

Joint submission to the
Special Rapporteur
on the right to privacy

children's right to privacy

**OBSTACLES AND AGENDA
FOR PRIVACY PROTECTION AND THE
DEVELOPMENT OF INFORMATIONAL
SELF-DETERMINATION
OF CHILDREN IN BRAZIL**

Organization

INTERNETLAE
pesquisa em direito e tecnologia

alana 

CRIANÇA e
CONSUMO 

children's right to privacy

OBSTACLES AND AGENDA FOR PRIVACY PROTECTION
AND THE DEVELOPMENT OF INFORMATIONAL
SELF-DETERMINATION OF CHILDREN IN BRAZIL

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About

INTERNETLAB is an independent research center that aims to foster academic debate around issues involving law and technology, especially internet policy. Our goal is to conduct interdisciplinary impactful research and promote dialogue among academics, professionals and policymakers. We follow an entrepreneurial nonprofit model, which embraces our pursuit of producing scholarly research in the manner and spirit of an academic think tank. As a nexus of expertise in technology, public policy and social sciences, our research agenda covers a wide range of topics, including privacy, freedom of speech, gender and technology.

ALANA INSTITUTE is a non-profit civil society organization that invests in programs that seek to guarantee conditions for the full experience of childhood. Created in 1994, it has been maintained by the income of an endowment fund since 2013. Its mission is to “honor children”.

CHILD AND CONSUMERISM is a program from the Alana Institute to increase awareness of the impacts and damage of children’s commercial exploitation in Brazil and worldwide, especially by advertising and marketing aimed at children under 12 years old in all kinds of media, including the digital environment. Established in 2006, this multidisciplinary program aims to promote the debate of the topic and the enforcement of children’s and consumer’s rights, notably through advocacy, including legal strategies, policy monitoring, campaigns, research and communication, also cooperating with companies to change their internal policies towards more ethical and fair marketing strategies.

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Executive summary

1

Structural inequalities, multiple childhoods and the best interests of the child

When designing policies and recommendations that will affect children, it is fundamental not to treat them homogeneously, acknowledging the existence of “multiple childhoods” throughout the world and within each continent and country, especially in contexts of structural inequalities. Alongside, it is vital to recognise that children in vulnerable situations and conditions will, in most cases, have their rights and, thus, their full development impaired in harshest and deepest ways.

In addition, the second common ground from which we understand any actions, decisions and recommendations issued by or addressed to public or private actors shall consider is children’s best interest. As provisioned by Article 3, paragraph 1, of the Convention on the Rights of the Child, the principle of children’s best interest shall be interpreted as a dynamic concept and always be considered primarily to any other concern, including commercial interests.

2

Children's commercial exploitation in the digital environment

The most powerful private actors in the world are the developers and operators of technologies that collect and monitor information about individuals' communications, activities and behavior on the internet, holding business models that monetize personal data for commercial and behavioral modulation purposes.

In fact, most of these digital technologies and platforms were not designed for children under 13 years old. However, it is undeniable that youngsters are as immersed as anyone else - if not more - in their logic and structure. The consequent massive children data collection raises significant concerns regarding exposure, storage and present and future use of children's precise and extensive digital tracks, especially concerning children's right to privacy and to a full development.

Questions raised

(i) THREATS TO CHILDREN'S SAFETY, FREEDOMS AND EQUAL TREATMENT.

The massive exposure and easy transit of children's personal data and persistent identifiers, including biometric and geolocation data, present several threats to their physical, mental and sexual integrity, especially through non-authorized and malicious contact, amplifying risk of online and offline abuse.

Furthermore, data based business models are designed to achieve unprecedented and pervasive strategies of behavioral modulation and manipulation through persuasive design and nudge techniques. Children, more than adults, are strongly impacted by those strategies, which shape their habits, perceptions and decisions on different fields, from routines related to daily use of technologies to serious political statements, consumer habits, religious beliefs and interpersonal relations.

Plus, automated decision-making with opaque algorithms and non-transparent nudge techniques based on personal data can lead to limited diversity experiences and developmental opportunities. In this sense, they often result in “digital racism” and “digital steering”, unequally affecting children inserted into more vulnerable scenarios.

(ii) DATA DRIVEN MARKETING STRATEGIES TARGETED TO CHILDREN.

Children are particularly vulnerable to any kind of marketing communication targeted at them and until they are 12, do not understand the persuasive nature of advertising – reason why all marketing communication directed to children under 12 years old is unethical.

As for marketing based on personal data and microtargeting – which reflects the statement that the foundation of data based business models is economic exploitation –, children’s vulnerability increases significantly; and this vulnerability, in different forms, covers the developmental phase that children from ages 0 to 18 years old go through.

Children’s exposure to marketing as a consequence of data based business models, until they reach 18 years old, presents a violation to their right to privacy and might impact on the fulfillment of other dimensions of their development, such as health, culture and leisure, in direct opposition to the principle of children’s best interests.

(iii) THE INSUFFICIENCY OF THE CONSENT AND AGE VERIFICATION APPROACH.

Media literacy and the consent and age verification standards are often offered as solutions to the pervasive data extraction practices, which they are not, especially considering that their outcomes are not instantly perceivable, as well as that opt out of data extraction and profiling choices are not offered in many cases. Alongside, terms of use and privacy policies that internet and technology users have to consent to tend to be inaccessible to most languages and reading skills.

These models are thus unfair, especially to children inserted into vulnerable contexts; and their unfairness is increased in scenarios where multiple childhoods and structural inequalities coexist, which struggle against a number of digital inequalities; where digital literacy and safety are not widespread; and where not all parents and families have the means to assist children on their internet navigation and teach them on how to protect their rights in the face of predatory data based business models.

In order to protect all children's right to privacy and to a full development, in search for their best interests, the children's rights-by-design standard arises, supported by the scope of the Convention on the Rights of the Child. The children's rights-by-design approach demands that all actors, including private ones and thus tech business enterprises, digital platforms, apps, connected devices accessed by children, incorporate a series of guidelines into their actions and policies, which include: integrating the Convention on the Rights of the Child provisions into all appropriate corporate policies and management processes; the due diligence of policies and community standards; the data minimization principle; children's full ownership of their data and parental controls; the offer of commercial-free digital spaces; the promotion of meaningful and non-monetizable digital experiences; standards of transparency, accessibility and legibility of terms of use and privacy policies.

3

The collection of children biometric data in public services

Under general and vague justifications, Brazilian public authorities have been imposing biometric identification on children, at an early stage and without a proper discussion of data security and lifetime risks.

Although Brazil's multiple childhoods are affected, those that rely most heavily on public policies are submitted to early collection, exposed to the associated risk, and subtracted from the possibility of developing informational self-determination on account of their vulnerability.

Examples of these uses are the biometric palm identification of all Brazilian newborns and the biometric identification of the mother; the use of facial and biometric recognition to monitor the attendance of students, teachers and employees in public schools; biometrics and facial recognition required in higher education admission exams and in public transportation for validation of the scholar pass.

These technologies present risks related to identity theft and misuse of personal information. In public services, inaccuracies can make it difficult for individuals to access services, such as public transportation. There are risks related to the theft or loss of databases, which are even greater in the

case of biometric data, since these data are permanently associated with an individual. Moreover, the processing of these data is often carried out in partnership with private actors, and without being submitted to public scrutiny.

Questions raised

(i) UNEQUAL EXPOSURE TO BIOMETRIC DATA COLLECTION, UNEQUAL DISTRIBUTION OF RISKS AND PRIVACY.

The technology is being incorporated first and foremost in facilities that carry out public policies, and in a non-optional way. That is, the collection of biometric data is now a condition of access to public services and the exercise of rights. This impacts mainly children in vulnerable situations who rely on these policies for their full development.

(ii) FAILURE TO COMPLY WITH PURPOSE LIMITATION AND DATA MINIMIZATION.

According to the Brazilian law, sensitive data should be processed only if it is in the best interest of the child and the purpose could not reasonably be fulfilled by other means, i.e., when the processing is indispensable for the implementation of public policies provided by laws or regulations (LGPD, art. 11, II, b). Brazilian public authorities have been imposing biometric identification since early ages and under general and vague justifications, such as “expanding the national database,” “fraud and crime prevention,” “security purposes and “modernization,” “time savings in presence check,” and “food saving,”

The choice of adopting such invasive technologies to children’s data and privacy without solid evidence of adequacy, necessity, their short and long term benefits, fail to fulfil the children’s best interests.

(iii) LACK OF TRANSPARENCY AND SECURITY SAFEGUARDS.

As parents and legal representatives’ consent are dispensed and the biometric identification is not optional where it has been established, there are doubts on whether information relating to the processing is made easily accessible. Moreover, the lack of transparency regarding

the protocols on data security and data sharing between government agencies and private entities leaves doubts about the adequate protection of this data, which, if improperly accessed, may even facilitate the harmful practices it aims to avoid.

(iv) **UNSATISFACTORY REGULATORY FRAMEWORK.**

In 2019, the Decree nº 10.046/2019 created the Citizen Base Register and facilitated the sharing and integration of databases between federal public administration agencies, for the purpose of “simplifying the provision of public services”. This broad access to personal data (that includes biographic, biometric and registration data) by agencies of the federal public administration reduces the possibilities of control over who – and for which purposes – accesses data and presents risks, such as profiling, discrimination, surveillance, and unfair control.

The use of biometrics technology may present benefits under some circumstances, but it must be implemented in compliance with data privacy and the best interest of children. That is, the processing of children’s sensitive personal data should be lawful, transparent, including aspects related to risks, rules, safeguards, and rights. The specific purposes should be explicit, determined and aligned with the child’s best interest – and not reasonably be fulfillable by other means; the data should be adequate, relevant, and limited to the absolute necessary. Appropriate security and confidentiality should be ensured, and unauthorized access prevented. **A massive biometric identification program, as has been designed in Brazil, seems to fail this test.**

4

Children’s sexual, reproductive, and digital rights

In Brazil, gender, social class and racial differences are vital social markers that influence the way in which violations are addressed to each group of children. The violations are related to domestic, educational, and Justice spheres, and profoundly impact children’s lives. There are some impacts connected to sexual education, privacy rights and legal decisions that should be considered:

(i) According to the federal government's official data, there were 86.837 reports of human rights violations against children in 2018. When related to sexual violence, victims are majorly female (82%).

There is no agreement about teaching sexual and reproductive rights at school to hamper awareness of this problem for children and their families.

(ii) In the Brazilian conservative political scenario, since 2014 politicians have been proposing bills at the National Congress and at the state legislative houses to prohibit the discussion of gender and inequality issues in schools.

(iii) Moreover, conservative politicians have been proposing bills to create obstacles to legal abortions or to prohibit the practice of abortion in any situation.

(iv) During the Covid-19 pandemic new problems have arisen. One of them is that children are closer to family members who commit violent practices against them, such as father, stepfather, uncle, or mother. Besides, social services responsible for receiving violence complaints are also closed or underperforming, and therefore, children have fewer opportunities to report.

(v) In this period, abuse and sexual violence against children appeared in different situations. The children who spent more time on the internet became more sensitive to other violations, such as pedophilia, cyberbullying, and dissemination of intimate images.

(vi) In the judicial sphere, it is essential to mention that confidentiality has been undermined in the context of datafied Justice. Although there is a consensus that children who are victims of violence must have their intimacy and personal data preserved, the electronic systems have not been sufficient to protect the leakage of sensitive information. Consequently, victimized children have their data exposed and are re-victimized by the publicness of the information.

(vii) Another problem found in the judicial sphere is related to cases involving the non-consensual dissemination of children's intimate images. Contrary to expectations, the number of condemnations was lower in cases of children than of adult victims. The explanation was that

the Statute of the Child and Adolescent (Law nº 8.069/90), responsible for cases of under age 18 victims, has a restrictive definition of pornography, in which scope the leaking of intimate images is not included.

In Brazil, the way children rights are undermined in different circumstances signal to the necessity of claiming for changes in educational, domestic and judicial fields. It would be essential to encourage sexual and digital education in schools in order to raise children's and parent's awareness of the risks and violations in online and offline scenarios. Besides, it is vital to indicate the urgency for the digital system of Justice to take into account the protection of children's data and privacy rights aims to prevent the re-victimization of children who are victims of violence.

1

Introduction

The present submission aims to provide an overview of several events, policies and practices that represent risks to privacy rights of children in Brazil. Before we move on, it is important to locate this submission in Brazilian conservative political scenery.

After the dictatorship period (1964-1984), Brazil began recognizing and strengthening human rights, including children's rights.¹ This last period was known as the "New Republic" (1985-present). However, in the previous seven years (2014-2020), one can observe setbacks and disputes around human rights' meanings. In 2018, with Jair Messias Bolsonaro's presidential election, the scenery became worse. Bolsonaro has a military background, with undue religious influence, and he is an open supporter of the dictatorship period. One of the marks of his government is the election of conservative politicians to ministries.

