

**THE COUNCILS FOR THE DEFENSE OF THE RIGHTS OF CHILDREN  
AND ADOLESCENTS AND THE RIGHT TO EDUCATION**

***OS CONSELHOS DE DEFESA DE DIREITOS DAS CRIANÇAS E  
ADOLESCENTES E O DIREITO À EDUCAÇÃO***

***LOS CONSEJOS PARA LA DEFENSA DE LOS DERECHOS DE NIÑOS Y  
ADOLESCENTES Y EL DERECHO A LA EDUCACIÓN***

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**ABSTRACT:** The article, resulting from a legal, juridical and bibliographic survey, points out changes in the relationship of Brazilian society with the new generations, which occurred from the end of the 1980s, when children and adolescents became legally subject to rights. It deals with the change of perspective that occurred in the policies of attention to children and adolescents with the promulgation of the Federal Constitution of 1988, the Statute of Children and Adolescents (ECA - Portuguese initials -, Law no. 8,069/1990) and the Law of Guidelines and Bases of Education (LDB - Portuguese initials -, Law no. 9394/1996). It analyzes the founding paradigms of ECA and the performance of councils aimed at guaranteeing rights: the Council for the Rights of Children and Adolescents and the Guardianship Council. Indicates the prerogatives of the Public Ministry and the Child and Youth Justice. Emphasizes the role of the school in guaranteeing the rights of children and adolescents, especially the right to school education.

**KEYWORDS:** Child and adolescent care policies. Councils for the rights of children and adolescents. Guardianship council. Right to school education. School role.

**RESUMO:** O artigo, decorrente de levantamento legal, jurídico e bibliográfico, aponta alterações na relação da sociedade brasileira com as novas gerações, que ocorrem a partir de finais dos anos 1980, quando crianças e adolescentes se tornam legalmente cidadãos de direitos. Trata da mudança de perspectiva que ocorreu nas políticas de atenção à infância e à adolescência com a promulgação da Constituição Federal de 1988, do Estatuto da Criança e do Adolescente (ECA, Lei n. 8.069/1990) e da Lei de Diretrizes e Bases da Educação (LDB, Lei n. 9394/1996). Analisa os paradigmas fundantes do ECA e a atuação dos conselhos voltados à garantia dos direitos: o Conselho dos Direitos da Criança e do Adolescente e o Conselho Tutelar. Indica as prerrogativas do Ministério Público e da Justiça da Infância e da Juventude. Enfatiza o papel da escola na garantia dos direitos das crianças e adolescentes, em especial o direito à educação escolar.

**PALAVRAS-CHAVE:** Políticas de atenção à infância e à adolescência. Conselhos de direitos da criança e do adolescente. Conselho tutelar. Direito à educação escolar. Papel da escola.

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**RESUMEN:** *El artículo, resultante de una encuesta legal, jurídica y bibliográfica, señala cambios en la relación de la sociedad brasileña con las nuevas generaciones, que ocurrió a fines de la década de 1980, cuando los niños y adolescentes quedaron legalmente sujetos a derechos. Se trata del cambio de perspectiva que ocurrió en las políticas de atención a niños y adolescentes con la promulgación de la Constitución Federal de 1988, el Estatuto de Niños y Adolescentes (ECA, Ley n. 8.069 / 1990) y la Ley de Directrices y Bases de Educación (LDB, Ley N ° 9394/1996). Analiza los paradigmas fundacionales de ECA y el desempeño de los consejos destinados a garantizar los derechos: el Consejo para los Derechos de Niños, Niñas y Adolescentes y el Consejo de Tutela. Indica las prerrogativas del Ministerio Público y la Justicia Infantil y Juvenil. Destaca el papel de la escuela para garantizar los derechos de los niños y adolescentes, especialmente el derecho a la educación escolar.*

**PALABRAS CLAVE:** *Políticas de atención a niños y adolescentes. Consejos para los derechos de niños y adolescentes. Consejo tutelar. Derecho a la educación escolar. Rol escolar.*

## Introduction

This article signals changes that have occurred in the relationship of Brazilian society with new generations, since the late 1980s, when children and adolescents are no longer seen only as tutored and become qualified as subjects of rights.

