

Behind Bars: Violence. Abuses against Detained Children in Brazil

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SOU REBELDE
Sou rebelde porque o mundo fez-me assim
porque ninguem tratou-me com amor
porque ninguem nunca quis ouvir-me
eu sou rebelde porque sempre sem razao
negaram-me tudo o que eu pedi
e deram-me somente incompreensao
E queria ser como aquela criança
como aquele homem que è feliz
E queria dar tudo o que tenho dentro de mim
Tudo por uma amizade
E sonhar, e viver
E esquecer o rancor
E cantar, e rir
E sentir apenas amor...
(J.)*

* J. is a fifteen-year-old boy detained in a juvenil centre in São Paulo, Brazil.

He gave this poem to Valdenia Aparecida Paulino, a Brazilian lawyer working among the excluded of Eastern outskirts in São Paolo. She sent it to me attached to her e-mail on 20 May 2005, together with J.'s best regards.

I've overcome my indecision and insecurity and I've made an attempt to translate J.'s poem.

As I expected, in the translation lots had been lost. I don't think J.'s feelings and emotions passed into the «english version» of his beautiful poem.

I AM A REBEL
I am a rebel as the world made me such
As no one has ever treated me with love
As no one has ever wanted to listen to me
I am a rebel as I am never right
They have refused me all what I asked
And they gave me only incomprehension

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And I would like to be as that child
As that man who is happy
And I would like to give what I have insight me
All in exchange for a friend
And dreaming, and living
And forgetting the grudge
And singing, and laughing
And feeling just love...

1. Introduction

Juvenile detention centres in Brazil fail to safeguard children's basic human rights.

Children are frequently abused, enduring severe corporal punishment, torture, forced labour, denial of food and water, isolation in their cells for long periods of time, sexual assaults, harassment and humiliation. Many detained children do not receive any education and the opportunities for recreation and sports are few.

Prohibitions against ill-treatment are frequently not enforced and children's complaints of abuses are not investigated. This is especially because it is the detention centre officers themselves who perpetrate such violence. «Complaining here is like a voice in the desert», said one sixteen-year-old detained girl.

My paper will focus on the violence against children that occurs behind the heavy gates and desolate bars of detention centres, at the hands of guards and institution staff.

The first part of the essay will try to investigate the «why» of such abuses, where their roots lie, how deep they are. An insight into the culture of violence that impregnates the life of thousands of Brazilian children will, thus, emerge from these pages.

I believe it's important to be aware of the real causes of the human rights abuses that take place in detention centres, for mainly three reasons. First of all, it allows you to better enter into the reality these children have daily to face, avoiding popular stigmatisation and inaccurate perceptions. Secondly, it is necessary in order to propose and understand successful long-term solutions. Finally, you can't fully «participate» in the feelings and sufferings of children without knowing where the violence they are subject to, comes from.

In the second section, then, we will take a journey throughout detention centres in order to assess which rights are actually

violated and which are the legal standards, international and national, in place to condemn and respond to such abuses.

According to international and national law, children who are deprived of their liberty, boys and girls alike, have the right to be treated with humanity, respect and dignity. However, how we will see, this is not the case in Brazilian detention centres.

Recommendations to face the main obstacles and impediments to the full realisation of children's rights, will constitute the third part of the paper.

The conclusion will bring you back to the real roots of the violence problem and set the way forward: it's very necessary to reform the repressive juvenil detention centres model, but it's not enough in order to completely eradicate the culture of violence that surround a big number of children in Brazil.

Before starting, I would like to add just two quick notes. The possibility I had to exchange e-mail letters with a lawyer, Valdenia Aparecido Paulino, that is directly working with children coming from the streets and slums and with children kept in detention centres, helps me to get sensitive to this issue. Therefore I decided, where I could, to let the children voices come out from my paper explaining you the abuses and violations they suffer. They are the best persons for doing that. And this is in line with the general principle of children's participation, established by the Convention on the Rights of the Child, and so important in all fields related to children.

