



A REVERSE CHILD PROTAGONISM: AN ANALYSIS ON LEGAL PROTECTION AGAINST CHILD LABOR IN BOLIVIA

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ABSTRACT

The main objective is to analyze the legal protection against child labor in Bolivia since the approval of the reduction of the legal working age by the "Código del Niño, Niña y Adolescente" that was supported by the social movement called Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO). The guiding problem is the analysis on how the legal protection of human and fundamental rights related to the confrontation of child labor and the protagonism of children and adolescents in Bolivia has been guaranteed since the minimum working age was lowered. Concerning the problem solving, the specific objectives were verifying the universal foundations in Convention on the Rights of the Child of the United Nations, which links the legal system of Bolivia; demonstrating international legal protection against child labor within the framework of the International Labor Organization; and analyzing the reduction of the minimum working age and the participation of the Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO) in this process. The approach method is the deductive and the method of procedure is the monographic, using bibliographic research techniques. As a result, it is noted that the reduction of the minimum working violates the ratified international conventions and constitutional clauses, damaging the integral development of children and adolescents, justifying the declaration of unconstitutionality of the Article 129 of the "Código del Niño, Niña y Adolescente" by the Plurinational Constitutional Court of Bolivia. Furthermore, it is a social backlash and flexibilization of human and fundamental rights.

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KEYWORDS: adolescent. child. child labor. protagonism.

PROTAGONISMO INFANTIL ÀS AVESSAS: ANÁLISE SOBRE A PROTEÇÃO JURÍDICA CONTRA O TRABALHO INFANTIL NA BOLÍVIA

RESUMO

O objetivo geral é analisar a proteção jurídica contra o trabalho infantil na Bolívia a partir da aprovação da diminuição da idade mínima para o trabalho pelo “Código del Niño, Niña y Adolescente”, que foi apoiada pelo movimento social União de Meninos, Meninas e Adolescentes Trabalhadores da Bolívia (UNATSBO). O problema que orienta a análise é como vem sendo garantida a proteção jurídica de direitos humanos e fundamentais relacionados ao enfrentamento do trabalho infantil e o protagonismo de crianças e adolescentes na Bolívia a partir da diminuição da idade mínima laboral? Para a sua resolução, cumpriu-se com os objetivos específicos: verificar as bases universais estruturantes previstas na Convenção sobre os Direitos da Criança da Organização das Nações Unidas que vincula o ordenamento jurídico da Bolívia; demonstrar a proteção jurídica internacional contra o trabalho infantil no âmbito da Organização Internacional do Trabalho; e analisar a redução da idade mínima para o trabalho e a atuação da União de Meninos, Meninas e Adolescentes Trabalhadores da Bolívia (UNATSBO). O método de abordagem é o dedutivo e o método de procedimento é o monográfico, utilizando-se de técnicas de pesquisa bibliográfica. Constata-se que a redução da idade mínima para o trabalho viola convenções internacionais ratificadas e cláusulas constitucionais, prejudica o desenvolvimento integral na infância, justificando-se a decretação da inconstitucionalidade do artigo 129 do “Código del Niño, Niña y Adolescente” pelo Tribunal Constitucional Plurinacional da Bolívia. Além ser um retrocesso social e uma flexibilização de direitos humanos e fundamentais.

PALAVRAS-CHAVE: adolescente. criança. trabalho infantil. protagonismo.

1. INTRODUCTION

Legal protection against child labor is the first step towards its eradication. Therefore, the ratification of international conventions dealing with the rights of children and adolescents, constitutionalization of rights and constitutional legislative structuring by the State must be included to the developing of public policies with strategically planned actions within the family, state and society.

The theme is delimited by the analysis of the structure of legal protection against child labor in Bolivia and the setback, violation and flexibilization resulted from the reduction of the minimum employment age in specific cases on the "Código del Niño, Niña y Adolescente". This reduction was carried out from the mobilization of representative social movements of children and adolescents, who have acted against their rights and progressiveness of human rights, leading to the social regression in the internal state level.

The theory of the integral protection of human and fundamental rights of children and adolescents is the research theoretical framework.

This research is justified to the need of verifying the violations of constitutional and conventional rights resulting from the Bolivian legislative change, as well as to the damages that are caused to the integral development of children and adolescents. Still, it has relevance in view of demonstrating that the social protagonism of social movements representing children and adolescents, can deconstruct important steps that have already been taken. There is no denying the importance of the law produced from

social spaces, however it must always be aligned with the bases of fundamental and human rights, which limits flexibilities and setbacks.

The guiding problem of the present analysis is how has the legal protection of human and fundamental rights related to the confrontation of child labor and the protagonism of children and adolescents in Bolivia been guaranteed since the minimum working age has decreased?

The research main objective is to analyze the legal protection against child labor in Bolivia from the approval of the reduction of the minimum employment age by the "Código del Niño, Niña y Adolescente," which was supported by the social movement Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO). Thus, the specific objectives are verifying the universal foundations foreseen on Convention on the Rights of the Child of the United Nations that binds the legal system of Bolivia; demonstrating the international legal protection against child labor within the framework of the International Labor Organization; and analyzing the reduction of the minimum employment age and the work of Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO).

The approach method is the deductive and the procedure method is the monographic, using bibliographic research techniques.

It was established as expected results for the present investigation, that it is of great importance to promote the protagonism of children and adolescents, however, there must be limitations so that social retrogression and the flexibility of rights are avoided. Inevitably, when disrespected the progressiveness of human and fundamental rights of a state, citizens have many rights violated, which will bring many losses.

2. CONVENTION ON THE RIGHTS OF THE CHILD OF THE UNITED NATIONS AS A UNIVERSAL STRUCTURING BASE OF COMMITMENTS TO THE LEGAL ORDERS OF THE STATES PARTIES

Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on 20 November, 1989. The international agreement on human rights is most accepted by its Member States. This is due to the fact that its ratification is almost unanimous and has not been adopted by the United States of America until now (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

In South America, there is a commitment to the established due to the ratification of Convention on the Rights of the Child by all the countries of the region. International cooperation is a strategic action instituted by Article 45 of the Convention in order to stimulate the effective implementation of the internationally established through the mobilization of States (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

The regular concern for the rights of children and adolescents on the world has made the consolidate the Convention on the Rights of the Child possible, as a universal legal protection framework, thus, demonstrating bases that must be respected, which binds States Parties to the establishment of legal protection and public policies for children (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

Bolivia became a signatory to the aforementioned Convention by the Law No. 1152 instituted on May 14th, 1990, confirming the agreement by the United Nations.

Thus, the Bolivian national legal system assumes the responsibility of adopting the rights and guarantees provided in Convention on the Rights of the Child, in a universal manner through the promulgation of consistent legal protection consonant with the international norm and the structuring of public policies in favor of the realization of what it is legally envisaged (BOLÍVIA, 1990).

International human rights organizations have been influencing states in favor of children's and adolescent's rights, which is achieved through the structuring of legal protection and the institution of public policies with a strategic focus in the implementation of actions of legal normalization, as fundamental care assurance measure, protection, justice and promotion of inherent rights to the generational period of childhood (CUSTÓDIO, 2018, p. 185; 192-194).

The ratifications of international conventions have a positive impact on the internal legal order of each State, making the consolidation of protective legislation in the period of childhood possible, aggregating all the internationally agreed topics, which significantly reflects the commitment to adopt and develop public policies in for the realization of the rights of children and adolescents (REIS, 2010, p. 152).

