Saraiva: São Paulo, 2013.

RAMOS, André de Carvalho. **Curso de Direitos Humanos**. Editora Saraiva Educação: São Paulo, 2020.

RAUPP, Mariana. O (in)visível tráfico e drogas: um estudo de sociologia das práticas jurídicas. **Revista Brasileira de Ciências Criminais**, São Paulo, IBCCRIM, p. 346 -364, 2009.

RELATÓRIO SOBRE RIQUEZA GLOBAL. Credit Suisse. 2021. Available at: https://www.credit-suisse.com/about-us/en/reports-research/global-wealth-report.html. Access in: 08 nov. 2021.

REUTER, Peter. Systemic violence in drug markets. **Crime, Law and Social Change**, v. 52, n. 3, p. 275–284, 2009.

RIZZINI, Irene; RIZZINI, Irma. "'Menores' institucionalizados e meninos de rua: os grandes temas de pesquisas na década de 80". *In*: FAUSTO, Ayrton & CERVINI, Rubem (org.). **O trabalho e a rua:** crianças e adolescentes no Brasil urbano dos anos 80. São Paulo, Cortez, Unicef, Flacso-Brasil, pp. 69-90, 1996.

ROCHA, Andréa Pires. Proibicionismo e a criminalização de adolescentes pobres por tráfico de drogas. **Serv. Soc. Soc**., n. 115, p. 561-580, 2013.

STF. HABEAS CORPUS COLETIVO nº 143.641/SP, 2018. Disponível no *site*: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=748401053. Acesso em 9 de

nov. 2021

STF. HABEAS CORPUS 143.988 ESPÍRITO SANTO, 2020. https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753732203. Acesso em 9 de nov.2021.

STF. AÇÃO DIRETA DE INCONSTITUCIONALIDADE 3.446 DISTRITO FEDERAL, 2019.https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=753361118. Acesso em 9 de nov.2021.

RODRIGUES, Luzania B.; FRAGA, Paulo C. P. O julgamento de adolescentes varejistas do tráfico de drogas no Brasil: uma análise de processos judiciais. **Revista Latinoamericana de Ciencias Sociales, Niñez y Juventud**, v. 18, n. 2, p. 1-21, 2020. Available at: http://dx.doi.org/10.11600/1692715x.18208

RODRIGUES, Ellen. Os 30 anos do Estatuto da Criança e do Adolescente e os horizontes possíveis a partir da Justiça Restaurativa: influxos abolicionistas em tempos de expansão punitiva a partir da extensão acadêmica. **Revista Direito e Práxis**, [s. l.], v. 12, n. 1, p. 642-686, mar. 2021.

RODRIGUES, Luzania; RIBEIRO, Monique; FRAGA, Paulo César. O envolvimento de adolescentes no tráfico de drogas em Juazeiro - norte da Bahia: uma análise do fluxo dos processos judiciais da vara da infância e da juventude. **Teoria e Cultura**, v. 12 n. 1, p. 241 – 252, 2017.

SANTOS, Daniel dos. Drogas, globalização e direitos humanos. **Antropolítica**, n. 16, p. 21-54, 2004.

SÃO PAULO. **Boletim Informativo da Fundação CASA**. Available at: https://fundacaocasa.sp.gov.br/index.php/boletins-2021/julho-2021/, 2021. Access in: 08 nov. 2021

SARLET, Ingo Wolfgang. **Controle de convencionalidade dos tratados internacionais**. Direitos Fundamentais. CONJUR, 2015. Available at: https://www.conjur.com.br/2015-abr-10/direitos-fundamentais-controle-convencionalidade-tratados-internacionais. Access in: 9 de julho de 2021.

SEMER, Marcelo. **Sentenciando o tráfico**: o papel dos juízes no grande encarceramento. São Paulo: Tirant lo Blanch, 2020.

SINHORETTO, Jacqueline. Etat, marchés et crime: une étude sur la Commission parlementaire d'enquête sur le narcotrafic au Brésil. **L'Ordinaire des Amériques** [*online*], 216, 2014.

SIQUEIRA, Italo B. L.; PAIVA, Luiz F. S. "No Norte tem Comando": as maneiras de fazer o crime, a guerra e o domínio das prisões do Amazonas. **Revista Brasileira de Sociologia** - SBS, v. 7, n. 17, p. 125-154, 2019.

SOARES, Judá Jessé de Bragança. Algumas considerações sobre a medida socioeducativa de internação. **Revista da ESMESC** – Escola Superior da Magistratura do Estado de Santa Catarina. Florianópolis, v. 5, ano 4, p. 241-257, 1998.

SOUZA e SILVA, Jaílson; URANI, André (coord). **Crianças no narcotráfico**: um diagnóstico rápido. Organização Internacional do Trabalho; Ministério do Trabalho e Emprego. Brasília: OIT, 2002.

STEINER, Henry; ALSTON, Philip. **International Human Rights in Context**: law, politics and morals. 2. ed. Oxford: Oxford University Press, 2000.

SUPERIOR TRIBUNAL DE JUSTIÇA. **Restrição para internação de adolescente infrator é assegurada em nova súmula**. 2012. Available at: https://stj.jusbrasil.com.br/noticias/100032033/restricao-para-internacao-de-adolescente-infrator-e-assegurada-em-nova-sumula. Access in: 24 de maio de 2021.

