

THE EXERCISE OF SEXUALITY AMONG ADOLESCENTS DEPRIVED OF FREEDOM

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ABSTRACT

This article presents the results of a research whose main goal was to know how imprisoned adolescents express their sexuality. The data were collected in three Brazilian northeast states that had adopted the public policy of offering ‘intimate’ visits to youngsters in conflict with the law. The results present the adolescents’ profile, their sexual life and health care before the imprisonment, their sexual life inside the institution and, finally, the ‘intimate’ visits from the youngsters’ point of view. This public policy was evaluated considering both the collected data and the adolescents’ rights to autonomy, participation, equality, non-discrimination, corporal integrity and health. As conclusion, recommendations were made in order to make the public policy of ‘intimate’ visits more adequate to attend the sexual rights of imprisoned adolescents.

ADOLESCENTS – RIGHTS – SEXUALITY – PUBLIC POLICIES

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This article displays the findings in a research where the main aim was to find out more about the exercise of sexuality among adolescents deprived of freedom. On the one hand we analyzed how these youngsters exercise their sexual rights and, on the other hand, the public policies established by some states of the federation regarding the conjugal visits inside the juvenile prisons according to gender and the level of autonomy granted to these youngsters.

This survey focused on male adolescents deprived of freedom. The number of female adolescents in juvenile prisons, comparatively to those of males, is much smaller and, also, a belief in stereotypes such as the one stating that women lack sexual drive, contributes for the lack of public policies for the exercise of sexuality steered to adolescents criminal offenders.

This was a qualitative research comprising 24 semi-structured interviews held in three social-educational juvenile correction prison units in three different states in the Northeast region of the Union: 15 interviews with adolescents deprived of freedom¹; 3 interviews with directors of the visited juvenile correction prison units; 3 interviews with people in charge of framing public policies in the scope of that specific state Executive Power; 1 interview with an Infant and Juvenile Court Judge; and, 2 interviews with representatives of the District Public Attorney office.

All the information was collected, recorded and transcript, after the free consent of the interviewees. During the interviews, it was emphasized the volunteer participation and the possibility of the interviewee to give up on his/her participation, at any time.

Based on the adopted theoretical references², this article intends to display and discuss the findings in the research. Initially, the article displays the contemporary concept of Human Rights and the current formulation of sexual rights plus a brief legal framework for children and adolescents rights. Following, we discuss the public policy regarding conjugal visits in juvenile correction prison units where adolescents are deprived of freedom due to conflicts with the Law. Then, the data gathered during the field research, held in July 2006, is analyzed. The third and last part reflects an endeavor to assess public policies by combining the theoretical stance and the

¹ Ten adolescents who are not eligible to conjugal visits and six adolescents enjoying this right.

² It is important to clarify that the exercise of sexual rights should be placed within a broader framework of respect and guarantee of human rights and this research shall not analyze the exercise of other rights.

empirical analysis. In this last part, we present propositions to improve such public policies in order to better meet the needs and sexual rights of youngsters in conflict with the Law.

CONTEMPORARY CONCEPT OF HUMAN RIGHTS

The theoretical reference adopted by the research was that of the contemporary concept of human rights, which is based on the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations – UN – in 1948.. The Declaration founds the “global system for the protection of human rights”³, and is addressed to all the human beings in all their abstractions and generality (Piovesan, 2003, p.205-206).

According to this concept, we must underline the process of specification of the subjects of these rights from which derived international treaties relating to specific groups and topics. According to Bobbio, this process

...consists in a gradual passage, which becomes more and more accentuated, for an ulterior determination of subjects entitled to these rights. The same thing that had happened, since the foundation, with the abstract idea of freedom – that was progressively determining singular and concrete freedoms (from freedom of conscience, freedom of opinion, freedom of press, freedom of association, freedom of gathering) in an interrupted progression that persists even today[...] - has happened with regards to the subjects. This specification occurred in relation to gender, to several facets of life, to the difference between normal and exceptional states of human existence. (2004, p.78-79)

This means that different subjects started to become holders of these specific rights, that is: women, impaired people, children and adolescents, afro-descendents, ethnic minorities, etc. The UN has seven main conventions and each one of them foresees a committee to monitor the effectiveness and the respect to the obligations agreed upon by the Member State through its

³ Parallel to this system, other regional systems for the protection of human rights have been created. In the American continent, an inter-American system for the protection of human rights was created based on the American Convention of Human Rights, adopted by the American States Organization in 1969 and ratified by Brazil in 1992.

ratification. Among the most important tasks of these committees are: the analysis of the periodical reports sent by the States and the elaboration of general recommendations that construe the rights and principles established in the convention, fulfilling the possible gaps and obscure wording in the texts. The international conventions establish minimum parameters for the actions of the State in the promotion of human rights and, therefore, it must guide all the public policies regarding human rights in the domestic environment.

Among the new holders of these rights, included after the mentioned specification process, are women, children and adolescents. Women's rights are primarily established in the Convention for the Elimination of all Forms of Discrimination Against Women, adopted by the UN in 1979 and ratified by Brazil in 1984. In the case of children and adolescents, their rights have been established in the International Convention on the Rights of Children adopted by the UN in 1989 and ratified by Brazil in the next year. Once these international documents were signed, all the rights stated on them have been recognized as demands and specificities of particular groups.

These rights mirror the social claims of the historical moment when they emerged as issues. Some of them have been incorporated to the legal framework according to the consensus reached by the time among the member States. If that is the case, they may be challenged not only internationally but also in the domestic sphere. Other rights simply did not achieved the same consensus, therefore, they have not become active rights and their implementation becomes more difficult.

Thus, we may say that human rights are, in large, historical rights. New rights are always being recognized and incorporated⁴, thanks to new social demands. Therefore, as time goes by, it is inevitable that the conventions become dated because there are always new demands and claims.

⁴ According to Faur (2005, p.57-58) "the expansion of the human rights may be developed in three ways: first, to recognize more rights to individuals; secondly, to specify those that are applicable to specific populations due to an existing discrimination; and lastly, to make compliance with the rights that have already been recognized."

Periodically, the UN organizes international conferences on a variety of themes, opportunity in which are debated contemporary aspects of life. In the 90's there were several conferences with the participation of governmental representatives and, more recently, members of non-governmental organizations, as well as UN employees. Although, in the end, no legally binding document is issued, as it happens in conventions and treaties, the parties always try to reach a consensus that may allow a formal declaration and program of action establishing how the countries should act regarding the issues raised by them. The final goal is to be able to maximize the links among countries as means to adopt a language on rights and obligations.

The adoption of this common language on rights and obligations, as explained by Miller (2002, p.138), allows one to work with the radical potential of the tripartite structure of State responsibility: to respect, to protect and to implement. Respecting human rights means that the State actions and their officers should not, by themselves, violate rights. Protecting rights means that the State must take actions in all its ramifications to assure that no other entity – individuals or corporations – perpetrates abuses against human rights. Implementing rights means that the State is obliged to guarantee that its actions, in all levels, allow the full compliance with these rights.