With the ratification of Convention on the Rights of the Child, every Member state undertakes to consolidate the legal protection of the provided rights and guarantees and, subsequently, to establish the legal framework through the development of public policies that are structured in systems and actions:

It is reaffirmed that the International Covenant on the Rights of the Child of 1989 provided for the possibility for States Parties to invest in public policies whenever it is necessary to ensure the faithful observance of the fundamental rights provided for in the treaty. These policies must meet and provide better living conditions, better development conditions, healthy and harmonious, as well as ensure full compliance with rights inherent to the stage of childhood. There must be a strategic rearrangement in the field of public policies that truly include children, adolescents and their families (translation mine) (LIMA, 2001, p. 91).

Convention on the Rights of the Child is an important international legal instrument consolidated by the United Nations, but it presents some limitations of applicability. The approval of the international instrument is a fundamental step towards the internal legal protection of the rights of children and adolescents, however, this is not a determining rule due to the fact that there are signatories that flexibilize or disobey the agreement. Moreover, there are no established mechanisms for a state accountability for its failure to ensure human and fundamental rights for children and adolescents. Therefore, the State that ratifies Convention on the Rights of the Child perhaps will not be significantly engaged with the provided rights and guarantees in its jurisdiction, since there will not necessarily be a legal framework that protects the rights of children and adolescents, as well as public policies for its implementation (BUSTELO, 2011, p. 103-133).

Therefore, it is important to highlight that the ratification of the Convention is fundamental to the beginning of the process of prevention and eradication of child labor in any Member State of the United Nations - UN. With ratification, the country is committed to align its domestic legislation with what is internationally provided. Thus,

it is crucial to establish a protective domestic legislation that does not violate the commitments to which the State is bound internationally. However, there will still be the need to build a set of actions and strategies of intersectoral and systemic public policies, so that it is possible to comply with what is promulgated in the legal system to confront child labor.

Convention defined as a child, in its article 1, any human being who is up to eighteen years old. This concept is broader than that adopted by several Member States of the United Nations, which chose the legal subdivision of child and adolescent terminology, using a narrower definition. It is obvious that the specificities adopted by some countries do not bring violations to Convention on child conceptions in a more general way, which was an option at international level (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

The rights set forth in the present Convention shall be the property of every child and shall be respected by all States Parties which must ensure universal application in their territory and without any discrimination or distinction of any kind whatever "[...] race, color, sex, language, belief, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child, his or her parents or legal guardians" (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

Article 4 has agreed on investment in social, economic and cultural rights inherent in childhood, demonstrating that States should provide "maximum available resources" for this purpose. The established expression is criticized in the face of subjectivity over maximum resources available by a State, which would currently make the necessary investment impossible. Human rights provided for in the Convention are practically unknown in social environment is also a criticized fact. This indicates the establishment of legal protection internally, however, there are insufficient public policies, as well as strategies and actions for the realization of rights with certain subjects, which is the reality of most countries in South America (BUSTELO, 2011, p. 103-133).

Human rights of children conventions in a universal world do not always produce the desired result in Member States, this is due to coordination problems by the national authorities and institutions and also the weak citizen participation in favor of childhood in some localities and the lack of structure and instruments of public policies in their essentiality (RUIZ, 2004, p. 357).

States sovereignty has an impact on the rights inherent in the discussed Convention. Some governments are more sensitive to humanitarian causes and comply with the conventions around childhood, guiding policy actions to ensure established rights in Convention on the Rights of the Child of the United Nations and other legislation at national level. There are those who work beyond their borders, having diplomatic actions in influencing the protection of the rights of children and adolescents, strengthening and articulating the international movements around the theme. While there are those who are indifferent to the topic and do not abide the internationally agreed.

Convention on the Rights of the Child of the United Nations is an international document with the greatest expression regarding the rights of children and adolescents in the world even being subject of strong criticism (VERONESE, 2015b, p. 127).

It is said that the mentioned Convention has been making significant contributions in order to provide Member States with legal protection of the rights of children through the establishment of principles, rights and guarantees that are in line with the internationally agreed (SOUZA, 2008, p. 21). It legally protected child's human rights to life, identity, family and social coexistence, dignity, expression association, thought or belief freedom, honor, safety, health, wellbeing, leisure, rest, education, access to information, social assistance, adoption, as well as protection against all forms of violence, exploitation, neglect, abandonment, discrimination, prejudice, torture, arbitrariness and cruel, inhuman or degrading treatment (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

Integral protection of children is a stated guarantee, a basic rule of the United Nations, considering the necessity of protection of people in a peculiar situation of development in their integrality and multidimensionality. It is established rights to ensure development physical, mental, social, moral and spiritual, as provided for in Article 27. The best interests of children is also ensured (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

The guarantee of integral protection of children and adolescents is a fundamental requirement for the human development in its multidimensionality, what provides respect for dignity, as well as the full recognition of the condition of subject of rights and the peculiar condition of person in development (FREITAS, 2019, p. 273; 280).

The concept of peculiar development is fundamental in the childhood law. It is in view of this that the interpreter - when applying the law - is forced to abandon the point of view of adults in order to interpret fundamental rights according to the particularities of children and adolescents (translation mine) (CAMPOS; CAMURÇA; MELO NETO, 2018, p. 356).

The concept of comprehensive children and adolescents' protection is considered an important principle, constitutionally and infra-constitutionally, under international law and the States Parties. Comprehensive protection is the theoretical framework to Child and Adolescent Law, built on consolidation from Convention on the Rights of the Child of the United Nations and from internal legislation in each Nation.

The theory of comprehensive protection is composed of principles, rules, human and fundamental rights. It lays on foundations the establishment of legal framework through the structuring of public policies that must carry out actions based on a systemic model for the guarantee of rights. The theoretical base of comprehensive protection was built from the perspective of childhood, paying attention to its superior interest and based on values of citizenship, democratic popular participation, interdisciplinarity, emancipation of the subject and dignity of the human person (CUSTÓDIO, 2008, p. 30-31).

The consolidation of a theory for childhood is a fundamental step towards changing the oppressive and perverse context against children and adolescents. The establishment of a theoretical framework allows the development of interpretations, questions in relation to the social environment. There is the possibility of an articulated rupture of violations of inherent rights to childhood that are naturalized as "normal" or "correct" in social imaginary, through mechanisms to emancipation of the subject, to

promotion of the right and to multiplication of information (BUSTELO, 2011, p. 138-144).

Childhood is a vital period for human development, starting at the moment of conception of life until the passage into adulthood. This period is characterized by transformations of the most distinct orders, justifying a legal, political and social treatment proper to this generation. Childhood is meant to be the beginning of life, the moment of discovery, and cannot be characterized by negations. That means that "no" should never be the rule during childhood, because deprivations and denials, especially of human and fundamental rights, have negative impacts on human development and adult life. Thus, the development of the childhood period must be diachronic and heteronomous, seeking innovation, emancipation, novelty, playing and discovering, centered on the child or adolescent in anti-hegemonic movements, facing adult-centric, conservative and harmful practices. Emancipation has been a quest during the infantile process, children are submitted to repetition of models. The discovery is fundamental in this generational period, since "to be born" and "to live" are not mere processes that must be executed by the systemic repetition in a movement of submission to the dominant interests in the society (BUSTELO, 2011, p. 138-158).

Article No 13 of Convention on the Rights of the Child expresses the right to freedom of expression including the knowledge and reproduction of information and ideas by all means and forms. The exercise of the right to freedom of expression is restricted to legal provisions with the core of respect for human and fundamental rights (United Nations, 1989). Consecutively, the article No 15 of Convention provides that States Parties shall recognize freedom of association and freedom to hold peaceful meetings. Such rights are unrestricted, with limited legal provisions, in particular to the "[...] protection of the rights and freedoms of others" (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

The education of children and adolescents have to meet human rights, thus, States Parties must guide their citizens in order to respect the fundamental freedoms and human rights enshrined in the United Nations by reproducing conventions principles and provisions, according to articles No 29 and No 42 (United Nations, 1989). Therefore, freedom of expression and the association of children and adolescents must be restricted to human and fundamental rights, which are foreseen in the international legal system of each country, through universally accepted commitments.