TEIXEIRA, Alessandra. **Construir a delinquência, articular a criminalidade: um estudo sobre a gestão dos ilegalismos na cidade de São Paulo**. PhD Thesis in Sociology - Faculdade de Filosofia, Letras e Ciências Humanas, Universidade de São Paulo, São Paulo, 2012.

TELLES, Vera.; HIRATA, Daniel V. Cidade e práticas urbanas: nas fronteiras incertas entre o ilegal, o informal e o ilícito. **Revista Estudos Avançados**, v. 21, n. 61, p. 173-191, 2007.

TOLEDO, Lidiana. et al. Criminal justice involvement of crack cocaine users in the city of Rio de Janeiro and Greater Metropolitan Area: Implications for public health and the public security agenda. **International Journal of Drug Policy**, n. 49, p. 65–72, 2017.

TORELLY, Marcelo. Controle de convencionalidade: constitucionalismo regional de direitos humanos? Rev. Direito e Práx., v. 8, n. 1, Rio de Janeiro, 2017, p. 321-353.

TORRES, Saulo de Medeiros; SABOYA Keity Mara Ferreira de Souza e. A aplicação do controle

de convencionalidade pelo juiz brasileiro: O caso do crime de desacato. **Revista Digital Constituição e Garantia de Direitos**, v. 10, n. 1, p. 5 - 30, 21 jan. 2018.

TRINDADE, Antônio Augusto Cançado. **Tratado de Direito Internacional dos Direitos Humanos**; v. 3; Porto Alegre: Editora Sérgio Antonio Fabris, 2003.

TST. RECURSO DE REVISTA, NOS AUTOS DE nº 1072-72.2011.5.02.0384, 2014. Disponível no site: https://tst.jusbrasil.com.br/jurisprudencia/496960065/embargo-em-recurso-de-revista-e-rr-10727220115020384/inteiro-teor-496960079. Acesso em 9 de nov.2021.

VAN BUEREN, Geraldine. Article 40: **Child Criminal Justice** (Commentary on the United Nations Convention on the Rights of the Child, 40). Liden: Martinus Nijhoff Publishers, 2006.

VAN BUEREN, Geraldine. **The International Law on the Rights of the Child**. Leiden: Martinus Nijhoff Publishers, 1998.

WILLADINO, Raquele; NASCIMENTO, Rodrigo Costa; SOUZA e SILVA, Jailson (coord.). **Novas configurações das redes criminosas após a implantação das UPPS**. Rio de Janeiro: Observatório de Favelas, 2018.

ZALUAR, Alba. Nexos entre droga, violência e crime organizado. **Revista Brasileira de Sociologia** - SBS, v.7, n. 17, p. 55-76, 2019.

ANNEXES

Geneva Declaration

Preamble - By the present Declaration of the Rights of the Child, commonly known as "Declaration of Geneva," men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

Article 1 - The child must be given the means requisite for its normal development, both materially and spiritually;

Article 2 - The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;

Article 3 - The child must be the first to receive relief in times of distress;

Article 4 - The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;

Article 5 - The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

Declaration of the Rights of the Child

Preamble - Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom. Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children.

Whereas mankind owes to the child the best it has to give. Now therefore, the General Assembly proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1 - The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2 - The child shall enjoy special protection, and shall be given opportunities and facilities, by law

and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3 - The child shall be entitled from his birth to a name and a nationality.

Principle 4 - The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5 - The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6 - The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 7 - The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8 - The child shall in all circumstances be among the first to receive protection and relief.

Principle 9 - The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10 - The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

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- Manual sobre Algemas e outros Instrumentos de Contenção em Audiências Judiciais: Orientações práticas para implementação da Súmula Vinculante n. 11 do STF pela magistratura e Tribunais (Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings) (executive summaries in Portuguese / English / Spanish)
- Caderno de Dados I – Dados Gerais sobre a Prisão em Flagrante durante a Pandemia de Covid-19
- Cadernos de Dados II – Covid-19: Análise do Auto de Prisão em Flagrante e Ações Institucionais Preventivas
- Manual de Arquitetura Judiciária para a Audiência de Custódia

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- Folder Central de Regulação de Vagas

Informative Materials

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- Relatório Audiência de Custódia: 6 Anos
- Cartilha Audiência de Custódia: Informações Importantes para a Pessoa Presa e Familiares – Versão 2023

UNODC: Criminal Justice Manuals - Portuguese Translations

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- Manual Recomendação nº 87/2021 – Atendimento inicial e integrado a adolescente a quem se atribua a prática de ato infracional
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- Manual Resolução CNJ 77/2009 – Inspeções Judiciais em unidades de atendimento socioeducativo
- Manual de Orientação Técnica para Preenchimento do Cadastro Nacional de Inspeção em Unidades e Programas Socioeducativos
- Guia sobre orçamento público e captação de recursos na política estadual de atendimento socioeducativo
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- Relatório de Monitoramento da Covid-19 e da Recomendação 62/CNJ nos Sistemas Penitenciário e de Medidas Socioeducativas I
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- Caderno de orientações técnicas para o mutirão processual penal 2023
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