The policy of care for children and adolescents in Brazil has undergone profound changes with the promulgation of the Federal Constitution of 1988, the Statute of Children and Adolescents (BRASIL, ECA - Portuguese initials -, Law n. 8,069/1990) and the Law of Guidelines and Bases of Education (BRASIL, LDB - Portuguese initials -, Lei n. 9394/1996). The Organic Law on Social Assistance (BRASIL, LOAS = Portuguese initials -, Law n. 8,742 / 1993) also had its influence. In this text I address the paradigms contained in the ECA and the performance of the councils provided for therein, aimed at guaranteeing the rights of children and adolescents within the scope of the municipalities, where education is effective: the Municipal Council for the Rights of Children and Adolescents and the Guardianship Council.

With the text, I seek to compile what exists in Brazil about the defense of the rights of children and adolescents. While giving an overview of the context in which changes occur, I emphasize education. I deal more with the legal, political and philosophical foundation of the issue than with the actual enforcement of guarantees. In this regard, numerous research exist and can be found on official and academic portals and websites related to the topic.<sup>2</sup>

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<sup>2</sup> I take the liberty of indicating two master's dissertations: “*Adolescente em Liberdade Assistida: análise quanto às dificuldades de (re)inserção na rede regular de ensino público em um município do interior paulista*” (Adolescent in Assisted Freedom: analysis of the difficulties of (re)insertion in the regular network of public education in a municipality in the interior of São Paulo) (BANDEIRA, 2016) and “*Gestão pedagógica na educação infantil: a relação da escola com as famílias de alunos ingressantes*” (Pedagogical management in early childhood education: the relationship of the school with the families of incoming students) (ESTEVEES, 2019).

I remind readers that legislation, by itself, does not change reality, but it does indicate ways and guides citizens and society about their rights and guarantees, making it possible to demand compliance with what is contained therein.

After the promulgation of the Federal Constitution (BRASIL, 1988), the process of discussing social policies aimed at tackling poverty has intensified. Organized social movements and some sectors of the public power fought for the establishment of a new legal-institutional order to deal with this issue. Regarding childhood and adolescence, the Magna Carta, in art. 227, states that:

It is the duty of the family, society and the State to ensure that children and adolescents, with absolute priority, have the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, to freedom and family and community coexistence, in addition to putting them safe from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression (BRASIL, 1988, our translation).

In vertical symmetry, the infraconstitutional legislation comes in the same sense of guaranteeing education as a subjective public right<sup>3</sup>, both through the ECA, with which I will deal with in more detail below, and through the LDB, as stated in art. 2nd: “Education, the duty of the family and the State, inspired by the principles of freedom and the ideals of human solidarity, aims at the full development of the student, their preparation for the exercise of citizenship and their qualification for work” (our translation).

In parallel to ECA, there is another infraconstitutional law, the Organic Law on Social Assistance (LOAS - Law n. 8,742/1993), whose destination is the *subset of the population that is in a state of need*, in compliance with arts. 203 and 204 of CF/1988, which obviously include children and adolescents. It happens that, many times, the executing agencies of the policy of attendance to the rights of the child and the adolescent, mainly regarding the protective measures, are confused with the agencies responsible for the execution of the social assistance programs, creating a nebulous zone as to their responsibilities, since many entities that provide aid to the rights of children and adolescents have an assistance nature. Hence the importance of mapping the resources available in each region and of the integration between the agencies, based on clear rules and criteria.

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<sup>3</sup> Subjective public law means that the non-provision or irregular provision of compulsory education by the public authority in any of its instances implies legal liability of the competent authority.

## The statute of children and adolescents

The ECA, which regulates art. 227 of the Constitution, it is not a law aimed at a specific segment of childhood and youth, but it covers all children and adolescents in Brazil. This law represents the incorporation, in Brazilian legislation, of the paradigms of the International Convention on the Rights of the Child, approved by the Assembly of the United Nations on 20 November 1989. The doctrine that presides over the elaboration of the Statute is the Doctrine of Integral Protection, of the United Nations, which can be summarized in the following expression: “*All rights for all children*” (GOMES DA COSTA, 2016). The comprehensive protection doctrine advocated by ECA is a natural consequence of the rules established by international standards and by the CF and reinforces the guarantee of the rights provided for therein, guiding the entire policy of serving citizens who are in the age group below 18 years.