Following, we will discuss the construction and the content of the sexual rights, which were defined jointly with the reproductive rights during UN International Conferences, more specifically those in Cairo and Beijing.

FORMULATION OF SEXUAL RIGHTS

This article emphasizes sexual rights, which refers to the exercise of sexuality. When, in the 80's the epidemics of HIV/AIDS aroused, the World Health Organization defined sexual health as “the integration of somatic, emotional, intellectual and social elements of the sexual being that may positively enriching and that may strengthen the personality, the communication and love. From this point of view it has a decisive importance in the right of sexual information and in the right to pleasure” (Mattar, 2007). The movement led by gays and lesbians, together

with part of the feminist movement, started to be mobilized by this new concept of sexual health and, based on it, tried to discuss something broader in the scope of the so-called “sexual rights”.

It was only during the 4th. World Conference on Women, in Beijing, 1995, that the provision 96 was minimally accorded, stating in the Declaration and Platform of Action that:

Women’s human rights include their rights to freely and responsibly control all the issues related to their sexuality, including reproductive and sexual health, free from coercion, discrimination and violence. Equal relationships between men and women - referring to sexual relations and reproduction, including the full respect for the individual’s integrity - require mutual respect, consent and responsibility sharing on their sexual behavior and its consequences. (Cidadania, Estudo, Pesquisa..., 1999, p. 149)

Although this is not exactly a definition of sexual rights, it certainly refers to the rights included in that definition. Since this is not the ideal formulation of sexual rights, we refer to two other formulations that, with some variants, use different designations to advocate equal ideas and rights. The first conception defended by (Miller, 2001, p.122-123), points some elements or common principles that may be construed as belonging to sexual rights: “right to integrity/autonomy (of the individual); rights to equality/non-discrimination (the diversity); rights to body/health integrity; and, rights of participation/capability”. According to this author, “each of these groups [of principles] includes existing guarantees for the human rights”. We must also consider “the notion that all the rights are interconnected and that they are interdependent in their execution” (Miller, 2002, p.139).

The other conception, adopted by Petchesky (1999), defends a positive alternative vision on sexual rights with two interlinked components: a group of ethical principles (basic substance or purpose of the sexual rights) and a broad spectrum of enabling conditions, without which this purpose can not be achieved in practical terms. The ethical principles she mentions are: sexual diversity or sexual plurality; dwelling diversity that refers to several living arrangements; [right to] health; and, finally, autonomy. The enabling conditions, although they may not be extensively listed here, correspond to all the other human rights that one needs to live a dignified life.

The combination of the two conceptions mentioned above⁵ lead us to conclude that the sexual rights, included in the human rights framework, envelops the following rights:

1. right to individual autonomy, meaning the rights of all people – children, youngsters and adults - to make their own decisions in issues that may affect their bodies and health;
2. right to individuals participation in the creation of structure, laws and rules that may affect them⁶;
3. right to equality/non-discrimination, that may be translated into the principle of sexual diversity or sexual plurality, which implies the acceptance of different types of sexual orientation (not only heterosexual or conjugal) and dwelling diversity, that is, the respect to the several different existing family arrangements.
4. right to body integrity and right to health, involving all its aspects – mental, physical, reproductive and sexual health.

Aside all these rights, the combination of the two conceptions necessarily require the existence of the “enabling conditions”, that is, for the respect of the principles of inter-relation, interdependence and indivisibility of the human rights. Only with them it is possible to properly make sexual rights effective.

But who are the holders of the sexual rights? If we are dealing with human rights, the holders of these rights are all the human beings. Therefore, the conception of sexuality to be adopted, as suggested by Miller (2001, p.90-91), must be the one that understands sexuality as a “characteristic of all human beings – heterosexuals and homosexuals, men and women, young and old people - in every country, culture and from every religious faith”.

⁵ The use of the combination of these two theories will be used as a methodological parameter, as we will see further on, for the analysis of the effectiveness of the human rights in the public policies regarding conjugal visits for adolescents who are deprived of freedom.

⁶ Miller (2003, p.139) understands that the participation of the more affected and more marginalized people is “the most radical aspect in the demands for sexual rights that challenge the stereotypes in a more coherent way”.

Below, we have a short description of the legal treatment applied to children and adolescents after the international community adopted the International Convention on Children's Rights, in 1989. The aim is to build, based on the contemporary conception of Human Rights, a connection between the current formulation of sexual rights and the new conception of children's and adolescents' rights. Once this connection has been established, we will, then, analyze the sexual rights of youngsters deprived of freedom and, finally, we will analyze the public policies on conjugal visits adopted by some states of the federation.

RIGHTS OF CHILDREN AND ADOLESCENTS

In 1989, the international community adopted the International Convention on Children's Rights. In that moment, a shift in paradigm was clearly happening as one can see in the principles established by that convention: (i) the child and the adolescent are the subjects of rights in "peculiar developing conditions", with autonomy, dignity, rights and citizenship; (ii) total priority must be given to the rights of children and adolescents; (iii) protection to children and adolescents must be full, that is, it should cover the integrality of the rights – adults human rights in addition to the rights specifically related to their peculiar developing conditions; and, finally, (iv) one should consider the child/juvenile protagonist situation. These principles, as reinforced by the convention, should be taken upon account in any public policy being developed by the Member State.

In the Brazilian case, both the Federal Constitution – enforced in 1988 - as well as the Law 8.069/90 that rules over the issue (also known as ECA – Children and Adolescents Statute) are totally in agreement with what is established in the convention and similar principles have been adopted in those domestic legislations. This statute foresees three sets of public policies: basic social policies, referring to the rights of all children, such as health and education (established in the provision 53-80, 87 section I); protective policies, for children and adolescents living in vulnerable social conditions, such as drug addicts and homeless⁷ (provisions 98-102);

⁷ Also, protective measures are applied to children (0-12 years) who have infringed the law. The social-educational measures are applied only to adolescents.

and the social-educational policies, only applicable to adolescents who have committed torts or misdemeanors, when based on evidences. Taking into account the aim of this research, the social-educational policy, ruled by the articles 103 to 128 of the mentioned Statute (ECA), shall be studied in more details.

Complying with the constitutional determination in provision 228, the ECA (Statute) considers as criminal incapable youngsters below 18 years of age. But, it foresees the possibility of holding adolescents liable for misdemeanor or torts by means of the so-called “social-educational measures”. This means that, according to the model adopted in Brazil, by the Federal Constitution and by the Children and Adolescent Statute (ECA), “the criminal incapacity (penal) does not exclude reprimand, therefore, criminal incapacity is not a synonym of irresponsibility or lack of punishment for adolescents who are criminal offenders.” (Sposato, 2006, p.69).