Regarding the human rights theme, he dissolved the Special Secretariat for Women's Policies and Special Secretariat for Human Rights, both created in 2003. In their place, he created the Ministry of Women, Family, and Human Rights. Damares Alves, a female Evangelical reverend, was appointed as a minister².

Furthermore, his government undermines the National Council of Children's and Adolescents'³ rights. Since 1991, the Council, composed by civil society representatives and government, is responsible for elaborating the national politics of children's rights. In 2019, the government changed the composition and operation of the Council, restricting the possibilities of action⁴.

1 In 1990, the Statute of the Child and Adolescent was created in Brazil. The statute ensures some rights, among others the right to privacy, image rights and the right to the protection of children and adolescent's personal data.

2 BRANDÃO, Elaine R.; CABRAL, Cristiane da S. Sexual and reproductive rights under attack: the advance of political and moral conservatism in Brazil. In: *Sexual and Reproductive Health Matters*, 27:2, p. 76-86, 2019.

3 Under the Brazilian Statute of the Child and Adolescent, subjects from 0 to 12 years old are children and those from 12 to incomplete 18 years old, adolescents. Regarding the present recommendation, however, we will refer to all subjects from 0 to 18 years old as children, as defined by the United Nations' Committee on the Rights of the Child.

4 MINISTÉRIO PÚBLICO DO PARANÁ (MP-PR). CONANDA - Decreto que altera composição do Conanda é publicado no Diário Oficial. MP-PR, Sep. 13, 2019. Available at: <http://crianca.mppr.mp.br/2019/09/175/CONANDA-Decreto-que-altera-composicao-do-Conanda-e-publicado-no-Diario-Oficial.html>. Accessed on: Sep. 24, 2020.

Also, in 2019, Bolsonaro's government dissolved the Commission of Confront Child Sexual Violence.⁵ The commission was in charge of articulating steps and policies to confront sexual violence against children. In 2020, the commission was re-created. Currently, Commission of Confront Child Sexual Violence has only the function of studying and systematizing theoretical and methodological materials about the theme. This way, it is possible to signal that the political situation restricts, at the moment, spaces to debate and the possibility of society to influence in the government's decision-making.

In the political scenario, the General Data Protection Law (Law 13.709/2018), approved in 2018, established the legal framework for the personal data protection regime in Brazil, which until then lacked a comprehensive regulation and depended on sparse rules. The law came into force in September 2020, after several debates and votes in the National Congress, which considered several bills proposing its further postponement. Earlier, in August, the federal government issued the decree that defined the regimental and organizational structure for the creation of the National Data Protection Authority (ANPD). The ANPD is subordinated to the Presidency of the Republic and has the function of supervising the processing of personal data, establishing guidelines and imposing sanctions. However, the appointment of the Board of Directors and of the Chief Executive Officer must be approved by the Federal Senate, whose commissions are suspended due to the Covid-19 pandemic. Therefore, the normative context, as far as data protection in Brazil is concerned, although has advanced, still reveals a degree of uncertainty.

In addition, for the various reasons we intend to present, the approach on issues related to children's right to a full development and its intimate connection with their right to privacy is urgent and mandatory.

⁵ VILA-NOVA, Carolina. Bolsonaro recria comissão de enfrentamento à violência sexual infantil com funções esvaziadas. *Jornal de Brasília*, Sep. 16, 2020. Available at: <https://jornaldebrasil.com.br/politica-e-poder/bolsonaro-recria-comissao-de-enfrentamento-a-violencia-sexual-infantil-com-funcoes-esvaziadas/>. Accessed on: Sep. 24, 2020.

1.1. Structural inequalities and the multiple childhoods

When designing policies and recommendations that will affect children, it is fundamental not to treat them homogeneously and try to maximize the comprehension of the peculiarities that each of them – individually and as a group – copes with in physical, cultural, social, economic and environmental aspects.

Therefore, as a starting point to this contribution, we highlight the necessity of acknowledging the existence of “multiple childhoods” throughout the world and within each continent and country, especially in contexts of structural inequalities.⁶

As a consequence, not only is it necessary not to standardize the demands, needs and points of view of children, but it is also fundamental to create the effort to perceive them and their uniquenesses’s as much as possible, comprehending that their right to privacy embody in different dimensions, priorities and perceptions.

As the two organisations are based in Brazil, the fifth largest and seventh most unequal country in the world,⁷ in which a quarter of the population (more than 50 million people)⁸ is below the poverty line⁹ – and being so that this figure unproportionate ranges 42.3% of children from 0 to 14 years old and 32.9% of black and brown people –, we understand it is extremely important to highlight this view on multiple childhoods and structural inequalities.

6 For this matter, UNICEF is co-custodian for Sustainable Development Goal 10 – Reduced Inequalities, acknowledging their existence and how they affect children. Source: UNICEF. *UNICEF is the custodian or co-custodian for 19 SDG indicators*. Available at: <https://data.unicef.org/children-sustainable-development-goals/>. Accessed on: Sep. 24, 2020.

7 CONCEIÇÃO, Pedro. Human Development Report 2019: Beyond Income, Beyond Averages, Beyond Today: Inequalities in Human Development in the 21st Century. In: *United Nations Development Programme*, 2019. p. 7. Available at: <http://hdr.undp.org/sites/default/files/hdr2019.pdf>. Accessed on: Sep. 24, 2020.

8 INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA (IBGE). Síntese de indicadores sociais: uma análise das condições de vida da população brasileira. Coordenação de População e Indicadores Sociais. Rio de Janeiro: IBGE, 2019. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101678.pdf>. Accessed on: Sep. 24, 2020.

9 World Bank indicator that determines the US \$ 5.50 PPC line to classify people in poverty, used as a reference for the IBGE Indicator Synthesis. This value refers to approximately R\$ 420 per month, which is equivalent to about 44% of the minimum wage in force in 2018, when the data was collected.

Differently from other parts of the world, when considering Brazilians' digital experience, the first barrier that many children have to struggle against is accessing technology and the internet. Recent research shows that 5% of Brazilian youngsters from ages 9 to 17 have never accessed the internet and 6% have already been connected to it, but not in the past three months.¹⁰ In figures, it's estimated that 4.8 million children have no access to internet from their homes.¹¹

In other words, in addition to dealing with all the sophisticated issues and current challenges that today's society presents for children to accomplish at most their right to privacy and full development, a number of countries, groups and people still have to deal with several basic and primary social, economic, political, and civil obstacles.

Ultimately, it is vital to recognise that children in vulnerable situations and conditions – whatever is the nature of their vulnerability – will, in most cases, have their rights and, thus, their full development impaired in harshest and deepest ways. The present contribution seeks to point this out, as further better illustrated by three specific cases and outcomes of children's right to privacy: (i) children's commercial exploitation in the digital environment; (ii) the collection of children biometric data in public services; and (iii) children's sexual, reproductive and digital rights.

1.2 The best interests of the child

Moving forward, besides the recognition of the existence and the necessary effort to perceive multiple childhoods in structural inequalities scenarios, the second common ground from which we understand any actions, decisions, and recommendations issued by or addressed to public or private actors in children's best interest.

As provisioned by Article 3, paragraph 1 of the Convention on the Rights of the Child,¹² the principle of children's best interest shall be interpreted

¹⁰ NIC.BR/CETIC.BR. Pesquisa sobre o uso da Internet por crianças e adolescentes no Brasil – TIC Kids Online. Brazil 2019. Available at: <https://cetic.br/pt/arquivos/kidsonline/2019/criancas/#tabelas>. Accessed on: Sep. 24, 2020.

¹¹ Idem.

¹² OHCHR, CRC, 1989. "Article 3: 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

as a dynamic concept and always be considered primarily to any other concern, including – and especially – commercial interests. Therefore, this contribution will intend to cover the following cases.

Furthermore, General Comment n° 14 of the Committee on the Rights of the Child¹³ defines the child's best interests as a threefold concept: (i) a substantive right: “the right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general”; (ii) a fundamental, interpretative legal principle: “if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen”; and (iii) a rule of procedure: “whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account”.

¹³ OHCHR, GC 14, 2013.

2

Children's commercial exploitation in the digital environment

Several lucrative business models adopted by companies who develop and manage digital products and services benefit from children's use by commercially exploiting them, including the collection and treatment of their personal data. The Convention on the Rights of the Child, nevertheless, in its Article 32, paragraph 1, explicitly protects children from any kind of economic exploitation, as follows: "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".¹⁴

It is, therefore, vital to carefully analyse how these business models might affect children's right to privacy and impact on their full development.

2.1 Data based business models, profiling techniques, and persuasive technologies

In the age of surveillance capitalism,¹⁵ "data is the new oil." The richest and some of the most powerful private actors in the world are the developers and operators of technologies that collect and monitor information about individuals' communications, activities and behaviour on the internet, holding business models that monetize personal data for commercial and behaviour modulation purposes, through persuasive design in the so-called attention economy.¹⁶

¹⁴ OHCHR, CRC, 1989.

¹⁵ The expression is forged by professor and author Shoshanna Zuboff in the work "The Age of Surveillance Capitalism: the Fight for a Human Future at the New Frontier of Power", published in 2019 by Public Affairs.

¹⁶ See more at: VIVREKAR, D. *Persuasive Design Techniques in the Attention Economy: User Awareness, Theory, and Ethics*. Master thesis at Stanford University. June 6, 2018. Available at: https://stacks.stanford.edu/file/druid:rq188wb9000/Masters_Thesis_Devangi_Vivrekar_2018.pdf. Accessed on: Sep. 24, 2020.

These digital platforms and applications are consciously designed to encourage constant use and overexposure, consequently more data can be collected and stored, frequently exposing users to mass surveillance, interception, and data collection.¹⁷ In other words, these data based business models, which primarily rely on profiling and micro-segmentation techniques, are, by nature, invasive to one's right to privacy and its outcomes.

In fact, most of these digital technologies and platforms were not designed for children under 13 years old. However, it is undeniable that youngsters are as immersed as anyone else – if not more – in this logic and structure. The possibilities of violating children's privacy and intimacy, thus, multiply as they engage on social media, browser cookies, email, search engines, video platforms and applications, games, connected toys, educational platforms, and services etc.¹⁸ As Dylan Collins, CEO of the Irish internet safety company SuperAwesome recently announced, “by the time the child is 13 which is usually when they are legally allowed to use a lot these services, just the advertising technology companies alone might have gathered somewhere north of 70 million different pieces of information on that child just because of their day to day browsing.”¹⁹

This massive children data collection raises significant concerns regarding exposure, storage, and present and future use of their precise and extensive digital tracks, especially concerning children's development and evolving capacities. There's no doubt that privacy and confidentiality are the key aspects of a healthy and full development, which allows children to make mistakes in a safe environment, promoting their self-confidence and the development of their maturity, allowing them to try out and explore different dimensions of their selves in their search for identity, without the risk of surveillance or exposure.²⁰

17 UNITED NATIONS, General Assembly. The right to privacy in the digital age. Resolution adopted by the General Assembly on 18 December 2014. 69/166, Feb. 10, 2015. Available at: <https://undocs.org/en/A/RES/69/166>. Accessed on: Sep. 24, 2020.

18 RADESKY, Jenny; CHASSIAKOS, Yolanda R.; AMEENUDDIN, Nusheen; NAVSARIA, Dipesh; COUNCIL ON COMMUNICATION AND MEDIA. Digital Advertising to Children. *Pediatrics*, Jul. 2020, 146 (1). Available at: <https://pediatrics.aappublications.org/content/146/1/e20201681>. Accessed on: Sep. 24, 2020.

19 NEWSTALK. Companies can gather over 70 million pieces of data from a child before they turn 13. Sep. 3, 2020. Available at: <https://www.newstalk.com/news/child-protection-guidelines-data-1070935>. Accessed on: Sep. 24, 2020.

20 HARTUNG, Pedro. The Children's rights-by-design (CRbD) standard for data use by tech companies. Unicef Data governance working group, 2020 (in press).

Firstly and foremost, thus, it shall be recognized that the current ultra-profitable data based business models themselves represent a significant threat to children's right to privacy and full development, provisioned by articles 16, paragraph 1²¹ and article 6, paragraph 2²² of the Convention on the Rights of the Child, in direct opposition to the fulfilment of their best interests.

2.1.1 Threats to children's safety, freedoms, and equal treatment

As data-based business models may initially pose severe threats to children's privacy, alongside they unfold into other layers of violations and possible impacts on their full development.

Initially, the massive exposure and easy transit of children's personal data and persistent identifiers, including biometric and geolocation data, present several threats to their physical, mental and sexual integrity, especially through non-authorized and malicious contact, amplifying the risk of online and offline abuses.²³

For example, the easy access to child sexual abuse materials and insufficient identification and combat of grooming and predatory behaviour on online spaces enables the exponential increase of harmful practices, such as online sexual exploitation and abuse.²⁴

Usually, the responsibility of protecting children from these threats is exclusively transferred to their families, reflecting an unfair pattern, as data-based business models are forged on a predatory form of information collection. Not exclusively, but it is also important to understand how uneven the power relation between companies and families is.

