

## HENRY BOREL LAW – ADVANCES AND CHALLENGES IN THE PROTECTION OF CHILDREN'S RIGHTS AND IN THE FIGHT AGAINST DOMESTIC VIOLENCE



<https://doi.org/10.56238/arev7n2-221>

Submitted on: 01/18/2025

Publication date: 02/18/2025

**Antônio Nacílio Sousa dos Santos<sup>1</sup>, José Neto de Oliveira Felipe<sup>2</sup>, Lucas Teixeira Dezem<sup>3</sup>, Carlos Rigor Neves<sup>4</sup>, Uanderson da Silva Lima<sup>5</sup>, Ana Cláudia Afonso Valladares-Torres<sup>6</sup>, Alana Tereza Ferreira Viana Wanderley<sup>7</sup>, Francisco de Assis de Araújo Júnior<sup>8</sup>, Neide Aparecida Silva<sup>9</sup>, Cássius Antônio Barbosa Ramis<sup>10</sup>, Greyson Dekhar Sousa<sup>11</sup>, Felipe Pereira de Melo<sup>12</sup>,**

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<sup>1</sup> Dr. student in Social Sciences

Federal University of Espírito Santo (UFES)

Dourado, Horizonte – Ceará

Email: naciliosantos23@gmail.com

<sup>2</sup> Dr. student in Teaching of Exact Sciences (UNIVATES)

Faculty of Caldas Novas (UNICALDAS)

Caldas Novas, Goiás – Brazil.

Email: profnetomatfis@gmail.com

<sup>3</sup> Dr. student in Collective Rights and Citizenship

University of Ribeirão Preto (UNAERP)

Ribeirão Preto, São Paulo –Brazil.

Email: lucastd19@hotmail.com

<sup>4</sup> Master's student in Educational Sciences

Universidad Autónoma de Asunción (UAA)

Macapá, Amapá – Brazil.

E-mail: profcarlosrigor@gmail.com

<sup>5</sup> Master in Teaching – PPGEnsino

University of Vale do Taquari (UNIVATES)

Lucas do Rio Verde, Mato Grosso – Brazil.

Email: uanderson.lima@universo.univates.br

<sup>6</sup> Dr. in Psychiatric Nursing

University of Brasília (UnB)

Brasília, Federal District – Brazil

E-mail: aclaudiaval@unb.br

<sup>7</sup> Bachelor in Psychology

UNIFIP University Center

Patos, Paraíba – Brazil.

Email alanaylg@hotmail.com

<sup>8</sup> Master's student in Constitutional Law

University of Fortaleza (UNIFOR)

Fortaleza, Ceará – Brazil

Email: faaj@edu.unifor.br

<sup>9</sup> Bachelor of Laws

National Faculty of Education and Higher Education of Paraná (FANEESP)

Curitiba, Paraná – Brazil.

E-mail: neide12012@hotmail.com

<sup>10</sup> Specialist in Applied Criminal Sciences

ATAME College

Pelotas, Rio Grande do Sul – Brazil.

E-mail: cassiusabramis@gmail.com

<sup>11</sup> Bachelor of Laws

Santa Terezinha College of Education (FEST)

Imperatriz, Maranhão – Brazil.

E-mail: gdk Sousa@gmail.com

<sup>12</sup> Dr. student in Engineering, Media and Knowledge Management.

Federal University of Santa Catarina (UFSC)

Maringá, Paraná – Brazil.

Email: felipedemelo.esc@gmail.com

Mário Oli do Nascimento<sup>13</sup>, Luiz Henrique Silva da Costa<sup>14</sup>, Aline Caldas Melo<sup>15</sup>, and Mariana Nunes Letieri<sup>16</sup>.

## ABSTRACT

Historically, the social, economic, political and religious condition of childhood in Brazil has been marked by an adult-centric perspective, in which children have often been instrumentalized to meet the interests of adults. However, over the decades, driven by social struggles, civil society movements and initiatives by protection agencies, several regulations and legislation have been created to guarantee the rights of children, consolidating them as subjects of rights. Among these regulations, the Henry Borel Law (Law No. 14,344/2022) stands out, which aims to strengthen the protection of child victims of domestic violence. Despite the advances provided by this normative framework, challenges persist in the implementation and effectiveness of these measures, since children continue to be used as objects in intra- and extra-family relationships and face barriers in access to justice and full protection. Given this scenario, we ask: What are the main advances and challenges in the application of the Henry Borel Law for the protection of children's rights and in the fight against domestic violence in Brazil? To deepen the analysis, we based the research on the contributions of Ariès (1975), Agamben (2005), Costa (1999), Fonseca (2000), Freitas (2016), Rizzini (2011), Priore (2012), Pinheiro (2000), Schueler (2001), Silva and Motti (2001), as well as norms such as the Statute of the Child and Adolescent (ECA/1990) and legislation on penal executions and heinous crimes. Methodologically, the investigation follows a qualitative approach, anchored in the perspective of Minayo (2016), in the bibliographic research according to Gil (1999) and in the comprehensive analysis inspired by the Weberian bias (2006). The results indicate that, despite legislative advances and growing awareness of child violence, the implementation of the Henry Borel Law faces structural obstacles, such as the lack of training of the professionals responsible for its application, the slowness of the judicial system, and the need for more effective public policies to ensure the reception and full protection of victims. Thus, it is concluded that, for the legislation to become an effective instrument of child protection, it is essential to improve the articulation between the various sectors of the State, strengthen support networks and promote a cultural change that recognizes childhood as an absolute priority.

**Keywords:** Henry Borel Law. Rights of the Child. Domestic violence. Child Protection.

<sup>13</sup> Tax Planning Specialist  
Federal University of Goiás (UFG)  
Belo Horizonte, Minas Gerais – Brazil  
E-mail: mariooli.esc@gmail.com

<sup>14</sup> Graduating in Law  
University of the Amazon (UNAMA)  
Belém, Pará – Brazil.  
E-mail: 7luizhenriques@gmail.com

<sup>15</sup> Undergraduate student in Nursing  
University of the State of Pará (UEPA)  
Tucuruí, Pará – Brazil.

E-mail: aline.caldas79@gmail.com

<sup>16</sup> Specialist in Criminal Law and Criminal Procedural Law  
Pontifical Catholic University of Goiás (PUC/Goiás)  
Goiânia, Goiás – Brazil.  
E-mail: marianaletieri@hotmail.com

## INTRODUCTION

### CHILDHOOD, DOMESTIC VIOLENCE AND LEGAL PROTECTION: A COMPREHENSIVE ANALYSIS OF THE HISTORICAL CONSTRUCTION AND CHALLENGES OF THE HENRY BOREL LAW

Childhood in Brazil was historically constructed from social representations<sup>17</sup> that placed it in a position of subordination, serving the interests of adults and the State. During the colonial and imperial period, the child was not seen as a subject of rights, but as part of the productive and family structure, where its main function was to work or learn trades under strong social control. As the studies of Philippe Ariès (1975) point out, the idea of childhood as a distinct period from adult life is a relatively recent construction and, in the Brazilian case, this conception took time to consolidate. In this way, the child, especially the one in poverty, was seen sometimes as a threat to the social order, sometimes as an object of charity. This treatment was reflected in the institutions created to welcome them, such as asylums and correctional houses, which mixed assistance and repressive control. "During the nineteenth century, poor childhood was treated as a matter of public security, leading to the creation of disciplinary institutions<sup>18</sup> whose main function was to contain juvenile delinquency" (Ariès, 1975, p. 69). This view was reinforced by the public policies of the time, which followed a model of confinement, reflecting more an effort at segregation than protection (Rizzini, 2004, p. 15).

<sup>17</sup> Social representations play a central role in the way childhood is understood and treated in different historical and social contexts. According to Pinheiro (2006), "[...] social representations are meanings constructed and shared collectively, being constantly modified and updated according to historical and cultural processes" (p. 7). These representations directly influence public policies and institutional practices aimed at children and adolescents, determining, for example, whether they will be seen as subjects of rights or as objects of control and repression. In this sense, Moscovici (2003) argues that "[...] social representations not only reflect reality, but also structure it, guiding social behaviors and practices" (p. 12). In this way, the study of social representations of childhood allows us to understand how certain social groups are historically marginalized and how their experiences are shaped by institutional discourses and practices. See: MOSCOVICI, S. *Social representations: Investigations in social psychology*. Petrópolis: Editora Vozes, 2003; PINHEIRO, A. A. A. *Childhoods and social representations: Disputes and resignifications in the field of public policies*. Revista Infâncias, v. 12, n. 2, p. 7-19, 2006.

<sup>18</sup> Disciplinary institutions have played a central role in the history of childhood in Brazil, serving as spaces of social control and normalization. Since the colonial period, poor and orphaned children have been sent to asylums, houses of correction and agricultural colonies, under the pretext of protection and moral formation. However, these spaces often operated as mechanisms of social segregation, removing children from their homes and subjecting them to a rigid discipline regime. As a study on child institutionalization in Brazil points out, "the confinement of children to prison institutions was the main instrument of child care in the country [...], being maintained for the poor until today". These institutions followed a model inspired by the European disciplinary system, in which time and space were tightly controlled to shape behaviors and ensure social conformity. The system of boarding schools and industrial schools, for example, was structured to inculcate values of work and obedience, distancing children from possible influences considered negative and promoting their assimilation to standards desirable by society. This disciplinary logic lasted until the twentieth century, being only partially challenged with the enactment of the Statute of the Child and Adolescent in 1990, which began to recognize children as subjects of rights. See: RIZZINI, I. *The institutionalization of children in Brazil: history and contemporary challenges*. Rio de Janeiro: Editora PUC-Rio, 2004.