According to the News Agency for the Rights of the Child (ANDI), it is important to adopt a terminology in line with the paradigms advocated by the rules of international and national law. In this sense, the term minor, previously used to define the person under 18, has fallen out of use, as it is considered to have a subjective, vague, inappropriate and pejorative sense. Since the ECA came into force, it has come to be understood that the term minor reproduces and endorses ingrained discrimination and a posture of social exclusion. Let us see why. The idea of adulthood refers to the age at which a person is able to enjoy their rights, exercise obligations and be held civilly and criminally responsible for their actions. Minority would then mean that children and adolescents would not yet enjoy their rights as citizens. By abolishing this concept, a new perspective was opened for the care of victims of violations of fundamental rights, stopping putting the blame on poor families for the situation of exclusion and vulnerability of their children. The new paradigm also defines that absolute priority must be given to meeting the needs and rights of children (from zero to 12 years old) and adolescents (from 13 to 18 years old), given their condition as persons in the process of development.

Thus, it is understood that the ECA represents an advance for society to fight for the enforcement of rights, since it supposes a break with discriminatory practices from the past.

The recognition of the rights of citizenship of children and adolescents corresponds to the evolution of human rights in Brazil because it introduces a new paradigm that enshrines them as people in biopsychosocial development, subject to rights. This new treatment differs substantially from the terms of the old Code of Minors (BRASIL, 1979)<sup>4</sup>, which was in force

<sup>4</sup> On 12 October 1927, President Washington Luiz signed a law that became known as the Minors Code and that established that the youth is criminally unenforceable until 17 years old and that only after 18, the youth is responsible for its crimes and can be sentenced to prison. The 1927 code was the first law in Brazil dedicated to

in Brazil until the end of the 1980s. It was based on assumptions that discriminated against children and adolescents in situations of poverty and exclusion, as associating poverty with delinquency. This, despite its reformulation in 1979 (it was created in 1927), after the promulgation of the International Declaration of the Rights of the Child in 1959. The new perspective opened by the ECA presupposes, therefore, the overcoming of the focus that was given by the Code of Minors.

In addition to regulating the achievements in favor of children and adolescents expressed in the CF, ECA promotes a set of changes that goes beyond the legal field and unfolds in the reality of the country's politics and society. “Its implementation presupposes actions by the public authorities and civil society, articulated, tuned and concatenated among themselves” (RUDGE, 2007, p. 88, our translation), which supposes the existence of a system, of an organized whole, that shapes public policy of assistance to the rights of children and adolescents within a new form of public management. Such a policy has an intrinsically different nature from sectoral policies (those aimed at each of the different areas: health, education, social assistance, employment, basic sanitation, food, housing, security, transport, among others), as it is defined by its public target - to children and adolescents -, with the objective of guaranteeing all their fundamental rights.

The policy to attend to the rights of children and adolescents would be implemented through an “articulated set of governmental and non-governmental actions, from the Union, the States, the Federal District and the municipalities” (BRASIL, ECA, art. 86), which presupposes tuned actions, concatenated among themselves, involving public power and civil society. According to Rudge (2009), the idea of a system is implicit in this conception, that is, of an organized whole that permeates the sectors responsible for the provision of services for the children and youth population, whose execution presupposes and requires an organic and permanent articulation with other social policies. However, according to Leite and Duarte (2005), Brazilian social policies lack an integrated approach, since they do not work together and do not dialogue with each other, with no institutionalized systematic effort to make actions compatible and to build complementarities.

The lines of action for implementing this policy for child and youth care are defined in art. 87 of the ECA. Also according to Rudge (2019), there are three axes. The first consists of the establishment of basic and consistent social policies that guarantee the primary needs of

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the protection of children and adolescents. Until then, justice was ruthless with the little offenders. By the Penal Code of 1890, created after the fall of the Empire, children could be brought to the courts from the age of 9 in the same way as adult criminals (WESTIN, 2015).

health, education, culture, food, sport, leisure and professionalization. They have a universal character, that is, they are aimed at all children and adolescents, regardless of their socioeconomic and cultural condition. The second determines the establishment of social assistance policies and programs for those children and adolescents who need them. This is because a social assistance policy is not aimed at the population, but at social groups that are in a state of need or vulnerability. The third proposes the organization of a network of special prevention and care services for victims of neglect, mistreats, exploitation, abuse, cruelty and oppression. They refer to special protection programs, aimed at children and adolescents at personal risk and involve an articulated action of Social Assistance with the Child and Youth Justice, the Public Ministry and Public Security. Table 1 presents a summary of the three axes.