²¹ OHCHR, CRC, 1989. "Article 16: 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."

²² OHCHR, CRC, 1989. "Article 6: 2. States Parties shall ensure to the maximum extent possible the survival and development of the child."

²³ End Violence Against Children, Safe Online website: <https://www.end-violence.org/safe-online>.

²⁴ HARTUNG, Pedro. The Children's rights-by-design (CRbD) standard for data use by tech companies. Unicef Data governance working group, 2020 (in press).

However, basic knowledge on digital citizenship and digital literacy could be a meaningful tool to minimize the damages that surveillance capitalism imposes to children.

Nevertheless, as a cause and result from the deep and historical frameworks of structural inequalities, this kind of knowledge is not equally spread throughout multiple childhoods and their families. Actually, even though specialists recommend that children are assisted by adults when navigating the internet,²⁵ many families don't have the structure to teach their children how to browse the internet safely – for reasons that range from adults not being aware of online risks for privacy and safety to adults – and specially single mothers – dealing with double or triple workloads and burdens that can result on them not having enough time to be aside their children during technology navigation.

According to the TIC Kids Online survey, 61% of Brazilian parents who graduated high school or further educational levels are able to assist their children when they're online, opposed to 48% of parents who studied up to elementary school.²⁶ Also, the research indicates that 82% of parents who graduated high school or further educational levels teach their kids ways to navigate the internet, while that percentage drops to 68% when considering parents who studied up to elementary school.²⁷

Children in vulnerable situations, thus, are more likely to have their right to privacy and subsequent layers beneath intimacy violations affected by data driven predatory business models.

Furthermore, these models are designed to achieve unprecedented and pervasive strategies of behavioural modulation and manipulation through persuasive design and nudge techniques.²⁸ Children, more than adults, are strongly impacted by this strategies, which shape their habits, perceptions and decisions on different fields, from routines related to

25 RADESKY, Jenny; CHASSIAKOS, Yolanda R.; AMEENUDDIN, Nusheen; NAVSARIA, Dipesh; COUNCIL ON COMMUNICATION AND MEDIA. Digital Advertising to Children. *Pediatrics*, Jul. 2020, 146 (1). Available at: <https://pediatrics.aappublications.org/content/146/1/e20201681>. Accessed on: Sep. 24, 2020.

26 NIC.BR/CETIC.BR. Pesquisa sobre o uso da Internet por crianças e adolescentes no Brasil – TIC Kids Online Brasil 2019. Available at: <https://cetic.br/pt/arquivos/kidsonline/2019/criancas/#tabelas>. Accessed on: Sep. 24, 2020.

27 Idem.

28 ZUBOFF, Shoshana. *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. 1st ed. Public Affairs, 2019. p. 375-376.

daily use of technologies²⁹ to serious political statements, consumer habits, religious beliefs and interpersonal relations.

These persuasive techniques can have serious impacts on childhood, such as anxiety, aggression, addiction, compulsion, and device dependence, and also diminishing children's creativity, autonomy, memory, sleep, and education.³⁰ As a result, children miss the fundamental opportunities to connect with themselves, the physical and outside world and with their communities. This has a profound impact on their development, self-regulation (executive function), as well as their physical and mental health.³¹

Plus, automated decision-making with opaque algorithms and non-transparent nudge techniques based on personal data can lead to limited diversity experiences and developmental opportunities. In this sense, automated decision-making based on opaque and biased algorithms often result in “digital racism” and “digital steering.”³² As stated by European Digital Rights,³³ these non-transparent business models and automated content curation algorithms lead to discriminatory “filter bubbles,” which, e.g., tend to drastically differentiate the appearance of opportunities on recruitment, housing and job offers for women and black people.

It might be redundant to indicate that these situations are completely opposite to children's best interests, as they may reinforce vulnerabilities of multiple childhoods, as well as generate threats to youngster's rights to self-determination and to an equal treatment.

29 KIDRON, Baroness.; EVANS, Alexandra; AFIA, Jenny. *Disrupted childhood*. The cost of persuasive design. London: 5Rights, 2018. Available at: <https://5rightsfoundation.com/static/5Rights-Disrupted-Childhood.pdf>. Accessed on: Sep. 24, 2020.

30 Idem, p. 30.

31 YOGMAN, M.; GARNER A.; HUTCHINSON J.. et al; AAP COMMITTEE ON PSYCHOSOCIAL ASPECTS OF CHILD AND FAMILY HEALTH, AAP COUNCIL ON COMMUNICATIONS AND MEDIA. The Power of Play: A Pediatric Role in Enhancing Development in Young Children. In: *Pediatrics*. 2018;142(3). Available at: <https://pediatrics.aappublications.org/content/142/3/e20182058>. Accessed on: Sep. 25, 2020.

32 BEDI, Sonu. *Private Racism*. Cambridge: Cambridge University Press, 2019. p. 82-112. Available at: <https://www.cambridge.org/core/books/private-racism/digital-racism/B5CE20ED1BF1C4D04F59F956C84BD781>. Accessed on: Sep. 25, 2020.

33 EUROPEAN DIGITAL RIGHTS. *Structural Racism, Digital Rights and Technology*. 2020. Available at: https://edri.org/wp-content/uploads/2020/09/Structural-Racism-Digital-Rights-and-Technology_Final.pdf. Accessed on: Sep. 25, 2020.

2.1.2 Data driven marketing strategies targeted to children

As indicated before, the foundation of data-based business models are economic exploitations. Users' personal data are as a rule monetized by the commercial use of profiling and automated decision-making, microtargeting of advertising or even by direct data selling to third parties.³⁴ As participants in the digital environment, thus, children are also significantly impaired by this commercial exploitation predatory structure.

Here, again, vulnerable children are often more broadly and deeply affected by structural threats to their privacy, also regarding the economic exploitation of their data. A recent study conducted in the USA and published by The Journal of the American Medical Association (JAMA Pediatrics)³⁵ revealed that child-directed mobile applications collect digital identifiers and transmit them to third-party companies – even though that is prohibited by COPPA, the applicable national law in case. The research also detected that children whose parents didn't have college degrees were two to three times more likely to have their digital information transferred to third parties.

That said, this commercial exploitation translates into methods that include explicit or thinly veiled marketing strategies targeted to children, such as data-driven by ethnicity and race with “culture-coded” content; geotargeting and “place-based” marketing, including in-store surveillance and point-of-purchase prompting; and new measurement tools to “micro-moment” messaging. The effectiveness of these strategies is constantly measured by marketers, enabling real-time optimization for impact³⁶ during persuasive design techniques. Yet, this severe privacy violation again unfolds to other

34 SEE LIEVENS, E. et al. The child right to protection against economic exploitation in the digital world. In: *Committee on the Rights of the Child*, May 2019. p. 1-6. Available at: <https://www.ohchr.org/Documents/HRBodies/CRC/GCChildrensDigitalEnvironment/OtherStakeholders/EvaLievensSimonevanderHofetal.pdf>. Accessed on: Sep. 25, 2020; UNICEF. Children and Digital Marketing: Rights, risks and responsibilities – Discussion Paper, 2018. Available at: https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-_Rights_Risks_and_Responsibilities.pdf. Accessed on: Sep. 25, 2020.

35 ZHAO, F.; EGELMAN, S.; WEEKS HM.; KACIROTI, N.; MILLER, AL.; RADESKY, JS. Data Collection Practices of Mobile Applications Played by Preschool-Aged Children. In: *JAMA Pediatr.* Published online Sep. 8, 2020. Available at: <https://jamanetwork.com/journals/jamapediatrics/article-abstract/2769689>. Accessed on: Sep. 25, 2020.

36 GARDE, Amandine. et. al. Submission to the Committee on the Rights of the Child in view of their intention to draft a General Comment on children's rights in relation to the digital environment (May 2019). Personalized marketing, p. 2. Available at: https://www.ohchr.org/EN/HRBodies/CRC/Pages/Submissions_Concept_GC_Digital_Environment.aspx. Accessed on: Sep. 25, 2020.

threats to children's full development, health, and well-being, in frontal opposition to their best interests.

Children are particularly vulnerable to any kind of marketing communication targeted at them. Researches and studies suggest that children up to 6-8 years old do not differentiate between advertising and content, nor do they have the necessary judgement to distinguish fiction from reality and, until they are 12, do not understand the persuasive nature of advertising, what makes them easily influenced by or not able to resist this type of commercial strategy.³⁷ This is one of the ground reasons why all marketing strategies aimed at children under 12 years old are anti-ethical and hence shall be considered abusive.

As for marketing based on personal data and microtargeting, children's vulnerability increases significantly – and this vulnerability, in different forms, covers the developmental phase that children from ages 0 to 18 years old go through.³⁸

Indeed, it is hard for anyone to comprehend the extent and depth of the persuasive tactics used by marketers when manipulative psychological techniques are coupled with algorithms that calculate the perfect advertisement to show next.³⁹ There is an unprecedented degree of asymmetry between the persuasive tactics used and the ability of a child to comprehend and resist to them, what makes children highly susceptible to sophisticated marketing techniques of companies whose primary goal is to profit from them, to build brand loyalty since their early age⁴⁰ and force them to influence their families on consuming decisions.⁴¹

37 DE LA TAILLE, Yves. A publicidade dirigida ao público infantil. Considerações psicológicas. In: *Contribuição da Psicologia para o fim da publicidade dirigida à criança*. Brasília: Conselho Federal de Psicologia, 2008. Available at: https://site.cfp.org.br/wp-content/uploads/2008/10/cartilha_publicidade_infantil.pdf. Accessed on: Sep. 25, 2020.

38 EUROPEAN COMMISSION. *Study on the impact of Marketing Through Social Media, Online Games and Mobile Applications on Children's Behaviour*, European Union, Mar. 1, 2016. Available at: https://ec.europa.eu/info/publications/study-impact-marketing-through-social-media-online-games-and-mobile-applications-childrens-behaviour_en. Accessed on: Sep. 24, 2020.

39 GLOBAL ACTION PLAN. Kids for Sale: online advertising & the manipulation of children. p. 5. London, s/d. Available at: https://www.globalactionplan.org.uk/files/kids_for_sale.pdf. Accessed on: Sep 25, 2020.

40 Idem.

41 Research indicates children influence 80% of families' consumption decisions. Source: TNS/INTERSCIENCE. Como atrair o Consumidor Infantil, atender expectativas dos Pais e ainda, ampliar as vendas. Out. 2003. Available at: <https://criancaeconsumo.org.br/wp-content/uploads/2014/02/Doc-09-Interscience.pdf>. Accessed on: Sep. 25, 2020.

Thereby, the American Academy of Pediatrics recently issued a new policy statement expressing “concern about the practice of tracking and using children’s digital behaviour to inform targeted marketing campaigns, which may contribute to health disparities among vulnerable children or populations.”⁴²

Besides, when heard about the presence of advertising in the digital universe, children express wide discontent and annoyance. In 2016, a study conducted by the Research Group on the Relationship between Childhood, Youth and Media (GRIM, in Portuguese Grupo de Pesquisa da Relação Infância Juventude e Mídia) of the Brazilian Federal University of Ceará (UFCE)⁴³ evidenced children’s negative perception in relation to the great amount of advertising displayed in physical and virtual environments they participate in, especially when commercial ads interrupt their moments of leisure:

There is a lot on YouTube, also before the video starts playing, there is advertisement (girl, public school, Brasilia);

Anywhere on the computer has advertising. (boy)

A lot! (girl, private school, Brasilia)

A lot! (boy)

Wow! (boy)

Lots of. (various, private school, Fortaleza);

I don’t like it. (boy)

It disturbs even the movies, in the best parts... (girl);

I go into settings on Google and Google doesn’t take it away. It’s horrible, because in the best part of movies and series it’s horrible, because it ends in no time, right. (girl)

Many. (girl, public school, São Paulo);

Yes. Several! (private school, São Paulo);

Only when it makes me angry then I change. (girl)

42 RADESKY, Jenny; CHASSIAKOS, Yolanda R.; AMEENUDDIN, Nusheen; NAVSARIA, Dipesh; COUNCIL ON COMMUNICATION AND MEDIA. Digital Advertising to Children. *Pediatrics*, Jul. 2020, 146 (1). Available at: <https://pediatrics.aappublications.org/content/146/1/e20201681>. Accessed on: Sep. 24, 2020.

43 Research Group on the Relationship between Childhood, Youth and Media (GRIM). Publicidade infantil em tempos de convergência [Advertising to Kids in times of convergence]. Universidade do Ceará, 2016. Available at: https://www.defesadoconsumidor.gov.br/images/manuais/publicidade_infantil.pdf. Accessed on: Sep. 25, 2020.