Violation to the law, abiding to provision 103, is the behavior described as offense or misdemeanor”. In this sense, when the State opts to consider the adolescent liable for the offense and applies one of the existing social-educational measures, it is making, as Sposato says:

...an option of criminal policy since the behaviors are the same as that of adults; what makes them different (youngsters and adults) is the peculiar developing condition and, as a result of a deficit in age, there is a rationale for the creation and implementation of measures and programs specifically designed for culpability. (2006, p.80)

Among the social-educational measures listed in provision 112 of the ECA (Statute), the most drastic and used as a last resource is the deprivation of freedom of the adolescent individual, which is called incarceration⁸. This measure is subject to the principles of briefness, exceptionality and respect to the peculiar developing condition of the person – these principles are in provision 227, section V of the Federal Constitution and also present in the *caput* of provision 121 of the Children and Adolescent Statute

⁸ In the sole paragraph in provision 2, it is expected that the provision is to be applied, exceptionally to individuals between 18 to 21 years of age. This is the case in the social-educational measures: if a young individual is punished with incarceration at 17 years and 11 months, knowing that this action can last, at maximum up to three years according to with what is provided in provision 12, paragraph 3, this individual may be deprived of freedom until he/she is 20 years and eleven months old.

The ECA in article 124, lists a whole number of fundamental rights of adolescents deprived of freedom. The caput of this legal provision adopts the expression “among others”, which indicates that that roster is not final but only an example. Therefore, this means that parallel to those rights, which are basic and fundamental, other rights may and must be assured. The exhausting non-specification of these rights gives way to several discussions about what are, in fact, the rights of youngsters deprived of freedom. Regarding the boundaries of the social-educational procedures for the incarceration⁹, in the juvenile justice system judges and governmental officers have absolute discretionary power to construe and order the ECA procedures as they wish, in spite of being obliged by the Law to give reasons for their decisions.

Another flaw is precisely the absence of provisions regarding the sexual rights and reproductive rights of these youngsters since the ECA does not deliberate over sexuality, paternity or maternity, not for those deprived of freedom or any other¹⁰. However, internationally, as we have already mentioned, the sexual rights have been recognized as human rights. So, this shows the gap between the domestic legislation and the international legal treatment regarding this theme.

The premises that sexual rights are human rights lead us to conclude that youngsters – including those who are deprived of freedom – are equally holders of sexual rights, regardless of the restrictions imposed on them by the social-educational measures. Nevertheless, this is a controversial point: some say that adolescents deprived of freedom do not have the right to exercise their sexuality exactly because of the punitive character of the social-educational measure.

This article considers that deprivation of freedom to youngsters – who are in a peculiar developing condition –, is, by itself, enough punishment to make them reconsider their attitudes. Any social-educational measure, but more specifically that of confinement, should not be only punitive or just a pay off for the offense. It should also be educational and, so, it should offer to

⁹ The adult penal system is ruled by the Penal Execution Law (n.7210/84), that describes in details all the rights and duties of the prisoners as well as the prison facilities and the regimens to fulfill the penalties.

¹⁰ It is serious enough the fact that youngsters in penal institutions do not have any perspective of exercising their sexuality or reproduction possibilities. But, worse than that is the fact that the ECA generically neglects adolescents` sexual and reproductive rights.

the young offender the possibility of re-educating him/herself in several aspects of life as, for instance, the exercise of the sexuality aspect.

However, one must point out that several experts in the rights of children and adolescent justify the exercise of sexuality in social-educational juvenile correction prison units because they consider that this is important for familial co-existence and the maintenance of emotional bonds. As we will see further on, the rationale above ends up by establishing one of the main criteria for allowing conjugal visits, that is, the necessity of the couple to have a stable union before the young is sent to prison. Although there are no doubts regarding the importance of maintaining these bonds, the right to the exercise of sexuality should not necessarily be linked to the familial binding ties. It should be exercised because it is a human right as any other right. Thus, the adolescent, although deprived of his right of freedom, that is his right of coming and going, should still be entitled to fully enjoy all the other human rights, there included the exercise of sexuality. The remaining question is how to exercise these sexual rights within an environment of deprivation of freedom and under what conditions.

THE CONJUGAL VISIT

No doubt, there is little interest in knowing how youngsters deprived of freedom exercise their sexuality. In fact, in general, little attention is given to aspects related to the life of youngsters facing conflicts with the Law. In the last years, only some organizations that work with topics related to the youth population have carried out researches on sexuality and sexual health of this specific group. Some surveys findings show that “there is a negation of sexual life to youngsters in most of the social-educational juvenile correction prison units in the country” (Andi, 2002). Other surveys (*Fique Vivo*, 2003; *Projeto Quixote*, 2003) found out that most of the adolescents deprived of freedom have had sexual life before they were convicted¹¹. Nevertheless,

¹¹According to data, gathered in 2006, from the Special Secretariat for Human Rights of the Republic Presidency, from the 14,074 adolescents deprived of freedom in all the national territory half of them are in Sao Paulo (7,069 adolescents). Thus, it seems to us that the adolescents from Sao Paulo, interviewed in the Projects *Fique Vivo* and *Quixote*, are quite representative of youngsters who are under social-educational measures in juvenile correction prison units in the country. These are figures gathered in the National Survey of Social-Educational Measures for Adolescents in conflict with the Law, August 2006, and the ratio remained the same along the years as we could

it is curious to see that only three juvenile correction prison units in the country, all of them in the Northeast region, recognize this is an evident truth and adopted a public policy to deal with the exercise of sexuality among adolescents deprived of freedom. All these three juvenile correction prison units followed, as is done in adult's prisons, the model known as "conjugal visit". So, the question is "why only three among 27 states have this policy"?

Probably this happens because, on the one hand, the ECA neglects the fact that the youngsters are reproductive and sexual beings by not mentioning any provision regarding these constitutional rights and, on the other hand, it may happen due to a lack of a law legislating over social-educational measures that could better define how to deal with the daily life of the offenders held in juvenile correction prison units. Therefore, there is no legal provision that can serve as a basis for a public policy providing the right to conjugal visits for these youngsters; and each state of the federation ends up by establishing its own criteria regarding the sexual rights of adolescents deprived of freedom. Thus, as the sexual rights of these juveniles in conflict with the Law are absent from the legal texts, there is no consensus over the implementation of a conjugal visit policy. This is so because the topic involves several issues, such as:

1. does an adolescent deprived of freedom have the right to exercise his/her sexuality? If the answer is "yes", how this should be done and with whom?
2. is the social-educational measure compatible with this possibility? Supposing that this measure admits the exercise of sexuality, does this exercise contributes to the social-educational process of juveniles? Does it collaborate for a broader process in the development of this youngster?
3. should all the adolescents deprived of freedom enjoy this right? What are the objective criteria to be adopted in order to define who is eligible and who is not eligible to enjoy these rights?
4. what are the conditions and the necessary premises to assure these rights to the adolescents in a healthy manner?

see in the surveys carried out in June 2002 and January 2004, available at the site of the Special Secretariat for Human Rights: www.planalto.gov.br/sedh/.

5. does the conjugal visit guarantees the maintenance of family bonds? In this case, does it work as a stimulus to the youngster to go back to their social life environment?
6. does the conjugal visits help to diminish the promiscuity inside the detention centers? Does it help to decrease the sexual abuse among youngsters?

Trying to find answers to these questions or at least to debate these issues under the perspective of framing, implementing or improving the public policy, we will present below, very briefly, the established public policy for conjugal visits in the three mentioned juvenile correction prison units, which we have visited, as well as data gathered during the interviews performed along the field research.

