



ACTIVE TRANSPORT AND ROAD SAFETY FOR CHILDREN

Final Report

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EXECUTIVE SUMMARY

WRI Brasil Cidades Sustentáveis has developed a legislative study on active transport and its relationship with road safety for children. This report documents the main findings of this study. Federal and municipal laws of cities with a population of more than 250,000 were considered. In addition, the process also included an analysis of the Senate and House bills, as well as the second instance decisions on the subject by the state courts of Rio Grande do Sul and Rio de Janeiro.

This study aimed to identify good legislative practices and possible gaps concerning road safety for children. The conclusion is that the Brazilian legislation, in spite of providing for a comprehensive system for child protection, does not include road safety as a children's and youth right.

Both federal and municipal laws are outdated in terms of meeting the goals for reduction of road crashes involving children. The main gaps include absence of differentiated speed limits for spaces where there is a high pedestrian flow of children and no safety, surveillance and preventive monitoring mechanisms. The road traffic legislation as well as the legislation on public safety and children's rights should be updated to include the places with higher flow of children as preferred areas for supervision and protection.

It was also observed that road crashes, especially those involving children being run over, are treated from a perspective of individual accountability, disregarding the participation, albeit indirect, of the government and other actors: community, police, road traffic agents and automakers.

CONSIDERATIONS

1. The Brazilian legislation provides for rules to protect children in transport, but fails to include road safety as a fundamental right of children.
2. Municipalities should review their legislation to be in line with the National Urban Mobility Policy and to prioritize active transport over private motorized transport.
3. The current reactive approach to road crashes, which places the responsibility on the victim and the driver, should be reviewed to include other social actors, especially public authorities and automakers, as co-responsible for road crashes prevention.
4. The judiciary and prosecutors should be qualified to properly interpret traffic crashes involving children.

INTRODUCTION

Children's independent mobility in public space is mainly by active transport, i.e., walking, cycling, skateboarding or rollerblading. This condition places children, together with the elderly and people with disabilities, in a position of vulnerability in the urban environment. Children are developing people who have not reached maturity to sufficiently understand the extent of road traffic risks. The notions of distance and speed are not fully developed and, especially in the early years of life, adult supervision is imperative.

The situation is even more unfavorable for children from low-income households, as they often lack qualified infrastructure, which increases the risk of crashes. In addition, these children live on a daily basis amid the growing motorization of the urban environment, do not have enough means to pay for private transportation and often do not have anyone to accompany them to school (HOLANDA, 2006; CACCIA, 2015).

Public and road insecurity, generated by the increased number of motorized vehicles on the streets and rising crime rates, has led to a reduction in children's independent mobility over recent decades. If we consider that a significant factor for urban violence is associated with social conditions and gender, mobility of poor girls and children with disabilities is even more affected. This aspect, combined with parental overprotection (PEREIRA, et al., 2013), has important implications on health, sociability, increased anxiety levels and cognitive development of children (SaBBAG, et al., 2015), contributing to further institutionalization of children at home, at school or in enclosed recreational spaces.

While the home is generally viewed as a safe place, the public thoroughfare is interpreted as a dangerous place. Road crashes are the leading cause of accidental death of children from one (1) to fourteen (14) years of age. On average, the global number of child fatalities due to road crashes is over 186,000 per year (SAÚDE, 2015). 30% to 40% of road deaths occur with children in low- and middle-income countries (PEDEN et al., 2004).

These figures reveal the urgent need for public policies aimed at reducing fatalities and serious injuries of children caused by road crashes, especially by prioritizing road safety for those who use active transport. Aware of the seriousness of the problem, the United Nations General Assembly, assembled in September 2015, ratifying the commitments made by the Decade of Action for Traffic Safety, set the new goal of reducing by half the number of traffic-related deaths and injuries by 2020 (World Health Organization, 2015). Some countries have developed public policies focused specifically on road safety. England, for example, has been promoting consistent education campaigns for children, parents and teachers on how to prevent crashes¹.

¹ Available at: <<https://www.gov.uk/government/publications/2010-to-2015-government-policy-road-safety/2010-to-2015-government-policy-road-safety>>. Accessed on 02/10/2016

In addition, there is a growing awareness that as crashes involving children decrease, parents' sense of safety increases, making them more at ease in allowing their kids to have more autonomy to get around, on foot or by bicycle. In the long term, this encourages the creation of a more active society, which sees non-motorized modes as a real transport choice in cities.