MODERATOR: *And on YouTube, is there advertising?*

Yes. (several)

There is soooo much! (boy, public school, Rio Branco).⁴⁴ [free translation]

The study also shows that children often fail to identify the message as advertising persuasion.

Moreover, marketing to children intensifies problems that jeopardize child development such as obesity and chronic non-communicable diseases (NCDs), family stress, violence, early binge drinking and smoking habits, unsustainable consumption behaviours, gender stereotypes and precocious eroticism, materialistic values and several impacts on the enjoyment of cultural rights.⁴⁵ That is, children's exposure to marketing, as a consequence of the violation data based business models presents to their right to privacy, might impact on the fulfilment of other dimensions of their development, such as health, culture and leisure, in direct opposition to the principle of children's best interests.

Ultimately, cost benefit estimates in Brazil show that the enforcement of the restriction of marketing to children under 12 years old could have important social and economic benefits, resulting in a physically and psychologically healthier population with positive economic results ranging from \$61 to \$76 billion after 15 years of a full ban,⁴⁶ what only reinforces the relevance of restraining data driven advertisement targeted to all children, from 0 to 18 years old.

44 Children's opinions about access to marketing and advertising on digital environments collected by the research referenced above, on page 52.

45 CRIANÇA E CONSUMO. Consumismo infantil – um problema de todos [Child consumerism - Everyone's problem], s/d. Available at: <http://criancaeconsumo.org.br/consumismo-infantil/>; WHO. Set of recommendations on the marketing of foods and non-alcoholic beverages to children. Geneva, World Health Organization, 2010. Available at: <http://www.who.int/dietphysicalactivity/publications/recsmarketing/en/>; WORLD HEALTH ASSEMBLY RESOLUTION WHA63.14. Marketing of food and non-alcoholic beverages to children. A/HRC/26/31. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. Available at: <https://undocs.org/A/HRC/26/31>; And: UNICEF. The Children's Rights and Business Principles. 2014. Available at: https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf; A/69/286. UNITED NATIONS. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. Available at: <https://undocs.org/A/69/286>; and Green Chemistry, Sustainability and Education Research Group (GPQV) from the University of São Carlos, commissioned by Instituto Alana. Plasticized childhood – The impact of plastic toy advertising to children on their health and the environment. Available at: https://criancaeconsumo.org.br/wp-content/uploads/2020/07/cc_infancia-plasticada_ingle%CC%82s_final.pdf. Accessed on: Sep. 24, 2020.

46 THE ECONOMIST INTELLIGENCE UNIT; INSTITUTO ALANA. The impacts of banning advertising directed at children in Brazil, 2017. Available at: http://criancaeconsumo.org.br/wp-content/uploads/2014/02/TheEconomist_EN.pdf. Accessed on: Sep. 24, 2020.

2.1.3 The commercial exploitation in educational services and platforms

Furthermore, it is known that a number of large tech companies that lead data driven business models also operate in the education field (EdTechs), offering schools and public management divisions solutions such as educational digital platforms and data processing and storing services. In the break of the Covid-19 pandemic in Brazil, these private actors rapidly signed several free partnerships with education secretariats for the implementation of their products,⁴⁷ which are now being used by millions of students just in Brazil. Google only was responsible for 84% of the systems implemented for public schools on remote learning, considering all 27 Brazilian states and its capital cities.⁴⁸

The education sector leads the ranking of Brazilian start-ups,⁴⁹ which is also mostly established on top of this predatory data collection model. Yet under the cloak of innovation, companies have argued that the future of education lies in using data to create personalized versions of content in a kind of “Netflix” education⁵⁰ – what could pose severe threats to children’s rights. Moreover, this kind of information raises concerns about the commercial exploitation of educational activities, inserted in the surveillance capitalism structures, which gain more sensitive outlines when, as indicated before, regarding the predatory collection and treatment of children’s data.

The sensitivity of the issue is raised by the nature of education itself – intended as children’s utmost autonomous right, as emancipatory in different ways, including socioeconomically.

47 MONTAGNER, Camila. Secretarias de educação entregam alunos de bandeja como clientes para gigantes da tecnologia. *Lavits*, Rede Latino-Americana de Estudos sobre Vigilância Tecnologia e Sociedade, Aug. 20, 2018. Available at: <http://lavits.org/secretarias-de-educacao-entregam-alunos-de-bandeja-como-clientes-para-gigantes-da-tecnologia/?lang=pt>. Accessed on: Sep. 24, 2020.

48 LIMA, Stephane. *Educação, Dados e Plataformas* – análise descritiva dos termos de uso dos serviços educacionais Google e Microsoft, p. 9. São Paulo: Iniciativa Educação Aberta, 2020. Available at: <https://www.aberta.org.br>. Accessed on: Sep. 24, 2020.

49 ASSOCIAÇÃO BRASILEIRA DE STARTUPS. Mapeamento Edtech. Investigação sobre as tecnologias educacionais no Brasil, 2018. Available at: <https://www.cieb.net.br/wp-content/uploads/2018/08/Mapeamento-de-Edtechs-FINAL.pdf>. Accessed on: Sep. 24, 2020.

50 GRATÃO, Paulo. A educação pós-pandemia terá análise de dados e ensino personalizado. *Revista Pequenas Empresas & Grandes Negócios*, 23 jul. 2020. Available at: <https://revistapegn.globo.com/Startups/noticia/2020/07/educacao-pos-pandemia-tera-analise-de-dados-e-ensino-personalizado.html>. Accessed on: Sep. 24, 2020.

It is not in vain that the UN Special Rapporteur in the field of Cultural Rights Farida Shaheed explicitly recommends banning “all commercial advertising in public and private schools, ensuring that curricula are independent of commercial interests.”⁵¹

Therefore, it is fundamental for the safeguard of children’s best interests and children’s right to privacy and to a full development that they are protected from the commercial exploitation of educational activities – that could become, if it is not already, a striking reality as the use of data based products and services in educational contexts advances.

2.2 The insufficiency of the consent and age verification approaches

Of course, based on all the issues mentioned above, the empowerment of citizens and the dissemination of digital literacy and safety knowledge are substantive and should be stimulated. The same applies to the enforcement of parental and families’ clarified consent on the collection and use of their children’s data and of age verification approaches.

The problem, however, is that media literacy, consent and age verification standards are often offered as solutions to the pervasive data extraction practices, which they aren’t, especially considering that their outcomes are not instantly perceivable, as well as that opt out of data extraction and profiling choices are not offered in many cases.⁵² Also, not consenting to tech companies’ terms of use and privacy policies, in many cases, is not a real option for most citizens – think of the use of educational platforms in the remote learning context of Covid-19, for example.

⁵¹ UNITED NATIONS, Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. Aug. 8, 2014. Available at: <https://undocs.org/A/69/286>. Accessed on: Sep. 24, 2020.

⁵² GARDE, Amandine. et. al. Submission to the Committee on the Rights of the Child in view of their intention to draft a General Comment on children’s rights in relation to the digital environment (May 2019). Personalized marketing, p. 5. Available at: https://www.ohchr.org/EN/HRBodies/CRC/Pages/Submissions_Concept_GC_Digital_Environment.aspx. Accessed on: Sep. 24, 2020.

Furthermore, truth be told, terms of use and privacy policies that internet and technology users must consent tend to be inaccessible to most languages and reading skills.⁵³

And even if those documents were rewritten to a better understanding language – what they should be –, children are individuals with evolving capacities who, therefore, have significant obstacles to distinguish in every situation what is best for themselves or fully understand the long term damages the misuse or mistreat of their personal information and intimacy rights may cause. The consideration of age verification and consent standards as the main tools to promote children’s protection, thus, are unfair.

This unfairness is increased in contexts of multiple childhoods and structural inequalities, which struggle against a number of digital inequalities, as reported above; where digital literacy and safety are not widespread; and where not all parents and families have the means to assist children on their internet navigation and teach them on how to protect their rights in the face of predatory data based business models.

Plus, it is also very important to point out that families and children themselves are not the only agents responsible for their own safety and development, and that the relation between users and tech companies is not in any way horizontal or equal.

The Convention on the Rights of the Child establishes that all the decisions made by States and by private actors, such as business enterprises in the digital environment, should always consider children’s evolving capacities, their best interests and the promotion and protection of all their rights.⁵⁴

In summary, the consent and age verification standards must be better balanced with other directives to maximize the promotion of children’s rights. In other words, they are no substitutes for a robust regulatory framework aimed at reducing the exposure of children to all forms of harmful data collection, profiling, and micro-segmentation techniques’ targets.

⁵³ HARTUNG, Pedro. The Children’s rights-by-design (CRbD) standard for data use by tech companies. Unicef Data governance working group, 2020 (in press).

⁵⁴ OHCHR, CRC, 1989. “Article 3: 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

And, of course, even if they are adequately put into practice, companies are not allowed to violate children's human rights. In fact, regardless of any kind of consent or age verification standard, all actors are obliged to act in order to fulfil children's best interests and to provide special attention to children inserted into vulnerable scenarios.

2.2.1 The children's rights-by-design standard

In order to protect all children's right to privacy and to a full development in search for their best interests, the children's rights-by-design standard arises, supported by the scope of the Convention on the Rights of the Child.⁵⁵

The children's rights-by-design approach demands that all actors, including private ones and thus tech business enterprises, digital platforms, apps, connected devices accessed by children – even if not primarily targeted to them –, as well as methods, algorithms and tools needed to endow autonomous agents with the ability to reason about decisions concerning children and their evolving capacities, from design and conception up to the execution phase.

Specifically, as addressed by the present topic of this contribution, the children's rights-by-design standard grants that data driven business models shall not predatorily exploit children's data. As doing so, they pose threats to children's right to privacy, safety and freedoms, and may promote discriminatory and commercial exploitation practices, including in the course of educational activities, which may seriously jeopardize children's development in different ways and levels, and directly contribute to the reinforcement and deepening of children's vulnerabilities in contexts of structural inequalities.

Moreover, the children's rights-by-design standard translates into the following specific recommendations for actors who operate the digital environment and somehow deal with children's data⁵⁶:

⁵⁵ HARTUNG, Pedro. The Children's rights-by-design (CRbD) standard for data use by tech companies. Unicef Data governance working group, 2020 (in press).

⁵⁶ For detailed information see reference above.

- ✿ Integrate the Convention on the Rights of the Child provisions into all appropriate corporate policies and management processes.
- ✿ Use an interdisciplinary perspective to achieve the best interests of the child.
- ✿ Universal adoption of the best technology and policy available.
- ✿ Due diligence of policies and community standards.
- ✿ Data minimization.
- ✿ Children's full ownership of their data.
- ✿ Commercial-free digital spaces.
- ✿ Promotion of meaningful and non-monetizable experiences.
- ✿ Nudge techniques in the best interest of the child
- ✿ Safety standards.
- ✿ Default high-privacy settings.
- ✿ Parental controls and mediation: children should have age appropriate and transparent information about how it works and how it affects their privacy.
- ✿ Right use, play and participate without data collection: options free from children's data processing.
- ✿ Promotion of children's right to disconnect.
- ✿ Adoption of Children's Data Protection Impact Assessments.
- ✿ Detrimental use of data: processing children's data should be always in their best interests.
- ✿ Transparency, accessibility and legibility of terms of use and privacy policies.
- ✿ No data sharing.

Ultimately, we hereby recommend the acknowledgement that children's data collection for profiling and micro-segmentation commercial purposes – which is any form of automated processing of personal data that consists on applying a "profile" to a child, particularly in order to take decisions concerning the child or to analyse or predict his/her personal preferences, behaviour and attitudes in order to insert them in persuasive design strategies, should be prohibited.

3

The collection of children biometric data in public services

In the last few years, the use of biometric data in public services has increased in Brazil. New technologies have been incorporated in citizens' everyday lives, from birth (through biometric registration of the new-born) through life, as by means of monitoring and facial recognition in public schools, public spaces, public transportation, public health facilities, etc.

For ages, in the name of promoting children's health and the development of education, childhood has been subjected to close monitoring by government authorities (LUPTON; WILLIAMSON, 2017)⁵⁷. The development of new technologies has allowed the massive collection of personal data information and monitoring children's lives. Even though this kind of technology may present potential benefits – such as preventing cases of illegal adoption and child abduction, for example –, it raises concerns about the risks associated with the use of biometric technologies and how it can affect children's privacy (UNICEF, 2019)⁵⁸, especially those that rely on public policies for the exercise of rights. Usually, the public debate on biometric data in Brazil diverges from the international discussion. Public authorities argue that biometric identification, even a child's biometric ID, is central to social welfare programs, fraud prevention, de-bureaucratization, modernization, and citizenship consolidation (KANASHIRO, 2011)⁵⁹. There is still little debate on potential privacy risks linked to the extensive use of biometric data in public policies, especially on children's privacy.