But, before starting to analyze the data, we must explain the choice made regarding the participants in the research. Most of them were those who were enjoying the right of conjugal visits. By making this choice, we intended to observe how the exercise of the sexual rights was covered by this policy. The other participants, who were not eligible to conjugal visits, have been selected by the managers of the units. In this case, we must enhance the fact that the technical staff of the detention centers tend to choose adolescents that are considered as having “good behavior”, which is quite a subjective criterion.

PUBLIC POLICY RULING OVER CONJUGAL VISIT IN THE VISITED JUVENILE CORRECTION PRISON UNITS

In all the units we visited, we found some type of rule regarding the public policy on conjugal visit: some of these rules were written and others were only verbal rules. The formal eligibility rules to conjugal visits are: minimum age of 18 years¹²; recognition of a marriage or a stable union before the incarceration, in which the existence of common children reinforce the

¹² As mentioned before, the Children and Adolescent Statute (ECA) is exceptionally applied for youngsters ranging from 18 to 21 years. This is the case in the social-educational policies. Let us see an example: an adolescent commits a misdemeanor when he/she is 17 years and 10 months old and is held in a juvenile correction prison unit for a maximum period of three years and have a chance of only being free when he/she is 20 years and 10 months old, that is, almost 21.

link; parent's authorization; judge's authorization when the adolescent is under 18 years of age; and good behavior of the individual.

Usually, there is a minimum period of confinement required so that the technical staff - psychologist, social assistant and educator – may observe how often the companion comes to visit, especially if together with other members of the family. In order to prove the relationship of the couple before the incarceration, the Social Service team visits the household of the adolescent. In one of the detention centers, once this relationship is proved, a previous consent of the parents of both is needed¹³ and then this authorization is sent to the juvenile court to be recognized.

As this is a public policy not fully institutionalized and without any clear legal provision, we could see that the criteria to allow conjugal visits changes throughout the time. These changes happen because of alterations in the group of employees and directors of the institution and also because of changes in the profile of the youngsters in these units. It is worth saying that the definition of the age criterion, as we noticed in the interviews with the directors, is not really based on the exercise of sexuality principle but in an *ad hoc* manner. In one of these units, with a new board of directors coming in, the minimum age jumped from 14 to 18 years without any reasonable justification.

The three juvenile correction prison units distribute condoms and in one of them they also offer contraceptives for the visitor. The three directors stated that they provide sexual education for the adolescents under their custody. In two of them, they do HIV/AIDS tests by means of a partnership with the Social Services State Secretariat or even with NGOs. Following, we display the results of the research.

¹³ Gutiérrez (2005, p.87), referring to Argentina, affirms that “the need of a parent's authorization for the access to the exercise of their sexual and reproductive rights is a critical point in the debate with conservative sectors. This situation makes evident the limited citizenship granted to youngsters below 18 years old. They are entitled to vote in the elections for government, therefore supposing that they have already achieved a high level of responsibility, but have to wait until they are 21 to be in charge and fully responsible for the exercise of their sexuality”. Here in Brazil, the rationale is the same: at 16 the youngsters can exercise their right to vote, choosing their representatives, but only when they are 18 they are considered autonomous for the exercise of their sexuality.

PROFILE OF THE ADOLESCENT DEPRIVED OF FREEDOM

The age of the interviewees ranged from 15 to 20. When answering the question about race: seven adolescents consider themselves as brown (*morenos*)¹⁴, seven white and two black. Schooling level ranged from third and eighth grade in elementary school, which is quite low when we consider the age of these adolescents. When questioned about religion, six of them said they had no religious faith, five declared themselves as Catholics, three Evangelists, one Spiritualist and another one refused to answer. When asked whether they worked before incarceration, 11 adolescents said yes and the other five said that they had no labored activity – two of them among those with no labor activity said that they used to do temporary odd jobs.

The mean age for their first sexual intercourse was 13 years. Among these 16 adolescents, 11 said that they had a steady partner at the moment of the interview and the time line of these relationships ranged from seven months to five years. Thus, regarding marital status, 11 adolescents said that they “lived together” with their girlfriends and/or companions, meaning that they were informally married. Among the other 5 individuals participating in the research, four were single and only one of them had a steady girlfriend.

Ten of these youngsters said they had no children: one thought he had a child but was not quite sure. Nine among the ten with no children said they would like to have children. In a research carried out by the São Paulo State Foundation for the Well Being of the Underage (juvenile correction prison system of São Paulo state), we read “youngsters commented that becoming “a father” was a sign of masculinity and that pregnancy was not a problem” (Peres et al., 2002, p.79). In addition, Paiva (1996, p.221) affirms that “the first meaning of having a child [...] is to repair the lack of citizenship [...]”. As the juvenile in conflict with the Law population is, no doubt, among the most excluded in the society, these are reasons enough to explain why so many, although still so young, already want to have their child.

¹⁴ The interviewer did not follow the IBGE – Brazilian Institute of Geography and Statistics interviewing standards and only asked about the race. Thus, many answered that they were ‘*morenos*’ (brown), which, according to IBGE’s definitions, means mulattos.

All the youngsters who had children said that having a child and being in prison is bad because they were worried about not being able to see the children. They said that they missed the children very often. Among the six that were fathers, five stated that they faced changes in their lives after paternity and one said that he could not know about the impacts yet because the child was born after he was already in prison. The changes mentioned are basically about not using drugs anymore and the need to find a job to be able to support the family. One of them puts it like this: “Many things have changed. I started to think more about the life I was living [...] because, before, I just did not think, I just went wild, took drugs. Since the baby was born, I have never used drugs anymore, not drank anymore, just work to support ...”

Ten of the interviewees were first time offenders sentenced to a social-educational measure in a juvenile correction prison unit. The others had already been in prison before. Recidivism of misdemeanors is quite common once that, as some scholars say, “the issue of criminality is being used as an instrument of accessibility for poor boys to achieve citizenship: to earn money, to be part of a group, to develop the male identity, to test limits and be respected” (Adorno, apud Peres, et al., 2002, p.77).

THE EXERCISE OF SEXUALITY BY THE ADOLESCENT AND SEXUAL HEALTH CARE

Now, referring to sexuality, 13 adolescents declared that they have had active sexual life before incarceration and the other three said that they had not. Ten - among the 13 that stated they have had active sexual life previously – were entitled to conjugal visits.

When questioned about the number of partners they had already had, five youngsters answered “several”, three did not know or could not recall, two had had three partners and two had had four partners. One of the boys did not inform, another one had had only one, another had had 18 and still another had had seven partners.

About the use of condoms and adhesion to contraceptive methods, either in or outside the juvenile correction prison unit, the answers were: two adolescents informed that they used condoms and their partners were taking the pills (double protection); one adolescent said that he did not use condom because his partner had already performed a tube ligation; five adolescents

said that since their partners were taking the contraceptive pill, they did not need to use condoms; one said that as his girlfriend was taking the pill, he only used a condom when he had intercourse with different sexual partners; another one said that he hated to use condoms; another one said that he used condoms but not always; and, yet another, said he always used condoms. Four adolescents did not answer the question.