This report presents the results of a study carried out with the federal and municipal legislative bodies (of cities with more than 250,000 inhabitants) and the jurisprudence of the state courts of Rio Grande do Sul and Rio de Janeiro, with the objective of identifying the extent to which Brazilian legislation is adequate to protect active transport users, especially children. At the same time, a literature review was also carried out to provide a qualitative basis for the analysis, which considered the main practices and recommendations of international references and regulations, as well as scientific research concerning road safety and active transport for children.

LEGISLATION

NATIONAL LAW

Federal Constitution

The Federal Constitution of 1988 enshrined the principle of the integral protection of the child, article 227, whereby it is the duty of the family, society and State to ensure to the child, adolescent and young person, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community coexistence, and to safeguard them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.

Two aspects of this device deserve attention. The first of these is the fact that, in spite of guaranteeing the right to life, the text does not expressly include the right to security, reflected in infraconstitutional legislation, which rarely mentions the child as the holder of the right to safe transportation. The second aspect is that responsibility for the protection of the child and therefore for its safety is not the exclusive task of the family, but also of society and especially of the State. The duty of protection and, consequently, liability for any accidents involving children has fallen on parents. One possible result of this is that many parents tend to take a stance of overprotection, avoiding the exposure of their children to the risks of traffic.

One of the constitutional principles of education is that access to school must take place under conditions of equality, article 206, item I. However, reality shows that the way to school is less safe for children from low-income families, who often make this journey on foot and in regions with less qualified road infrastructure.

Only recently, in 2014, the Constitution has won an amendment to include road safety as a component of public safety. Article 144, § 10, establishes that road safety is exercised for the preservation of public order and the safety of people and their assets on public roads. It includes education, engineering and traffic supervision, as well as other activities provided for by law that ensure citizens the right to efficient urban mobility.

Child and Adolescent Statute

The protection of children and adolescents is expressly provided in the Child and Adolescent Statute (ECA, from Portuguese). The ECA emerged at a crucial time of affirmation of fundamental children rights. The federal constitution had been enacted less than two years earlier, and the UN Convention on the Rights of the Child was ratified by Brazil in the same year that the ECA was adopted. In the following years, several human rights treaties were also ratified in the country.

Article 3 of ECA reaffirms the doctrine of integral protection established in the Constitution by stipulating that the child enjoys all the fundamental rights inherent to the human person,

without prejudice to the integral protection, assuring him or her of all the opportunities and facilities, in order to provide the physical, mental, moral, spiritual and social development, in conditions of freedom and dignity. Along the same lines, Article 4 enshrines the absolute priority of the child's interest. This priority includes, among other prerogatives, the primacy of receiving protection and relief under any circumstances and the preference for care in public services or of public relevance.

ECA also recognizes the child as a developing person by requiring that the law be interpreted considering this condition. Consequently, caution should be exercised by both the public authority and motor vehicle drivers so that the child is not required to be as mature as an adult on public roads. More than that, the expectation that the child make more mistakes than an adult should be incorporated into road design.

To a certain extent, and together with the Constitution, ECA is equivalent to a first generation of affirmation of children's rights at the national level, since for the first time the child is positioned as a subject of rights and a system of integral protection is established. The rights to life, health, freedom, respect, dignity, family coexistence, education, sport, leisure, professionalism and protection of work were prioritized.

The concern of the social movement that instituted ECA was the protection of children within the family and access to public social policies: health, education, institutions of shelter and custody. Rights such as accessibility and public and road safety have not been explicitly included in legislative texts, although they are implicitly included in full protection and in the criteria of absolute priority and the best interests of the child.

After 26 years since the statute came into force, it appears necessary to update it, incorporating in its text the right to public and road safety, as well as accessibility rights and the assumption of reduced mobility. The right to full protection should contemplate the reduction of traffic accidents involving children.

Brazilian Traffic Code

The Brazilian Traffic Code (CTB, in Portuguese), Law 9,503 / 1997, does not contain specific provisions on universal accessibility, reduced mobility, traffic moderation, road safety or a set of standards aimed at protecting children in urban environments. In this sense, a CTB revision would be appropriate to update it in relation to the recent developments on road safety and urban mobility. Still, some devices deserve attention. Article 29, § 2, establishes that all vehicles, motorized and non-motorized, are responsible for the safety of pedestrians.

Article 244 of the infractions is more specific and expressly prohibits the transport of children under seven years old on motorcycles, motor scooters or mopeds. These vehicles can transport children over the age of seven provided they are able to take care of their own safety. This article introduces an open and indeterminate concept: "conditions to take care of one's own security", because it does not refer to any other rule that objectively delimits under what conditions a child can or cannot take care of his own safety. That is, the interpretation of what will become "conditions to take care of one's own safety" will depend on judicial valuation in case of accident involving child transports by motor vehicle of two wheels.