57 LUPTON, Deborah; WILLIAMSON, Ben. (2017). The datafied child: The dataveillance of children and implications for their rights and implications for their rights. In: *New Media & Society*. 2017;19(5):780-794. Available at: <https://journals.sagepub.com/doi/full/10.1177/1461444816686328>. Accessed on: Sep. 24, 2020.

58 UNICEF. *Faces, fingerprints and feet: Guidance on assessing the value of including biometric technologies in UNICEF-supported programs*. UNICEF: 2019.

59 KANASHIRO, M. (2011). Biometria no Brasil e o Registro de Identidade Civil: novos rumos para identificação, p. 81. Available at: https://teses.usp.br/teses/disponiveis/8/8132/tde-23042012-120515/publico/2011_MartaMouraoKanashiro_VOrig.pdf. Accessed on Sep. 24, 2020.

Even though there is no specific definition of biometric data in Brazilian legislation,⁶⁰ our General Data Protection Law considers biometric data as sensitive data. This kind of data is subject to restrictive processing conditions. The use of sensitive personal data requires “specific and detached consent, for the specific purposes” (article 11). However, for the public administration’s execution of public policies provided in laws or regulations, the law allows the processing of sensitive data without consent from the data subject.

In Brazil, the processing of children’s and adolescents’ data is subjected to a particular regulatory regime. According to the General Data Protection Law, the processing of data belonging to children and adolescents “shall be done in their best interest” and processing children’s data “shall be done with specific and highlighted consent given by at least one of the parents or the legal representative”. Consent may be waived for the children’s data collection when necessary to contact parents or for their protection, but the data may not be transferred to third parties. To the law, a child is a person below 12 years old, and an adolescent is a person between 12 and 18 years old.

In this section, we will discuss the incorporation of these new biometric technologies in public policies in Brazil and the impacts of their expansive use on children’s privacy.

3.1 Birth registration

In 2018, the Ministry of Health issued the ordinance n° 248,⁶¹ which makes mandatory the hand identification of all Brazilian new-borns and the mother’s biometric identification. The ordinance was a request by the National Council of Justice (Conselho Nacional de Justiça – CNJ). According to CNJ,⁶² the purpose of the new registration is to start collecting

60 The Decree n° 10.046/2019, which institutes the Citizen’s Base Register, provides the following definition of biometric “attribute”: “measurable biological and behavioural characteristics of the natural person that can be collected for automated recognition, such as the palm of the hand, fingerprints, retina or eye’s iris, face shape, voice and way of walking” (Art. 2º, II).

61 BRASIL. MINISTÉRIO DA SAÚDE. Portaria n° 248, de 2 de fevereiro de 2018. *Diário Oficial da União*. Available at: http://bvsms.saude.gov.br/bvs/saudelegis/gm/2018/prt0248_05_02_2018.html. Accessed on: Sep. 26, 2020.

62 ANDRADE, Paula. CNJ e Ministério da Saúde tornam obrigatória a biometria de recém-nascidos. *Agência CNJ de Notícias*, 7 fev. 2018. Available at: <https://www.cnj.jus.br/cnj-e-ministerio-da-saude-tornam-obrigatoria-a-biometria-de-recem-nascidos/>. Accessed on: Sep. 26, 2020.

data for the National Civil Identification⁶³ from birth, thereby expanding to the national database. Besides, this kind of registration would help to prevent children's disappearance and human trafficking. The ordinance stemmed from a Federal District program called "Little Citizen", created by the District Law n°. 5.804/2017.

Some Brazilian hospitals started to implement biometric registration; the first was the Military Police Hospital, in the state of Minas Gerais.⁶⁴ The biometric system collects data from the new-born's palm while still in the delivery room. It is automatically linked to the mother or legal guardian's data and sent to the Live Births Declaration. Without the biometric registration, the new-born can't leave the maternity hospital.

A Brazilian company called Griaule developed the biometric system implemented in the Military Police Hospital. Besides the biometric birth registration, Griaule is also responsible for implementing biometrics in Brazilian voter ID, the biometric identification of Caixa Econômica Federal⁶⁵ cash machines, and is also used by a few state law enforcement agencies for forensic investigation. According to João Weber, Griaule's director, "almost the entire [Brazilian] population has had contact with our technology. Sometimes without knowing."⁶⁶

Other states in Brazil have been implementing biometric birth registration. In Goiás, the healthcare system for government employees called Ipasgo⁶⁷ launched the program Ipasgo Baby. Through biometric birth registration in the maternity hospital, it would automatically include the new-born in the healthcare system. This program was developed with the Department of Public Safety and the Court of Appeals of Goiás.

63 The National Civil Identification (Identificação Civil Nacional – ICN), created by Law n° 13.444/2017 is a unique national identity card. This document would gather civil and biometric information of citizens with an electronic chip and photo. Supposedly, this unique identity card would "generate savings and reduce fraud". ICN hasn't yet been implemented in Brazil (Available at: <https://www.gov.br/casacivil/pt-br/assuntos/noticias/2017/maio/temer-sanciona-lei-da-identificacao-civil-nacional>. Accessed on: Sep. 26, 2020).

64 DA SILVA, Douglas V. da. Hospital mineiro usa biometria para registrar bebês recém-nascidos. *Tecmundo*, May 12, 2019. Available at: <https://www.tecmundo.com.br/software/141089-hospital-mineiro-usa-biometria-registrar-bebes-recem-nascidos.htm>. Accessed on: Sep. 26, 2020.

65 BRASIL. CAIXA ECONÔMICA FEDERAL. Caixa Econômica Federal is a government-owned bank. It is the third largest financial institution in Brazil. Available at: <http://www.caixa.gov.br/site/english/About-Caixa/Paginas/default.aspx>. Accessed on: Sep. 26, 2020.

66 GOMES, Helton Simões. No rastro do terror. *UOL/Tilt*, June 5, 2020. Available at: <https://www.uol.com.br/tilt/reportagens-especiais/tecnologia-brasileira-para-pegar-terroristas/#page2>. Accessed on: Sep. 26, 2020.

67 The Institute of Social Security and Assistance for Employees of the State of Goiás (in portuguese, Instituto de Previdência e Assistência dos Servidores do Estado de Goiás – Ipasgo) was created by Law n° 4.190/1962.

The biometric database of new-borns will be included in the Civil Police biometric identification database.⁶⁸ According to Ipasgo's president, the purpose of the program is to prevent illegal adoptions, child exchanges and to “ensure greater security in the process of identifying new-borns, as well as in the Civil Police's biometric identification database, which will increase the likelihood of resolving future inquiries”.⁶⁹

We also registered, in Brazil, the first blockchain certificate in the world. In 2019, a baby born at the São José Health House in Rio de Janeiro was registered on a blockchain through biometric identification during a pilot project. To make it possible, the 5th Civil Registry of Natural People and the Health House partnered with Growth Tech's Notary Ledgers network, which provides registry services through the IBM blockchain system. The blockchain certificate also held a biometric facial recognition of the baby.⁷⁰

The main argument mobilized by those who defend the biometric registration of new-borns concerns fraud prevention. According to this reasoning line, the biometric registration would prevent illegal adoptions⁷¹ – popularly known as “Brazilian style adoption” (adoção à brasileira) –, in which the adoptive family registers a child without due legal process. Frequently, the adopting family registers the baby as their biological child. The biometric technology would also prevent the abduction, sale, or trafficking of children. Besides the allegations concerning fraud prevention, another argument mobilized in favour of biometric birth registration is that it could combat unnecessary bureaucracy in children's birth registration, making it faster and easier.

Even though the concerns about frauds on child registration, illegal adoptions, and the prevention of the abduction, sale, or trafficking of children are legitimate, the extension of the biometric birth registration programs in Brazil raises serious questions. Here are some of them:

68 IPASGO. Projeto Bebê Ipasgo beneficia recém-nascidos em Goiânia. *Ipasgo*, s/d. Available at: http://www.ipasgo.gov.br/web/home/site/-/asset_publisher/D8L0LNGSforh/content/id/13604104. Accessed on: Sep. 26, 2020.

69 IPASGO. Governo de Goiás lança projeto inédito de cadastro de recém-nascidos ao Ipasgo. *Ipasgo*, s/d. Available at: http://www.ipasgo.gov.br/web/home/site/-/asset_publisher/D8L0LNGSforh/content/id/13493321. Accessed on: Sep. 26, 2020.

70 TILT. Brasil registra 1º bebê de forma digital, por meio de tecnologia blockchain. *UOL/TILT*, Oct. 10, 2019. Available at: <https://www.uol.com.br/tilt/noticias/redacao/2019/10/30/brasil-tem-1o-registro-digital-de-bebe-blockchain.htm>. Accessed on: Sep. 26, 2020.

71 PAZ, J.; TEIXEIRA, S. The need for the biometric registry of the parturient and the newborn. In: *Interfaces Científicas*, 2018, v. 6, nº 2, p. 35-46.

(i) UNEQUAL EXPOSURE TO BIOMETRIC DATA COLLECTION, UNEQUAL DISTRIBUTION OF PRIVACY.

The technology is being incorporated first and foremost in facilities that carry out public policies, and in a non-optional way. That is, the collection of biometric data has been constituted as a condition of access to services and the exercise of rights. This impacts mainly children who rely on these policies for their full development.

(ii) FAILURE TO COMPLY WITH PURPOSE LIMITATION AND DATA MINIMIZATION.

I.e., the adequacy, relevance, and necessity of biometric data to effectively avoid such practices – if that is indeed the specified purpose. As mentioned, in the implementation of the biometric birth registration, public authorities argue that the biometric identification would help prevent fraud and other crimes, but also “expand the national biometric database” and “the Civil Police biometric identification database.”

According to the Brazilian law, sensitive data should be processed only if it is in the best interest of the child and the purpose could not reasonably be fulfilled by other means, i.e., when the processing is indispensable for the implementation, by the public administration, of public policies provided by laws or regulations (LGPD, art. 11, II, b). International studies indicate that the prevalence of child abduction in maternity hospitals is not high and can be prevented by facility policies and procedures, such as the use of secure numbered bands in the baby and mother, the implementation of security tags or abduction alarm systems, the identification of the staff in direct contact with children, the access control to the facility, etc. The choice of adopting such invasive technologies to children’s data and privacy without solid evidence of adequacy, necessity, their short and long term benefits, fail to fulfil the children’s best interests.

(iii) LACK OF TRANSPARENCY AND SECURITY SAFEGUARDS.

As parents and legal representatives’ consent are dispensed and the biometric identification is not optional where it has been established, there are doubts on whether information relating to the processing is made easily accessible. Moreover, the lack of transparency regarding the protocols on data security and data sharing between other government agencies and private entities leaves doubts about the adequate protection of this data, which, by the way, if improperly accessed, may even facilitate the practices it aims to avoid.

3.2 Digital education policies

3.2.1 Facial recognition and biometrics in school presence checks

Since 2011,⁷² Brazilian public authorities have been implementing facial recognition technology in public policies, focusing mainly on four areas: education, transport, border control, and public security. In the educational field, schools have been using facial and biometric recognition to monitor students, professors, and school employees' presence checks.

In 2014, the Municipal School Antônio Inácio Furtado Polo, in Mato Grosso do Sul state, implemented the Digital School Attendance program, in which a sensor identifies the students through facial recognition.⁷³ The student attendance is automatically confirmed, and the information is sent to a data centre. At this school, the program also checked the professors' and employees' presence, and the data about their attendance is sent to the Ministry of Education. At the time of implementation, the possibility of integrating Digital School Attendance with the social welfare program Bolsa Família⁷⁴ and with the Tutelary Council was present, but it never happened.

Several municipal schools,⁷⁵ in different states, replicated the attendance-checking model and implemented facial recognition systems. These programs recognize the students' facial biometric data and associate it with

72 INSTITUTO IGARAPÉ. Reconhecimento facial no Brasil. *Instituto Igarapé*, s/d. Available at: <https://igarape.org.br/infografico-reconhecimento-facial-no-brasil/>. Accessed on: Sep. 26, 2020.

73 CORREIO DO ESTADO. Figueirão implanta sistema de reconhecimento facial em escola. *Correio do Estado*, Campo Grande, Jul. 29, 2014. Available at: <https://correiodoestado.com.br/cidades/figueirao-implanta-sistema-de-reconhecimento-facial-em-escola/223423>. Accessed on: Sep. 26, 2020.

74 Bolsa Família is a social protection program that, through a conditional cash transfer model, provides financial aid to families that live in poverty and extreme poverty. Beneficiary families must ensure that their children attend school and are vaccinated. The Bolsa Família program reaches, nowadays, 13.1 million families (or 40.8 million people).