The article No 32 of Convention appoints that Member States must "establish a minimum age or minimum age for admission to employment". Although the Convention on the Rights of the Child is the most general legal instrument on ensuring the rights of children internationally, it is committed to the establishment a legal working age, which is a specific subject of other international treaties. Work activities performed below legal working age are considered child labor (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

Exploitation of child labor highlights violation of rights guaranteed on Convention, negatively impacting their integral development as a person and impairing the exercise of childhood as a fundamental generational phase for human development (ORGANIZAÇÃO DAS NAÇÕES UNIDAS, 1989).

The human rights of children and adolescents are undispoansable, in other words, cannot be flexibilized, diminished or broken, even upon the initiative of the protagonism of children. Since the establishment of the reduction of the legal working age by the agreed international guidance, the retrogression by popular initiative in human rights is not allowed, for they would violate the precept of social participation in the development of rights through the social environment and would be in disagreement with the precept of progressivity to humanitarian accomplishments. Therefore, the protagonism of children must respect the legal protection by the Bolivian State with the ratification of the United Nations.

3. INTERNATIONAL LEGAL PROTECTION AGAINST CHILD LABOR ON INTERNATIONAL LABOR ORGANIZATION SCOPE

International Labor Organization also ensures the rights of children and adolescents with a special focus on the protection against exploitation of child labor through Conventions C138, promulgated in 1973, and C182 enacted in 1999. Both devices deal with legal working age and worst child labor forms prohibition. These Conventions are regarded as fundamental documents by International Labor Organization.

Bolivia is a signatory to Conventions C138 and C182 of International Labor Organization. Convention No 138 was ratified by Bolivia on June 11, 1997, fourteen years old was considered the minimum legal working age in the country. And Convention C182 was ratified by Bolivia on 06 June 2003 (OIT: OFICINA SUBREGIONAL PARA LOS PAÍSES ANDINOS, 2005, p. 07).

Convention C138 aims to establish a minimum legal working age. It was preceded by others conventions with the same purpose since the year 1919, which was the year of the founding of International Labor Organization. States Parties that have adopted Convention C138 undertake to pursue a national policy for child labor eradication and to bring a progressive increase in working age in order to limit it without prejudice to the integral development of adolescent during the execution of labor activities. Convention C138 is supplemented by Recommendation No 146, which deals with suggestions on the subject to the Member States (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1973a).

It is important to point out that for the implementation of a national policy, it is necessary to plan public policy by governmental actors based on technical and scientific data, with the aim of taking strategic actions to respond to society in relation to respective demand (SCHMIDT, 2008, p. 2.316-2.320).

Public policy aims at the realization of the rights provided for by laws, being split into plans, programs, projects, databases, diagnostic, research, information and assessments (SOUZA, 2006, p. 26).

Article 2 of Convention C138 imposes a rule about legal working age. Working age cannot be lower than the age children accomplish compulsory school activities. In any event, legal working age must not be lower than fifteen years old. However, there is the exceptionality of a reduction to fourteen years, situation adopted by Bolivia at the time of ratification of this Convention since a prior consultation with representative organizations of workers/employers and a justification due to insufficient development

of economic conditions and teaching (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1973a).

The guarantee of the condition of full citizenship depends on access to the right to education and the permanence in school, which should preferably occur during childhood. To that end, one must tackle the reasons that lead to truancy of children and adolescents, including all forms of child labor (CUSTÓDIO; MOREIRA, 2019, p 298.).

School dropout negatively impacts the development of children and adolescents, frustrating the best opportunities in the future as a result of originating and perpetuating cycles of poverty or extreme poverty and preventing social inclusion (MOREIRA; CUSTÓDIO, 2015, p. 239).

Article 3 of Convention C138 prohibits children employment below eighteen years old in cases that "by nature or circumstances" there is the possibility of safety, morals or health prejudice. Prohibited works under the age of eighteen should be listed. This list has to be subject to periodic review, as outlined in section 3 of Recommendation 146. Article 6 disciplines that in cases of adolescents in technical or vocational education schools, institutions with professionalization objective, labor activities can be exercised from the fourteen years old (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1973a).

Recommendation 146 indicates the importance of investment in national policies for children and for the integral development of children and adolescents, ensuring wellbeing as well as the fight against child labor in order to the convention fulfillment. To this end, in addition to eradicating child labor, strategies should be developed to reduce the poverty of families by implementing public policies in the economic, educational and social spheres, which discourages child labor in view of an adequate family living and income standards (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1973b).

For the promotion of human rights to be successful, there must be strategic alignment with public policies that will be responsible for its effectuation. That is, it is essential to establish the national and international legal protection, but there is a dependence on political actions to their success (FLORES, 2009, p. 73). Hence the relevance of the international provisions that link States to the concretization of public policies.

Also, there is a need to standardize the minimum legal working age in all economic activities. The progressive increase of the minimum legal working age to sixteen years old is already a reality in countries such as Brazil and Argentina. In countries where legal working age is under fifteen years in regular jobs, those that do not hinder integral development; and in countries the legal working age is under eighteen years in activities that compromise health, safety and morals of adolescents, urgent measures must be taken to ensure the protection of the minimum legal working age provided for in Convention 138, in compliance with the rule. Measures must be taken to supervise and control the exercise of employment activities by adolescents, both for regularly allowed work or for professionalization modality allied to education, guaranteeing labor rights and avoiding the configuration of exploitation (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1973b).

Convention C182 of International Labor Organization deals with the prohibition of the worst forms of child labor and immediate action to eliminate it, supplementing Recommendation 190. Convention C182 is directed towards specificities in relation to Convention C138, ensuring Member States to consolidate public policies strategies and actions for eradication of child labor, as a specialized and urgent priority (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1999a). This convention established that the term child is used to designate any person who is up to eighteen years of age. And its article 3 determines the worst forms of child labor³.

The urgency and priority to face the worst forms of child labor is to protect children and adolescents from the effects most cruel and perverse to human development in full. In order to comply with Convention 182 of the International Labor Organization, States should direct specific strategies for the immediate and urgent eradication of the worst forms of child labor (MOREIRA, 2020, p. 213).

To eradicate the worst forms of child labor, Convention C182 determines States are obliged to create structured public policies to carry out strategic actions to abolish, as urgently as possible, the exploitation of children and adolescents in the activities provided for in article 3. Therefore, articulated, networked, sectoralized and intersectoral measures must be foreseen, acting in several points and enabling prevention, promotion of rights, protection, justice, health care, education, social assistance, leisure, culture and sport. These measures aim at the guarantee, maintenance and preservation of threatened rights. They also aim at the restitution of violated rights. The implementation of public policy is a priority measure to be adopted, each Member State must indicate a Commission or other enforcement control mechanism to monitor the effective implementation of the compacted, as established in Articles 5, 6 and 7 (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1999a).

It is through investment in public policies that protective systems are built in order to guarantee the rights of children and adolescents. The systems must be structured in dimensions, where, firstly, the provision of education, health, social assistance, culture, sports, leisure and public security must be made available. All agencies that provide services aimed at fulfilling these rights are co-responsible for preventing and identifying cases of child labor. In the second dimension, there is protection, which will act when there is a threat or violation of the rights of children and adolescents, based on the communication of the fact by society or by members of the system. The third dimension is justice, which aims to guarantee rights that were not made available by other public policies, as well as to hold accountability for violations of the rights of children and adolescents (MOREIRA; CUSTÓDIO, 2018, p. 308-309).