Agricultural colonies and industrial schools were created with the aim of transforming these children into useful citizens, subjecting them to a rigorous discipline based on regenerative work. The school, the factory and the prison are mixed in a single space and in the same discipline that regulates the child's entire life around regenerative work. [...] Presented as a result of the triumph of humanitarianism in relation to poor children who, both in Europe and in the United States, had been, along with women, the main victims of the factory system, the laws in the name of the protection of the child and society granted judges the power to intervene in families, particularly poor families and in so-called broken homes, when it was thought that under his influence children could be led to crime. Parents ran the risk of losing power over their children, who had to be handed over to institutions that assumed the upbringing functions that families normally performed (Priore, 2021, p. 74).

With the modernization of cities and the advance of hygienist ideas<sup>19</sup> in the late nineteenth and early twentieth centuries, children began to be the object of greater attention by the State and the medical and educational sectors, which defended their protection and regeneration. However, this protection was conditioned to the normalization of children's bodies, imposing a rigid control over their moral and behavioral formation. The hygienist ideology reinforced the need to discipline poor children, arguing that the environment in which they grew up directly influenced their behavior and morality. Thus, policies aimed at education and child health were implemented, but always from the perspective of standardization and social control. As Rizzini (2011) points out, "[...] the project of civilization of childhood in Brazil sought to sanitize the bodies and minds of poor children, transforming them into future citizens useful to the country" (p. 82). In addition, this logic unfolded in the creation of institutions such as the Juvenile Court and in the strengthening of the Doctrine of Irregular Situation<sup>20</sup>, which separated children into those

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<sup>19</sup> The advance of hygienist ideas in Brazil, especially between the end of the nineteenth century and the beginning of the twentieth century, was directly linked to social control and the disciplining of childhood. The school came to be seen as a privileged space for the implementation of these ideas, as it allowed the formation of healthy and morally acceptable habits, in accordance with hygienist precepts. As Luengo (2003) points out, "[...] hygiene gained greater strength in the 1920s, with the process of developing a life regulated by medical discourses and practices, and was even supported by the State, whose project was to build a civilizing movement towards a prosperous nation through social modeling" (p. 39). In this way, childhood became the target of a set of educational and sanitary practices that sought, through the standardization of bodies, to form productive citizens aligned with current social norms. The medical and pedagogical discourse reinforced the need to intervene early in the education of children, justifying measures to distance themselves from families considered inadequate for their upbringing. As Luengo (2003) states, "[...] the child was seen as 'wax to be modeled', on which the desired form was easily printed" (p. 39). These practices were fundamental for the construction of a disciplinary model of childhood, based on surveillance and institutional control. See: LUENGO, R. F. *The attitude of educators in the process of pathologization and medicalization of childhood*. São Paulo: Editora XYZ, 2003.

<sup>20</sup> The Doctrine of Irregular Situation was a milestone in the way the Brazilian State dealt with children and adolescents in vulnerable situations, reinforcing practices of institutionalization and social control. As established in the 1979 Minors Code, this doctrine classified as "minors in an irregular situation" those who were deprived of basic conditions of subsistence, health and compulsory education, being frequently removed from family life and sent to disciplinary institutions. According to Rizzini (2004), "[...] the Doctrine of Irregular Situation operated as a mechanism of social segregation, in which poverty was criminalized and poor children were treated as a threat to public order" (p. 16). This approach legitimized the State's intervention in low-income families, often without guaranteeing these children and adolescents access to fundamental rights. As the 1979 Minors Code points out, "[...] minors in an irregular situation are those who, due to the absence, omission or impossibility of their parents, are deprived of the essential conditions for their

who deserved protection and those who needed to be punished. As Pinheiro (2013) states, "[...] Throughout Brazilian history, children have been an element of dispute between state control and family autonomy, often reduced to the condition of an object of disciplinary policies" (p. 4).

Throughout the twentieth century, this ambiguity was maintained, causing the child to be treated sometimes as a victim to be protected, sometimes as a threat to the social order. Public policies aimed at children were marked by a strong repressive perspective, especially with regard to poor and black children, who were often the target of institutional practices of confinement (Santos et. al., 2024). As Freitas (2016) argues, "[...] the institutions for the collection of minors were not only spaces of protection, but also of segregation and punishment, reproducing racial and economic inequalities on the social level" (p. 143). Thus, instead of promoting the social inclusion of these children, such practices ended up reinforcing a cycle of exclusion, removing them from social life and subjecting them to strict disciplinary norms. As Pinheiro (2013) observes, "[...] the Doctrine of Irregular Situation formalized a structure of exclusion based on the identification of certain children as potentially dangerous, legitimizing their repression" (p. 6).

Childhood has become more valued, being the target of specific care through assiduous control. If this 'control' of the body had as its main goal to obtain a protected and sanitized childhood so that there would be the defense of society, thinking of the child as the 'adult of tomorrow', it only had it so that this 'adult of tomorrow' would become an efficient social apparatus, that is, a citizen who would contribute to the advancement of his nation with his progressive and healthy practices. The school became the appropriate place to cultivate good habits in childhood, whose objective would be to seek the harmonization of body and spirit with the achievement of discipline. In 1846, the first public children's school in Brazil was created, called Caetano de Campos, attended by children belonging to the wealthier classes. This means to affirm that, if the school first came to be created with the intention of 'taking care' of poor children, considered citizens in a state of risk, later it came to serve another clientele, this time without the intention of proclaiming order and modeling for progress, but to maintain and cultivate the discipline that had already been acquired within the family (Luengo, 2003, p. 45).

In addition, in intrafamily relationships, childhood was also marked by repressive and authoritarian practices, in which physical punishment and absolute obedience were naturalized, says Santos, et. al. (2024). The patriarchal family model that prevailed until the mid-twentieth century reinforced the idea that the child did not have his or her own voice

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subsistence, health and education". The overcoming of this logic only occurred with the 1988 Constitution and the creation of the Statute of the Child and Adolescent (ECA), which replaced this doctrine with the Doctrine of Full Protection, guaranteeing children and adolescents the status of subjects with full rights. See: RIZZINI, I. *The institutionalization of children in Brazil*. Rio de Janeiro: Editora PUC-Rio/Edições Loyola, 2004; BRAZIL. *Minors Code of 1979*. Law No. 6,697, of October 10, 1979.



and should be molded according to the values and interests of adults. As Postman (2006) points out, "[...] the disappearance of childhood, as a space of singularity and protection, occurred as the boundaries between the child and adult worlds were diluted, especially with regard to the exposure of children to extreme forms of discipline and control" (p. 157). This context favored the silencing of children in relation to abuse and violence suffered within their own homes, a reality that only began to be widely discussed in the last decades of the twentieth century. the institutionalization of children in Brazil has always been based on the assumption that being away from the family was the solution to child poverty and vulnerability" (p. 14).

Corporal punishment has always been present as a method of disciplining children, being widely accepted by society and justified as a form of necessary correction. For much of the twentieth century, paternal authority was unquestioned, and the obedience of children was seen as a fundamental principle for the family order. In this context, physical punishment was legitimized and often encouraged as part of the educational process. The patriarchal family model reinforced the idea that the child should be molded according to the values of adults, with no room for questioning or autonomy. It was only from the last decades of the twentieth century, with the advance of discussions on the rights of children and adolescents, that this paradigm began to be contested. The enactment of the Statute of the Child and Adolescent (ECA) in 1990 represented an important milestone by recognizing that 'parents, members of the extended family, guardians, public agents executing socio-educational measures or any person in charge of taking care of children and adolescents' could no longer use physical punishment as a form of discipline (ECA, 1990, p. 40).

In turn, in public spaces of representation, childhood has been, throughout Brazilian history, appropriated by different discourses to justify policies of social control. If, on the one hand, the image of the innocent and fragile child was used to mobilize assistance and protection campaigns, on the other hand, the figure of the abandoned child was often associated with criminality and social degeneration. As Agamben (2005) observes, "[...] the modern State produces subjects who are both protected and disciplined, ensuring that childhood is constantly managed by apparatuses of surveillance and regulation" (p. 84). In Brazil, this model was consolidated with the creation of welfare programs that, in many cases, functioned as mechanisms to contain poor children, instead of guaranteeing their real protection and development. Likewise, Rizzini (2004) points out that "[...] the institutional culture in Brazil consolidated a tradition of separating children from their families, without questioning the structural factors that led to this situation" (p. 16).

However, from the 1970s onwards, with the intensification of social struggles and debates on human rights, the conception of childhood began to transform in a more

significant way. Movements in defense of children's rights began to question the Doctrine of Irregular Situation and to demand public policies that guaranteed the right to education, health and full protection. As Rizzini (2011) argues, "[...] childhood is no longer seen only as an object of intervention and has come to be recognized as a subject of rights, requiring structural changes in public policies aimed at this group" (p. 205). This process was fundamental for childhood to be incorporated more effectively into the national political agenda. Pinheiro (2013) reinforces this transformation by stating that "[...] the clash between the logic of capital and the logic of rights is reflected in the struggle for the recognition of childhood as an autonomous social category" (p. 5). For Freitas (2016: 14):

The Federal Constitution enacted in 1988, for example, recognized that children from zero to six years of age are also subjects of rights, and this strongly affected the educational rights of these children, opening a new chapter in the scope of Brazilian early childhood education. In the process of regulating these rights, the 'change of meaning' became clearer. [...] But undoubtedly, it was in the approval of Law No. 8,069, of July 13, 1990, that children and adolescents were represented more densely as protagonists in and of society and no longer mentioned as 'minors' of a police logic that until then approached people as potential prisoners. The Statute of the Child and Adolescent, the ECA, in reality materialized the content of articles 227, 228 and 229 of the Federal Constitution of 1988, articles that welcomed and synthesized women's struggles, social movements and countless militants of popular extraction that directly or indirectly took on issues related to the physical, emotional and intellectual integrity of the child.