In this sense, one can perceive that the adolescents are “not fully aware of the importance of using condoms and double protection” (Gutiérrez, 2005, p.96) and since the female partner is the one responsible for contraception, they do not comply with the use of condoms. Therefore, we can suppose that for these youngsters “[the STDs are not perceived as a issue of health; only very few have some information about it, which is still very confusing (...); somehow they associate these diseases with non-conventional forms of sex” (Gutiérrez, 2005, p.97).

We could notice, based on their answers, the relational idea of gender. That is, the male adolescents believe that their female partners are in charge of caring for contraception. It seems that they are not fully aware about the importance of the use of condoms. The girls are the ones who should be in charge of contraception and they do not negotiate the methods of barriers, as the condom, which not only protects them against undesirable pregnancy but also prevents against sexual transmitted diseases.

Six of the boys interviewed have been tested for HIV/AIDS – five of them in the juvenile justice system – and the other have never been tested but would like to do it.

THE EXERCISE OF SEXUALITY INSIDE THE SECURITY FACILITY

About their sexual experience in the detention centers, ten adolescents said that they masturbate by using porno magazines and watching films. One of them explained that the act is performed behind a sheet or a curtain inside the cells. The others said that they do not know how adolescents resolve their sexual needs inside the juvenile correction prison units.

About occasional sexual intercourse with other prisoners: nine said that they did not know anything about this; another one said that this does not happen; another said that it happens; two said that they heard of it but never saw anything.

Three youngsters in Unit 1 informed that during the last administration there were some cases of sexual intercourse among inmates. One of these answered that: "... once, in the former administration, there was a homosexual guy here and another guy was with him...they had sexual intercourse and all...the only thing is that nobody would ever mention anything about it..." (Unit 1).

In an informal chat with the interviewees, it was clear that before the change in the administration, in January of 2006, there was an inmate who was homosexual and had sexual intercourse with other juveniles in dorm 10. We were not able to get information about consent of the other youngsters for these sexual intercourses; nevertheless, there was no mention to any kind of violent sex or coercion. When this was occurring, neither the management nor the monitors were allowed to get into that dorm, which was under the control of some juveniles. Currently, we must say, there is free access to all areas in the unit.

About sexual intercourse among inmates and employees: seven interviewees said that they knew nothing about it; seven affirmed that this does not happen at all; and two said that they heard some gossip about it but they are not sure. Regarding sexual intercourse as means to receive favors: seven said that they did not know about it and nine said that this does not happen.

THE CONJUGAL VISIT FROM THE POINT OF VIEW OF THE ADOLESCENT

For all the adolescents who are eligible to conjugal visits, as expected – since this is one of the criteria to enjoy this right – the visitor is the partner with whom the adolescent is sharing a stable union.

All the interviewees, unanimously, agreed that sex outside the security facility is much better for several reasons. The main reason is the lack of privacy in the detention center. The transcriptions below show the embarrassment of the youngsters in some cases:

...here we must haste and always worried because they may knock at the door...we only have one hour ...outside the prison, it can last longer, very calmly, more lovingly and we are at home... (Unit 1)

... outside we can relax, be totally naked, free. But not in here: here one has to keep wearing clothes, just low down the shorts. You take off the short and that is it. (Unit 2)

[In the center] you can not moan to high, otherwise.... (Unit 1)

It is obvious that when the public policy for conjugal visits was being framed, no one considered privacy – here defined as the right of an individual to retain information about him/herself. The best example of this is that the special private setting (“Venusroom”) in Unit 1 is neighboring the technical staff room and its key is kept by the monitor: this conveys to the young couples that, at any moment, somebody may get in and surprise them. Besides, the fact that everyone knows that the inmate is in a special room with his companion makes him uncomfortable and that is why he does not strip off himself.

This issue that tried to compare sexual intercourse in and outside the juvenile justice system was based on the hypothesis that inside the institutional environment – with all the tools offered by the social-educational program, such as physical space, sexual education, condoms, contraceptives, etc – the exercise of sexuality would be easier, more satisfying and safer. However, that was not the case. It became clear that in an institutional environment, as the juvenile correction prison units, the exercise of sexuality by means of the conjugal visit is strictly controlled since there is an expectation that by controlling their bodies it is possible to discipline them.

When asked whether incarceration conditions improved after enjoying conjugal visits, five adolescents had positive answers. But, one of them, although admitting some improvement, said that he is thinking about asking the partner not come to visit any more in order to spare her the embarrassment of being searched to get into the prison facilities, procedure known as quite humiliating. All the other youngsters who are not eligible to conjugal visits believe that incarceration would be better with the possibility of being eligible to conjugal visits.

When asked about sexual education in the environment of deprivation of freedom, five adolescents said that the juvenile correction prison units do not offer any kind of sexual education and one said that he had only participated in a counseling group. The others did not answer the question.

Bozon (2004, p.66-67), when discoursing on sexual education, mentions that this is “a contemporary invention”, which aims at “either completing or, in some extreme cases, denying some ‘spontaneous’ information and attitudes in matters of sexuality”. He also mentions that sexual education

...aims at a balanced formation of the personality and a learning process on relations, according to a principle of equality and responsibility in the relations between sexes, including information that recommends the use of contraceptives and means to prevent AIDS and STDs. (Bozon, 2004, p.68)

The importance of sexual education is evident. When not offered to the youngsters, the State, the society and the family miss the opportunity to convey important information regarding health care – including information about reproductive rights - and the proper exercise of sexuality.

When asked about any suspended right regarding conjugal visits by the unit’s direction, the majority of the adolescents said that it never happened. However, in some occasions the adolescents do not receive the visit because of social-economical reasons: the companion for instance did not have enough money to pay for the transportation. The absence of the girlfriends, when being expected by the adolescent, suggest structural factors that pervade the reality of the youngster outside the prison, causing impacts in all spheres of his life, including in his sexuality. Moreover, these factors indicate that, at least in an environment of deprivation of freedom, the young boys have a passive attitude facing sex, an attitude of dependence and expectation, which necessarily generates a change on the viewpoint of the social norms in the role of genders.

In fact, two youngsters did have their visit suspended by the unit’s direction: one because of his involvement in a disturbance inside the unit and another one because he got involved in a row. Good behavior is, evidently, an important requirement for the exercise of sexuality inside the juvenile correction prison units visited. In this sense, it is possible to say that the conjugal visit is not a right but a kind of reward for good behavior according to institution expectations.

At the end, we asked the youngsters to tell us how they imagine themselves at 30. Six of them said that they imagine themselves as “old”¹⁵; two did not know what to say; three thought that they will be married with children; one, that he would be working; one, that he will go on being “an active guy as I am today”; and, another said that he will be “in excellent shape and fit”; and, finally, two believed that they would not reach this age.

After analyzing the data gathered in the interviews, we will now analyze the public policy from the point of view of human rights. In order to do so, we are going to make use of a combination of the two mentioned theories: that of Alice Miller and that of Rosalind Petchesky.