In my paper, «child» refers to anyone under the age of eighteen, consistent with the definition provided by the Convention on the Rights of the Child. This use differs from the definition of «child» in Brazil's juvenile justice law, which makes distinction between persons under the age of twelve (who are considered «children») and those between twelve and seventeen years of age («adolescents»).

2. The Culture of Violence

The police treat us badly. They hit us. Not for any particular reason... just because they feel like it. They've hit me lots of times. We are sufferers.

Fifteen-year-old boy, Brazil¹

¹ Human Rights Watch, *Easy Targets: Violence Against Children WorldWide*, in «Human Rights Watch Publications», September 2001, available at <http://www.hrw.org>.

Violence against children in detention centres is a horror story too often untold. It hides behind the bars of desolate cells.

On 10 December 1998, while the world was celebrating the 50th anniversary of the Universal Declaration of Human Rights, children detained in a centre in São Paulo, were subjected to eight hours of violence and humiliation, forced to run through a gauntlet of policemen who kicked and beat them. Policemen were shouting: «Today is human rights day, and this is what your rights are!»².

This violence, however, doesn't have its origins in detention centres. Its deep roots lie outside detention centres' heavy gates. Violence is an aspect of the identity of a vast and growing number of children in Brazil and is tragically indelible as the scars that crisscross their bodies.

An ILO study on children in Brazil reveals that the big majority of children confined in detention centres are children coming from the reality of slums and streets³.

Most of them are «roaming vendors», selling odds and ends on a day-to-day basis. They beg and engage in illegal activities – stealing, drug trafficking and prostitution – in order to «make a little extra»⁴.

While I'm writing and you are reading, there are about 30 million⁵ children in Brazil living in conditions that are subhuman and inadequate for their development⁶.

In slums, they soon learn the brutality of poverty, its taste and smell. Hunger, malnutrition and disease are a daily reality.

When poor children are abandoned by society in their most basic needs of care and decent education, they grow up in desperation, and violence often appears as the way out.

People in these conditions will kill and risk death for something to eat or for a single material possession⁷. In situations of hopelessness, without work or any chance for upward socio-economic mobility⁸, they easily develop feelings of frustration, anger and resentment. From victims of society that they are, in their impotence they themselves become victimisers.

Brazilians living in slums claim that every day they have to deal with, «theft, vandalism, muggings, rapes, gang fights, murders, and organized crime»⁹. «People are very hostile here. They even have knife fights over soccer». «People get killed at parties and on their way to and from parties»¹⁰.

The country has the world's highest murder and homicide

² Amnesty International USA, *No One Here Sleeps Safely*, in «Amnesty International USA Reports», June 1999, available at <http://www.amnestyusa.org>.

³ A. Urani, J. de Souza e Silva, *Brazil, Children in Drug Trafficking: A Rapid Assessment*, Geneva, International Labor Organisation, 2002.

⁴ K. Rupesinghe, M. Rubio C. (eds.), *The Culture of Violence*, New York, United Nations University Press, 1994, p. 265.

⁵ I like to remember that, while statistics are useful to get an idea of a given phenomenon, behind the bare numbers there are real children with a real face and eyes, real hopes and sufferings.

⁶ K. Rupesinghe, M. Rubio C. (eds.), *The Culture of Violence*, cit., p. 259.

⁷ E-mail from Valdenia Aparecida Paulino, a Brazilian lawyer working among the excluded of Eastern outskirts in São Paulo, 20 May 2005.

⁸ According to the World Bank (*Country Brief: Brazil*, at www.worldbank.org), Brazil is one of the countries with the most inequality in terms of the gap that exists between the very wealthy and the extremely destitute. A huge portion of the population lives in poverty: «one-fifth of Brazil's 173 million people account for only a 2.2 percent share of the national income. Brazil is second only to South Africa in a world ranking of income inequality».

⁹ D. Naryan, P. Petesch (eds.), *Voices of the Poor from Many Lands*, Washington D.C., World Bank, 2002, p. 369.