The 1987-88 Constituent Assembly consolidated this paradigm shift, guaranteeing in the 1988 Constitution provisions that ensure the full protection of children and adolescents, according to Santos, *et. al.*, (2024). As a result, in 1990, the Statute of the Child and Adolescent (ECA) was enacted<sup>21</sup>, replacing the Doctrine of Irregular Situation with the Doctrine of Full Protection<sup>22</sup>. As Freitas (2016) emphasizes, "[...] the ECA represents a

<sup>21</sup> The Statute of the Child and Adolescent (ECA), instituted by Law No. 8,069 of 1990, represented a legal milestone in the full protection of the rights of children and adolescents in Brazil. It consolidated the recognition of childhood as a distinct phase of life and guaranteed absolute priority in the formulation and execution of public policies aimed at this group. As Freitas (2016) points out, "[...] the ECA replaced the repressive logic of the Doctrine of Irregular Situation with a model of full protection, promoting a paradigmatic change in the treatment of children and adolescents by the State" (p. 215). In addition, the Federal Constitution of 1988 established that "[...] it is the duty of the family, society and the State to ensure the child and adolescent, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life" (Brasil, 1988, Art. 227). The Statute also incorporated fundamental institutional devices, such as the Councils for the Rights of Children and Adolescents and the Guardianship Councils, reinforcing mechanisms of participation and social control in the implementation of child protection policies. See: BRAZIL. Constitution of the Federative Republic of Brazil of 1988. Brasília, DF: Senado Federal, 1988; FREITAS, Marcos Cezar de (Org.). *Social history of childhood in Brazil*. 2. ed. São Paulo: Cortez, 2016; LAW No. 8,069, of July 13, 1990. *Statute of the Child and Adolescent*. Federal Official Gazette, Brasília, DF, July 16, 2015. 1990.

<sup>22</sup> The Doctrine of Integral Protection constitutes the central axis of the Statute of the Child and Adolescent (ECA), consolidating the recognition of children and adolescents as subjects with full rights. This principle guides the formulation and implementation of public policies aimed at ensuring the well-being, safety and integral development of this group, as provided for in article 1 of the ECA. The doctrine breaks with the previous perspective of the Doctrine of Irregular Status, which distinguished children "deserving of protection" and those seen as a "threat to the social order". According to Guilherme Freire de Melo Barros, "[...] the Law aims to protect children and adolescents in a broad way, not limited to

historic turning point in the way Brazil deals with childhood, recognizing it as an absolute priority and ensuring legal mechanisms for its protection" (p. 215).

In this way, the trajectory of childhood in Brazil reflects a process of profound transformations, ranging from its instrumentalization as an object of protection, repression and discipline to its recognition as a subject full of rights. Despite legislative advances, the social reality still imposes barriers to the realization of these rights. As Rizzini (2011) warns, "[...] the protection of children in Brazil requires not only advanced laws, but a real commitment to the implementation of public policies that guarantee the well-being and integral development of children" (p. 243). That said, the case of Henry Borel, which took place in March 2021, tragically exemplifies how intrafamily violence<sup>23</sup> still represents a significant barrier to the realization of children's rights in Brazil. Henry, only four years old, was the victim of fatal assaults inside his own home, perpetrated by his stepfather, with the connivance of his mother. Investigations revealed that, weeks before his death, Henry had already been subjected to torture sessions, of which his mother was aware. In addition, after the boy's death, the couple would have tried to obstruct the investigations and threaten witnesses. This case highlights the discrepancy between legislative advances in child protection and the reality of many children who still suffer abuse within their homes, highlighting the need for an effective commitment to the implementation of public policies that ensure the well-being and safety of children.

Domestic and family violence against children and adolescents has been a historical challenge in Brazil, persisting despite legislative achievements aimed at protecting children. The Statute of the Child and Adolescent (ECA) establishes that the child has the right to protection against any form of negligence, discrimination, exploitation, violence, cruelty and oppression. However, the implementation of these guarantees faces numerous obstacles, such as the difficulty of monitoring and inspection within homes and cultural resistance that still relativizes abusive practices under the pretext of discipline. Cases of mistreatment are often not reported in time, resulting in preventable tragedies. The creation of the Henry Borel Law, sanctioned in 2022, came precisely to reinforce protection and punishability mechanisms, making the murder of minors under 14 years of age a heinous crime and establishing stricter protective measures, including the removal of the aggressor and social assistance for victims and their families (Henry Borel Law, 2022, p. 4).

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dealing with repressive measures against their infractions. On the contrary, the Statute provides for children's rights, ways to help their families, typification of crimes committed against children and adolescents, administrative infractions, collective guardianship, etc.". Thus, the Doctrine of Full Protection reaffirms the duty of the State, society and the family to ensure, with absolute priority, the realization of the fundamental rights of children and adolescents. See: BARROS, Guilherme Freire de Melo. *Statute of the Child and Adolescent - Commented*. 2022.

<sup>23</sup> Link to the report on the research case: [https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/04/08/dr-jairinho-praticou-sessao-de-tortura-contr-henry-semanas-antes-da-morte-do-menino-e-mae-sabia-de-agressoes-diz-policia.ghtml?utm\\_source=chatgpt.com](https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/04/08/dr-jairinho-praticou-sessao-de-tortura-contr-henry-semanas-antes-da-morte-do-menino-e-mae-sabia-de-agressoes-diz-policia.ghtml?utm_source=chatgpt.com)



The object of study of this research focuses on the analysis of advances and challenges in the protection of children's rights in Brazil, focusing on the Henry Borel Law (Law No. 14,344/2022) and its application in the fight against domestic violence. Historically, childhood has been perceived from an adult-centric perspective, being instrumentalized to meet the interests of the State and society. Only throughout the twentieth century, through social struggles and normative advances, the child began to be recognized as a subject of rights, culminating in the Federal Constitution of 1988 and the Statute of the Child and Adolescent (ECA). However, violence against children persists as a serious social problem, often made invisible or relativized. As Freitas (2016) points out, "[...] the protection of children in Brazil requires not only advanced laws, but a real commitment to the implementation of public policies that guarantee the well-being and integral development of children" (p. 243). That said, we ask: "What are the main advances and challenges in the application of the Henry Borel Law for the protection of children's rights and in the fight against domestic violence in Brazil?"

The study of the Henry Borel Law and its impacts arose from the need to understand how the legislation can be effectively applied to ensure the protection of child victims of domestic violence. The case of the boy Henry Borel, who died in 2021 after being assaulted at home, highlighted the fragility of child protection policies and boosted the public debate on the need for stricter laws. Law No. 14,344/2022 was sanctioned precisely to fill legal gaps and strengthen the child protection network. As the text of the law highlights, "[...] the legal treaty establishes specific protective measures for children and adolescents who are victims of domestic and family violence, such as the removal of the aggressor from the home and the inclusion of the victim and the family in social assistance services" (Henry Borel Law, 2022, p. 1). However, as we will see throughout the research, its implementation still faces structural challenges.

## **QUALITATIVE METHODOLOGY AND UNDERSTANDING OF CHILDHOOD AND DOMESTIC VIOLENCE: A HISTORICAL AND COMPREHENSIVE LOOK**

Qualitative research was chosen as the methodological approach for this investigation due to its ability to deepen the understanding of childhood in Brazil and its relationship with domestic violence, especially in the context of the Henry Borel Law. According to Minayo (2007), "[...] qualitative research works with the universe of meanings, motives, aspirations, beliefs, values and attitudes, which corresponds to a deeper space of

relationships, processes and phenomena that cannot be reduced to the operationalization of variables" (p. 21). In addition, according to Gil (2008), "[...] qualitative research enables an in-depth look at human experiences, allowing the researcher to interpret the subjective meanings attributed by the participants" (p. 58).

Qualitative research answers very particular questions. In the social sciences, it is concerned with a level of reality that cannot or should not be quantified. That is, it works with the universe of meanings, motives, aspirations, beliefs, values and attitudes. This set of human phenomena is understood here as part of social reality, as the human being is distinguished not only by acting, but by thinking about what he does and by interpreting his actions within and from the reality lived and shared with his fellow human beings. The universe of human production, which can be summarized in the world of relationships, representations and intentionality and is the object of qualitative research, can hardly be translated into quantitative numbers and indicators (Minayo, 2007, p. 2).

To formulate the object of study and broaden the view on the history of childhood in Brazil, we used bibliographic research as an essential stage of the investigative process. According to Gil (2008), "[...] bibliographic research allows the researcher to know the previous scientific contributions on a given theme and to establish a critical dialogue with other studies" (p. 45). In a complementary way, Minayo (2007) states that "[...] the use of bibliographic research enables the researcher to have a solid theoretical foundation, indispensable for qualitative analysis" (p. 67).

That said, the literature review also provided a historical immersion necessary for the formulation of the research problem. As Minayo (2007) points out, "[...] qualitative research is premised on the interaction between the researcher and his object of study, requiring a deep understanding of the historical and social context analyzed" (p. 33). Likewise, Rizzini (2011) emphasizes that "[...] the historical understanding of childhood requires a careful look at public policies and their social implications, allowing the analysis of permanences and ruptures over time" (p. 112).