All public policies that exert combat the commercial sexual exploitation of children and adolescents have also responsibilities in the implementation of awareness-raising of the society and technical teams through the dissemination of technical and

³[...] a) all forms of slavery or practices analogous to slavery, such as the sale and trafficking of children, bondage and servitude, and forced or compulsory labor, including the forced or compulsory recruitment of children for use in conflicts armed;
b) the use, recruitment or offering of children for prostitution, the production of pornography or pornographic performances;
c) the use, recruitment or provision of children for the purpose of carrying out illicit activities, in particular the production and trafficking of drugs, as defined in the relevant international treaties; and,
d) working, by its nature or its conditions, is liable to harm the health, safety or morals of children.

scientific information on the subject, promulgating information on the concept, causes, consequences, indicators, context, communication of facts, ways of acting, and other specificities pertaining to each location (MOREIRA; CUSTÓDIO, 2019, p. 138-140).

According to Article 7, some measures need to stimulate the necessity of immediate elimination of child labor in its worst forms with a fixed deadline and an urgent action in an effective manner, taking into account the characteristics of the modality. These measures aim to enable the full development of children and adolescents through strategic public policy acts to eradicate the worst forms of child labor and guarantee human and fundamental rights (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1999a).

The exploitation of child labor in activities analogous to slavery, in commercial sexual exploitation activities, in illegal occupation or in activities likely, by their very nature or work conditions, to harm to health, safety or morale of children and adolescents; activities that undermine their peculiar process of developing person, violating a multiplicity of rights guaranteed in a range of legislations. The enticement of children and adolescents for illegal practices is due to the deprivation, perversity and violations resulting from the situation of poverty and social exclusion. In addition, in such cases there is a clear and constant situation of submission of children and adolescents to adults due to the power deriving from the economic and generational condition.

The path to the elimination of the worst forms of child labor needs to contemplate the fundamental step of building specific and decentralized technical planning, which is directed to each of its subdivisions. In this sense, it is important to create a management and program team, having its own and autonomous coordination, which will act independently, but articulated with the general program team. That is, in view of the peculiarities, complexities and urgency, facing the worst forms of child labor needs specialized attention for its success. Thus, it will be possible to delimit responsibilities and set goals, guidelines, axes, roadmaps, flows, protocols, strategies, actions and calendar of annual activities (MOREIRA, 2020, p. 233-235).

Article 4 of Convention C182 requires from States parties a definition, by national legislation and consultation with representative organizations of workers and employers, a list of the types of child labor defined as the worst forms in their abstention, which need to be reviewed with periodicity. Article 8 postulated that Members of the International Labor Organization should provide support, cooperation and mutual assistance to enable the implementation of the Convention, including an economic and social development perspective. Actions planned on article 8 provide the eradication of poverty and universal access to education (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1999a).

Recommendation 190 indicates the objectives of public policies for the eradication of the worst forms of child labor. Also, it demonstrates what is taken into account to conceptualize what is dangerous work, exposing modality characteristic. However, Article 4 discusses about an exception. It provides that in respect of hazardous work referred to in Article 3 (d) of Convention C182, there may be an authorization for work or employment from sixteen years old onwards by national law or competent authority after workers 'and employees' organizations consultation. However, "... the health, safety and morals of such children are fully guaranteed and that they have received

appropriate and specific instructions or professional training in the area of the corresponding activity " must be provided (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1999b).

Recommendation 190 postulates possibilities that are not permitted by Convention C182 but are exceptions to Convention C138. Convention C182 has banned hazardous work under eighteen years old in view of potential risks to children and adolescents. In other words, Recommendation 190 should not admit such possibilities because it does not bring consistent supplementation to Convention 182 and because it contradicts the mentioned Conventions in this respect.

Finally, Recommendation 190 emphasizes the importance of producing information indicators and statistical data on the exploitation of child labor, demonstrating detailed characteristics to structure public policies in a strategic manner and with predictability of actions to be developed. The primacy of mutual collaboration is a priority when it comes to protect children systems, and responsibilities must be imposed on every public entity. Diagnoses are fundamental to realities knowledge, making possible greater political effectiveness and the right to privacy preservation (ORGANIZAÇÃO INTERNACIONAL DO TRABALHO, 1999b).

The monitoring of public policies through diagnostics is of relevance for the analysis of the performance of activities, verifying the fulfillment of previously established objectives and for the improvement of strategic actions. With this, it is possible to establish indicators, which generates important information for the management of public policy. Indicators are essential tools in decision-making, and their collection must be carried out by trained professionals, in a responsible and reliable manner (SILVA; SOUZA-LIMA, 2010, p. 37).

International conventions tend to reflect positively in each Member State, especially after its ratification. It reflects public policies legal order and development, a first step towards the eradication of child labor and ensuring rights to children and adolescents. United Nations (UN) and International Labor Organization (ILO) are international institutions that have been achieving fundamental tasks to consolidate the protection of the human rights of children and adolescents and the eradication of child labor in the world.

The international community has made progress in the recognition, promotion and protection of international treaties dealing with human rights, ensuring that any of its violations will not be a matter solely within the internal sphere. In this way, each State is committed to protecting human rights, however, when there are violations, the matter will be the object of the entire international community (GORCZEVSKI, 2009, p. 150-151).

The commitment with the eradication of child labor in Bolivia needs to rely on the protagonist participation of the whole society, family and State, facing cultural causes that show misleading concepts that look at working practices as being beneficial. Child labor brings a range of consequences to the development of children and adolescents in an integral way, needing the social participation for the guarantee of human rights. The progressivity of achievements about the humanitarian conceptions related to the generational period of childhood must not retrogress regarding the committed

basis of the ratification of the Convention 138 and 182, as well as the Recommendations that are the minimal protective foundation around the world. In other words, the constitutional control in Bolivian legislative committees did not fulfilled its role in restricting any possibility of reduction of the legal working age. Furthermore, the protagonism of children must be stimulated in the guarantee of human rights of the children and adolescents progressively and, never, aiming for setbacks of what has already been achieved.

4. A REVERSE CHILD'S PROTAGONISM: ANALYSIS OF THE REDUCTION OF MINIMUM LEGAL WORKIN AGE IN BOLIVIA AND THE ACTIVITY OF "UNIÓN DE NIÑOS, NIÑAS Y ADOLESCENTES TRABAJADORES DE BOLIVIA" (UNATSBO)

Children and adolescents rights are constitutionalised in Bolivia, a fundamental fact for legal protection for children. The Political Constitution of the Plurinational of Bolivia protects in its article 59 the universal right to the integral development of children and adolescents. Article 60 presents the guarantee of the best interest of children and adolescents as a responsibility shared between the State, society and the family. It includes the priority regarding the availability of rights, the primacy of receiving relief and the protection in all situations, priority service in public and private services, and access to justice with specialized assistance (BOLÍVIA, 2009). Legal consolidation of the rights of Child and Adolescent as an autonomous branch of law studies, composed of consistent theoretical and legal bases, is a difficult factor since it promulgates and reproduces scientifically surpassed ideas, leading to setbacks (VERONESE, 2015a, p. 01-05).

The General Labor Law prohibits employment under fourteen years old, except in cases of apprenticeship. It prohibits employment under eighteen in cases there may be impairments to physical development or superior to their strengths. Unhealthy work, dangerous, heavy, immoral or nightily are also cases this law prohibits to children and adolescent. Nurse activities, domestic or other services that are determined are exceptions, according to article 58, 59 and 60 (BOLÍVIA, 1942). Child labor may be considered as "[...] any employment activity practiced below minimum legal working age allowed for a particular type of activity, and may be an economic activity and/or survival strategy, paid or unpaid, by children or adolescents" (translation mine) (CUSTÓDIO; MOREIRA, 2015, p. 69).