75 In 2015, the Municipal School Anapolino de Faria, in Anápolis, state of Goiás, implemented the facial recognition system (Available at: <http://g1.globo.com/goias/noticia/2015/05/escola-adota-reconhecimento-facial-para-controlar-frequencia-de-alunos.html>). Accessed on: Sep. 26, 2020.) Similarly, schools in Jaboatão, state of Pernambuco, and in Nova Venécia, state of Espírito Santo, joined the facial recognition attendance checks (Available at: <https://g1.globo.com/pernambuco/noticia/escolas-municipais-de-jaboatao-adoptam-reconhecimento-facial-para-controlar-frequencia-de-alunos.ghtml>; <http://reconhecimentofacial.com.br/2018/04/06/escolas-de-nova-venecia-usam-reconhecimento-facial-para-controlar-frequencia-e-desperdicio-de-merenda/>. Accessed on: Sep. 26, 2020.). In 2020, 29 municipal schools, only in the city of Itapetinga, Pernambuco, had already implemented the facial recognition systems (Available at: <https://www.diariodoaco.com.br/noticia/0075842-sistema-de-reconhecimento-facial-ja-funciona-nas-escolas-de-ipatinga>. Accessed on: Sep. 26, 2020.).

other personal information the school holds, such as the student's name, home address, name and phone number of the legal guardians, and student performance data. Parents receive an electronic report about their child and get notifications in case of absence.

Public authorities justify the implementation of facial recognition technologies for monitoring attendance based on three main arguments:

(i) FOR SECURITY PURPOSES: parents are assured that their children are at school, and students are prevented from leaving school without authorization.

(ii) TO MAKE ATTENDANCE MONITORING SIMPLER: professors would be saved the burden of checking attendance themselves, which, according to education policy managers, takes about 15 minutes of class time.

(iii) TO AVOID WASTING FOOD: since schools can count and predict the exact number of meals to prepare.

3.2.2 Biometric recognition in admission test for colleges and universities

Admission to public colleges and universities in Brazil is also subject to biometric collection and facial recognition. The National High School Exam, popularly known as Enem, is the main exam for admission in federal universities and it can be used to obtain scholarships and financing in private colleges.⁷⁶ Since 2016, the National Institute of Educational Studies and Research Anísio Teixeira (Inep), a federal agency linked to the Ministry of Education (MEC), that organizes the exam, has been implementing the collection of biometric data from students who undertake the Enem. In 2017, the public notice of the exam established that “the participant who refuses, unreasonably, to collect the biometric data will be eliminated from the exam”.⁷⁷ According to Inep, this measure would prevent other people from taking the exam for participants.

In 2020, Inep announced that Enem would also have a digital version. Starting this year, in addition to the printed tests, Enem will also be applied through digital platforms.⁷⁸ For the validation of a student’s participation in the Digital Enem, facial recognition will be used. According to Camilo Mussi, director of Information Technology and Educational Information Dissemination at Inep, for the safety of the test, there will be a lot of “encryption layers.”

However, no information was given regarding data processing. Inep did not communicate publicly what would be considered “reasonable refusal” in case of biometric identification or what are the “encryption layers” implemented in its facial recognition system.

In state colleges, such as University of São Paulo (USP) and University of Campinas (Unicamp), facial recognition has been implemented in its

76 With the score obtained in Enem, low-income students can get partial or full scholarships in private universities through the University for All Program (ProUni). Through Student Financing Fund (Fies), low-income students can obtain funding to get into university. Both programs are linked to the Ministry of Education.

77 BRASIL. MINISTÉRIO DA EDUCAÇÃO. Edital nº 13, de 7 de abril de 2017. *Diário Oficial da União*, nº 69, Apr. 10, 2017. Available at: http://download.inep.gov.br/educacao_basica/enem/edital/2017/edital_enem_2017.pdf. Accessed on: Sep. 26, 2020.

78 INEP. Inep aborda Enem Digital em webnário sobre tecnologia. *INEP/MEC*, Jul. 10, 2020. Available at: http://inep.gov.br/web/guest/artigo2/-/asset_publisher/GngVoM7TApe5/content/inep-aborda-enem-digital-em-webnario-sobre-tecnologia/21206?inheritRedirect=false&redirect=http%3A%2F%2Finep.gov.br%2Fweb%2Fquest%2Fartigo%2F3Fp_p_id%3D101_INSTANCE_GngVoM7TApe5%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1%26_101_INSTANCE_GngVoM7TApe5_struts_action%3D%252Fasset_publisher%252Fview. Accessed on: Sep. 26, 2020.

own admission tests. In 2020, University Foundation for Exams (Fuvest), responsible for the USP admission tests, used facial recognition to identify students.⁷⁹ The new system replaced biometric collection. According to Fuvest, facial recognition would enhance security and speed up the identification of students. Similarly, and under the same justifications, Unicamp adopted facial recognition technologies to identify students in the 2020 admission exams.⁸⁰

There are reports of fraud and data breach in these admission tests, especially concerning Enem. However, most frauds are related to test leaking,⁸¹ cheating and electronic transmissions of the answers to participants.⁸² Cases of other people taking the exam for participants – which, according to the exams’ organizers, would justify the use of facial recognition technology – are extremely rare.

Again, even though some of the concerns that justify such measures are legitimate, the massive incorporation of biometric technology in educational policies raises serious questions, as:

(i) UNEQUAL EXPOSURE TO BIOMETRIC DATA COLLECTION, UNEQUAL DISTRIBUTION OF PRIVACY.

Although college admission tests affect all children in a broad spectrum of classes and backgrounds, the absorption of technology in public schools for presence checking disproportionately affects children in socioeconomic vulnerability. As in the previous section, the technology is being incorporated in a non-optional way, as a condition of access to services and the exercise of rights.

(ii) FAILURE TO COMPLY WITH PURPOSE LIMITATION AND DATA MINIMIZATION. I.e., the adequacy, relevance, and necessity of biometric data to effectively avoid the alleged harms – if that is indeed the specified purpose.

79 AGÊNCIA BRASIL. Fuvest usará reconhecimento facial de candidatos no vestibular de 2020. *UOL Educação*, Oct. 30, 2019. Available at: <https://educacao.uol.com.br/noticias/2019/10/30/fuvest-usara-reconhecimento-facial-de-candidatos-no-vestibular-de-2020.htm>. Accessed on: Sep. 26, 2020.

80 G1 Campinas. Unicamp 2020: reconhecimento facial é ampliado para todos os locais de prova durante 2º fase. *G1, Campinas*, Jan. 7, 2020. Available at: <https://g1.globo.com/sp/campinas-regiao/noticia/2020/01/07/unicamp-2020-reconhecimento-facial-e-ampliado-para-todos-os-locais-de-prova-durante-2a-fase.ghtml>. Accessed on: Sep. 26, 2020.

81 In 2009, the Enem entrance exams were stolen from the printing company responsible for printing the tests. (Available at: <https://educacao.uol.com.br/ultnot/2009/10/01/ult105u8763.jhtm>. Accessed on: Sep. 26, 2020.)

82 In 2019, pictures of the exam were published on the internet during the test. (Available at: <https://agenciabrasil.etc.com.br/educacao/noticia/2019-11/enem-imagem-de-prova-que-circula-em-redes-sociais-e-real-diz-inep>. Accessed on: Sep. 26, 2020.)

(iii) LACK OF TRANSPARENCY AND SECURITY SAFEGUARDS.

3.3 Monitoring public spaces and public means of transportation

In different locations, municipal and intercity buses, and subways, and trains have adopted facial recognition technologies, especially for validating tickets.

In Brazil, children under 5 years old⁸³ and people with disabilities have the right to free public transportation and students have the right to a scholar pass.⁸⁴ Beneficiaries must possess an ID card with a pass chip to enjoy such rights. Many cities around Brazil started to implement facial recognition in buses to assert identity and prevent third parties from using the free card pass. When going through the turnstile, if the facial recognition system doesn't match the person with the ID card, the system blocks the card. In some cities, this system failed to identify children with disabilities.⁸⁵ According to parents, the height of the facial recognition camera prevented children from reaching it for identification and, as a result, the ID card was blocked. To unlock the ID card, parents must pay a fee.

In 2018, ViaQuatro, a private company that holds a public-private partnership to operate one of the subway lines in São Paulo, implemented a technology called “Digital Interactive Doors.” That technology recognizes the human presence and identifies emotions, gender, and age of the subway passengers without the subject's consent or any signalling about cameras. It was implemented for advertising purposes, disregarding the General Data Protection Law. After IDEC, a consumer rights organization, filed a lawsuit against ViaQuatro, the Court of Appeals of São Paulo ruled that the company must remove cameras and biometric recognition from

⁸³ Federal Constitution, Article 230, §2°.

⁸⁴ The gratuity for people with disabilities and the right to school pass for students is guaranteed by local authorities, through state and municipal laws.

⁸⁵ G1. Após instalação de biometria facial, crianças portadoras de deficiência não conseguem andar de graça nos ônibus. *G1*, São Paulo, Jul. 26, 2018. Available at: <https://g1.globo.com/sp/sao-carlos-regiao/noticia/2018/07/26/apos-instalacao-de-biometria-facial-criancas-portadoras-de-deficiencia-nao-conseguem-andar-de-graca-nos-onibus.ghtml>. Accessed on: Sep. 26, 2020.

subway stations. ViaQuatro appealed the decision, which is still on trial.⁸⁶ To address children’s privacy, Alana Institute filed an *amicus* brief in the case of ViaQuatro. According to Alana, the Digital Interactive Doors facial recognition system can identify children – adding to the data that the company already holds on students for the scholar pass. Furthermore, since the system is implemented in a public space, it would collect children’s data without legal representative consent. In addition to all these problems, recognizing emotional reactions for advertising violates the principle of a child’s best interest (Convention on the Rights of the Child, Federal Constitution, Article 277 and Data Protection Law, Article 14). Children should not be the object of research for advertising purposes, especially with public authorities’ endorsement.

In 2019, the São Paulo Subway, after a bidding process,⁸⁷ bought a facial recognition system for the amount of R\$58 million. The system would be implemented in three subway lines that would affect approximately 3.7 million passengers.⁸⁸ The technology was purchased without any public discussion about the possible impacts and there was little transparency under the purchase process. IDEC, among other civil rights organizations,⁸⁹ filed a lawsuit⁹⁰ against São Paulo Subway demanding information on the purchase and implementation of the facial recognition cameras. The first instance judge demanded that the Subway reports on system reliability, the motivation for its implementation and what data will be collected and stored. About children’s rights, the court ruled that the Subway must explain “how to obtain consent from parents and guardians of the personal data of children and adolescents.” However, São Paulo did not produce the legally required report and didn’t develop any data protection policy for children and adolescents.⁹¹

86 TJ-SP. Law Case nº. 1090663-42.2018.8.26.0100. Available at: https://esaj.tjsp.jus.br/cpopg/show.do?processo.codigo=2S000WSPS0000&processo.foro=100&uuidCaptcha=sajcaptcha_7bdf6c0f1fc54e94b85347ced6d5ec35. Accessed on: Sep. 26, 2020.

87 METRÔ-SP. Metrô compra Sistema de monitoramento eletrônico com reconhecimento facial. *Metrô-SP*, Jul. 28, 2020. Available at: <http://www.metro.sp.gov.br/noticias/28-06-2019-metro-compra-sistema-de-monitoramento-eletronico-com-reconhecimento-facial.fss>. Accessed on: Sep. 26, 2020.

88 G1. Justiça dá 30 dias para que Metrô de SP esclareça projeto de câmeras de reconhecimento facial. *G1*, São Paulo, Feb. 2, 2020. Available at: <https://g1.globo.com/sp/sao-paulo/noticia/2020/02/12/justica-da-30-dias-para-que-metro-de-sp-esclareca-projeto-de-cameras-de-reconhecimento-facial.ghtml>. Accessed on: Sep. 26, 2020.

89 The law case was filed by State Public Defender ‘s Office, Intervenções, ARTIGO 19 and Coletivo de Advocacia em Direitos Humanos (CADHu).

90 TJ-SP. Law Case nº 1006616-14.2020.8.26.0053. Available at: https://esaj.tjsp.jus.br/cpopg/show.do?processo.codigo=1H000GYSV0000&processo.foro=53&processo.numero=1006616-14.2020.8.26.0053&uuidCaptcha=sajcaptcha_25c09dc4326441728dfa1b389b60dbba. Accessed on: Sep. 26, 2020.

91 IDEC. Metrô não garante segurança de dados de reconhecimento facial em SP. *IDEC*, Jul. 2, 2020. Available at: <https://idec.org.br/noticia/metro-de-sp-nao-tem-garantia-de-seguranca-de-dados-de-reconhecimento-facial>. Accessed on: Sep. 26, 2020.

3.4 Risks and impacts on children privacy

The Brazilian Federal Constitution, promulgated in 1988 after a long dictatorial period, enshrined full protection of children and adolescents, aligned with the provisions of the Convention on the Rights of the Child. Children's rights must be guaranteed by ensuring their best interest and their absolute priority. In this regard, biometrics, if and for it to be implemented, must conform to the children's full protection.