RESPECT TO SEXUAL RIGHTS IN THE CONJUGAL VISIT PUBLIC POLICY

Here we are going to discuss whether the public policy for conjugal visit, such as it was conceived and has currently been implemented in the three juvenile correction prison units situated in the Brazilian Northeastern region, is able to assure the concrete enjoyment of the sexual rights of the juveniles in conflict with the Law. In other words, we will try to evaluate the effectiveness of the sexual rights, which are here understood as human rights and comprise: right to autonomy; right of participation; right to equality/non discrimination; and, finally, right to physical integrity and health.

Right to personal autonomy

When dealing with the public policy for conjugal visit for adolescents under State custody, the respect to personal autonomy is one of the most controversial points. This happens because one has to decide the exact age when adolescents start to have enough discretion to opt for sexual intercourse in a healthy way. That is: when does the adolescent start to understand the importance of family planning and prevention against STDs and when do they learn to

¹⁵ Other word has also been used: ‘a veteran’, ‘ancient’ ‘aching bones’.

experience sexuality with the partner in a manner that respects the principles of dignity, integrity and freedom of the other party?

In one of the visited units, the criterion for being eligible for conjugal visit was age – minimum age of 18. What as the basis for this criterion? What was the concept, the idea of autonomy adopted to define this precise age? Why not at 16 when the adolescents, if they wish so, are entitled to vote? Why not at 14 when, according to the Penal Code, as we will see later, the adolescent may consent to have sex?

If one wants to think over all these questions, one must take upon account: first, the theoretical understanding of the principle of personal autonomy; then, the current legislation stated in the Brazilian Penal Code regarding the consent for the exercise of sexuality; and, finally, the interpretation of the Federal Supreme Court (STF) for the theme. In parallel, we shall be using the General Comments of the Committee on Children’s Rights that monitors the compliance with the obligations assumed by the Member States when ratifying the International Convention on Children’s Rights.

Adopted Concept of Autonomy

First of all, we must make clear what we understand for autonomy. According to Mogilka (1999), “the term autonomy, derived from the Greek *auto* (self) and *nomos* (rule or law) means the ability to defines one’s own rules and limitations, which do not have to be imposed by others; it means that that agent is able to self-regulate him/herself”. In this sense, “autonomy implies a behavior that always has some level of uncertainty, instability and lack of determination unless we explain human behavior as something predicable”, which is not the case.

Since this indetermination exists, the juvenile autonomy must be gradually exercised and sexuality, according to Heilborn (2004, p.12), is a privileged space for that. The problem is how this gradual exercise of autonomy happens when there is “a lack of tune between the installations of new affective-sexual relationships, which generate personal autonomy – weaved by the relational learning about gender and by the construction of oneself as the subject – and the new social conditions that enable this independence”? (Brandão, 2004). This lack of synchronism is clear in Bozon’s statement (2004, p.69), already mentioned, that “sexual autonomy precedes and

announces the social autonomy¹⁶”. Thus, the family interference in the life of an adolescent that is still dependant on the family, even if just financially, is inevitable. As, once again, Heilborn points out (2004, p.12), in the contemporary families, there is a constant “entangled negotiation in the exercise of the children’s sexuality that involves respect to the juvenile autonomy but does not exclude parent’s regulations”.

If autonomy is a skill for self-regulation, the interference of the parents – establishing limits to the youth’s personal freedom – shall not be coercive to a point that it may curb this self-regulation. Its main goal should be to guide the adolescents’ actions by giving them parameters on how to behave in all aspects of life, including those regarding the exercise of sexuality. Therefore, it must have a sense of education and not a coercion nature

One more thing when we are discussing the juvenile autonomy: we must take on account the General Comment # 4 from the Committee on Children’s Rights that addresses the adolescent’s right to health. In its paragraph 9, it suggests that the Member States should establish

..a minimum age for the consent to sexual intercourse and to marriage as well as the possibility of receiving a medical treatment without the parents’ consent. This minimum age [...] should mirror the recognition of a status of subject of rights to people less than 18 years of age, according to the development of their skills, age and maturity. (Article 5º and Articles 12 to 17).

The Brazilian Penal Code and the interpretation of the Federal Supreme Court

The Brazilian Penal Code in articles 213 and 234 disposes about “Crimes against Customs”. Among these crimes we find the crimes against sexual freedom¹⁷, such as rape, indecent assault and sexual harassment, among others. In the overall provisions, more precisely in article 224 “a”, the Code deals with the presumption of violence. According to the text, when

¹⁶ Abramovay et al. (2004, p.69) confirms this understanding that the juveniles live in the ambiguity of being a sexually adult but still living in situations of economic and familial dependence, among others.

¹⁷ There are several discussions, especially among feminist groups, about how inappropriate it is to consider crimes against women’s sexual freedom as crimes against customs and not crimes against the individual. This definition represents a patriarchal, sexist and conservative mentality (on part of the legislator of 1940) that could not see women as owners of their own body.

the victim of a sexual crime is less than 14 years of age, the violence is presupposed. The legislator, in 1940, considered that an adolescent at that age has no ability in distinguishing whether he/she is willing to have sexual intercourse or not and, therefore, his/her consent is not valid.

As the years go by, some questioning aroused whether the presumption of violence existing in the legislation is absolute or relative¹⁸. One of the cases judged by the Supreme Court became emblematic¹⁹ in respect to the theme, which was *Habeas Corpus* 73.662-9 – MG, judged on April 16, 1996, since it establishes parameters for the definition of an age when the youngster has enough autonomy for exercising sexuality. The relator in the case was Justice Marco Aurélio Mendes de Farias Mello, and the case was presented by a father of a 12 years old girl who looked older and had had sexual intercourse with a young man of 24. The young girl clearly manifested that she had consented to the practice of sexual intercourse. Based on the arguments presented by the relator, by a majority of votes, it was decided that that presumption of violence (as mentioned, described in the Penal Code, article 224 “a”) was a relative presumption. The rationale for that decision was centered in the thesis of “error of type” about the individual (error regarding the age of the victim, due to her behavior) and ended up by considering as valid the consent of the young 12 year old girl. Judges blamed the media, particularly the TV, as those responsible for “nowadays” youth precocity in approaching the subjects related to sexuality and also mentioned the “behavior revolution” that happened in the last decades. In this sense, the relator, Justice Marco Aurélio, understood that the article 224, “a” of the Penal Code should “yield to reality”.

The losing voters argued that a young girl of 12 is necessarily immature, and, therefore, does not have enough ability to freely consent in the practice of sexual intercourse because she can not properly perceive her sexual instincts.

Considering these arguments, it is possible to say that the Law –and the highest constitutional court in the country – determines *contra sensu* that adolescents since 14 years old do have the ability and autonomy to decide over their exercise of sexuality. The decision of the

¹⁸In the legal jargon, absolute presumption do not allow for adverse evidence; whereas the relative presumptions may be contradicted and, because of this, may be put aside against evidence.

¹⁹For the first time, the Supreme Court conceded, by a majority of votes an *habeas corpus* based on the argument of relativation of presumption of violence in the practice of sexual intercourse between a girl with less than 14 and a young adult of 24. That is why it is important for this research.