Law No 548, promulgated on July 17, 2014, known as the "Code of the Child," aims to develop, recognize and regulate the exercise of the rights of children and adolescents through the Integral Plurinational System of Children and Adolescents, bringing co-responsibility to family, society and the State. According to its article 5, childhood is a period between the conception period up to twelve years old. A teenager is between the twelve and eighteen years old (BOLÍVIA, 2014).

From articles No 126 to No 136 new rules regarding protection against child labor and adolescent workers are presented. Article No 126 expresses the right to protection of all kinds of employment. This protection must be carried out by the State, family and society. This article ensures there is no harm to education, dignity and integral development. It also forbids the exercise of hazardous, unhealthy or economic exploitation

by children and adolescents. The State is obligated to build projects to overcome extreme poverty (BOLÍVIA, 2014).

Articles No 127 and No 128 are nominated as family activities and family community activities. The foreseen activities are those that aim at training, socialization and learning. Tasks that do not cause any violation or threat of rights. Activities carried out in the family, social and community environment can only be exercised when it is not below the minimum legal working age, according to the legislation. Such a prohibition should apply even if it is a cultural practice arising from any community because cultural relativism cannot be in opposite direction in relation to human rights. The articles should not relativize laws to protect children from labour exploitation (BOLÍVIA, 2014).

From article 130 to 134 guarantees related to the employment, its procedures and activities requirements are provided. On the other hand, articles 135 and 136 present lists with forbidden activities for children and adolescent (BOLÍVIA, 2014).

Fundamental rights, despite being ensured at the constitutional level as the property of the universality of children and adolescents, need to be standardized and consolidated through political actions (ROSSATO; LÉPORE, 2015, p. 136-141). Bolivia consolidated this process, however, it stepped back when it relaxed the legislation to accept the performance of child labor.

Article No 129 is the legal instrument that generates the greatest potential of violation of rights and causes great controversy. It was from its promulgation in the "Código del Niño, Niña y Adolescente" in 2014 that Bolivia declined in relation children and adolescents rights protection, reducing the minimum legal working age. Fourteen years old was the minimum working age when the ratification of Convention 138 of the International Labor Organization. The article allows, exceptionally, employment under the age fourteen. A clear noncompliance with the internationally agreed.

Article No 129⁴ established that the minimum working age in Bolivia is fourteen years old. However, in an exceptional way, Ombudsman for Children and Adolescents' office may authorize the work "por cuenta propia" from ten to fourteen. These "por cuenta propia" activities can also be from twelve to fourteen, since it follows the formalities and legal limits (BOLÍVIA, 2014).

Article No 129 exceptions are at odds with the international agreement. It violates a significant range of constitutional and infra-constitutional rights of children and adolescents. Section II of article 129 authorizes such modalities. It is controversial, since it admits employment in the mentioned ages, since it does not jeopardize integral

⁴ARTICLE No 129. (MINIMUM LEGAL WORKING AGE)

- I. Fourteen (14) is the minimum legal working age.
- II. Exceptionally, children and adolescent advocacy Adolescencia, may authorize work on their own behalf by girls, boys or adolescents from ten (10) to fourteen (14) years old, and labor activity from twelve (12) to fourteen (14) years, provided that this does not undermine their right to education, is not dangerous, unhealthy, assault on their dignity and integral development, or is expressly prohibited by law.
- III. Requests must be answered within seventy-two (72) hours computable from receipt, prior socio-economic assessment, and will have effects of registration in Sistema de Información de Niñas, Niños y Adolescentes-SINNA.
- IV. The registration of the authorization for a specific item may be modified at a verbal request of the interested party, with no necessity to initiate a new authorization procedure. Children and Adolescents Advocacy, if necessary, may request a new medical and psychological assessment (translation mine).

development and dignity, and, invariably. However, employment activities under fourteen are decisive to have negative implications for children and adolescent rights, impairing human development.

"Por cuenta propia" employment activities are conceptualized in Article No 133. These activities are categorized work situations without relation of subordination or dependence on companies, and is not yet part of social, community and family activities. Execution conditions of this employment modality by children and adolescents, between ten and fourteen years old, is that the activities cannot be exercised after ten o'clock at night. Its performance also cannot present risks to life, health, integrity, image or jeopardize their education (BOLÍVIA, 2014).

"Por cueta ajena" employment activities are defined in article No 132. It is developed through subordination to an employer and economic remuneration equated to other workers with a limit of eight hours daily and forty weekly of working time for adolescents from the age of fourteen. To adolescent under fourteen working time limit is six hours daily and thirty weekly (BOLÍVIA, 2014).

"Asalariado del hogar" employment is foreseen in article No 134. It is a home salaried labor that can be exercised from fourteen years old. These activities are, according to item I, kitchen, cleaning, laundry, childcare and care and assistance services, which are complex, perverse activities. They have no state control, carrying many risks during childhood (BOLÍVIA, 2014).

Therefore, in Bolivia, the minimum legal working age is fourteen years old. Children may, exceptionally, carry out activities from ten years old in case of self-employment, and from twelve, on an account of another activity or a learning situation, according to the required legal requirements. From eighteen, dangerous, nocturnal, unhealthy, painful or immoral activities are allowed. "Código del Niño, Niña y Adolescente" articles No 135 and No 136 express some of prohibited activities to children and adolescents in Bolivia. The worst forms of child labor, including those expressed in article No 3 of Convention C182 of the International Labor Organization, are also prohibited to children or adolescents, and some of the activities listed are also not allowed in adult cases. Thus, all labor activities or survival strategies that are exercised below labor age limits established by law, are considered as an activity of child labor exploitation.

Self-employment possibilities from ten years old, and on behalf of others employment from fourteen, were approved by the " Código del Niño, Niña y Adolescente ". It was analyzed its constitutionality. Educators and the active participation of representative social movement of children and adolescents, especially those movements of children and adolescents who were already being exploited by child labor and became delegates were an important support. Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO) was the responsible for the representation during the legislative process. UNATSBO is constituted by members who are or experienced employment period during childhood.

The measure for confronting poverty is the main approval justification of this law. However, this is a false justification since employment at such ages significantly impairs integral development, which consequently hinders learning, professionalization, socialization, maturation as well as has consequences on mental and physical health

condition and cultural, sports and leisure practices. Children and adolescent in premature employment situations miss fundamental steps for human development; a time that must be dedicated to leisure. This environment brings adult responsibilities, a hostile situation to that moment of life (CUSTÓDIO; MOREIRA, 2015).

There is a perpetuation of intergenerational cycles of poverty, occasioned by the exclusion of opportunities due to the exploitation of preterm labor, preventing integral development that aims the multidimensionality of universal fundamental rights and guarantees related to childhood, factors that prepare to adult life and enable social inclusion and the disruption of cycles of poverty. There is a clear inequality between exploited children and adolescents by child labor activities. They are deprived, in relation to others that had their development fully ensured in its fullness, and future opportunities are denied due to the lack of professionalization and other consequences resulting from the violation of rights, and the. In cases of self-employment, the perversity is even greater, given the lack of protection on streets, the main place where the exploitation takes place (MOREIRA, 2020).

It is clear that reduction of the legal working age is a setback, given the harmful consequences child labor brings to the development of children and adolescents. In education system, it negatively impacts teaching and learning, causing school dropout. From a health perspective, it damages physical and psychological development. In the economic system, it generates social exclusion and perpetuation of the intergenerational cycle of poverty. In the current competitive context of life in the globalized market capitalist model, the more premature the exploitation of child labor, the worse the opportunities in the future life. It also violates the fundamental rights of children and adolescents, such as the health, leisure, professionalism, dignity, freedom, life, education, sports, culture, non-working under the minimum age rights (CUSTÓDIO; MOREIRA, 2015, p. 87-95).