**Table 1** – The lines of action of the Child and Adolescent Statute

<b>1° axis</b>	<b>2° axis</b>	<b>3° axis</b>
<b>Basic Social Policies</b>	<b>Social Assistance Policies and Programs</b>	<b>Special Protection Programs</b>
Aimed at guaranteeing the rights and needs of all: health, education, culture, work.	For children and adolescents who are in a state of social vulnerability.	Fixed for children and adolescents at personal risk.

Source: Rudge (2007, p. 89, our translation)

By adopting the principles of political-administrative decentralization and the participation of civil society in the formulation of policies and in the control of actions, enshrined in art. 204 of the CF, the ECA is based on the following ideas:

1- It is in the municipality that the demands, conflicts and needs are set and it is in this space that the strategies to overcome them must happen; thus, the municipalization of care, in line with the constitutional principle of political-administrative decentralization, is a priority guideline in the process of establishing fundamental actions for the care of children and adolescents provided for by ECA.

2 - From an organizational point of view, changes in how to manage the care policy for children and adolescents imply a review of the competences and roles played by the federal, state and municipal executive branches, as well as a resizing of the relationship between the State and the society; the CF also considers as a principle the participation of the population through entities representing civil society. The form found for the realization of this participation was the constitution of representative councils aiming at greater transparency in the actions of the public power and the guarantee of a democratic process of co-management<sup>5</sup> (RUDGE, 2009, p. 89).

<sup>5</sup> Co-management is understood as a process that consists in the sharing of responsibilities between government and organized civil society agencies in decision-making and in the joint implementation of measures in an attempt to optimize the use of resources..



In line with this policy, ECA proposes the creation of the national council and state and municipal councils for the rights of children and adolescents, deliberative and controlling agencies for actions at each of the levels, which are guaranteed equal participation by the people, with half by representatives of public authorities and half by representatives of civil society. Its resources are destined to the establishment of policies, programs and actions aimed at fulfilling the rights of children and adolescents, according to the deliberations of the councils to which they are linked. Another feature of ECA is that it presents an interface between the executive and the judiciary, which provides the necessary support in situations involving conflicts.

Before reaching the municipal councils, it is necessary to clarify the background that led to the proposal to create these, speaking of the National Council for the Rights of Children and Adolescents (Conanda, Portuguese initials).

### **The National Council for the Rights of Children and Adolescents (Conanda)**

According to Gomes da Costa (2016), the creation of Conanda is linked to two social processes. The first concerns the context of redemocratization and the incentive to expand the participation of society in governmental decisions about social policies, as well as in controlling their implementation. The second reflects a new view on the rights of children and adolescents that aims to materialize principles, such as absolute priority and integral protection, based on the implementation of the so-called rights guarantee system, based on the CF and ECA.

Conanda, a deliberative collegiate agency, was born, as provided for in art. 88 of ECA, as the main agency of the rights guarantee system. It was created in 1991 by Law no. 8,242 (BRASIL, 1991) and regulated by Decree no. 5,089/2004 and by Resolution no. 105/2005. It has, as stated in the Portal for the Rights of Children and Adolescents (BRASIL, s/d), among other attributions:

- define the guidelines for the National Policy for the Promotion, Protection and Defense of the Rights of Children and Adolescents;
- supervise the actions carried out by the public authorities regarding the care of children and adolescents;
- manage the National Fund for Children and Adolescents (FNCA);
- Define guidelines for the creation and functioning of State, District and Municipal Councils for the Rights of Children and Adolescents and Guardianship Councils.

