



April 12, 2024

Mr Volker Türk

High Commissioner for Human Rights

Subject: Alana Institut's written contribution to the Call for inputs to the High Commissioner's report about Human Rights Council resolution 54/6 on the centrality of care and support from a human rights perspective.

Dear High Commissioner,

The Alana Institute [www.alana.org.br] is a non-profit civil society organization with a socio-environmental impact that, for 30 years, has defended the rights of children and adolescents as an absolute priority. In addition, the Alana Institute acts as an advisor to the National Council for the Rights of Children and Adolescents (Conanda), the National Council for Food and Nutrition Security (Consea), the National Environment Council (Conama), the Senate's Social Communication Council, the Human Rights Observatory of the National Justice Council and has consultative status with ECOSOC. The Alana Institute works in defense of the human rights of children and adolescents based on three thematic axes: equity and inclusion, nature, digital, based on the inclusion of children in the first place in social and judicial policies.

This submission will focus on explaining the main issues concerning the care of children and adolescents, based on the following pillars: (i) The right of children and adolescents to care, from the perspective of Brazilian frameworks; (ii) The right of caregivers and those receiving care and support from the perspective of vulnerability and non-discrimination; (iii) Children's and adolescents' right to care and their relationship with nature; and (iv) The duty of care of companies and digital platforms.

1. The right of children and adolescents to care and Brazilian frameworks

In this contribution, the perspective adopted in relation to the centrality of care and support from a human rights perspective is based on children and adolescents rights, as they are at a peculiar stage of development and have specific care needs. At national level, the right to care for children and adolescents is based on the article 227 of the Constitution of the Federative Republic of Brazil (1988), which addresses the duty of absolute priority for the rights of children and adolescents and the duty of shared responsibility - state, families and society - for guaranteeing these rights. The 4th article of the Statute of the Child and Adolescent (Law No. 8.069/90) clarifies the meaning of the constitutional rule of absolute priority: children and adolescents must come first in public policies, budgets and services.

In addition to these regulatory frameworks, initiatives to guarantee this right also stand out in Brazil's history. In this regard, the National Care Policy is being drawn up, and so far the Conceptual Policy Mark has been developed and submitted to public consultation for

popular participation, aiming to design the policy, its components and its action strategies¹. According to this framework, the concept of care has a multiplicity of meanings and encompasses various areas of public policy, such as health, education and social assistance. In this manner, the policy intends to reorganize social responsibility for care in a fair manner, through actions, initiatives and programs that aim to meet the needs of those who receive care, as well as those who provide it. Thus, although at an early stage, the structuring of a system that understands and responds to the needs of those who require care, as well as those who carry out the care work, is taking shape on the Brazilian horizon.

So, at this time of structuring, it is extremely important to look at care from the perspective of the rights of children and adolescents, as well as understanding the multiple childhoods and the various vulnerabilities that surround them.

2. The Right to Care from the perspective of vulnerability and non-discrimination: multiple childhoods and different vulnerabilities

a. Early Childhood

Early childhood is the phase between the ages of zero and six and is a fundamental time for the full and healthy development of human beings, which is why it is necessary to provide special attention to this part of life. Studies have shown that care and affection at this stage has a positive effect on growth, learning potential and survival, as it is an essential period for the development of brain structures and circuits². The rights of early childhood, in addition to being guaranteed by the Federal Constitution and the Children's and Adolescent's Statute, are also laid down in the Legal Landmark for Early Childhood (Law No.13.257/2016), which, in its Article 5th, determines that food, nutrition and early childhood education, among others, must be priority areas for public policies. Therefore, the normative provisions recognize the indispensable need to care for children in early childhood, since they are not only in a highly vulnerable phase, but are also in a crucial period for human formation in the short and long term. In this way, the data also highlights the urgency of designing and implementing public policies for children at this stage of life.

b. Black children and adolescents

The focus on black children and adolescents is justified by the history of countless and systematic rights violations committed against them, resulting in a range of obstacles to guaranteeing their rights, including a life free from violence and oppression and the right to care. In 2022, hunger was a reality for 23.8% of Brazilian families headed by black women

¹ The Conceptual Framework for the formulation of the National Care Policy and the National Care Plan was drawn up on the basis of dialogues held by the Interministerial Working Group, formed in March 2023, for the creation of the National Care Policy and Plan (GTI - Cuidados). It was also structured by the National Secretariat for Care and Family Policy of the Ministry of Development and Social Assistance, Family and Fight against Hunger (SNCf/MDS) and the National Secretariat for Economic Autonomy and Care Policies of the Ministry of Women (SENAEC/Women). Available at: <<https://www.gov.br/participamaisbrasil/marco-conceitual-da-politica-nacional-de-cuidados-do-brasil>>. Accessed on April 1, 2024.