Bolivia has legalized child labor in some circumstances, in disagreement with international conventions while other countries are systematically advancing in actions to eradicate child labor. Bolivia has regressed in the protection of the human rights of children and adolescents, which must be progressive. These rights must not regress socially or be relaxed by dominant interests.

However, the constitutionality control carried out by the Plurinational Constitutional Court (CPT) declared the unconstitutionality of the Article No 129 of the "Código del Niño, Niña y Adolescente" in sentence 025/2017 that was issued on July 21, 2017. The motivation for declaring unconstitutionality is that Article No 129 is incompatible and contradicts the Political Constitution of the Plurinational State of Bolivia, the Convention on the Rights of the Child of the United Nations Organization and Convention C138 of the International Labor Organization (EL DEBER, 2018). Nowadays, there are already parliamentary initiatives to modify article No 129 of the Code in explanation. It aims to define legal working age in fourteen years old, which would strengthen protection against child labor and demonstrate again the commitment to the Convention C138.

The sentence that declared the unconstitutionality by the Plurinational Constitutional Court of Bolivia has shown the necessity of the protection to the integral development, to the fundamental rights of children and adolescents, to the principle of the

superior interest of childhood and to the legal instruments to the confrontation of the exploitation of child labor and the economic exploitation, in a clear control process of conventionality by the verification of the noncompliance to the human rights agreed in the framework of United Nations and of the International Labor Organization, as well as the violation of the fundamental rights belonging to the constitutional framework. Therefore, the constitutional court demands the guarantee of human and fundamental rights of children and adolescents, that, invariably, are violated with the minimum working age lowered to child labor, forbidding any legal and social setback. This happens, even after the role of the Bolivian Legislative Power and the social protagonist participation of social movements due to the legal changes made. The choice shows that there must be a progressivity regarding the minimum working age, forbidding setbacks on the minimum established guarantees and the decreasing of the inherent commitments to the ratification of the conventions. As a result, the State cannot legislate against the interests of children and adolescents, shall guaranteeing the basis in the human rights agreed internationally and in the constitutionalized fundamental rights. The case generated the violation of distinct constitutional and international legal devices that are listed exhaustively in the sentence, what prompted the declaration of its unconstitutionality.

States have primary responsibility on human rights guarantees of their citizens. They carry out legal protection of international agreements upon in their fundamental laws. However, it is also necessary to carry out public policies, at the initiative of the State and social commitment, based on the citizen's action in favor of humanitarian issues. The conventions and declarations internationalized human rights. They become fundamental rights after constitutively positified by the States (RUBIO. 2009, p. 28-30).

In rule of law consolidated by the Federal Constitution, governmental, individual and market actions must respect the fundamental rights and dignity of human being. It must be considered that subjects of rights are the center of public or private relations (LORENZETTI, 1998, p. 221-245).

In cases where the fundamental rights and dignity of human person are established as a constitutional basis, its entire juridical system is irradiated. Democratic State of Right based on the constitutionalisation of fundamental rights has the human person as the center of social relations, leading to the limitation of all actions of subjects, of the market or the State that may violate the provisions of the Constitution (SARMENTO, 2010, p. 33-93).

The subjects must be the center of social relations, acting with interactions in the retroactive processes of cultural production and language, ensuring benefits for humanity. After World War II, humanitarian development worked as a model for the universality of subjects without any distinction. This view is aligned with the idea of belonging to the planet Earth and of global development in solidarity and civilization (MORIN, 2001, p. 65-97).

Political, legislative and legal decisions on the rights of children and adolescents should take into account the principles of the dignity of the human person and the interests inherent in childhood (RUIZ, 2004, p. 358).

The exploitation of child labor has as significant phenomena for its occurrence, the adultcentrism and the childhood objectification. While adultcentrism guides social relations, imposing adult interests as priorities, disregarding the relevance of other generations, childhood objectification is subjecting children and adolescents to a condition that do not recognize their rights and guarantees, since they are in a submission condition.

Childhood objectification is the result of constant practices of mercantilization of the person that are imposed on children and adolescents in the sense of establishing treatment similar to an object that belongs to adults aside the condition of subject of rights and guarantees that has been achieved and it is legally protected in a list of legislations. It also affects the generational period of childhood, placing it in a second level against the adult in social environments. It subjects children to forced labor since it reproduces an idea of property and the dominant interest (CUSTÓDIO; MOREIRA, 2015, p. 80-85).

The process of domination around children and adolescents relies on ideological reproduction by media and social environment discourses, as well as by the naturalization of the condition of submission of childhood performed by citizens. There are constant situations of domination and manipulation proper to a controlling society that influence people to act and think according to the dominant interests of those who hold the hegemonic power, as well as deny the emancipation of children and adolescents. Ideological reproduction is constant. It influences and manipulates the way of thinking and acting, through media, social networks and education discourse as well as other ideological apparatuses (BUSTELO, 2011, p. 23-25).

Ideological devices promote the culture of individualism and diminish the importance of public policies focused on the realization of fundamental rights and the promotion of social inclusion. It leads to invariable violations and deprivations of rights of children and adolescents, especially the poorest classes. As a consequence, the state of affairs of socially excluded classes tends not to be modified by the insufficiency of public policies and maintenance of the poverty condition, legitimized by the members of society who have been convinced by the dominant ideological discourses in favor of the market and economic elites (BUSTELO, 2011, p. 29-34; 50-55).

The imposition of conduct that undermines the universalization of human rights also occurs from economic globalization. It guarantees the interests of the economy at the global level to the detriment of humanitarian causes. There are impositions of conduct that harm children and commodify relations in favor of economic liberalism, decreasing the importance of the state and its public policies (SANTOS, 2001).

The capitalist system structures as a system that social exclusion, oppression, individualism, competitiveness, discrimination, prejudice, stigmatization, violence, poverty, among other negativities are not considered important matters. The system relies on the ideological devices that perpetuate the dominant interest and it hinders the change of state of affairs. In this sense, most citizens are taught not to question the speeches that are imposed as a rule, a discourse that holds the condition of submission of the masses. A logic of discouragement to the people who disagree with the standardized models with a control function (ALTHUSSER, 1969, p. 17-21).

Child labor culture relies on the dominant interests that are reproduced ideologically. These interests impose a condition of subjection of children and adolescents in relation to adults. There is the naturalization and legitimization of the exploitation of child labor in view of a favorable social culture. Economic and cultural causes and institutional weaknesses are determinant for the occurrence of child labor, and the State has to build actions strategies that face causes through public policies.

The exercise of citizenship rights as well as the condition of subject of rights to children and adolescents is fundamental for the promotion of children's protagonism. Subject is influenced by the globalized capitalist model of the market, a competitive, individualistic and discriminatory model. Thus, the attempt to the reduction of the legal working age tends to be something reproduced as a positive movement. In the exercise of citizenship, all groups demands must be respected and considered. In democratic systems, political participation requires the condition of full citizenship (LAPIERRE, 2003, p. 29-34; 79-81).

Social movements enable citizen to be protagonist in a given demand. It facilitates: "[...] the citizens' civic political will to decide voluntarily why, how and when to organize themselves to defend their collective interests and, eventually, transform the society and the political power itself " (translation mine) (GORCZEVSKI; MARTIN, 2011, p. 128). The social movements are committed some delimited guidelines; they participate directly in the political struggles from the exercise of the citizenship in a certain State (GOHN, 1997, p. 273-295).