Initially, Conanda was part of the basic structure of the Human Rights Secretariat of the Presidency of the Republic (SDH/PR, Portuguese initials). Currently, it is part of the organizational structure of the Ministry of Women, Family and Human Rights (MMFDH, Portuguese initials). In 1991, when it was created, the planned formation was equal, with 28 members: 14 elected representatives of civil society and 14 representatives of the Federal Government, with 14 ministries appointing one member each, on the understanding that the rights of the child and the adolescents should be the subject of transversal policies.

However, in 2019, there was a turnaround. Conanda underwent changes through Presidential Decree no. 10,003, of 4 of September, which defined that the board members would be chosen by selection process and not by election. The participation of civil society was also reduced to nine councilors, leaving the federal government with a majority of 13 members, with representatives from three ministries. The president of the collegiate, who was elected by the members, is now chosen by the President of the Republic. The directors who took office in March 2019, and would act until 2021, had their terms suspended. At the time of writing this text (Feb. 2020), the presidential measure was being challenged for non-compliance with the constitutional precept, with a request for a precautionary measure by the Public Ministry, and the presidential decree was suspended by a minister of the Supreme Court Federal on 19 December 2019, creating a legal vacuum until the issue was definitively resolved.

The National Fund for Children and Adolescents (FNCA), whose creation was set out in art. 6 of the same law no. 8,242/1991, its resources come mainly from donations from individuals and legal entities, deductible from income tax, resources consigned in the Union budget and contributions from governments and international organizations.

### **The Municipal Council for the Rights of Children and Adolescents**

The Municipal Council for the Rights of Children and Adolescents is the body responsible for the formulation and deliberation of the assistance policy and for the control of actions aimed at children and adolescents in the sphere of the municipality. Its mission is to prepare the Municipal Plan for Children and Adolescents that gives body and visibility to the Integral Care Policy for Children and Adolescents in the Municipality. In this formulation two points must be considered: the analysis of the situation of children and adolescents and, as a result, the prioritization of programs, actions and projects.

It is understood that knowledge of the local reality and the situation of children and adolescents is fundamental in the process of formulating the care policy, as it allows



establishing the prioritization of actions and the definition of which areas will receive the greatest concentration of financial resources and which programs will be developed. Another relevant issue concerns how to define the competencies of the different municipal departments and non-governmental entities in the service to be provided, considering the idea that participatory strategies contribute to the population's involvement in a more active way, as stated by Rudge (2009, p. 90, our translation):

There are several possible ways to arrive at the knowledge of the municipal reality about the situation of children and adolescents and the establishment of priorities, but, certainly, with the participation of the various local actors in the apprehension and knowledge of the reality, this process becomes much more alive, dynamic and legitimate. Experience shows that participatory strategies have been shown to be much more efficient, generating more significant results, since the data are absorbed and matured by the group that will act in the process of changing the performance of local public policies.

The Municipal Council for the Rights of Children and Adolescents is responsible for ensuring compliance with the provisions contained in the ECA (Chapter IV - Right to Education, Culture, Sports and Leisure) and the LDB (Title III - Right to Education and the Duty to Educate). Its actions must be articulated with those of the Municipal Education Council<sup>6</sup>, in order to guarantee the access of all children to education and to a dignified treatment at school, respecting the differences of class, gender, race and performance. Therefore, it is a requirement that councilors know the legislation, outline strategies to monitor and analyze the performance of municipal education policy, have access to the city's educational data and indicators and know how to interpret them.

This participatory conception of managing public affairs is quite challenging. On the one hand, public institutions do not always establish participatory practices in their management; on the other, there is no participatory tradition in civil society. For this reason, the opening of spaces for discussing public policies and concrete actions aimed at serving children and adolescents means investing in the construction and consolidation of a more just and democratic society, that is, it is a pedagogical and educational issue.

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<sup>6</sup> The Municipal Council of Education (CME) is instituted by municipal law. The directors are defined by election or nomination, according to the approved law. It is up to the municipality to guarantee the infrastructure that allows periodic meetings, materials and equipment. It acts as a mediator of the relationship between society and the managers of municipal education. Main functions: to elaborate, together with the Municipal Department of Education; standardize state and federal regulations, adapting them to the municipality; to deliberate on the functioning of municipal public schools and the private education network and on the curriculum of municipal schools; legalize courses; assist in answering questions and doubts from public authorities and society, issuing opinions; inspect and monitor the implementation of public policies and monitor the educational results of the municipal system.