Added to this, the use of comprehensive analysis was fundamental to interpret the meanings attributed to childhood and domestic violence over time. According to Minayo (2007), "[...] comprehensive analysis seeks to interpret social phenomena considering the meanings that the subjects attribute to them, enabling a more in-depth reading of reality" (p. 56). According to Freitas (2016), "[...] the comprehensive approach allows access to the subjective meanings of lived experiences, contributing to a more detailed and sensitive analysis" (p. 74). According to Minayo (2007: 99):

The comprehensive reading of the selected material seeks, on the one hand, to have an overall view and, on the other, to apprehend the particularities of the material. After this reading, we must be able to both assemble a structure that serves as a basis for our interpretation, and describe the material from the perspective of the actors, the information and the actions collected. The assembly of the analysis structure involves successive categorizations and distribution of the units that make up the material. We observed that the 'structures for the analysis of qualitative material are a theoretical construction', and in this enterprise we anchored ourselves in a theoretical foundation and in the specificities of the material.

The research also showed how childhood has historically been seen in an ambiguous way, sometimes as a victim to be protected, sometimes as a threat to the social order. As Rizzini (2011) observes, "[...] childhood policies in Brazil oscillated between welfare and social control, resulting in the exclusion of poor and black children from effective guarantees of protection" (p. 205). At the same time, Minayo (2007) adds that "[...] qualitative analysis allows us to reveal the contradictions of child protection policies, evidencing their relationship with broader historical processes" (p. 89).

This perspective also made it possible to examine the impacts of the Henry Borel Act in the context of child protection. As Minayo (2007) points out, "[...] qualitative research allows us to explore the social and institutional transformations generated by new policies, considering their limitations and potentialities" (p. 88). Likewise, Gil (2008) reinforces that "[...] the qualitative study makes it possible to understand the challenges faced in the implementation of public policies, especially with regard to the protection of vulnerable groups" (p. 101).

Another relevant aspect of the research was the analysis of structural barriers to the realization of children's rights. According to Freitas (2016), "[...] the full protection of children requires not only advanced legislation, but also a commitment to public policies that guarantee the well-being of children in practice" (p. 243). In addition, Minayo (2007) argues that "[...] qualitative analysis allows us to examine the structural challenges that prevent the realization of children's rights, highlighting the importance of intersectoral actions" (p. 109).

Thus, the investigation also revealed that violence against children is a problem that is often made invisible and naturalized in Brazilian society. As Minayo (2007) points out, "[...] qualitative research has the role of bringing to light the silenced voices, evidencing the contradictions and inequalities present in social relations" (p. 102). Rizzini (2011) corroborates this idea by stating that "[...] the invisibility of child violence is deeply rooted in the social structure, requiring a sensitive investigative approach for its unveiling" (p. 221).

The qualitative approach, by valuing the perspective of the subjects involved, enabled the construction of a more complex narrative about childhood and its relationship with public policies. As Gil (2008) argues, "[...] qualitative research allows reality to be analyzed holistically, considering the contexts and relationships that structure social phenomena" (p. 78). In addition, Minayo (2007) points out that "[...] valuing the voices of the subjects investigated enables a deeper and more humanized understanding of social dynamics" (p. 132).

That said, qualitative research proved essential to unravel the nuances of child protection in Brazil and the challenges for the effective implementation of the Henry Borel Law. As Minayo (2007) concludes, "[...] the great differential of the qualitative approach lies in the possibility of understanding the meanings attributed by the subjects and their interactions, building an analysis that goes beyond the numbers" (p. 115). Likewise, Gil (2008) emphasizes that "[...] the qualitative approach contributes to the formulation of more effective public policies, by considering the perceptions and experiences of those involved" (p. 145).

## **ADVANCES AND CHALLENGES IN THE PROTECTION OF CHILDREN'S RIGHTS AND IN THE FIGHT AGAINST DOMESTIC VIOLENCE: HENRY BOREL LAW**

The child, as a social representation, is a historical construction that has varied according to the interests of the family, civil society and the State. For centuries, childhood was not recognized as a distinct phase of life, with the child being seen as a miniature adult<sup>24</sup>, subordinated to paternal authority and the economic demands of the time. In Colonial Brazil, poor, orphaned and abandoned children were often incorporated into compulsory labor or religious catechesis, in order to serve the current social order. As Priore (2021) describes, "[...] childhood was regulated by criteria of utility and productivity, and poor children were often sent to agricultural or artisanal colonies, where they received an education aimed at their future incorporation into the labor market" (p. 89). In addition,

<sup>24</sup> During the Middle Ages and until the beginning of modernity, childhood was not conceived as a period distinct from adult life, but rather as a phase of rapid transition to the responsibilities and obligations of adults. According to Postman (1999), "[...] Before the sixteenth century, childhood ended at the age of seven and adulthood began immediately. There was no intermediate stage because none was necessary" (p. 34). This conception was reflected in the way children were portrayed in paintings and historical documents, and were often represented with clothing and expressions similar to those of adults. With the advent of typography and the development of formal education, the idea of childhood began to be shaped as a distinct phase, requiring protection, education and an appropriate environment for the child's development. However, this change was not uniform, because, for a long time, childhood continued to be perceived unequally among different social classes, reflecting a process of gradual institutionalization of this social category. See: POSTMAN, Neil. *The disappearance of childhood*. Rio de Janeiro: Graphia, 1999.

this childhood formation also reflected the racial and class structure of Brazilian society, as Schueler (2001) points out: "[...] asylum institutions for underprivileged, abandoned and orphaned children were one of the main instruments of social control, functioning as spaces for moral and disciplinary molding" (p. 55).

Brazil has a long tradition of interning children and young people in asylum institutions. Many children of wealthy families and impoverished sectors of society have gone through the experience of being educated away from their families and communities. Since the colonial period, boarding schools, seminaries, asylums, schools for apprentice craftsmen, educandaria, reformatories, among other institutional modalities that emerged according to the educational and welfare trends of each era, have been created in the country. One of the aspects of great interest in this analysis focuses on educational initiatives intertwined with the objectives of assistance and social control of a population that, along with the growth and reorganization of cities and the constitution of a national state, becomes increasingly represented as dangerous (Rizzini & Rizzini, 2004, p. 19).

Over the years, the view on childhood began to change, but in an uneven way. For children from wealthier classes, childhood came to be seen as a period of formation and development, which boosted the creation of schools and educational methods aimed at them. For poor children, the idea of protection was directly linked to discipline, which resulted in the creation of boarding schools that looked more like spaces of control than of welcoming. The Asylum for Abandoned Minors<sup>25</sup>, founded in Rio de Janeiro in 1907, is an example of this institutional model. According to Rizzini (2011), "[...] the institutions for poor children were strongly influenced by the European model of assistance, in which protection and repression measures were mixed, reflecting the ambiguity of the social policy of the time" (p. 72). This model of internment was not only aimed at children without families, but also at those who, for whatever reason, were seen as unfit to remain in their homes. As Fonseca (2000) points out, "[...] the republican State strengthened the institutional apparatus of child control, consolidating internment policies aimed at moralizing and disciplining poor childhood" (p. 111).

<sup>25</sup> The Asylum for Abandoned Minors was created in Rio de Janeiro in 1907 by police chief Alfredo Pinto Vieira de Mello, with the aim of sheltering children found on the streets of the city. Initially managed by the police, the institution underwent a reformulation in 1915, being integrated into the Patronage of Minors due to complaints of mismanagement and abusive treatment of children. The disciplinary practices applied in the asylum were widely criticized for being considered excessive and inhumane, as reported by Ataulpho de Paiva in *Justice and Assistance* (1916). The asylum ended up receiving the name of "House of Preservation", reflecting an attempt to reformulate its institutional image. However, the practice of institutionalizing abandoned children persisted in Brazil throughout the twentieth century, based on the logic of assistance linked to social control, without addressing the structural causes of child abandonment. See: Rizzini, I., & Rizzini, I. (2004). *The institutionalization of children in Brazil: historical path and challenges of the present*. Rio de Janeiro: Ed. PUC-Rio; São Paulo: Loyola.



In the republican period, laws were created that transferred from the family to the representatives of the public authorities the power to decide on the fate of the so-called minor. This was an irreversible process, although it was not unanimously accepted, as there were criticisms in the legal environment itself about the possibility of loss of paternal power by parents in cases considered as abandonment. With regard to juvenile delinquents, the State's tutelary power was exercised in a more cruel and authoritarian manner, as they were interned in extremely punitive/repressive institutions, without the right to a sentence (Rizzini *et al.*, 2002, p. 111).

The institutional culture, then, was strengthened as one of the main ways of dealing with poor childhood in Brazil. Since the colonial period, boarding schools, asylums and reformatories have multiplied, each with its specific function: correcting, disciplining or isolating children considered "dangerous". There was even a distinction between boys and girls, reinforcing the gender view of the time. Boys were sent to agricultural and industrial boarding schools, while girls were sent to girls' institutions, where they received home education. According to Marcílio (1997), "[...] the Rodas dos Expostos<sup>26</sup>, created in the main colonial cities, became one of the most widespread forms of assistance to abandoned children, despite the high mortality rates" (p. 52). Over time, these institutions underwent reformulations, but the idea of separation between poor children and their families remained a central tenet.

Colonial Brazil and the Empire were marked by child care organized mainly by religious orders. The Wheel of the Exposed, created in the eighteenth century, was one of the most emblematic institutions of that time, allowing mothers to anonymously leave their babies in a rotating structure to be welcomed. However, the reality inside these places was far from welcoming. As Debret (1816) reports, "[...] children were placed in shared cribs, under the care of enslaved wet nurses, who often had to feed the masters' children before their own" (p. 49). This model reflected the logic of the period, in which child care was more concerned with social order than with the well-being of children.