Children and adolescents' representativeness is a "tense and unresolved relationship". In general, there is no self-representation since it is an adult responsibility. When it comes to the representation of childhood, it is fundamental to eliminate the adult perspective. The best interest for childhood should be the primary end of their representation (BUSTELO, 2011, p. 158-177).

However, Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO) advocates to fundamental human rights of children and adolescents. It is clear that the quest for the lowering of the minimum legal working age is based especially on adult and capital interests, as well as being a reproduction of cultural practices that were ideologically constructed what it is difficult to break. It is stated that the movement's performance of this action is configured as a social setback.

The prohibition of social retrogression must be considered as a principle with a central role in the realization of fundamental rights. Such a prohibition is not expressed in many legal systems, but it can be grounded as an implicit principle seeking to protect achievements already stated and to protect laws that protect constitutionally established social rights. In this way, the prohibition of social setback aims to prevent suppression in the field of social rights, as well as the progressive nature of human rights. The progressivity shows that advances and achievements around human rights cannot be suppressed (VILLATORE; FERRAS; QUETES, 2019, p. 173-176).

It should be noted that the representativeness and protagonism of children and adolescents are practices of great relevance for the social, political and legal development of a society. It should not be forgotten that any social initiative related to children's issues, both citizen and representative social movements, must be linked to the

best interests of children and adolescents and it cannot be contrary to internationally agreed human rights and constitutional fundamental rights. Any production of law with social bases must respect them through the accomplishment of the control of constitutionality and convention, as well as by the observance of a minimum reference of human and fundamental rights. It aims to avoid social backsliding and guarantee progressivity around human rights, promoting social participation.

5. CONCLUSION

Bolivia has been a signatory to the Conventions on the Rights of the Child of the United Nations, Convention C138 and Convention C182 of the International Labor Organization, and has undertaken an international commitment to eradicate child labor. At first moment, the international conventions reflected positively in its legal system. It was fulfilled through legal protection as a fundamental right and the structuring of infraconstitutional legislation in accordance with the convention, a fundamental step for the development of public policies in relation to the thematic.

However, reduction of the minimum legal working age under exceptional circumstances carried out by article 129 of the "Code of the Child" in 2014, which authorized self-employment from the age of ten; and the work of others, from the age of twelve, causes a significant violation of national and international rights of children and adolescents. It has negative consequences for facing child labor, weakening public policy actions for their eradication and harms the integral development of children and adolescents by exploratory practices, a social retrogression that violates a large range of fundamental rights. It is at odds with the concept of progressiveness of human rights.

It is a matter of concern that the Unión de Niños, Niñas y Adolescentes Trabajadores de Bolivia (UNATSBO) played a leading role in reducing the legal working age because it shows a lack of knowledge about the perverse consequences of this legislative change. The federal parliamentary approval of legislation is also a concern since this decision is unconstitutional and it is in disagreement with commitments assumed at the international level. This demonstrates the power of the favorable culture to child labor. As consequence, it is necessary public policies that promote demystification on the subject, and reproduction of dominant ideologies that are full of pro-market and adult-centric interests with perverse force.

Plurinational Constitutional Court declared the unconstitutionality of article No 129 of the "Code of the Child," in sentence 025/2017. It was issued on July 21, 2017, and it was motivated by incompatibilities and contradictions with the Political Constitution of the Plurinational State of Bolivia, the Convention on the Rights of the Child of the United Nations and Convention C138 of the International Labor Organization.

The exercise of the rights inherent to citizenship and the condition of subject of rights to children and adolescents is fundamental for the promotion of children's protagonism. They are practices of great relevance for the social, political and legal development of a society that must be strengthened. However, this protagonism cannot be contrary to the human and fundamental rights of children and adolescents, because it represents a counter-claim; it is in disagreement with principles and human rights and

fundamental, presenting negative consequences for integral development. This idea makes the initiative harmless since processes of construction of law in social environments must respect a minimum constitutional and humanitarian reference.

6. REFERENCES

ALTHUSSER, Louis. **Ideología e Aparelhos ideológicos do Estado**. Presença: Lisboa, 1969.

BOLÍVIA. **Constitución Política del Estado**. 2009. Disponível em: https://www.oas.org/dil/esp/Constitucion_Bolivia.pdf. Acesso em: 10 jan. 2019.

BOLÍVIA. **Lei № 1.152 de 14 de maio de 1990**. Disponível em: <https://www.lexivox.org/norms/BO-L-1152.xhtml>. Acesso em: 24 dez. 2018.

BOLÍVIA. **Ley General del Trabajo**. 1942. Disponível em: https://www.ilo.org/dyn/natlex/docs/WEBTEXT/_46218/65057/S92BOL01.htm. Acesso em: 24 jan. 2019.

BOLÍVIA. **Ley № 548 – Código Niño, Niña y Adolescente**. 2014. Disponível em: <http://www.derechoteca.com/gacetabolivia/ley-no-548-del-codigo-nina-nino-y-adolescente-vigente-y-actualizado#1004CAP%C3%8DTULOVI>. Acesso em: 24 jan. 2019.

BOLÍVIA. **Auto Constitucional Plurinacional 0025**. 21 de julho de 2017. Disponível em: [https://buscador.tcpbolivia.bo/_buscador/\(S\(cqbacfc5meuvf0rngiwky4ji\)\)/WfrFechaResolucion1.aspx](https://buscador.tcpbolivia.bo/_buscador/(S(cqbacfc5meuvf0rngiwky4ji))/WfrFechaResolucion1.aspx). Acesso em: 26 set. 2019.

BUSTELO, Eduardo S. **El recreo de la infancia**: Argumentos para otro comienzo. Buenos Aires: Siglo Veintiuno Editores, 2011.

CUSTÓDIO, André Viana. Teoria da proteção integral: pressupostos para a compreensão do direito da criança e do adolescente. **Revista do Direito**: Revista do programa de pós-graduação do mestrado e doutorado, Santa Cruz do Sul, n. 29, p. 22-43, jan./jun. 2008.

CUSTÓDIO, André Viana; MOREIRA, Rafael Bueno da Rosa. Participação política e cidadania no Brasil: exercício da cidadania plena por meio da efetivação da educação de crianças e adolescentes. **Revista Meritum**, Belo Horizonte, n. 1, v. 14, p. 279-300, jun./dez. 2019.

CUSTÓDIO, André Viana; MOREIRA, Rafael Bueno da Rosa Moreira. A Influência do Direito Internacional no Processo de Erradicação do Trabalho Infantil no Brasil. **Revista Direitos Fundamentais e Democracia**, Curitiba, n. 02, v. 23, p. 178-197, mai./ago. 2018.

CUSTÓDIO, André Viana; MOREIRA, Rafael Bueno da Rosa Moreira. **Exploração Sexual Comercial de Crianças e Adolescentes: Reflexões Contemporâneas no Contexto do Brasil, da Argentina e do Uruguai.** Curitiba: Multideia, 2015.

CAMPOS, Juliana Cristine Diniz; CAMURÇA, Eulália Emilia Pinho; MELO NETO, Carlos Roberto Cals de. Palavra na interpretação da infância: uma análise do legado hermenêutico a partir da Constituição Federal. **Revista Nomos:** Revista do Programa de Pós-Graduação em Direito da UFC, Fortaleza, v. 38, n. 2, p. 345-361, jul./dez. 2018.

EL DEBER. **Anulan la autorización del trabajo infantil desde los 10 años.** 2018. Disponível em: <https://www.eldeber.com.bo/bolivia/Anulan-la-autorizacion-del-trabajo-infantil-desde-los-10-anos-20180209-9582.html>. Acesso em: 31 nov. 2019.