¹⁰ *Ibidem*.

rates, due mainly to drug-related violence in the slums¹¹. An article in the «BBC News», dating back to 2002, compared the situation in the slums surrounding Rio de Janeiro to a war zone. There are an estimated 5,000 to 6,000 armed children in Rio alone. Statistics also show that over the past 14 years, guns killed a total of 4,000 children under the age of eighteen¹².

The author Tobias Hecht brings to light, through several interviews with «street children», that a natural consequence of the situation described above, it's children's little hope for survival and for improving their situations in life¹³.

In the street and in the slums in Brazil, children see the extreme poverty and inequality around them and often conclude that there is no way to deal with things except to resort to violence and survive by whatever means possible¹⁴: gangs, drugs and arms trafficking tend to become the way of life in a sea of social intolerance and neglect.

Neglected and abused, involved in gangs and drug trafficking, using violence to get food and clothing, street and poor children end to be both the victims and the perpetrators of the violence that impregnates the reality in which they born, grow up and live. This circle and culture of violence fuels the stigmatisation poor and street children are subject to.

They are popularly perceived to be criminals and a danger to society¹⁵.

Such perception and a strong fear of violent crime lead public opinion to be quite supportive of repressive measures against children. A nation-wide poll run in 2003 by Brazil's largest newspaper, «Folha de São Paulo», found that many Brazilians regard the Statute of the Child and Adolescent (*Estatuto da Criança e do Adolescente* - ECA) too lenient on young offenders and that 84% of respondents supported a proposal that would reduce the age of criminal responsibility, charging fifteen-year-olds in the adult system¹⁶.

Strong of this perception, police and authorities present the abuse and even killing of children suspected to have committed crimes, as a necessary measure. The following words of the Rio de Janeiro Governor, pronounced during a speech on the issue of children and delinquency, well-explain the concept: «We don't want anyone to die, but if someone has to die, it is those who are harming society»¹⁷.

Another popular related misperception is that the vast majority

¹¹ *Country Brief: Brazil*, cit.

¹² T. Gibb, *Rio, Worse than a War Zone*, in «BBC News», 9 September 2002.

¹³ T. Hecht, *At Home in the Street: Street Children of Northeast Brazil*, Cambridge, Cambridge University Press, 1998.

¹⁴ The 1996 WHO Task Force on Violence and Health Report stated: «We are only beginning to understand how marked social and economic disparities contribute to the aetiology of violence. Poverty, joblessness and the lack of real employment opportunities may promote violence by generating a sense of frustration, low self-esteem, hopelessness about the future, and family instability. Racism and sexism produce social and economic disparities and may contribute to violence by depriving certain segments of the society of the opportunities to be successful in school and work. The poor in many societies do not have equal access to criminal justice, health care and educational systems, making it more difficult to escape from the impoverished conditions that contribute to violence».

¹⁵ Currently there is talk of creating a ten-foot wall around two of the main slums in Rio, Rocinha and Vidigal, where gangs and drugs appear to authorities to be getting out of control to an intolerable degree. Authorities claim that the wall will help the security forces to control the area better. Brazilian society seems to be supportive.

¹⁶ Human Rights Watch, *Brazil, Real Dungeons*, in «Human Rights Watch Publications», vol. 16, no. 7 (B), December 2004, p. 17, available at <http://www.hrw.org>.

¹⁷ *Ibidem*.

of children in Brazil's juvenile facilities are detained for acts of serious violence¹⁸. Consequence of this is a generalised tolerance towards the abuses and the human rights violations against the so-called «bandits», «vagabonds» and «animals» that are detained in there¹⁹.

This is how violence enters detention centres together with children and becomes institutionalised. It is a horror story locked behind bars. Nobody outside there wants to hear it, «they are just happy to have built institutions where confining the most disadvantaged out of view»²⁰.

Let's now walk through the detention centres' gates. We are going to have a close look at the human rights violations that occur inside there and at the legal international and national standards in place to condemn and stop such abuses.