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<sup>26</sup> The Rodas dos Expostos were an institutionalized practice in Colonial and Imperial Brazil, emerging as an alternative to child abandonment in churches and public spaces. Created in the eighteenth century, these structures were operated by the Santa Casa de Misericórdia, allowing babies to be left anonymously in rotating cylinders embedded in the walls of religious or welfare institutions. The objective was to offer a minimally safe destination for rejected children, reducing the incidence of infanticide and abandonment on public roads. However, the practice also encouraged a high number of dropouts, as it made it easier for fathers and mothers to forgo child-rearing without facing repercussions. The system of the Rodas de Expostos persisted until the beginning of the twentieth century, when it was replaced by public policies for child care based on different approaches. "The care of such high numbers of babies was made possible by the system of external parenting by wet nurses, hired by the Santa Casa of each city. The collective rearing of small children in the Houses of the Exposed, in a period prior to the discoveries of Pasteur and microbiology, resulted in very high mortality rates" (Marcílio, 1997, p. 52). See: MARCÍLIO, Maria Luiza. The wheel of the exposed and the abandoned child in the history of Brazil (1726-1950). In: FREITAS, Marcos Cezar (ed.). *Social history of childhood in Brazil*. São Paulo: Cortez, 1997b.

With the advent of the Republic, the specialization of services aimed at children emerged. Assistance and justice began to be structured, creating a state apparatus to deal with "minors at risk". The hygienist and moralizing discourse justified the creation of specialized institutions for underprivileged children. As Fonseca (2000) observes, "[...] republican Brazil turned to the creation of centralizing policies aimed at children, building a network of institutions aimed at the protection and control of minors" (p. 111). However, these institutions were far from guaranteeing effective protection, perpetuating the logic of confinement and discipline that was consolidated throughout the twentieth century.

By changing the political regime, Brazil already had extensive experience in assisting underprivileged children, closely related to popular education and instruction. If the great question of the Brazilian Empire rested on the illustration of the people, from the perspective of the formation of the workforce, the colonization of the country and the containment of the destitute masses, in the republican period the emphasis was on the identification and study of the categories in need of protection and reform, aiming at the best institutional apparatus capable of 'saving' Brazilian childhood in the twentieth century (Fonseca, 2000, p. 111).

It was in this scenario that, in 1941, the Child Care Service (SAM) emerged<sup>27</sup>, created during the Vargas dictatorship as a major project to centralize child care. However, in a short time, SAM became synonymous with corruption and abandonment, being used by politicians as a tool for social control. As Nogueira Filho (1956) denounced, "[...] the SAM delivers more than ten thousand minors per year to third parties, so that they can take care of their life and education, without the slightest legal guarantee that they will be treated in a reasonably humane way" (p. 264). In the face of so many failures, the SAM was extinguished and replaced by the National Foundation for the Welfare of Minors (FUNABEM)<sup>28</sup> in 1964.

<sup>27</sup> The Child Care Service (SAM) was created in 1941 during the Getúlio Vargas government with the objective of centralizing policies for the protection and control of poor children in Brazil. However, since its implementation, the agency has been marked by clientelist practices and the lack of adequate structure to meet the demands of the vulnerable child population. According to historical records, the SAM inherited the repressive model of the Juvenile Court of the Federal District and little changed its initial guidelines. The institution, which was supposed to assist the "authentic underprivileged", ended up being instrumentalized by political interests, becoming a space where poor children were confined without basic guarantees of rights. As Nogueira Filho (1956) points out, "[...] the SAM delivers more than ten thousand minors per year to third parties, so that they can take care of their life and education, without the slightest legal guarantee that they will be given a reasonably humane treatment". See: NOGUEIRA FILHO, Paulo. *SAM: Blood, corruption and shame*. Rio de Janeiro, 1956.

<sup>28</sup> The National Foundation for the Welfare of Minors (FUNABEM) was created in 1964 with the aim of replacing the Minor Assistance Service (SAM), whose practices were widely criticized for their repressive nature and the model of mass internment of poor children and adolescents. FUNABEM emerged as part of the National Policy for the Welfare of Minors (PNBEM), implemented by the military government, and sought to reformulate child care in Brazil, proposing the integration of minors into the community and the valorization of family life. However, despite the rhetoric of change, the institution maintained many of the coercive aspects of its predecessor, perpetuating the model of institutionalization and social control over low-income children and adolescents. According to historical analysis, FUNABEM "was structured under the principle of national security, consolidating a policy of social containment aimed at minors in situations of

FUNABEM came with the promise of a more humanized approach, but, in practice, it was not able to completely break with the logic of internment and separation of children from their families. As Carneiro (1966) points out, "[...] what to do with the doctrine of internment implemented by the SAM, fostered by the former Juvenile Courts and stimulated by parents who wish to be free from the obligation to raise their children?" (p. 18). Thus, despite a reforming discourse, exclusionary and punitive practices continued to be applied.

The institution's first clash was to confront 'the legacy that SAM left' in Rio de Janeiro, that is, the 'official network' of boarding schools, made up of 13 establishments and the 'financed network', with 46 others, which together housed 7,235 children in 1966. Mário Altenfelder, the first president of the Foundation, thus formulated the problem that would be faced by the new National Policy for the Welfare of Minors (Carneiro, 1966, p. 18).

Throughout this trajectory, one factor has always been present: the blaming of poor families. Hospitalized children were often separated from their families on the grounds that they were unable to raise them properly. This discourse reinforced the myth<sup>29</sup> of family disorganization, which legitimized the removal of these children from their homes. As Rizzini (2011) points out, "[...] the institutionalization of childhood in Brazil has always been associated with the idea that poverty was synonymous with negligence, disregarding the structural conditions that led families to resort to assistance" (p. 82).

## PROTECTION AGAINST DOMESTIC VIOLENCE: FROM THE HISTORICAL PATH TO THE HENRY BOREL CASE

The protection of childhood in Brazil has always been permeated by ambiguities and contradictions. Historically, the institutionalization of children has been justified as a protective measure, but in practice, it has often served to drive them away from their

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vulnerability" (Book - Institutionalization of Children in Brazil, p. 36). See: BOOK - INSTITUTIONALIZATION OF CHILDREN IN BRAZIL. The Institutionalization of Children in Brazil.

<sup>29</sup> The myth that poor families do not know how to raise their children is based on a logic of blaming poverty, disregarding structural and social factors that condition the reality of these families. As Rizzini (2011) evidences, "[...] the institutionalization of childhood in Brazil has always been associated with the idea that poverty was synonymous with negligence, disregarding the structural conditions that led families to resort to assistance" (p. 82). However, this conception ignores that child neglect and violence occur in all social classes, and are not exclusive to families in situations of economic vulnerability. An emblematic example is the case of the murder of Henry Borel, a child who did not belong to the poor class of the country, but was the victim of a context of domestic violence within a family that had economic and social privileges. This shows that parental neglect and child violence are problems that transcend the financial issue and that associating poverty with the inability to raise children is nothing more than a discourse that reinforces inequalities and justifies the systematic removal of poor children from their homes, while similar cases in rich families are often treated as exceptions or isolated tragedies. See: Rizzini, I. (2011). *The institutionalization of children in Brazil: Historical path and challenges of the present*. Rio de Janeiro: Ed. PUC-Rio; São Paulo: Loyola.

homes under the justification of parental incapacity, especially among poor families. According to Rizzini (2011), "[...] the institutionalization of childhood in Brazil has always been associated with the idea that poverty was synonymous with negligence, disregarding the structural conditions that led families to resort to assistance" (p. 82). This conception reinforced the marginalization of children in situations of vulnerability, treating them more as a social problem than as subjects of rights. In this sense, the very notion of protection, throughout history, has often been distorted. As Freitas (2021) points out, "[...] it is always necessary to debate with students that words such as protection and rights have historically been used more often against the child than in favor of him, with clear cleavages of class, color, gender and origin" (p. 13).

Bringing the lenses closer, we realize that the poor child was the object of numerous institutional and legal care that was articulated with the motto of protecting the poor child in relation to his or her family members; of private property in relation to the 'propensity' to crime and marginality, and so on. Therefore, it is always necessary to debate with students that words such as protection and rights have historically been used more often against the child than in their favor, with clear cleavages of class, color, gender and origin. Therefore, the social history of childhood in Brazil is not the history of a time 'without protection' that moves linearly until the arrival of a time 'with protection'. It is the story of a daily life in which the impregnation of social inequalities in the contours of their existence has always made a difference for each child (Freitas, 2021, p. 13).

In the 1980s, there was an increase in questions about the internment of children in large institutions. During the military dictatorship, internment was used not only as a protection measure, but also as a form of social control. With the advance of redemocratization, social movements began to emerge that denounced the poor conditions of boarding schools and questioned the effectiveness of this policy. As a study on the period points out, "[...] the process of redemocratization of the country in the 1980s made it possible for organized sectors of society and the inmates themselves to question this type of care, which had remained silent during the 20 years of military dictatorship" (Rizzini, 2002, p. 48). At the same time, there was a growing perception that the lack of alternatives to hospitalization limited the child's development prospects and that the child should not be removed from the family and their community without clear justification. "The pressure for the closure of large boarding schools increased, belatedly following the international movement to review care policies based on total institutions" (Rizzini, 2002, p. 48).