Article 311 imposes the requirement to travel at a speed compatible with the necessary safety near schools. The difficulty with this device is that, unless there is on-the-spot signaling on the

speed limit, in the case of a case there is room for discretion, or even discretion, of the driver and the judge over what is to traffic with incompatible speed.

CTB devotes an entire chapter to traffic education, articles 74 to 79. From the reading of these devices, especially from article 76, it is inferred that the traffic education prescribed by CTB is somewhat vague and states only that it must exist without guidance on the content. Added to this is the fact that the Brazilian Traffic Council (CONTRAN) has paid little attention to traffic education, whar guides to conclude that education for traffic in Brazil is practically nonexistent.

In addition, CTB provisions indicate that the main recipients of traffic education are children at school, disregarding that other actors - drivers, parents, teachers, school principals – should have information on how to avoid road crashes involving children. In addition to educating children about how to become good drivers, education practices should also encourage them to go on foot or by bike to school.

CTB is laconic regarding speed limits, since it only recommends limits to the circulation in the roads. In this way, the Code assumes a subsidiary position with respect to local governments, which will define the road hierarchy and signal the speeds allowed in each area of the city. From the reading of the jurisprudence, it was verified the absence of clear limits, which transfers to the Judiciary the decision on what is high speed. Insofar as it does not define what is high or low speed (which varies according to the type of road) and refers only to "compatible speed", CTB leaves room for the Judiciary to decide, on a case-by-case basis, if the driver is guilty or not.

Finally, it should be noted that CTB devotes few devices to transport by bicycle. What exists is the determination that public authorities should plan, design, regulate and operate vehicle, pedestrian and animal traffic, and promote the development of cycling traffic and safety. There is no article on the use of bicycles by children on the roads. Only Article 58 states that cyclists must circulate at the edges of the running track in roads with no structure dedicated to bicycles, regardless of the age of user or speed and safety conditions of the road.

In addition, there are no age restrictions for the transport of children on bicycles unlike the case of motorcycles, and no regulations on restraint systems, as opposed to cars. CTB also does not regulate which safety equipment should be required for children's transport in bicycle, such as the use of specific helmets, lights or the correct chair type/size according to age, height or weight.

Accessibility law for disabled persons or persons with reduced mobility

Law 10.098/2000 establishes general standards and basic criteria for the promotion of the accessibility of persons with disabilities or reduced mobility, by removing barriers and obstacles in roads and public spaces, in street furniture, in the construction and renovation of buildings and in modes of transport and communication. The use of "or" disjunctive indicates that accessibility is inclusive: it covers all persons who, temporarily or not, have reduced mobility, including children.

An important aspect of the law lies in the definition of some key concepts of mobility, such as accessibility, universal design, urban furniture and people with reduced mobility. However, this law clearly aims facilitating the access of persons with disabilities to people and goods in

urban areas, mentioning the word "child" only once and just to cite an example of a person with reduced mobility.

Multiyear Plan

Although unknown to the general public, the Pluriannual Plan (PPA, in Portuguese) sets guidelines, objectives and goals of the Public Administration for a period of four years. The current PPA was approved in 2016 by Law 13249 and will be in force until 2019. It determines a series of tasks to the Ministry of Cities, among them the implementation of measures of road safety and traffic moderation. In addition, the Ministry of Cities should support the deployment of 8,000 kilometers of tracks for non-motorized transport systems. It is recommended to monitor compliance with these targets, which may be an opportunity to influence that these measures be implemented in areas that register intense traffic of children and high rates of road crashes.

MUNICIPAL LEGISLATION

In relation to the municipal legislation, the research established a cut of municipalities with more than 250 thousand inhabitants. The analysis showed that, in most cases, there is no legislative elaboration on urban mobility. In those cities with some legislation, there are few laws that prioritize active transportation.

The requirement to implement municipal urban mobility plans could remedy this gap, but federal law does not require municipalities to institute the plan by law. Laws have the advantages of being generic, better elaborated and discussed, and presenting more precise provisions than non-instituted plans, in addition to being binding - that is, failure to comply with one of its provisions may result in sanctions against the public authority responsible for application. Because of the obligatoriness, smaller municipalities with little capacity of planning often end up practicing a mimetic isomorphism, that is: they copy without contextualization the plans of larger municipalities only to fulfill the legal requirement, not acting adequately in their own problems.