According to the General Data Protection Law, the processing of personal data must comply with the purpose limitation principle, that establishes that processing should be done "for legitimate, specific and explicit purposes of which the data subject is informed, with no possibility of subsequent processing that is incompatible with these purposes" (Article 6, I) and the data minimization principle, which means that the processing of personal data should be done with the "minimum necessary to achieve its purposes, covering data that are relevant, proportional and non-excessive in relation to the purposes of the data processing" (Article 6, III).

Under general and vague justifications, such as "expanding the national database," "fraud and crime prevention," "security purposes and "modernization," "time savings in presence check," and "food saving," Brazilian public authorities have been imposing biometric identification since early ages, without a consistent discussion about data security and the lifelong risks.

The extensive use of biometrics, disregarding the principles above, raises serious concern on children's privacy. These technologies present risks related to identity theft and misuse of personal information, for example. In public services, inaccuracies can hinder individuals' access to services, such as Brazil's public transportation cases. Still, there are risks related to theft or loss of databases, whose risks are even greater in the case of biometric data, since these data are permanently associated with an individual (UNICEF, 2017)⁹². Moreover, the processing of this data is often carried out with the participation of private actors, without the terms of this collaboration being submitted to public scrutiny.

⁹² UNICEF. *Child Privacy in the Age of Web 2.0 and 3.0: Challenges and opportunities for policy*. UNICEF, 2017. p. 8. Available at: https://www.unicef-irc.org/publications/pdf/Child_privacy_challenges_opportunities.pdf. Accessed on: Sep. 26, 2020.

In addition to errors and misuse of data, there are still concerns about legal uses of biometric data. In 2019, president Jair Bolsonaro signed the Decree n° 10.046/2019, that creates Citizen Base Register (in portuguese, Cadastro Base do Cidadão), that allows sharing databases between federal public administration agencies, for the purpose of “simplifying the provision of public services” (Article 1). As previously pointed out by InternetLab studies, this broad access to personal data (that includes biographic, biometric and registration data) by agencies of the federal public administration could reduce “the possibilities of control over who – and for which purposes – accesses data” (FRAGOSO; MASSARO, 2019). This enfeeblement of democratic control of access to personal data presents risks, such as profiling, discrimination, surveillance, and unfair control.⁹³ These risks are even greater with data accumulated over a lifetime, since birth, and in an unequal way. Although Brazil’s multiple childhoods are affected, those that rely most heavily on public policies are submitted to early collection, exposed to the associated risk, and subtracted from the possibility of developing informational self-determination on account of their vulnerability. Thus, implementing biometric birth registration, for instance, implicates strengthening datafication of public policies and a large surveillance state.

The use of biometrics technology may present benefits under some circumstances, but it must be implemented in compliance with data privacy and the best interest of children. That is, the processing of children’s sensitive personal data should be lawful, transparent, including aspects related to risks, rules, safeguards, and rights. The specific purposes should be explicit, determined and aligned with the child’s best interest – and not reasonably be fulfillable by other means; the data should be adequate, relevant, and limited to the absolute necessary. Appropriate security and confidentiality should be ensured, and unauthorized access prevented. A massive biometric identification program, as has been designed in Brazil, seems to fail this test.

⁹³ FRAGOSO, Nathalie.; MASSARO, Heloisa. Cadastro Base e amplo compartilhamento de dados pessoais: a que se destina? *InternetLab*, 2019. Available at: <https://www.internetlab.org.br/pt/privacidade-e-vigilancia/cadastro-base-e-ampl-compartilhamento-de-dados-pessoais-a-que-se-destina/>. Accessed on: Sep. 26, 2020.

4

Children’s sexual, reproductive, and digital rights

4.1 Violence against children and resistance to sex education

4.1.1 A brief contextualization of violence against children formal data

According to the “Human Rights Hotline – Report 2019,”⁹⁴ produced by the federal government, there were 86.837 reports of human rights violations against children in 2018. The primary forms of violations were negligence, psychological, physical, sexual and institutional violence, and labour exploitation. Negligence was the most performed form of violation against children. Furthermore, close family members, such as mother, father, stepfather, and uncle, are the most usual performers of violations against children. This information is compatible with the data about the places where the breaches happen, i.e., victims or suspects’ homes.

The report shows that, while the mothers appeared as the main responsible for negligence (56%), fathers and stepfathers appeared as the primary suspects for sexual violence (40%). The differences between violations perpetrated by men and women are signals of how gender inequalities play out in Brazilian culture.

The victims were 55% female and 45% male; their ages were distributed between 0 to 17 years old. Male victims were concentrated between the ages of 4 and 7, and between 8 and 11 years old. When the victims are female, they distribute uniformly between the ages of 0 to 17. However, the report demonstrated that female children victimization is more visible than male children. When it comes to sexual violence, victims are majorly female (82%).

⁹⁴ BRASIL. Disque direitos humanos – Relatório 2019. *Equipe da Ouvidoria Nacional de Direitos Humanos (ONDH)*, Brasília, Distrito Federal, 2019.

Moreover, black children are 57% of the victims, and white children, 42%. Then, it is possible to point out that gender and racial differences are vital social markers in Brazil, influencing how the different violations are addressed to each group of children.

4.1.2 Sexual education for children and “gender ideology”

According to Santiago (2020), sexual violence against children is related to Brazilian society’s indifference towards children’s right to privacy. Children’s bodies are often treated as public. In some country regions, it is common to show and comment about babies’ genitals, change diapers in public, and force kids to sit on strangers’ laps. Consequently, violent situations are normalized and not perceived as violence.⁹⁵ This kind of behaviour from adults prevents children from constructing self-protection and understanding what violence is (SANTIAGO, 2020).

Despite the data about violence against children, to whom sexual violence is a brutal violation, there is no agreement about teaching sexual and reproductive rights at school.⁹⁶ Recently, the rise of conservative politics placed Brazil’s human rights, including children’s rights, under attack.

In this context, a campaign against what is called “gender ideology” took off. These claims are used by religious activists to prevent the discussion about gender inequalities, including sexual violence, preserve a particular understanding of Christian moral values, and reaffirm the biological determination of sex at birth and heteronormativity (BRANDÃO; CABRAL, 2019).

Since 2014, conservative politicians have proposed several bills at the National Congress and the state legislative houses defending the prohibition of discussing gender and sexuality issues in schools. These bills

⁹⁵ SANTIAGO, Viviana. O combate de violências à infância começa com a educação sexual. *Lunetas*, Aug. 17, 2020. Available at: <https://lunetas.com.br/o-combate-de-violencias-a-infancia-comeca-com-a-educacao-sexual/>. Accessed on: Sep. 17, 2020.

⁹⁶ UNICEF. *Relatório Anual da UNICEF Brasil*. PORTES, Larissa; COSTA, Paula, 15, n. 42, Feb., 2019.

put at risk notions like security, privacy, and children’s human rights.⁹⁷

Moreover, the bills open the possibility that children do not recognize the events as violations. A recent case was exemplary: after a sexual education class, a 9-year-old child reported that her grandfather abused her. The case reinforced the debate in favour of sexual education at schools.⁹⁸

In addition, it is essential to consider that Jair Bolsonaro’s presidency has been reinforcing notions like “gender ideology” and against teaching themes related to gender, diversity, and sexuality in the country’s public schools. Since many of vulnerable children attend public schools, they are the most affected.⁹⁹

4.2 The dispute about reproductive rights and exposure of children’s privacy

Abortion in Brazil is allowed in three cases: when the mother’s life is at risk, when the pregnancy results from rape, and when the fetus has an anencephaly condition (Supreme Court decision in 2012). Still, several bills have been proposed to narrow or obstacle the possibilities of abortion or prohibit its practice altogether by women and children in any case. More

97 At a federal level, at least 14 bills were proposed in the National Congress since 2015 (Bills of Law nº 1859/2015; 2731/2015; 3235/2015; 3236/2015; 5487/2016; 10577/2018; 10659/2018; 1239/2019; 258/2019; 664/2019, 5616/2019; 867/2015; 193/2016 and 246/2019) addressing the prohibition of “gender ideology” in schools. Three of these (Bills nº 867/2015; 193/2016 and 246/2019) were connected to the movement School Without Party (in Portuguese, Escola Sem Partido), that defends a “political, ideological and religious neutrality” in public schools. At state and municipal level, according to a survey conducted by the movement School Without Censorship (in Portuguese, Frente Escola Sem Mordada), between 2014 and 2019, 237 bills defending the prohibition of political, ideological, gender and sexuality issues in schools were proposed (Available at: https://www.escolasemmordaca.org.br/?page_id=4218. Accessed on: Sep. 26, 2020.). The first bill addressing the topic School Without Party was proposed in Rio de Janeiro in 2014 by Flávio Bolsonaro, president Bolsonaro’s son (Bill nº 2974/2014). The discussion about laws and bills regarding “gender ideology” and School Without Party was brought to the Brazilian courts. In 2020, the Federal Supreme Court, in the analysis of ADPF 457, declared a law from Foz do Iguaçu, Paraná state (Law nº 1.516/15), that prohibited school activities and school material that reference “gender ideology” to be unconstitutional (Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=5192888>. Accessed on: Sep. 26, 2020.).

98 G1 PR. Criança denuncia avô por abuso após aula sobre violência sexual no Paraná. *RPC Ponta Grossa*, Mar. 12, 2019. Available at: <https://glo.bo/3c6Nt8C>. Accessed on: Sep. 17, 2020.

99 CORREIO BRAZILIENSE. Bolsonaro diz que vai proibir “ideologia de gênero nas escolas”. *Correio Braziliense*, Brasília, Sep. 3, 2019. Available at: https://www.correio braziliense.com.br/app/noticia/politica/2019/09/03/interna_politica.780561/bolsonaro-diz-que-vai-proibir-ideologia-de-genero-nas-escolas.shtml. Accessed on: Sep. 17, 2020.

specifically, 89 prohibition bills were proposed from 1989 until 2016¹⁰⁰ against only one proposal to decriminalize it since 2011.¹⁰¹

One of those bills is worthy of detailing: n° 478/2007, known as the Statute of the Unborn Child, that grants full legal protection to the unborn child since his conception. According to it, the State or individuals are prevented from causing “any harm to the unborn child due to a criminal act committed by any of its parents” (Article 12), thereby prohibiting the woman’s right to abortion even in rape cases. In pregnancy resulted from rape, the bill establishes that the pregnant woman should receive psychological care and that the child should receive financial support until 18 years old. If the genitor – the man accused of rape – is found, he will be responsible for paying for child support. If unidentified, the State should bear the costs. In cases of sexual violence, if, after birth, the mother puts the child up for adoption, the baby will have a “priority right to adoption.”¹⁰²

The main argument of supporters against abortion is life defence. From their perspective, all children’s lives must be considered, and fetuses, regardless of the gestational age, are understood as children. However, when children are pregnant as a result of rape, a contradiction appears: the fetuses’ life is prioritized over the girl’s, what raises questions over the actual fulfilment of children’s best interests and right to a healthy and complete development.

Recently, a tragic case was an example of the notion of life protection. A 10-year-old girl was pregnant because of a series of rapes committed by her uncle. This child suffered from different acts of violence, including sexual violation, State negligence, and privacy violation. When the pregnancy was discovered, the child told the police that her uncle, a 33-year-old man, had abused her. The abuses started when the girl was 6 years old and she had been afraid of talking about it. The girl’s case fulfilled Brazilian law abortion requirements, but she needed to fly more than

100 CAMARGO, T. M. C. R. *Narrativas de políticas sobre aborto no Brasil: uma análise a partir do narrative policy framework*. Tese de doutorado, USP, São Paulo, 2018.

101 Revista Marie Claire. *Só um projeto de lei propôs a descriminalização do aborto no Brasil na última década*, July 06, 2020. Available from: <https://globo.bo/2FllgsP>. Accessed on September 27, 2020.

102 This bill was reported in July 2017 at the Inter-American Commission of Human Rights of the Organization of American States (OAS) by the Specialized Center for the Promotion and Defense of Women’s Rights and the Feminist Network of Jurists - a group composed of feminist lawyers and judges (Brandão; Cabral, 2019). However, it was re-introduced at the National Congress in 2019, and the Federal Government supports this bill. Huffpost Brasil. *Estatuto do nascituro volta a tramitar na câmara*, December 16, 2019. Available at: https://www.huffpostbrasil.com/entry/estatuto-nascituro-novo-relator_br_5df2916fe4b04bcba1806c29. Accessed on Sep. 17, 2020.