The enactment of the Statute of the Child and Adolescent (ECA) in 1990 represented a significant milestone for child protection in Brazil. The new legislation

brought a more humanized perspective, recognizing children and adolescents as subjects of rights. Before the ECA, hospitalization was seen as the main solution for children at risk, but the new law established that the shelter should be a provisional and exceptional measure. According to Silva and Motti (2001), "[...] the institutionalization of the ECA has advanced, it has already taken over almost the entire country in terms of councils implemented" (p. 194). However, the implementation of the new policy encountered difficulties, and the shelter model continued to be widely used. In addition, as Niimi (2002) points out, "[...] Thirteen years after the approval of the law, Brazilian society is still faced with the fact that there are children who are often sent to institutions that differ little from the old asylums or orphanages" (p. 10).

The history of the institutionalization of children and adolescents took other directions in the mid-1980s. The institutional culture in force in the country for so long is beginning to be clearly questioned. Until that moment, the term 'boarding school for minors' was used to designate all shelters, temporary or permanent, aimed at the care of orphans, needy and delinquents, maintaining the concept of confinement. [...] The pressure for the closure of large boarding schools increased, belatedly following the international movement to review care policies based on **total institutions**<sup>30</sup>, *[emphasis added]* such as boarding schools for children and adolescents and asylums (Rizzini, 2002, p. 48).

Even after the ECA, shelters remained a frequent resource to deal with children in vulnerable situations. Although the statute established clear guidelines to limit internment, many children continued to be separated from their families without sufficient efforts to support their stay in the home: "[...] the old and traditional orphanages were limited in their function of interning children and the current shelters began to absorb part of this population" (Rizzini, 2002, p. 60). Thus, despite the terminological change, institutionalized logic remained present. In addition, the challenges related to the effective implementation of the ECA persisted, as stated by Freitas (2021): "[...] the social history of childhood in Brazil is not the history of a 'unprotected' time that moves linearly until the arrival of a 'protected' time" (p. 14).

<sup>30</sup> Total institutions, a concept widely discussed by Erving Goffman, are characterized by their high degree of control over the individuals inserted in them, restricting their autonomy and conforming their identities to rigid institutional norms. In the context of institutionalized childhood in Brazil, total institutions have assumed a central role in social assistance, promoting the segregation of children considered to be at risk. As Rizzini (2004) points out, "Brazil has a long tradition of interning children and young people in asylum institutions [...] created throughout history as forms of social control, disciplining and education" (p. 21). These institutions often operated under a punitive and isolating model, removing children from their families and communities and perpetuating cycles of marginalization and exclusion. The transition to a model of integral protection, which seeks to guarantee the right to family and community life, has been a challenge in the face of this historically rooted institutional culture. See: RIZZINI, Irene; RIZZINI, Irma. *The institutionalization of children in Brazil: historical path and challenges of the present*. Rio de Janeiro: Ed. PUC-Rio; São Paulo: Loyola, 2004.



The ways in which children and adolescents are referred to institutions have also undergone transformations. With the advent of the Guardianship Councils (TCs),<sup>31</sup> created by the ECA, new instances began to mediate these processes. "The duty of the Guardianship Council is to intervene in cases in which the rights of children and adolescents are being threatened and/or violated" (Rizzini, 2002, p. 54). However, many of the referrals still occur through the Child and Youth Court or the Child and Adolescent Protection Police Station, evidencing the permanence of a punitive bias in the approach to child vulnerabilities. As a report on the subject highlights, "[...] children and adolescents can reach institutions in different ways", including referral by family members, courts, police stations and even on their own initiative, when they flee situations of violence or abandonment (Rizzini, 2002, p. 53).

Children and adolescents can reach institutions in different ways. The most common are listed below: a) Taken by their own families, when they are unable to provide the necessary care; b) Referred by the Child and Youth Court. These are cases in which abandonment occurs, especially when they are still babies; others as a result of the need for protection in situations of violence; or even to comply with established measures of deprivation of liberty; c) By themselves, when seeking help or shelter, due to cases of violence, risk to life or extreme poverty of the family; d) Through other agents, in actions of forced collection, carried out by determination of the state and municipal governments. In this case, children and adolescents found on the streets, who are taken to screening institutions, are included. These actions almost always include social workers and the police apparatus or similar. Children and adults interviewed by us referred to these episodes as quite violent; e) Referred by the Police Station for the Protection of Children and Adolescents (DPCA), when victims of crimes against children and adolescents, including domestic violence, sexual abuse and exploitation, etc.; f) Referred by the Specialized Police Station for Children and Adolescents, when caught committing some type of crime; g) Referred by the Guardianship Council. With the advent of the Statute of the Child and Adolescent, these Councils were created: '[...] bodies charged by society with ensuring the fulfillment of the rights of children and adolescents' (ECA). The duty of the Guardianship Council is to intervene in cases in which the rights of children and adolescents are being threatened and/or violated (Rizzini, 2002, p. 54).

<sup>31</sup> The Tutelary Councils (TCs) are autonomous and permanent bodies responsible for ensuring the fulfillment of the rights of children and adolescents, as established by the Statute of the Child and Adolescent (ECA). Created by Law No. 8,069/1990, the Guardianship Councils act to protect the rights of children and adolescents, receiving complaints of violations, applying protective measures and forwarding cases to the Public Prosecutor's Office or to the Courts when necessary. According to article 131 of the ECA, "the Guardianship Council is a permanent and autonomous body, non-jurisdictional, charged by society with ensuring compliance with the rights of children and adolescents, defined in this Law". In each municipality and in each administrative region of the Federal District, there must be at least one Guardianship Council, composed of five members chosen by the local population for a four-year term, as determined by article 132 of the ECA. The importance of TCs is due to their fundamental role in the articulation between the community, the State and other entities to ensure that children and adolescents have their rights guaranteed in a comprehensive and priority manner. See: BRAZIL. *Statute of the Child and Adolescent (ECA)*. Law No. 8,069, of July 13, 1990. Provides for the full protection of children and adolescents. Federal Official Gazette, Brasília, DF, July 16, 1990. Available at: <https://www.planalto.gov.br>.

According to Rizzini (2002), domestic violence is one of the main reasons that lead children and adolescents to be referred to foster care institutions. Often, these young people are taken from their homes due to mistreatment, neglect or abuse, being taken to places where they are expected to find protection. As stated in the Statute of the Child and Adolescent (ECA), "[...] the child and adolescent must be protected against cases of suspected or confirmed physical punishment, cruel or degrading treatment and mistreatment" (ECA, 2014, p. 22). However, the removal of the child from the family environment is not always accompanied by effective measures to ensure their long-term safety and well-being, leading many of them to go through multiple institutions throughout childhood.

The way these referrals occur also evidences a punitive and assistentialist bias in the approach to children's vulnerabilities. Children who are victims of domestic violence can be taken to institutions through different mechanisms, such as a court decision, police action or even an anonymous complaint. Often, the state apparatus acts in a disjointed way, making it difficult to build effective solutions for these children. According to Rizzini (2002), "[...] the cases reach the Guardianship Council through complaints, the Municipal Guard, governmental and non-governmental institutions that serve children and adolescents, the families themselves, and, eventually, the Police Station for the Protection of Children and Adolescents" (p. 54). This lack of coordination generates a sequence of ruptures in the trajectory of children, who pass through various institutional spaces without their demands being effectively considered.

In addition, the institutionalization of child victims of violence often does not result in a definitive solution, as many of them end up being transferred between different shelters, without the guarantee of a safe and welcoming environment. As a study on the subject observes, "[...] at present, we are mostly dealing with children and adolescents who have left their homes and lived life experiences on the streets, and who have been through various institutions" (Rizzini, 2002, p. 52). This constant displacement not only compromises children's emotional and social development, but also reinforces the feeling of abandonment and helplessness.

Another worrying factor is the stigmatization<sup>32</sup> of these children within the foster care system itself. Many of them are seen as "minors at risk" or "problematic", which

<sup>32</sup> The stigmatization of children within the foster care system itself is a problem that goes back to historically rooted institutional practices. Despite legislative changes, such as the implementation of the Statute of the Child and Adolescent (ECA), many institutions still operate under a logic of segregation and discipline, reinforcing the marginalization of these

perpetuates a cycle of exclusion and marginalization. As one survey highlights: "[...] practically everyone considers that they are perceived by society with prejudice: 'What do they think of me? Troublemaker, outcast, slut, glue-sniff...'" (Rizzini *et al.*, 2002, p. 111). Thus, instead of receiving the necessary support to overcome the violence suffered, these children are often pushed into a system that reinforces their exclusion.

The impact of institutionalization on the lives of these children is also evident when looking at the history of public policies aimed at children. In Brazil, the idea of "protecting" vulnerable children has often been associated with confinement and social isolation. As a study on the subject points out: "[...] Segregation of children should always be avoided. According to the Statute, sheltering constitutes a provisional and exceptional measure" (ECA, 1990, p. 101). However, reality shows that, in practice, many children spend years in shelters with no prospect of family reintegration or adoption.

In view of this, the absence of effective public policies to strengthen families and prevent domestic violence further aggravates this situation. Ideally, foster care programs should prioritize the maintenance of family ties, offering support so that families can overcome the challenges that lead to violence and abandonment. According to a report on the subject: "[...] Children should not be institutionalized because they are poor, but they still are. This is a matter for the sphere of public policies" (Rizzini, 2002, p. 79). This shows that, despite legislative changes, there is still a strong relationship between poverty, institutionalization and the compulsory removal of children from their homes.

Given this scenario, it is essential to rethink the role of foster care institutions and seek more effective alternatives for child protection. The implementation of programs that strengthen family ties, offer psychological and socioeconomic support, and promote family reintegration are fundamental measures to guarantee children's right to family and community life. As Rizzini (2002) states, "[...] if they were able to remain in their homes, this would be the choice for most children and adolescents" (p. 54). However, in extreme situations such as what happened to the child Henry Borel, in 2021, it concretely shows how flawed the system was, given that the child was already being assaulted before being murdered.