Despite the lack of consistent legislation on the subject, some municipal initiatives deserve mention. In São Paulo, Law 14.492 / 2007 created, the area of school safety as a priority area of municipal public power. According to the law, the said area corresponds to a circle of radius of 100 meters from the entrance and exit gates of the schools, where the city hall has a series of obligations: to promote adequate public lighting in the accesses to the school, paving the streets, keep sidewalks in perfect conditions of use, pruning trees, besides the permanent maintenance of pedestrian lanes, traffic lights and speed reducers.

By law, the municipal traffic company must provide strict control of speed limits and proper signage. Likewise, it will be the responsibility of the Metropolitan Civil Guard, in partnership with school boards, parents' and teachers' associations and the school community, to promote actions that collaborate with the prevention of violence and crime in the region.

The initiative of São Paulo was timely and motivated the presentation of similar bills in other municipalities and scopes of the federation. Bill 7035/2009 in the Chamber of Deputies practically copies the content. In the Federal District, Law 5,385 of 2014 was also inspired by São Paulo law to create the school safety area. In Viçosa, Law 2,497/2015 has the same content.

Law 14.492/2007, however, contains some limitations. It is not specific because it promises to provide basic services in the school environment which are, in fact, services commonly intended for the whole municipal population, irrespective of the location - every citizen is entitled to maintenance services for roads and public roads, for example . In addition, São Paulo law assigns to civil guards actions to prevent crime and violence, when constitutionally the municipal guards should adhere to the protection of the municipal public patrimony, without joining in crime prevention, which is the exclusive attribution of Municipal Guard.

Municipalities are still highly dependent on resources and technical capacities of the federal government, but the experience of São Paulo reveals, on the other hand, the possibility of diffusion of public policies and initiatives of municipal public powers. The municipal scope is the most appropriate to promote changes in urban planning and carry out campaigns to reduce road crashes involving children. In this sense, the law that instituted Fortaleza's Cycle Transport Policy foresees the formation of groups in neighborhoods near schools, encouraging children to go together for classes, on foot or by bicycle.

RECOMMENDATIONS

Based on the legislative survey and the quantitative and qualitative analysis, some specific regulatory gaps were identified for road safety with the potential to qualify the use of non-motorized transport by children. The aim of this report was to identify opportunities for change in order to make children's travels safer and to encourage them to use active means of transport, such as walking and cycling. Based on this, some recommendations were made for changes in the legislation and public policies on the subject:

Recommendation 1

Establish a preventive monitoring system to reduce crashes involving children in active transport. As the legislation is insufficient regarding road safety for children in urban areas and the state bodies (Judiciary) are better prepared for a reactive approach, i.e., post-crashes, we recommend creating, by federal law, a national system for prevention of road crashes involving children.

This type of system has already been implemented in other areas, such as for prevention of human rights violations, and has proved to be effective without implicating the culpability of those involved, as it focuses on the identification of risk factors for crashes involving children, dialog with the authorities responsible for promoting the changes and monitoring of these measures.

Such a system would be based on the premises of prioritization of active transport, universal accessibility, joint responsibility, reduced mobility and the best interest of children. A preventive system would include all the actors involved in safeguarding children: Municipal executive authorities, traffic departments, guardianship councils, school principals, family of victims, drivers involved in crashes, road safety experts, the Prosecutor's Office and civil society entities with experience in the subject.

The preventive system would help with the monitoring of spaces and institutions that create the most risks to children's safety in the urban environment: places with intense circulation of children and high rates of crashes, school areas, public transport companies etc. This system would also focus on training public and civil authorities on how to address risk situations and how to properly respond to traffic crashes involving children.

Recommendation 2

Governments in the three spheres – Union, states and municipalities – should develop specific public policies for the reduction of crashes involving children in order to reduce deaths and serious injuries, ensure the fundamental rights of children and the implementation of the Child and Adolescent Statute (ECA), as well as to meet the Sustainable Development Goals established by the UN. Ensuring children's safe mobility is also a way of ensuring access to the education system and other public services and facilities in the city. The accessibility law for people with disabilities can serve as a reference in drafting a bill or a plan to reduce road crashes involving children, as well as in implementing measures to encourage active transport.

Recommendation 3

Municipalities with a population of more than 20,000 should review their legislation and adapt it in line with the National Urban Mobility Policy, especially regarding road safety for children, setting goals and actions to reduce crashes and prioritize active transport.

Recommendation 4

Public safety and enforcement agencies should establish programs together with education entities and include in their actions school rounds to increase children's public and road safety. The driver training process should also include a module dedicated to prevention of road crashes involving children.