Supreme Court Justices also suggests that in some concrete cases the youngsters may exert this autonomy even before they reach 14.

Based on these thoughts and on the enhanced points, the public policy for conjugal visit, such as it has been implemented, clearly does not respect the autonomy of the adolescent. First, because the minimum age that has been established (in Unit 1 visited by the researchers) is 18 years of age, that is, it only allows the exercise of sexuality when these youngsters are not adolescents any more, at least from a legal point of view; then, because of the need of parents' consent, even when the boys are already 18, and, in some cases, the need of the judge's authorization. Even with the legal support mentioned above, the states of the federation that adopted a public policy for conjugal visits defined the minimum age based on a conservative stance without considering that the adolescents are subjects of rights and, in real life, they do enjoy an active sexual life. They did not consider that by guaranteeing a healthy and safe environment, through educational counseling (either from their parents or from the institution), adolescents may well exercise their sexuality.

Right to Participate

The right of adolescents to participate in the creation of structures, laws and norms that affect them is the easiest element of the public policy to be assessed. So, let us see: In 1993, in the International Conference on Human Rights, held in Vienna, the States agreed that "the non-discrimination and the superior interest of children must be considered as fundamental in all the activities steered to childhood, taking into consideration the opinion of the stakeholders" (Piovesan, 2004, p.208). According to the Action Program of the International Conference on Population and Development that took place in Cairo in 1994, "the youngsters should be totally involved in the plans, implementation and assessment of the activities that directly impact their lives". (Ventura; Chaves Junior, 2003, p.23).

The International Convention on Children's Rights, article 12, establishes that "the Member States shall assure to the children who are able to formulate their own judgments the right to freely express their opinions in every matter related to them, considering these opinions

based on the age and maturity of the child”. In the national scope, the ECA, in article 16, disposes that the right of freedom to the adolescent comprises the rights of opinion and expression. Both provisions confirm the importance of taking into account the opinion of adolescents to whom some policies are designed.

The participation of youngsters in the elaboration of public policies designed for them makes this policy become more adequate and, therefore, more efficacious because the problems to be covered by it shall be dealt with based on the interpretation of those who experience such problems. By appreciating their participation, the legislator of the public policy is giving space to the juvenile protagonism, as internationally determined by the Convention on the Rights of Children and nationally determined in the Children and Adolescent Statute (ECA).

During this research, it became clear that the youngsters have no participation at all in the elaboration of the public policy regarding conjugal visit in juvenile correction prison units.

Right to equality and to non-discrimination

In the three states that we visited, the public policy for conjugal visit is only implemented in units for males, who receive their female partners. Thus, this policy is only valid for males with heterosexual orientation; that is to say that it discriminates both female youngsters and homosexuals.

Based on the answers given by the individuals in charge of the public policies in the state executive powers regarding the lack of right to conjugal visits for females, we could see how the official discourse is pervaded with gender stereotypes related to the exercise of sexuality:

“Currently, we have a small number of incarcerated adolescent females, around sixteen adolescents[...].”

“This answer would not be for female adolescents deprived of freedom today because we have a huge amount of male adolescents in prison for whom we still do not avail this activity (sic) (State 1)

“In the female ward there is no conjugal visit. And, most of these girls...they are just a few... [...] So, it becomes difficult... we have never implemented the conjugal visit for them. Also, we see no problem occurring. (State 2)

Thus, the priority in the implementation of public policies steered to the exercise of sexuality is focused on male juvenile offenders and, only afterwards, it might focus on the females as well. This happens because “we see no problems occurring” in the female wards regarding the exercise of sexuality. According to what we heard, there is no demand for that. In this sense, as Bozon (2004, p.95), says: “men are still considered as the main agents for sexual intercourse and women’s sexual drive remains broadly ignored as if the space of women should be limited to affection”.

The International Convention on the Rights of Children is quite clear when it rises in Article 2 the principle of non-discrimination. It affirms that the Member States must respect all human rights, assuring its use to each child subject to its jurisdiction, without any distinction – as, for example, due to gender. Furthermore, according to Faur, the Member States, when ratifying the Convention for the Elimination of all Forms of Discrimination against Women, as it was the case in Brazil,

...assume as *injustice* the existence of several forms of gender inequality and become committed to grant equal treatment for men and women and to punish any type of practice that perpetuates this inequality and to promote transitory measures of “affirmative actions” for its transformation. (Fasin, 2005, p.59).

In this sense, the Brazilian State, by not admitting conjugal visits for young female offenders, at least for the time being, is not complying with the obligations established neither in the International Convention for the Elimination of all Forms of Discrimination against Women, nor in the International Convention on the Rights of Children.

If, on the one hand, it is easier to reach consensus towards the elaboration of public policies for conjugal visits in juvenile female correction prison units²⁰, on the other hand, the topic becomes quite controversial when related to homosexuals. As mentioned, there is a determination, in article 2 of the Children’s Convention, that all the children’s rights must be respected regardless of any condition. This wording clearly shows that the list of reasons that

²⁰ We may believe that this consensus is possible because some adult female penal institutions, such as the Penitentiary for Women in São Paulo, already admits conjugal visits.

should not give grounds to discrimination is vast, with several examples included, among which the sexual orientation of the child and/or adolescent²¹. If discrimination due to the sexual orientation of the youngsters can not exist, so they have the rights to conjugal visit when deprived of freedom.

The absence of the right to conjugal visit for homosexuals happens because they are not recognized as subjects of rights and because of the “lack of social and legal recognition for stable relationships among gays and lesbians that may be considered as family bonds” (Mello, 2005, p.17). According to Mello (2005, p.17) this is the “main restraint affecting homosexuals in the Brazilian context”. Thus, there is a long road to be paved until we reach a material equality regarding the exercise of sexuality by homosexuals when compared to heterosexuals.

Once more, we conclude that when implementing the public policy for conjugal visits, the states did not comply with the equality of rights for men and women and for heterosexuals and homosexuals, therefore, disrespecting the principle of diversity.

Right to body integrity and right to health

In respect to public policy for conjugal visit for adolescents deprived of freedom, the right to body integrity and the right to health should be analyzed from the point of view of sexual education²².

The discourses of the directors from the visited units were clearly denied by the young interviewees regarding the existence of sexual education. In doubt, we suppose that there is no educational program or sexual counseling for the youngsters eligible for conjugal visits in these environments. Nevertheless, in all the three visited institutions, condoms are distributed to the inmates. In unit 2, even inmates who are not eligible for conjugal visits also receive the condoms.

²¹ See paragraph 8 from the Overall Comments n. 3 of the Committee on Children’s Rights, in English, at [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.3.En?OpenDocument).

²² See Overall Comments n.14, of the Committee that monitors the implementation of the International Treaty of Economic, Social and Cultural Rights by the Member States, available at: <http://www.ohchr.org/english/bodies/cescr/comments.htm>.

Sexual education, in accordance to the NGO ECOS – Communication in Sexuality -, may be understood as an “intervention process that favors reflections on sexuality and reproductive health, covering not only the information about biological aspects but also discussions about feelings, values, beliefs, prejudices and personal experiences among other topics” (Boletim Dicas..., 2001).