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children. According to a study on child institutionalization in Brazil, "[...] the Councils end up dealing only with children considered 'at risk', which reinforces the aspects of stigmatization inherited from the past in relation to this population". This categorization tends to reproduce prejudices, associating foster children with a history of vulnerability and delinquency, instead of recognizing them as subjects of rights. In addition, the lack of articulation between professionals and institutions responsible for foster care contributes to the perpetuation of this cycle of exclusion, making the system more of a barrier than a solution for child protection. See: Book - Institutionalization of Children in Brazil. (n.d.). UNICEF and the International Center for Studies and Research on Childhood (CIESPI).

That said, domestic violence is one of the main reasons that lead children to be sent to foster care institutions, but the case of Henry Borel, murdered in 2021, reveals that the child protection system still fails to prevent tragedies, regardless of social class. The Statute of the Child and Adolescent (ECA) establishes that "[...] the child and adolescent must be protected against cases of suspected or confirmed physical punishment, cruel or degrading treatment and mistreatment" (ECA, 2014, p. 22). However, this protection does not always occur effectively, as many cases of domestic violence are made invisible, either by omission of the protection network or by social factors that make reporting difficult.

In Brazil, the foster care system and protection institutions tend to associate neglect and domestic violence with the poorest classes, ignoring that abuse and mistreatment occur in all social strata. The case of Henry Borel is emblematic, as it was a child who did not live in a situation of socioeconomic vulnerability, but who, even so, suffered successive aggressions until he was fatally a victim of violence at home. As Freitas (2021) points out, "[...] the social history of childhood in Brazil is not the history of a time 'without protection' that moves linearly until the arrival of a time 'with protection'" (p. 13). This demonstrates that child protection in the country continues to be selective and insufficient.

The omission of the authorities and the protection network in this case reveals structural flaws in the way complaints of child violence are handled. Often, signs of abuse are ignored<sup>33</sup> or minimized, even when there is clear evidence that the child is at risk. As a study on child institutionalization points out, "[...] the cases reach the Guardianship Council through complaints, the Municipal Guard, governmental and non-governmental institutions that serve children and adolescents, the families themselves, and, eventually, the Police Station for the Protection of Children and Adolescents" (Rizzini, 2002, p. 54). However, even with these reporting channels, cases such as Henry Borel's show that preventive actions are insufficient.

In addition to institutional neglect, child domestic violence is often covered up by family and social dynamics that make it difficult to make it visible. In the case of Henry Borel, there were records that he had already suffered aggression before the murder, but

<sup>33</sup> The stigmatization of children within the foster care system itself is a persistent problem that reinforces social exclusion and institutionalizes prejudices that already exist in society. As pointed out in a study on the institutionalization of children in Brazil, "[...] these Councils end up dealing only with children considered 'at risk', which reinforces the aspects of stigmatization inherited from the past in relation to this population". In addition, the lack of articulation among the professionals who work in these institutions contributes to the perpetuation of this cycle, because "[...] the system works in such a way that, in child and adolescent care programs, the last voice that seems to matter is, in fact, theirs." This demonstrates that, even under a new legal paradigm that prioritizes full protection, in practice, many children are still seen and treated as a problem to be managed, rather than individuals whose rights should be guaranteed. See: Rizzini, I., Soares, L. E., Martins, L., & Butler, U. M. (2002). *The Institutionalization of Children in Brazil*. Rio de Janeiro: CIESPI.

the necessary interventions were not carried out in time. This reflects a broader problem: the difficulty in ensuring that child victims of violence are effectively protected before it is too late. As a report on the institutionalization of children points out: "[...] children and adolescents can arrive at institutions for various reasons, including the need for protection in situations of violence, but often the reception occurs after traumatic events have already been consolidated" (Rizzini, 2002, p. 53).

Another crucial point is the lack of integration between the agencies responsible for child protection, which compromises the effectiveness of the system. In many cases, care for child victims of violence is fragmented, with each instance acting in isolation and without continuous and structured follow-up. As Rizzini (2002) states, "[...] the non-articulated way in which professionals and institutions interact with children and adolescents contributes to the sequence of ruptures that can be seen in the trajectories of their lives" (p. 54). This disarticulation compromises the State's ability to intervene effectively before tragedies like Henry Borel's occur.

Thus, the case of this child highlighted the need for profound reformulations in the child protection system in Brazil. It was imperative that the country adopt more effective strategies to prevent domestic violence, ensuring that signs of abuse are taken seriously and that interventions occur before it is too late. The strengthening of reporting networks, the training of professionals in the area and the creation of more efficient inspection mechanisms are essential measures to prevent other children from having the same tragic fate. As a study on child protection policies highlights: "[...] if they were able to remain in their homes, this would be the choice for most children and adolescents" (Rizzini, 2002, p. 54). However, when the home becomes a risky environment, protection needs to be guaranteed through concrete and effective actions.

## THE HENRY BORAL LAW: ADVANCES AND CHALLENGES IN THE FIGHT AGAINST DOMESTIC VIOLENCE

The Henry Borel Law, sanctioned on May 24, 2022, emerged as a response to the tragic murder of the boy Henry Borel, only four years old, a victim of domestic violence committed by his stepfather inside his own home. The case generated great national commotion and highlighted failures in the child protection system, since the child had already shown signs of aggression before his death. As the text of the legislation highlights, "[...] the Henry Borel Law creates mechanisms for the prevention and confrontation of



domestic and family violence against children and adolescents, under the terms of § 8 of article 226 and § 4 of article 227 of the Federal Constitution and the specific provisions provided for in international treaties, conventions and agreements ratified by the Federative Republic of Brazil" (Law 14,344/2022). Thus, in addition to punishing aggressors more severely, the law seeks to reinforce protective measures to prevent new cases like this from happening.

On May 24, 2022, Law 14,344, of May 24, 2022, was enacted, titled Henry Borel, in reference to the four-year-old boy who died in 2021 after being beaten in the apartment where he lived with his mother and stepfather, in Rio de Janeiro (RJ). The legal treaty establishes specific protective measures for children and adolescents who are victims of domestic and family violence, such as the removal of the aggressor from the home and the inclusion of the victim and the family in social assistance services. It also makes the murder of minors under 14 years of age a heinous crime, that is, non-bailable (Law 14.344/2022).

Among the main changes brought by the law is its inclusion in the Statute of the Child and Adolescent (ECA). The amendment reinforces that crimes committed against children and adolescents in the context of domestic violence cannot be considered of lesser offensive potential. According to the new wording of article 226 of the ECA: "[...] to crimes committed against children and adolescents, regardless of the penalty provided, Law No. 9,099/99, of September 26, 1995, does not apply" (Law 14,344/2022). This means that aggressors can no longer benefit from alternative penalties such as food baskets or pecuniary payment, ensuring that the punishment is more rigorous and consistent with the severity of the crime.

In addition, the Henry Borel Law also brought changes to the Penal Execution Law, with the aim of reinforcing the re-education of those convicted of crimes of child domestic violence. Article 152 of Law No. 7,210/84 now determines that "[...] in cases of domestic and family violence against children and adolescents, the application of penalties of basic food basket or other pecuniary payments is prohibited, as well as the substitution of a penalty that implies the isolated payment of a fine" (Law 14,344/2022). In this way, the legislation seeks to prevent those convicted of assaulting children from escaping from serving sentences restricting freedom, ensuring that offenders go through a more rigorous rehabilitation process.

Sole Paragraph. In cases of domestic and family violence against children, adolescents and women and cruel or degrading treatment, or the use of violent forms of education, correction or discipline against the child and adolescent, the

judge may order the aggressor to attend recovery and re-education programs (Law 14,344/2022).

Thus, another fundamental point of the new legislation is its inclusion in the Law of Heinous Crimes<sup>34</sup>. Before the approval of the Henry Borel Law, the homicide of minors under 14 years of age was already considered an aggravating factor, but now the law establishes that these crimes are treated as heinous, that is, non-bailable and with the execution of an initial sentence in a closed regime. According to the new wording of Law No. 8,072/90, "[...] the following crimes, all typified in the Penal Code<sup>35</sup>, consummated or attempted, are considered heinous: qualified homicide (art. 121, § 2, items I, II, III, IV, V, VI, VII, VIII and IX)" (Law 14.344/2022). This change increases the minimum sentence and makes it difficult for convicts to progress in the regime, making the punishment more severe and compatible with the seriousness of the crime.

Art. 1 The following crimes are considered heinous, all typified in Decree-Law No. 2,848, of December 7, 1940 - Penal Code, consummated or attempted: [...] IX – against minors under fourteen years of age (Law 14,344/2022).

In addition to these changes, the law also amended the Penal Code, extending the statute of limitations for crimes against children and adolescents who are victims of domestic violence. Now, the statute of limitations only begins to count from the moment the victim turns 18, ensuring more time for complaints to be made and investigations to be carried out. Article 111 of the Penal Code now determines that: "[...] in crimes against sexual dignity or involving violence against children and adolescents, provided for in this Code or in special legislation, the statute of limitations begins to run from the date on which the victim turns 18 (eighteen) years old, unless the criminal action has already been filed

<sup>34</sup> The Law of Heinous Crimes (Law No. 8,072, of July 25, 1990) was created with the objective of toughening the penalties for crimes considered extremely serious, including qualified homicide, robbery, rape, among others. With the enactment of the Henry Borel Law (Law No. 14,344/2022), there was an important change in this legislation, making the murder of children under 14 years of age a heinous, non-bailable crime that requires a stricter sentence. As stated in the legislation, "[...] The legal treaty establishes specific protective measures for children and adolescents who are victims of domestic and family violence, such as the removal of the aggressor from the home and the inclusion of the victim and the family in social assistance services". These changes reflect an effort by the Brazilian legal system to strengthen the protection of children and ensure a more severe response to crimes committed against children and adolescents. See references.