900 miles to another city to undergo the procedure because of her city's hospital denial to do so. The child's personal data was spread on social media by anti-abortion activists. When the child arrived at the hospital to undergo the procedure, she was harassed by religious extremists.¹⁰³ Damares Alves, the above-mentioned Minister of Women, Family and Human Rights, is being investigated for having personally participated in the obstacles created and in the illegal leak of the girl's personal data.¹⁰⁴

4.2.1 The violence against children in a pandemic scenario

If the violation of rights has been part of children's experience in "normal" conditions, there has been an escalation of this problem during the Covid-19 pandemic. Firstly, it is significant to mention that, in September 2020, the majority of Brazilian public and private schools continue to be closed due to the pandemic. The recommendation of the National Council of Education is that each place decide its best way to deal with the problem. On account of the isolation politics, the use of the internet became essential to education, in a context of deep unequal access.¹⁰⁵

As mentioned above, 4.8 million children between 9 to 17 years old don't have access to the internet at home in Brazil. Some of them used to access the internet at school, but that is not possible at this moment because they are closed. Many of those who are connected have only mobile phone access.

More children are spending time only with their families and are closer to those who commit violations against them, such as father, stepfather, uncle, or mother. Moreover, social services responsible for receiving complaints of violence are also closed or underperforming, and therefore children have fewer opportunities to report. According to the Human

103 PHILLIPS, Tom; BRISO, Caio B. Brazil: outcry as religious extremists harass child seeking abortion. *The Guardian*, UK, Aug. 17, 2020. Available at: <https://bit.ly/3c5RGJR>. Accessed on: Sep. 17, 2020.

104 VILA-NOVA, Carolina. Ministra Damares Alves agiu para impedir aborto de criança de 10 anos. *Folha de S.Paulo*, Sep. 21, 2020 (Available at: <https://www1.folha.uol.com.br/cotidiano/2020/09/ministra-damares-alves-agiu-para-impedir-aborto-de-crianca-de-10-anos.shtml>. Accessed on: Sep. 21, 2020.); REVISTA CLAUDIA. MP investiga vazamento de dados no caso da menina estuprada pelo tio. *Revista Claudia*, São Paulo, Aug. 18, 2020. (Available at: <https://claudia.abril.com.br/noticias/mp-investiga-vazamento-de-dados-no-caso-de-menina-estuprada-pelo-tio/>. Accessed on: Sep. 21, 2020.).

105 TOKARNIA, Mariana. CNE autoriza atividades não presenciais em todas as etapas de ensino. *Agência Brasil*, Rio de Janeiro, Apr. 28, 2020. Available at: <https://agenciabrasil.etc.com.br/educacao/noticia/2020-04/cne-autoriza-atividades-nao-presenciais-em-todas-etapas-de-ensino>. Accessed on: Sep. 17, 2020.

Rights Hotline, there has been a decrease in reports during the quarantine – from 1.408 in February 2020 to 1.152 in April 2020. But the data points out to the reduction of reports, not crimes.¹⁰⁶

While the reports decrease, the number of abortions performed on pregnant children who were abused increased. In São Paulo, the largest city of the country, 45% of Pérola Byington Hospital attendance – a hospital responsible for supporting sexual violence victims – was addressed to children under the age of 11. Furthermore, while in the first semester of 2019 there were 190 practices of interrupting pregnancies, in the same period of 2020, 275 abortions were completed in victims of 11 years old.¹⁰⁷

Separately from the violence mentioned above, it is necessary to take into consideration the fact that abuse and sexual violence against children also took place in other ways in this period. Since part of this group spent more time on the internet, they became more susceptible to other violations,¹⁰⁸ such as dissemination of intimate images, paedophilia, and cyberbullying.¹⁰⁹

4.2.2 Security issues in judicial data

According to the Brazilian legislation, the judicial procedure shall be guided by the principle of publicity of trials (Federal Constitution, article 93, XI), decisions and case records (Code of Civil Procedure, Article 189). There are, however, exceptions. In cases that concern children, several rules guarantee the right to privacy in the judicial process, such as the Statute of the Child and Adolescent (articles 70, 100, and 45) and the Law n° 13.431/2017.

Although granted by law, the judicial confidentiality in Brazil has been weakened in the context of a datafied justice. Legal protections are no longer sufficient, and the electronic systems deployed are proving to be inadequate

106 MARTINS, Elisa. Pandemia do coronavírus torna crianças mais expostas à violência. *O Globo*, Aug. 23, 2020. Available at: <https://glo.bo/3mxxp9Bt>. Accessed on: Sep. 17, 2020.

107 OLIVEIRA, Joana. Abortos legais em hospitais referência no Brasil disparam na pandemia e expõem drama da violência sexual. *El País Brasil*, Aug. 30, 2020. Available at: <https://bit.ly/2ZMwrYo>. Accessed on: Sep.17, 2020.

108 BILCHES, William. Alerta aos pais pedofilia virtual aumenta no Brasil em meio a pandemia. *Gazeta do Povo*, May 20, 2020. Available at: <https://www.gazetadopovo.com.br/vida-e-cidadania/alerta-aos-pais-pedofilia-virtual-aumenta-no-brasil-em-meio-a-pandemia/>. Accessed on: Sep. 22, 2020.

109 BRAUN, Julia.; SAMPAIO, Jana. O *cyberbullying* avança entre estudantes brasileiros na quarentena. *Veja*, Aug. 21, 2020. Available at: <https://veja.abril.com.br/educacao/o-cyberbullying-avanca-entre-estudantes-brasileiros-na-quarentena/>. Accessed on: Sep. 17, 2020.

in their design to prevent the leakage of sensitive information. Generally, the case is indexed in the courts' search system, allowing whoever has any other information to de-anonymize the person involved. The decisions can be found – with cover data usually omitted –; perhaps not in the mechanisms of procedural consultation, but in searches of jurisprudence by entering the type of crime, name of the aggressor and case number. It may also be that the decision itself delivers the information when revealing some other personal data that allows identification. Finally, there is no consistency in the anonymization tools and procedures used. For instance, names are covered by stripes that are easily removed by anyone with technological knowledge; names and documents are sometimes hidden in parts of the decision, but not all the times they appear; subpoenas may reveal the name of the aggressor, which easily leads to the name of the victim.

In the previous case mentioned, the 10-year-old girl who suffered sexual violation had the abortion authorized by the Judiciary. Although the judicial confidentiality was applicable and formally in place, her name was exposed on social media, as well as the hospital where the procedure would be performed and the name of the doctor in charge. There are still doubts as to how the access to confidential information was obtained. The case, however, is not an exception.¹¹⁰

Thus, although it is a consensus that children should have intimacy and personal data protected when they are victims or witnesses of violence, the judicial system has not been able to guarantee that in a context of increasing datafication. As a result, vulnerable and already victimized children, including girls who are victims of violence, are exposed and re-victimized by the publicity of the cases.

110 ROVER, Tadeu. Tribunais de Justiça falham no dever de manter o segredo de processos. *ConJur*, Apr. 28, 2018. Available at: <https://www.conjur.com.br/2018-abr-28/tribunais-justica-falham-dever-manter-segredo-justica>. Accessed on: Sep. 26, 2020.

4.3 Threats to intimacy, health, and wellbeing through breaches of privacy

4.3.1 Problems in the legislation and case law on intimate images of children

The non-consensual dissemination of intimate images (NCII), also known by the defective term “revenge porn,” refers to the practice of circulating private sexual photos or videos online – and it is, therefore, a breach of privacy. While it can victimize anyone, it mostly involves the violation of women and girls, making it a gendered kind of violence.

In Brazil, the media and the public opinion raised the issue in mid-2013, the year when, within a week, two teenagers committed suicide after having their intimate images spread across the internet. Since then, a specific intermediary liability rule was approved to tackle such cases (within Brazil’s Civil Rights Framework for the Internet, or, in Portuguese, Marco Civil da Internet, from 2014), and a criminal offense was introduced into the penal code.

When the victim is younger than 18, the criminal case falls under the Statute of the Child and Adolescent (Law n° 8.069/90).¹¹¹ NCII is then prosecuted as child pornography (241-B), a crime that encompasses even the possession of pornographic or explicit sex scenes. Explicit sex scenes are defined narrowly (241-E) as “explicit sexual activities, real or simulated, or exposure of genital organs of a child or adolescent for primarily sexual purposes.”

An InternetLab’s research from 2016 revealed that cases involving children and adolescents were half of the criminal cases in the Court of Appeals of São Paulo. Counterintuitively, the rate of condemnations was far lower than that of adult victims.¹¹²

One of the reasons was that pornography is so narrowly defined that several images that would be considered intimate are excluded from

¹¹¹ BRASIL. Casa Civil. Estatuto da Criança e do Adolescente, Lei n° 8.069/1990. *Diário Oficial da União*, Sep. 27, 1990. Available at: www.planalto.gov.br/CCIVIL_03/leis/L8069.htm. Accessed on: Sep. 26, 2020.

¹¹² VALENTE; M. NERIS, N; RUIZ, J; BULGARELLI, L. (2016). *O Corpo é o Código*. São Paulo: InternetLab, 2016. Available at: <https://www.internetlab.org.br/wp-content/uploads/2016/07/OCorpoOCodigo.pdf>. Accessed on: Sep. 26, 2020.

its scope. Often aggressors would be absolved under the argument of ignorance that the victim was under 18, and therefore the law would not apply to it. Between the lines of legal decisions, it was also possible to read that judges were wary of punishing NCII as child pornography because of how severe and stigmatized that offense is. Such crime raises the imaginary figure of the paedophile, who not necessarily resembles the one who disseminated images of a naked adolescent.

4.3.2 Lack of policies for protection and prevention and class-related obstacles

The same research analysed a case known as the “TOP 10” through a case study in the peripheral districts of Grajaú and Parelheiros, in São Paulo, low-income areas with a low level of public services and facilities. Although it had been a practice for many years “away from the eyes of adults,”¹¹³ it was only in May 2015 that the Brazilian media began reporting on the dissemination of “slut-shaming” lists of adolescents between 12 to 15 years old within schools.

These lists involved videos scoring girls and supposedly describing details of their sexual lives, produced from images of teenage girls downloaded off the internet without their permission, then posted on YouTube or shared on WhatsApp and (less frequently) on Facebook. Videos containing some level of nudity were shared on WhatsApp only, to avoid YouTube’s and Facebook’s take-down policy on nudity. The phenomenon was so widespread that phrases relating to the videos started to appear as graffiti on school walls and led to physical abuse and harassment of the girls depicted.

The media became interested after hearing about suicide attempts in the districts of Parelheiros and Grajaú, and their initiatives to report on the issue led to privacy violations and the renewed infringement of the adolescents and these girls’ rights, because of their lack of concern for truly preserving anonymity. TOP 10 cases pointed out other impacts such as school dropout, depression, moving neighbourhoods, as well as long-term emotional harm to the girls involved.

¹¹³ According to activists from the group “Sementeiras de Direitos” (Rights Sowers) and “Mulheres na Luta” (Women in the Struggle), interviewed in 2015. (Available at: <https://www.facebook.com/sementeirasdedireitos> and <https://www.facebook.com/Mulheres-na-Luta>. Accessed on: Sep. 26, 2020.)

The study also called attention to the absence of instances for counselling and conflict-solving within public schools and health units, and the hardships that victims faced to refer to their families for help due to conservatism. Because of that, classes and school played an important role because of the state's absence in the peripheries, and police violence's pervasiveness. Sexual education comes in again as an essential subject.

Local feminist activists were critical of criminal agendas; they draw attention to the adults' role in incentivizing boys to expose and stigmatize girls, and betted on the power of public campaigns, workshops, and a positive agenda for public policies.¹¹⁴

114 Activists from local feminist collectives, particularly Sementeiras de Direitos (Parelheiros) and Mulheres na Luta (Grajaú) were able to address this by organizing events and public campaigns, betting on the transformative power of public advocacy on gender and sexual rights, and through educational activities and workshops. See, for example: <https://www.facebook.com/411459515662514/videos/570654566409674> , or the photos at: <https://www.facebook.com/media/set/?set=a.1601565713417871.1073741850.1458646637709780>

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Concluding remarks

Considering the foregoing, essentially, this contribution intends to draw attention to a series of current issues and movements that directly affect children throughout the world – and, particularly, Brazilian children. By doing so, our primary purpose is to point out the coexistence of multiple childhoods and the need to thoughtfully consider that actually reaching the goal of perceiving children’s best interests depends on acknowledging that not all children are impacted by actions and omissions in the same way.

It is fundamental to consider that, in contexts of structural inequalities, privacy-related violations affect vulnerable children the most, whatever is the source of this vulnerability: socioeconomic, gender, ethnic/racial, territorial, etc. Thus, it is vital that vulnerable children are taken and considered in their uniqueness by all social actors, who shall take measures for their protection and the promotion of their rights, leaving aside the unfair and exceeded thesis that only children’s families are responsible for their utmost wellbeing.

Ultimately, it is additionally essential to recognize that children’s right to privacy convert into different layers and spheres, as a dynamic concept, relating to children’s commercial exploitation, surveillance and general experiences. In addition, it undoubtedly impacts other arenas of their lives, directly affecting their right to a full development, as provisioned by the Convention on the Rights of the Child, and hence deserves special protection and attention.



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