² SCIENTIFIC COMMITTEE OF THE SCIENCE FOR EARLY CHILDHOOD NUCLEUS. Study No. 1: The Impact of Early Childhood Development on Learning. Available at: <<https://ncpi.org.br/wp-content/uploads/2018/07/O-IMPACTO-DO-DESENVOLVIMENTO-NA-PRIMEIRA-INFANCIA-SOBRE-A-APRENDIZAGEM.pdf>>. Accessed on April 1, 2024.

and with children under the age of 10³. The data on child labor from a racial perspective is also alarming. In Brazil, around 7 out of 10 children who are victims of child labor are black or brown⁴, and these children work to support themselves and their families. This situation also takes shape in the area of child domestic work, which is strictly related to care tasks: in 2019, around 84,000 children and adolescents between the ages of five and seventeen were engaged in domestic child labor, with 48.6% working as caregivers for other children and 40.3% performing domestic services⁵. In addition to the racial issue, child domestic work is also gender-based: 85.2% of the children were women and 70.8% were black⁶. This undermines these children's right to be protected from any form of economic exploitation and to do any work that would jeopardize their enjoyment of other rights⁷, such as education, health, and their right to care. It's possible to observe how a scenario of a lack of public policies tailored to the needs and realities of black children and adolescents has a major impact on the guarantee of their rights, including the right to care, the right to life and the right to health. It is therefore the duty of states to establish, as a matter of priority, policies, actions and programs aimed at the right to care, taking into account the racial dimension, given the vulnerability of this group and the impacts of racism on children and adolescents.

c. Children and adolescents with disabilities

The demands and specificities of children and adolescents with disabilities should also be a priority when considering the right to care. General Comment No. 9 of the Committee on the Rights of the Child emphasizes that the obstacles that prevent children and adolescents with disabilities from fully enjoying their rights are not inherent to the disability itself, but result from a variety of social, cultural, attitudinal and physical challenges that they face on a daily basis⁸. Therefore, in order to guarantee the realization of their rights, it is essential to overcome these barriers and it is from this perspective that the right to care must be analyzed. In Brazil, a survey pointed out the main challenges to a more dignified life for those who find themselves under the care of other people due to a disability or rare disease: professionals who are insufficiently prepared for humanized care; discriminatory attitudes; the lack of financial conditions to cover the costs of health insurance; and structural issues in the Brazilian public health system. It is important to note that Brazilian legislation recognizes

³ PENSSAN NETWORK. II National Survey on Food Insecurity in the Context of the Covid-19 Pandemic in Brazil - Supplement I: Food Insecurity in the states. 2022, Available at: <<https://www.oxfam.org.br/download/18545/>>. Accessed on April 1, 2024.

⁴ GARCIA, Diego. Almost 70% of child labor victims are black or brown, says IBGE. Folha de São Paulo, 2020. Available at: <<https://www1.folha.uol.com.br/mercado/2020/12/quase-70-das-vitimas-de-trabalho-infantil-sao-pretas-ou-pardas-diz-ibge.shtml>>. Accessed on April 1, 2024.

⁵ NATIONAL FORUM FOR THE PREVENTION AND ERADICATION OF CHILD LABOR. Domestic Child Labor: statistical analysis. 2022. Available at: <https://fnpeti.org.br/media/publicacoes/arquivo/O_trabalho_infantil_dom%C3%A9stico_no_Brasil_-_an%C3%A1lise_e_estatisticas.pdf>. Accessed on April 1, 2024.

⁶ Idem.

⁷ The "right of the child to be protected against economic exploitation and against any work that is hazardous to, or interferes with, the child's education, or is harmful to the child's health or physical, mental, spiritual, moral or social development" is provided for in Article 32 of the Convention on the Rights of the Child. Convention 182 deals with the prohibition of the worst forms of child labor and proposes immediate action to eliminate them.

⁸ COMMITTEE ON THE RIGHTS OF THE CHILD. General Comment No. 9 (2006): The rights of children with disabilities. Paragraph 5.

that the right to life and health of these children and adolescents includes access to specialized treatment free from discrimination⁹. It is on the basis of this factual and legal context that children and adolescents with disabilities must be a priority in the structuring of public policies on care, and it is the responsibility of the state and the entire community to overcome the obstacles faced by this group in order to fully guarantee their rights, especially the right to care.

3. Children's and adolescents' right to care and their relationship with nature

In Brazil, article 225 of the Federal Constitution establishes that everyone has the right to an ecologically balanced environment and that it is the duty of the state and the community to defend and preserve it for present and future generations. On the basis of the recognition of this right, it can be seen that a connection with nature contributes significantly to the integral well-being of children and adolescents. This is proven by research that demonstrates these benefits: children and adolescents who feel love, respect and belonging in relation to the natural world are more likely to build a better environment for all living beings¹⁰. Besides that, the lack of opportunities for contact with nature, as well as playing and learning in this context, can result in health problems for children and adolescents, such as obesity, sedentary lifestyles, hyperactivity¹¹.