## The Guardian Council

The ECA also provides for the creation of another body that makes up the service policy and which also presupposes the participation of society in addressing issues related to childhood and youth in the municipality: the Guardianship Council, which, as defined in art. 131, “is a permanent and autonomous, non-jurisdictional agency, charged by society to ensure the fulfillment of the rights of children and adolescents” (our translation).

The Guardianship Council is fundamental to the care policy in a municipality, as it works with the paradigm of affirming rights and no longer with the corrective and repressive logic that previously characterized the care of children and adolescents and their families exposed to the situation of poverty and of social vulnerability. The existence of the Guardianship Council breaks with the logic of criminalization and family breakdown and returns the focus of public action to guarantee social rights.

The difference is that, while the Rights Councils operate on issues related to the formulation of policies aimed at guaranteeing fundamental rights, the Guardianship Councils act in particular cases of non-compliance or violation of the rights of children and adolescents.

It is up to the municipal executive to guarantee resources to finance the infrastructure for the functioning of this public service. The creation of the Guardianship Council takes place by means of a municipal law that defines the type of election of counselors, as well as their remuneration. The election that can be: direct - universal and optional, through the direct vote of the population in all the candidates that present themselves, or indirect - through an electoral college formed by representatives of the civil society, in which only the representatives vote in the candidates. In any of the modalities, legitimacy and transparency must be guaranteed to the process, the election being carried out under the responsibility of the Municipal Council of Rights and under the supervision of the Public Ministry.

Even though it is not an executive body, the Tutelary Council is a space for denouncing and defending cases of neglect, oppression, abandonment, exploitation and discrimination practiced against children and adolescents. Its assignment is to receive grievances, denunciations and complaints about the situations of children and adolescents whose rights have been threatened or violated, including the non-offer or irregular offer of services and public assistance programs, and to take steps to ensure that the situation is resolved, including with notifications to the Judiciary when necessary. It is understood that a right is threatened when an individual is at risk of being deprived of material and immaterial goods. The violation of the law exists when this deprivation takes place. In the case of children's rights, we can

exemplify the violation of the right to physical and psychological integrity when children and adolescents are abused or sexually exploited, when they are victims of physical punishment, when they are exploited as labor for work incompatible with their physical and psychic complexion and his apprentice condition. Below are the detailed attributions of the Guardianship Council, according to article 136 of the ECA (Table 2).

**Table 2** – Duties of the Guardianship Council, according to article 136 of the ECA

♦ Assist children and adolescents whose constitutional rights are threatened or violated, applying the protection measures provided for by ECA;
♦ Assist and advise parents or guardians in cases of threat or violation of rights and apply necessary measures;
♦ To request public services in the areas of health, education, social service, social security, labor and security and to bring justice when their deliberations are not carried out;
♦ Forward to the Public Ministry news of fact that constitutes an infraction of administrative (for example, when the doctor, teacher or person in charge of health care and elementary education, pre-school or daycare centers, fail to report to the competent authority the cases, that he has knowledge of, involving suspicion or confirmation of ill-treatment) or criminal nature (for example, subjecting the child or adolescent to abuse, torture or ill-treatment) against the rights of the child or adolescent;
♦ Take steps to ensure that the protection measures are effectively complied with;
♦ Issue notifications in cases of its competence;
♦ Communicate to the Child and Youth Judge so that they can request birth and death certificates for children or adolescents when necessary;
♦ Assist the local Executive Branch in the preparation of the budget proposal for plans and programs to address the rights of children and adolescents;
♦ Bring to the Public Ministry knowledge of the cases that demand lawsuits for loss or suspension of family power;
♦ To monitor, jointly with the Public Ministry and the Judiciary, the governmental and non-governmental entities that execute protection and socio-educational programs for children and adolescents.

Source: ECA (1990, art. 136)

It is worth emphasizing that the fundamental rights of children and adolescents can be threatened by action or by the omission of the government, which violates rights when it fails to offer or offers services and programs of basic assistance and social assistance in an irregular way. Parents or guardians can also be the violators when they fail to assist, care for, protect and educate their children. It is the duty of parents to ensure that their children's basic needs are met, and their absence puts children and adolescents in a situation of vulnerability.