FREITAS, Raquel Coelho de. Direito fundamental à educação para adolescentes em situação de rua: entre autonomia e igualdade de prestação. **Revista Nomos:** Revista do Programa de Pós-Graduação em Direito da UFC, Fortaleza, v. 39, n. 1, p. 265-283, jan./jun. 2019.

GOHN, Maria da Glória. **Teoria dos movimentos sociais:** paradigmas clássicos e contemporâneos. São Paulo: Loyola, 1997.

FLORES, Joaquín Herrera. **A (re)invenção dos direitos humanos.** Florianópolis: Fundação Boiteaux, 2009.

GORCZEVSKI, Clovis. **Direitos humanos, educação e cidadania:** conhecer, educar, praticar. Santa Cruz do Sul: Edunisc, 2009.

GORCZEVSKI, Clovis; MARTIN, Núria Beloso. **A necessária revisão do conceito de cidadania:** movimentos sociais e novos protagonistas na esfera pública democrática. Santa Cruz do Sul: Edunisc, 2011.

LAPIERRE, Jean-William. **Qué es ser ciudadano.** Madrid: Biblioteca Nueva, 2003.

LIMA, Miguel Moacyr Alves. **O Direito da Criança e do Adolescente:** Fundamentos para uma abordagem principiológica. 2001. 479 f. Tese (Doutorado em Direito), Programa de Pós-graduação em Direito, Universidade Federal de Santa Catarina, Florianópolis, 2001.

LORENZETTI, Ricardo Luis. **Fundamentos do Direito Privado.** São Paulo: Revista dos Tribunais, 1998.

MOREIRA, Rafael Bueno da Rosa Moreira. **As estratégias e ações de políticas públicas para a erradicação da exploração sexual comercial nos municípios brasileiros no contexto jurídico e**

político da teoria da proteção integral dos direitos da criança e do adolescente. 2020. 291 f. Tese (Doutorado em Direito), Programa de Pós-Graduação em Direito. Universidade de Santa Cruz do Sul - Unisc, Santa Cruz do Sul, 2020.

MOREIRA, Rafael Bueno da Rosa; CUSTÓDIO, André Viana. O papel das políticas públicas na promoção de ações de sensibilização sobre violência sexual contra crianças e adolescentes. **Revista Jurídica Direito e Paz**, Lorena, n. 41, ano XII, p. 123-144, jun./dez. 2019.

MOREIRA, Rafael Bueno da Rosa; CUSTÓDIO, André Viana. A garantia do direito à educação de crianças e adolescentes no contexto das políticas públicas brasileiras. **Revista Brasileira de Políticas Públicas**, Brasília, n. 01, v. 5, p. 224-245, jan./jun. 2015.

MOREIRA, Rafael Bueno da Rosa; CUSTÓDIO, André Viana. Estratégias municipais para o enfrentamento da exploração sexual comercial de crianças e adolescentes. In: XXVII Encontro Nacional do CONPEDI, 27, 2018, Salvador. **Anais eletrônicos**. Salvador: UFBA, 2018.

MORIN, Edgar. **A cabeça bem-feita:** repensar a reforma, reformar o pensamento. Rio de Janeiro: Bertrand Brasil, 2001.

ORGANIZAÇÃO DAS NAÇÕES UNIDAS. A convenção sobre direitos das crianças. 1989. Disponível em: http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/D99710.htm. Acesso em: 10 nov. 2019.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. Convenção 138 sobre a idade mínima de admissão ao emprego. 1973a. Disponível em: http://www.planalto.gov.br/ccivil_03/decreto/2002/d4134.htm. Acesso em: 11 nov. 2019.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. Convenção 182 sobre a proibição as piores formas de trabalho infantil e ação imediata para sua eliminação. 1999a. Disponível em: http://www.planalto.gov.br/ccivil_03/decreto/d3597.htm. Acesso em: 11 nov. 2019.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. Recomendação 146 sobre a idade mínima de admissão ao emprego. 1973b. Disponível em: <http://white.oit.org.pe/ipec/documentos/r146.pdf>. Acesso em: 11 nov. 2019.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. Recomendação 190 sobre a proibição das piores formas de trabalho infantil e ação imediata para sua eliminação. 1999b. Disponível em: http://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:1849585729961720::NO:12100:P12100_INSTRUMENT_ID:312528:NO. Acesso em: 11 nov. 2019.

OIT: OFICINA SUBREGIONAL PARA LOS PAÍSES ANDINOS. **Derechos fundamentales en el trabajo. Convenios fundamentales y prioritarios, mecanismos de control y observaciones de la Comisión de Expertos en Aplicación de Convenios y Recomendaciones (Bolivia)**. Lima: OIT, 2005.

REIS, Suzéte da Silva. Educação em Direitos Humanos: Perspectivas de promoção e defesa dos direitos das crianças e adolescentes. In: PES, João Hélio Ferreira (coordenador). **Direitos Humanos: Crianças e Adolescentes**. Curitiba: Juruá, 2010.

ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo. A tutela coletiva dos direitos fundamentais da criança e do adolescente trabalhadores. In: VERONESE, Josiane Rose Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo (Coordenadores). **Estatuto da Criança e do Adolescente: 25 anos de desafios e conquistas**. São Paulo: Saraiva, 2015.

RUBIO, David Sanchez. **Repensar los Derechos Humanos: De la anestesia a la sinestesia**. Madrid: Mad, 2009.

RUIZ, Floriberta Aguilar. Reseña de la “Explotación sexual comercial infantil” de Erick Gómez Tagle-López y Miguel Ontiveros Alonso. **Revista Venezolana de Ciencias Sociales**, Cabimas-Venezuela, v. 8, n. 2, p. 357-370, jul./set. 2004.

SANTOS, Milton. **Por uma outra globalização**. 6. ed. Rio de Janeiro: Record, 2001.

SARMENTO, Daniel. **Livres e Iguais: Estudos de Direito Constitucional**. Rio de Janeiro: Lumen Juris, 2010.

SCHMIDT, João Pedro. Para entender as políticas públicas: aspectos conceituais e metodológicas. In: REIS, Jorge Renato dos; LEAL, Rogério Gesta (organizadores). **Direitos Sociais e Políticas Públicas: Desafios Contemporâneos**. Tomo 8. Santa Cruz do Sul: Edunisc, 2008.

SILVA, Christian L.; SOUZA-LIMA, José E. **Políticas públicas e indicadores para o desenvolvimento sustentável**, São Paulo, 2010.

SOUZA, Jadir Cirqueira de. **A efetividade dos direitos da criança e do adolescente**. São Paulo: Pillares, 2008.

SOUZA, Celina. **Políticas Públicas: uma revisão de literatura**. Revista Sociologias. Porto Alegre. July/dec-2006.

VERONESE, Josiane Rose Petry. O Estatuto da Criança e do Adolescente: Um Novo Paradigma. In: VERONESE, Josiane Rose Petry; ROSSATO, Luciano Alves; LÉPORE, Paulo Eduardo (Coordenadores). **Estatuto da Criança e do Adolescente: 25 anos de desafios e conquistas**. São Paulo: Saraiva, 2015a.

VERONESE, Josiane Rose Petry. Adolescente autor de ato infracional sob a perspectiva da intersetorialidade. **Revista do Direito**: Revista do Programa de Pós-graduação do Mestrado e Doutorado, Santa Cruz do Sul, n. 47, p. 125-143, set./dez. 2015b.

VILLATORE, Marco Antônio César; FERRAZ, Miriam Olivia Knopik; QUETES, Regeane Bransin. O direito ao trabalho como elemento do mínimo existencial e a proteção em face do retrocesso social. **Revista Nomos**: Revista do Programa de Pós-Graduação em Direito da UFC, Fortaleza, v. 39, n. 2, p. 147-160, jul./dez. 2019.