Furthermore, Law 14.826/24¹², about positive parenting and the right to play as intersectoral strategies to prevent violence against children, deals with care in this sense. Article 7(I) and (II) of this law provides for the fundamental rights and guarantees of children and adolescents to "relate to nature". As well, the Article 6 (I), (II), (III), (IV), (V), (VI), establishes the duty of the state, the family and society to promote the following aspects of positive parenting: actions to protect and maintain the life of the child, in order to provide conditions for their survival and physical and mental health, and also to prevent violence and violations of rights; promote emotional support; provide a set of common-use facilities for cultural, leisure and sporting activities; encourage actions and campaigns aimed at the full development of the child's neurological and cognitive capacities; stimulate actions aimed at developing children's autonomy; and ensure a non-violent and playful education.

The Brazilian legal framework thus highlights the importance of prioritizing children's contact with nature, along with the experience of playing and positive parenting, which is fundamental for children and their full development¹³. Item III, in addition, guarantees the right of children and adolescents to "live in their original territories". It is therefore necessary to highlight the right to care for indigenous children and adolescents and from traditional

⁹ This provision refers to art. 11, § 1, of the Statute of the Child and Adolescent, Law no. 8.069/1990, of July 13, 1990.

¹⁰ Home to Us All: How Connecting with Nature Helps Us Care for Ourselves and the Earth. 2018. Available at: <<https://www.cbd.int/doc/strategic-plan/Post2020/postsbi/C&nn2.pdf>>. Accessed on April 1, 2024.

¹¹ BRAZILIAN SOCIETY OF PEDIATRICS. Guidance Manual: benefits of nature in the development of children and adolescents. 2019. Available at: <https://www.sbp.com.br/fileadmin/user_upload/manual_orientacao_sbp_cen1.pdf>. Accessed on April 1, 2024.

¹² BRAZIL. Law 14.826 of March 20, 2024. Available at: <https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2024/lei/L14826.htm>. Accessed on April 1, 2024.

¹³ "Every child shall have the right to play and have fun, and it shall be for society and the public authorities to ensure that this right is fully exercised," states the Convention on the Rights of the Child, the most widely accepted human rights instrument in universal history, ratified by 196 countries, including Brazil.

communities. The attacks on their original territories¹⁴, contrary to the provisions of the law, are a highlight.

4. The duty of care of companies and digital platforms

The article 3 of the Convention on the Rights of the Child states that both public and private institutions, such as companies, must consider the best interests of the child in their actions. In addition, the Committee on the Rights of the Child details and provides recommendations regarding this responsibility in General Comment No. 16 on State obligations in relation to the impact of the business sector on children's rights. As well, the General Comment No. 25 clarifies guidance on the measures that should be adopted to ensure full implementation of the obligations imposed by the Convention on the Rights of the Child, in relation to the risks and challenges within the digital environment

In this sense, the duty of care of digital platforms towards children and adolescents stands out, through the commitment of the companies involved in this business model. With this in mind, the duty of care must take into account the extent of the responsibilities of digital platforms in relation to violations of the rights of children and adolescents, the prevention of commercial exploitation of this group and, considering the Brazilian context, the interpretation of Law No. 13,709 (General Data Protection Law) regarding the processing of personal data and vigilantism related to children and adolescents¹⁵.

Currently, the responsibility for the safety of children and adolescents online falls only on fathers, mothers and guardians. In a country with more than 12 million single-parent families who face a daily shortage of time and the burden of care work, it is necessary to ensure that this duty does not fall exclusively on families, but rather respects the shared responsibility provided for in Article 227 of the Constitution, as a collective commitment between the state, families and society.

It is therefore essential to address the duty of care of companies and digital platforms from the perspective of the rights of children and adolescents, as well as the responsibility of the States to guide and communicate with society about issues such as data protection, media education and the safe use of the internet.

¹⁴ INDIGENOUS MISSIONARY COUNCIL. Invasion of indigenous lands increased again in 2021, in a context of violence and attacks on rights. Available at: <<https://cimi.org.br/2022/08/relatorioviolencia2021/>>. Accessed on April 1, 2024.

¹⁵ FRAZÃO, Ana. Platforms' general duty of care towards children and adolescents. Available at: <<https://criancaconsumo.org.br/wp-content/uploads/2021/11/dever-geral-de-cuidado-das-plataformas.pdf>>. Accessed on April 1, 2024.