The Committee on Children’s Rights, linked to the Convention under the same name, in paragraph 16 points out that the States need to provide proper and accessible information about HIV/AIDS prevention and treatment. This committee enhances that the effective prevention against HIV/AIDS requires the States to abstain from censorship, retaining information or purposely lying about issues related to health, including sexual education and information and, also, to comply with its obligation to assure the right to life, the right to survival and the right to a proper development for the children (article 6). The Member States should guarantee that children may be able to acquire knowledge and experience to protect themselves and to express their sexuality.

Once these sexual education/counseling services are not offered, one may see unending consequences. As an example, we could mention the lack of awareness about double protection ... What is the use of distributing condoms if the youngsters can not see the importance of its use? Moreover, although the fertility rates are dropping in Brazil, we can see an increase in the age group 15 to 19 years. As we learn with Abramovay (2004, p.132), “[from 1935 to 1996, the trend was a strong increase in fertility rates in the age group 15 to 19 years and a progressive reduction in the fertility rates recorded in the age group 20 to 24 years. But even in this latter group, the fertility rates are higher than that in older women”. In this sense, information about reproductive rights and, more specifically, about family planning, became very important in juvenile environments.

So, we reach the conclusion that the states do not offer sexual education to the youngsters, who are the target of the public policy for conjugal visits, leaving them vulnerable to STDs such as HIV/AIDS and other, in addition to undesired pregnancy. Even worse, they miss the opportunity to discuss with these youngsters about the meanings of the exercise of sexuality, which, certainly, envelops other questions regarding the exercise of citizenship and respect to human rights.

CONCLUSION AND PROPOSITIONS FOR THE RE-FORMULATION OF A PUBLIC POLICY OF CONJUGAL VISITS

The public policy for conjugal visit, such as the ones implemented in the visited states of the federation, does not put into effect the sexual rights of the adolescents who are deprived of freedom. This happens because, as we have seen, it does not respect the youngster's autonomy or his right to participate in the elaboration of public policies that affect them. In addition, it confirms gender stereotypes by discriminating female youngsters and homosexuals who are not entitled to enjoy conjugal visits. At last but not at least, by not offering an ongoing sexual education to the adolescents, it puts at risk their sexual and their reproductive health. It remains clear that the public policy for conjugal visit is necessary. However, if it is not properly studied and discussed as an action plan that aims at implementing and assuring juvenile's rights it will not achieve its goals. Following, we present a propositional reflection intended to re-formulate and better adequate the public policy for conjugal visit to the national and international legal parameters, not only regarding sexual rights but also regarding the rights of the children and adolescents.

- I. The main purpose of the public policy for conjugal visit is to allow the juvenile in conflict with the Law the safe and healthy exercise of his/her sexuality. Therefore, we suggest that this policy becomes object of a national legislation, possibly (this is an issue to be further studied in terms of legislative strategy and technicality) object of a Law of Execution of Social-Educational Measures, that can establish clear and objective criteria for the implementation of this public policy. As a national policy, it would make feasible to offer to every juvenile in the justice system, regardless of the state where they have been incarcerated, the same treatment and the same exercise of rights. With this procedure, it would no more

be subject to changes of government and administrations – facts that give way, as we have seen, to the discontinuity of the policy turning it into something discretionary and guided by almost random criteria.

- II. The elaboration of this new national legislation, covering every state of the federation, must contemplate the existence of participative channels in order to listen and incorporate the claims and opinions of the youngsters.
- III. The criteria to allow the adolescents to enjoy their rights to conjugal visits should be re-considered according to the issues raised by this research. The minimum age to make a youngster eligible should be assessed again taking on account the jurisprudence of the Federal Supreme Court and the national and international legislation about the topic. We suggest that, based on theoretical and empirical results of the research, the minimum age for adolescents to be eligible to enjoy the conjugal visit should be 16 years. Although at 14 the youngsters may already consent to the practice of sexual intercourse, cultural and geographical differences exist in terms of sexual and social maturity.
- IV. Parent's authorization, as we already mentioned above, is totally in disagreement with the idea that the adolescent, at 16, can freely exercise his/her sexuality. In this sense, we suggest that this authorization shall only be necessary for the visitor who is less than 16 years of age, since he/she will be in an environment that is not entirely safe. If the young visitor is less than 14 years of age, then, a judicial authorization is indispensable.
- V. The communication to the court that the juvenile is enjoying conjugal visits may be done but there is no reason why this communication is mandatory for two reasons: first, because the youngster is a subject of rights and, at 16, he/she has the ability and the autonomy to exercise his/her sexuality. And, furthermore, if this is ruled by the Law, it is not subject to the judge's discretion to either authorize it or not.
- VI. The configuration of a stable union between two youngsters must, first of all, take into account what the adolescents declare and it may be checked, as it is done

currently in the visited states, by means of visits to the household of the adolescent and also by means of interviews with the family members.

- VII. It is absolutely inevitable that the juvenile correct prison unit offers to the youngsters – inmates or visitors – sexual education and counseling about the safe and healthy exercise of sexuality. The adolescents should be informed about the importance of the double protection not only regarding family planning but also to prevent against sexual transmitted diseases, including HIV/AIDS.
- VIII. The exercise of sexuality by means of the conjugal visit must be guaranteed to all youngsters, males or females and even to homosexuals who fulfill the criteria previously accorded. The regulation of this public policy must be quite attentive not to discriminate individuals in regards to gender and sexual orientation stereotypes and to recognize all youngsters as subjects of rights, regardless of their specificities.
- IX. It is also necessary to inform those directly involved in the execution of this policy – technical staff, monitors and judges, prosecutors and all the people responsible for implementing the public policies within the Executive Power – about the sexual and reproductive rights of juveniles in conflict with the Law. We suggest capacity-building courses about human rights and more specifically about sexual and reproductive rights to better prepare all the players.
- X. And, finally, while formulating this public policy, it is important to underline that the assurance of the exercise of sexuality, in itself, does not contribute for the social-educational process of a youngster. Ideally, this proposition should be inserted into a broader re-socialization project using as a reference the integral protection and total priority that should be given to adolescents, through the respect of the inter-dependence, inter-relation and indivisibility of the human rights²³.

²³ It does not make much sense to guarantee to the adolescent the exercise of his sexuality if it is not offered to him, in the juvenile justice system environment, minimum conditions of hygiene and healthfulness; education (including sexual education) and professional training to allow him a possible insertion in the work force; family intimacy, etc. This is the case in Unit 3, studied in this research.

In a summarized and synthetic way, this research tried to demonstrate that youngsters deprived of freedom do not exercise their sexual citizenship, meaning, they do not experience the “democratic rights to sexuality, referred in international instruments, which assure freedom, equality, dignity and non-discrimination” (Rios, apud Paiva, 2005). Thus, they are not respected as subjects of rights in peculiar developing conditions. With the above propositions, we intend to help frame a public policy for conjugal visits that can be more properly implemented, respecting the sexual rights of the young inmates. It is also expected that by putting it into practice it can contribute for the construction of a concept of citizenship necessary for a socialized adulthood.

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