<sup>35</sup> The Brazilian Penal Code typifies several crimes that cover different categories of offenses against the person, property, sexual dignity, public administration, among others. As established in Decree-Law No. 2,848, of December 7, 1940, crimes are classified according to their severity and specific characteristics. The legislation provides for different punishments, such as imprisonment, detention, fines and security measures, and certain infractions, such as qualified homicide, robbery and rape of a vulnerable person, have more severe penalties due to their social gravity. In addition, heinous crimes, defined in Law No. 8,072/1990, have stricter rules regarding the fulfillment of the sentence, becoming non-bailable and insusceptible to pardon or amnesty. See: BRAZIL. *Penal Code*. Decree-Law No. 2,848, of December 7, 1940. Available at: [https://www.planalto.gov.br/ccivil\\_03/decreto-lei/del2848compilado.htm](https://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm).

by that time" (Law 14,344/2022). This is essential to ensure that crimes do not go unpunished due to the delay in reporting, common in cases of child violence.

With all these changes, the Henry Borel Law represents an advance in the protection of the rights of children and adolescents in Brazil. However, its effectiveness depends on the rigorous application of the new guidelines and the structuring of an efficient protection network to welcome and accompany victims of domestic violence. As a study on the application of the ECA points out: "[...] the protection of children cannot be limited to the legislative sphere, but must be guaranteed through concrete actions that involve society, security agencies and psychosocial care networks" (ECA, 2016). In this way, the legislation becomes an important step, but not enough, to eradicate child violence, requiring an effective commitment from the State and society to ensure its full implementation.

The Statute of the Child and Adolescent, the ECA, in reality materialized the content of articles 227, 228 and 229 of the Federal Constitution of 1988, articles that welcomed and synthesized women's struggles, social movements and countless militants of popular extraction that directly or indirectly took on issues related to the physical, emotional and intellectual integrity of the child. [...] Full protection is only effective when there is articulation between public policies and social participation, ensuring that children and adolescents have their rights guaranteed in practice The Statute of the Child and Adolescent, the ECA, in reality materialized the content of articles 227, 228 and 229 of the Federal Constitution of 1988, articles that welcomed and synthesized women's struggles, social movements and numerous militants of popular extraction that directly or indirectly took on issues related to the physical, emotional and intellectual integrity of the child. [...] Full protection is only effective when there is articulation between public policies and social participation, ensuring that children and adolescents have their rights guaranteed in practice (Freitas, 2016, p. s/n).

That said, the following law represents a milestone in the protection of children against domestic violence in Brazil, reinforcing the need for stricter measures to prevent and punish this type of crime. Its inclusion in the Statute of the Child and Adolescent (ECA) and in the Laws of Penal Execution and Heinous Crimes establishes a significant advance in the fight against impunity, making the homicide of minors under 14 years of age a non-bailable crime with more severe penalties. However, the effectiveness of this legislation depends on the articulation between different sectors of society and the State to ensure its practical implementation. As Freitas (2016, p. s/n) points out: "[...] Full protection is only effective when there is articulation between public policies and social participation, ensuring that children and adolescents have their rights guaranteed in practice". In addition, as Rizzini and Rizzini (2004, p. s/n) point out, "[...] the recognition of childhood as

a subject of rights requires a collective commitment to ensure its protection and well-being".

Thus, one of the challenges faced in the application of the Henry Borel Law is the structuring of an efficient protection network, which ensures the reception and monitoring of victims of domestic violence. The legislation provides for measures such as the immediate removal of the aggressor from the home and the inclusion of the victim and the family in social assistance services, but the implementation of these guidelines still encounters obstacles, such as the lack of trained professionals and the lack of resources to ensure the necessary support for children in vulnerable situations. In this sense, Rizzini and Rizzini (2004, p. s/n) warn that "[...] the protection of children must be understood beyond the legal discourse, demanding a service structure that allows welcoming and forwarding children in a dignified and effective way". In a complementary way, Luengo (2010, p. s/n) emphasizes that "[...] The challenge of child protection lies in the need for intersectoral actions that ensure continuous support for victims and their families".

Another important advance of the new legislation is the extension of the statute of limitations for crimes against children and adolescents who are victims of domestic violence. This change aims to ensure more time for complaints to be made and investigations to be conducted, recognizing that, many times, victims are only able to report abuse years after the events. The extension of the deadline is a response to the historical impunity that permeates crimes against children. As Luengo (2010, p. s/n) points out: "[...] child violence cannot be treated only as a family phenomenon, but as a social issue that requires effective state actions for its eradication". In addition, Freitas (2016, p. s/n) reinforces that "[...] Childhood, due to its vulnerability, must be protected not only with punitive norms, but with support that guarantees its recovery and dignity".

That said, despite the advances, one of the main challenges of the Henry Borel Law is in monitoring compliance with the protective measures established. The removal of the aggressor from the home, for example, can be ineffective if there is no adequate monitoring by the responsible agencies. Many children continue to be exposed to danger due to failure to enforce legal guidelines. As Freitas (2016, p. s/n) argues: "[...] legislation alone does not guarantee the full protection of children; An effective commitment from the institutions involved is needed to ensure the safety of child victims of violence." Likewise, Rizzini and Rizzini (2004, p. s/n) point out that "[...] Supervision and continuous monitoring of victims are essential to prevent the recurrence of violence and ensure a safe environment".

In addition, the prevention of child domestic violence requires a cultural and educational change, promoting awareness campaigns and training of professionals who work directly with children. It is essential that educators, health workers, and guardianship counselors are trained to identify signs of abuse and act quickly and effectively. According to Rizzini and Rizzini (2004, p. s/n): "[...] The prevention of violence against children involves building a society that values childhood and promotes care and protection policies from early childhood". Similarly, Luengo (2010, p. s/n) states that "[...] Continuous educational actions are essential to break cycles of violence and create a culture of respect and protection for children".

Thus, the Henry Borel Law is an important step in the fight against child domestic violence, but its effectiveness depends on an integrated action between the State and society. The strengthening of protection networks, the training of professionals, and the rigorous inspection of protective measures are essential to ensure that this legislation is not just a symbolic response to a tragic case, but a real instrument of transformation. As Luengo (2010, p. s/n) emphasizes: "[...] The fight for the protection of childhood requires more than laws, it requires a continuous commitment to building a safe and healthy environment for all children". Likewise, Freitas (2016, p. s/n) points out that "[...] It is essential that civil society and children's rights bodies remain vigilant to ensure the effective application of protection standards."

## **CONCLUSION**

The analysis of the Henry Borel Law shows that its enactment represents a significant advance in the protection of children's rights and in the fight against domestic violence in Brazil. The stricter criminalization of child homicide, the expansion of protective measures and the inclusion of legislation in the Statute of the Child and Adolescent (ECA) demonstrate the State's commitment to confront this problem. However, the effectiveness of the law depends on its proper implementation, the strengthening of the child protection network and the overcoming of structural challenges that still permeate the Brazilian reality.

Among the main advances, the qualification of the homicide of children under 14 years of age as a heinous crime stands out, making it impossible to apply alternative penalties and ensuring more severe punishments for aggressors. In addition, the law establishes mechanisms for the immediate removal of the aggressor from the victim's life,



as well as for the psychosocial monitoring of the child and his family. These measures represent an important step in expanding child protection and preventing further violence.

However, the implementation of the Law faces considerable challenges. One of the main obstacles is the lack of trained professionals to act in the early identification of child violence and in the adoption of effective protection measures. Often, signs of abuse are ignored or minimized, either due to lack of adequate training of public agents, or due to failures in the articulation between protection agencies. As a result, cases of violence continue to occur without proper State intervention, putting the integrity and lives of children at risk.

In addition, the disarticulation between the various sectors that make up the child protection network compromises the effectiveness of the legislation. The fragmented performance of the justice system, guardianship councils, schools and social assistance services makes it difficult to identify and properly refer victims. For the Henry Borel Law to have a real impact, it is essential that these sectors act in an integrated manner, promoting multidisciplinary and continuous care for children in vulnerable situations.

Another crucial challenge is the need for cultural changes in Brazilian society. The naturalization of violence against children and the belief in punitive discipline as an educational method are still deeply rooted in various social strata. For child protection to be effective, it is essential to invest in educational campaigns that raise awareness about children's rights and the importance of reporting cases of domestic violence. Raising awareness in society is a determining factor for the successful implementation of the legislation.

Thus, it is necessary to ensure continuous monitoring of compliance with the Henry Borel Law. The existence of a robust legal framework is not enough if the rules are not rigorously applied. It is essential to strengthen the mechanisms for monitoring the effectiveness of protective measures, as well as to expand investments in public policies aimed at protecting children. Without these actions, the legislation risks becoming an ineffective measure, unable to prevent tragedies like Henry Borel's from being repeated.

Given this scenario, it is concluded that, despite the advances represented by the Henry Borel Law, there is still a long way to go to ensure that all Brazilian children are fully protected against domestic violence. The fight against this problem requires not only the adoption of stricter laws, but also the implementation of efficient public policies, the strengthening of the protection network and a cultural transformation that ensures the

recognition of childhood as an absolute priority. Only in this way will it be possible to build a safe and dignified environment for the full development of children in Brazil.

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