Recommendation 5

The Child and Adolescent Statute should be modified to include as basic rights road safety and accessibility of children and adolescents in the integral protection system. Changes should include those aimed at compelling public authorities and the private sector to modify public spaces to provide safe access for children.

Recommendation 6

The Child and Adolescent Statute should also be amended to include as a duty of the Guardianship Council the supervision of the conditions of access to schools and the safety of the school surrounding.

Recommendation 7

The Brazilian Traffic Code (CTB) should be updated in accordance with the National Urban Mobility Policy, its terminology and conceptions, and incorporate the perspective of children into its regulations. In addition, some specific changes should be promoted:

- A. include schools and recreational spaces in Article 220 in order to penalize drivers who fail to reduce the vehicle speed in a manner compatible with road safety in these areas;
- B. amend article 244, item V to define the situations in which children cannot take care of their own safety or authorize Contran (National Traffic Council) to define them by resolution;
- C. establish specific rules on speed limits, especially for areas where there is intense flow of children, such as the immediate vicinity of schools, parks and squares;
- D. amend traffic education provisions to encourage the use of active transport for children's travels to and from school or recreational spaces;
- E. define mandatory safety equipment for the safe transport of children, such as lights, helmets, safety seats etc.;

- F. devote a chapter to promoting the active transport policy, with specific provisions on cycling, its prioritization, the rules for its use by both adults and children and to foster the expansion of bikeways and cycle tracks.

Recommendation 8

In compliance with the goal of implementing traffic-calming measures, as provided in the PPA (Multi-Year Plan), the Ministry of Cities should prioritize spaces with intense circulation of children in active transport by restricting freight and private transport modes.

Recommendation 9

The executive and legislative branches should design and sanction a Proposed Constitutional Amendment to Article 227 of the Constitution to include safety and mobility as fundamental rights of children and adolescents. Here they are understood as the right to free mobility on sidewalks and public walkways safe from both acts of violence and the risks offered by motorized transport.

Recommendation 10

State prosecution offices should assign specialized groups to oversee and file suit against municipal and state governments, as well as automakers, when there are indications of actual or potential crashes caused by omission or malpractice on the part of these entities. In addition, it is the responsibility of the Prosecutor's Office to supervise the proper implementation of municipal urban mobility plans.

Recommendation 11

Municipal governments should establish groups and train their technicians to incorporate the safe design of roads, public spaces and urban projects, in order to minimize the risk of crashes resulting from environmental factors and infrastructure problems. As with some existing municipal initiatives, laws should be passed for the creation of school safety zones and speed reduction zones, establishment of calm areas, installation of specific municipal signs etc.

FINAL CONSIDERATIONS

Children, the elderly and people with disabilities are particularly affected by the lack of infrastructure dedicated to active transport in cities and end up being fatal victims when involved in crashes. Worldwide, traffic violence kills more children between the ages of 5 and 14 than AIDS or malaria and is the leading cause of death among young people aged 15-29.

Accountability for road crashes falls mainly on the victim, the driver or both. The Constitution allows the government to be held responsible, but this is rarely the case because victims and their families, drivers and transport companies, as well as prosecutors, do not take into account the role of the other actors in these events. The view that accountability goes beyond the victim and driver is not widespread in Brazil. To reverse this logic, it is necessary to engage not only governments and justice, but also the media and any other agents capable of generating cultural transformation.

Prosecutors, for example, have the power to initiate a public civil investigation to compel public authorities, transport companies, public and private schools, and automakers to adjust their conduct in favor of road safety. The Conduct Adjustment Statement (TAC) is an important instrument in the hands of the Prosecutor's Office in order to prevent crashes. In order for the TAC to be effectively used, the Prosecutor's Office must be aware of the problem.

Research and studies that deepen the understanding of the components of public policies are necessary to support measures that reverse the prioritization of motor vehicles in favor of people. The purpose of this report is to provide a broad overview of the legislation on road safety and the use of active transport by children and the potential for improving public policies.

This work is part of WRI Brasil Cidades Sustentáveis' strategy to encourage systematic investment in active transport and in establishing norms and guidelines to ensure safe mobility for all. Within this global goal, providing training and technical assistance to governments and other stakeholders is critical in order to support them in decision-making that steers the investment in the right direction. With the support of UNEP's Share the Road program and the Climate and Society Institute, WRI Brasil Cidades Sustentáveis engages decision-makers in the discussion of opportunities to influence the prioritization of active transport in cities and increase the safety of vulnerable groups through changes in the legislation.