In any of these cases, the Guardianship Council must be called upon by civil society entities, by technicians of the public power or by citizens, so that it can take the appropriate measures, applying the protection measures provided for by ECA. Both the Child and Youth Judge and the Guardianship Council can apply these measures and demand that they be complied with (by families, government agencies or civil society entities), and they are not responsible for their execution.

The Judiciary, the Public Ministry and the Guardianship Council are agencies that make up the Rights Guarantee System, which aim to ensure the conditions for enforcing the rights of children and adolescents contained in the Constitution and ECA. Despite the specificities of their duties, it is essential that they work organically, establishing a complementary relationship.

Protection measures, by counselors, may be, for example, summoning parents or guardians to become aware of the rights that are being violated and to ensure that they fulfill their duties, or refer children and adolescents to assistance in counseling, temporary support and monitoring services.

The protection measures directly linked to school education refers to the guarantee of enrollment and attendance at an official educational establishment. It is the duty of parents and guardians to enroll and control the attendance of children at school. If they fail to fulfill this duty, the Guardianship Council must guide the family and monitor the case until it is regularized.

In turn, school leaders have a duty to enroll, monitor the attendance of students and report to the Guardianship Council, once school resources are exhausted, cases of repeated unjustified absences and school dropouts (art. 56 of ECA); it is also up to them, under penalty of criminal liability, to denounce cases in which there is suspicion of mistreatment, violence, abuse and neglect against children and adolescents.

As can be seen, the role of the school is fundamental in preventing and reporting cases of physical, sexual and psychological violence against children and adolescents. Notification of cases of violence is mandatory and the responsibility of the education professional is non-transferable and may be charged in court, according to Article 13 of the ECA: "cases of suspicion or confirmation of ill-treatment against children or adolescents must be reported to the Guardianship Council of the respective locality, without prejudice to other legal measures". It is not, therefore, just a matter of conscience. Even in art. 245, the ECA establishes a fine for the person responsible for failing to report cases involving suspicion or confirmation of ill-treatment to which he is aware. The Guardianship Council is considered in these cases as a

competent authority to give the necessary referrals in accordance with its attributions, among them that of invoking the Judiciary to resolve conflicts that are not resolved in its sphere of action.

In this regard, Deslandes (1994) defines abuse or mistreatment by the existence of a subject in superior conditions (age, strength, social or economic position, intelligence, authority) who commits physical, psychological or sexual damage, contrary to the will of the victim or by consent obtained from misleading induction or seduction. In Table 3, I present the most common forms of abuse and violence to which children and adolescents are subjected.

**Table 3** – Forms of abuse and violence against children and adolescents

<b>Physical violence</b>	Aggressions with the use of physical force, intentionally and not accidentally, leaving or not evident marks.
<b>Sexual violence</b>	It is any activity with a child, before the age of legal consent, aimed at the sexual gratification of an adult or a much larger child. It is characterized by: <ul style="list-style-type: none"> <li>• Sexual practices that do not involve physical contact - sexual harassment, verbal sexual abuse, exhibitionism, voyeurism;</li> <li>• Sexual abuse with physical contact - indecent assault, rape, seduction;</li> <li>• Commercial sexual exploitation - characterized by the sexual intercourse of children and adolescents with adults, mediated by money or by exchanging favors.</li> </ul>
<b>Psychological violence</b>	They are all forms of rejection, depreciation, discrimination, disrespect, exaggerated charging or punishment and use of the child or adolescent. They can cause damage to the child's development.
<b>Negligence</b>	It is the act of omission of the person responsible for the child or adolescent to provide the basic needs for their development (ABRAPIA, 1997)

Source: Rudge (2009, p. 93)

When the Guardianship Council receives a report of mistreatment, it must request the study of the case with the assistance agencies of the municipality to verify the family situation where the child or adolescent lives. In the case of unjustified absences, the family must be informed, alerting them to their children's right to education and the implications of excessive absences in school performance. Regarding the observation of high repetition rates in a given school unit, the Guardianship Council should seek clarification of the fact from the school leader, alert him to the need for planning pedagogical intervention and bring the situation to the attention of the Council for the Rights of the Child and the Adolescent of the city, in case of repetition. In the case of non-compliance with the guidelines, the Guardianship Council must present the case to the Child and Youth Justice.

The Guardianship Council can request the competent municipal agencies to include families in aid programs and request medical, psychological or psychiatric treatment and assistance for alcohol and drug addicts. In the absence of these services, within the scope of the municipality, it is responsible for notifying the authorities responsible for the municipal health policy for alternative measures and referrals.

Finally, the creation of the Guardianship Councils represented an advance in the establishment of rights, since they assumed some attributions previously exercised by the Child and Youth Justice. In view of the breadth of their duties, it is understood that the Guardianship Councils must be in close relationship with the municipal executive in the formulation of public policies in the various areas aimed at guaranteeing the rights of children and adolescents and in the selection of municipal priorities for care policy foreseen in the ECA, including the area of education.

Despite this importance, we still find fragile guardianship councils on the national scene, with many questions and doubts about their role and without enough infrastructure to perform the work to be developed. Counselors need to be trained and in a constant process of improving their practice. The Councils must be constituted in training and reflection spaces, valuing their own experience and establishing exchanges between their components of ideas and experiences with other Councils existing in the city and with Guardianship Councils from other locations<sup>7</sup>.

### **Child and youth justice <sup>8</sup>**

It is the exclusive competence of the judicial authority to know representations presented by the Public Prosecutor's Office for the investigation of an infraction attributed to adolescents, applying the appropriate measures. It is also within its competence to receive and decide on requests for adoption, custody and guardianship, as well as on actions resulting from irregularities in service entities, applying the appropriate measures.

The Child and Youth Justice has its competences listed in art. 148 of the ECA. In the event of a case, jurisdiction is determined by the home of the parent or guardian, or, failing that,

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<sup>7</sup> There are several formative courses for guardianship counselors. Escola Virtual.Gov - EV.G, for example, has a portal for offering distance formation (<https://www.escolavirtual.gov.br>). States and municipalities also offer courses, such as the Parliament School, of the São Paulo City Council, with the Guardianship Counselors Formation course, exclusive for the city of São Paulo. Available: <http://www.saopaulo.sp.leg.br/escoladoparlamento/cursos/cursos-anteriores/cursos-realizados-2018/formacao-de-conselheiros-tutelares/>. Access: 10 Sep. 2020.

<sup>8</sup> In Brazil, jurisdiction is exercised exclusively by the Judiciary. For convenience criteria, jurisdiction is divided by subject and location, in what has been called competence. That is why in each district there are Family, Public Finance, Criminal and Childhood and Youth Courts (PORTALEDUCAÇÃO, n/d).



by the place where the child or adolescent is found, in a shelter, for example. When a problem refers to an infringement, the competent authority is the one at the place where the action took place.

The judicial authority also has other powers to discipline through ordinances, and to authorize, through permits, the entry and stay of the child or adolescent, unaccompanied by parents or guardians, in stadiums, balls, nightclubs, etc. All of this is described in art. 149 of the ECA. Among others, it is the exclusive competence of the judicial authority to know representations promoted by the Public Prosecutor's Office for the investigation of an infraction attributed to adolescents, applying the appropriate measures. Also included in the Child and Youth Justice are interprofessional teams, maintained with resources from the Judiciary, as provided for in art. 151 of the ECA.

### **Final considerations**

In view of the above, it is concluded that there is no lack of legislation in Brazil regarding protection and the guarantee of the right to education for citizens who are in the age group below 18 years old. The Rights Councils and Guardianship Councils are public agencies created by ECA that work directly in cities and should be valued, supported and implemented as a strategy to break the cycle of social exclusion and violation of rights experienced by Brazilian children and adolescents (RUDGE, 2009).

It is observed, at the same time, that, in practice, it is difficult to implement protective measures, especially for children in extreme poverty, in addition to identifying the overlapping of functions and the lack of dialogue between the various instances of public power in the solving of problems. Recalling that, behind every helpless child and adolescent, there is an equally helpless family from an economic and social perspective.

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