3. Human Rights Abuses against Detained Children

The guards had gone in and hit everybody, beat them up. The boys were bruised, with broken arms, broken legs, covered with blood. I saw this. Fifteen boys called me over to look inside and see how they were. I saw them inside a bathroom. They lifted their shirts to show me the injuries.

Parent of youth in detention, Brazil²¹

International law and Brazilian national law accord to every child who are deprived of their liberty, boys and girls alike, the right to be treated with humanity, respect and dignity. However, this is not the case in detention centres of Brazil.

3.1. Abuses

Once children are transferred to juvenil institutions, they often endure violence at the hands of the guards. Human Rights Watch reports to have heard story of cruel physical abuse by guards in all detention centres visited in the year 2003 and 2004²².

«The guards hit us with wooden sticks, punch us with their fists. They speak rudely to us. They lack respect»²³. Stories like this are on the mouth of every detained child.

In addition to beatings and verbal abuse, diverse Human Rights Organisations report that children are subjected to excessively

¹⁸ In fact, fewer than 10% of detainees have committed crimes such as homicide or rape. The large majority have been charged with drug trafficking and robbery.

¹⁹ Some sectors of the media play a big role in feeding such negative popular belief. Tragically famous is the riot, all filmed by the TV, that spread throughout the FEBEM detention centre in São Paulo on 24 October 1999. The Amnesty International Report, *A Waste of Lives*, well explains what happened. «Severe overcrowding, appalling conditions, and cruel punishments and beatings had rendered the system unsustainable [...]. On 24 October a riot spread throughout the whole complex. 18 hours later, four boys were dead, 58 people were injured, including 29 FEBEM staff, dozens of boys had escaped, and the complex had been completely destroyed. Brazilians were horrified at images of boys, with T-shirts wrapped around their heads to hide their faces, completely out of control, ill-treating and torturing *monitores* (FEBEM staff) and fellow-inmates for the television cameras [...]. An already widespread fear of violent crime was exacerbated by the waves of escapes» (pp. 10-11).

²⁰ E-mail from Valdenia Aparecida Paulino, 20 May 2005.

²¹ Human Rights Watch, *Cruel Confinement: Abuses against Detained Children in Northern Brazil*, in « Human Rights Watch Publications», vol. 15, no. 1 (B), April 2003, available at <http://www.hrw.org>.

²² Human Rights Watch, *Brazil, Real Dungeons*, cit., p. 24.

²³ *Ibidem*.

lengthy periods of lockup. Often, the time spent in cell confinement is completely discretionary: «You stay there as long as you don't obey the guards. Some stay for one day. Others are there for four or more days», a fifteen-year-old boy detained in a centre in Rio de Janeiro reported at Human Rights Watch²⁴. Cell confinement is a common practice in girls detention centres as well, as this testimony of a detained girl reveals: «For me, the worst thing was being in isolation. I was very sad. I stayed there a long time, more than a month inside there without leaving or anything... for me, that was the worst»²⁵.

Extreme examples are also present. In a surprise inspection conducted in July 2003 by the public prosecutor's office in the detention centre «Padre Severino» in Rio de Janeiro, prosecutors found thirteen youths confined to a cramped and windowless cell.

Describing the cell as «inhumane», officials in the prosecutor's office reported that guards had beaten the youths repeatedly and that many had respiratory and skin problems resulting from the close quarters in which they had been confined²⁶.

Other disciplinary punishments that may violate international and national human rights standard are reported to be common practice. One of this is forcing children to stand for long periods of time in uncomfortable positions. «You do it if you get out of the line. If you take food out of the dining hall. If they see that you were talking during the meal»²⁷.

Another common measure is suspending parental visits.

Violence in detention is a crude reality for boys as well as for girls.

Clear principles and standards are provided as responses to this violence by several international legal instruments to which Brazil is party.

3.2. Legal Standards

The protection of children from violence is a key component of the Convention on the Rights of the Child²⁸. The Convention recognises that children, due to their particular condition of physical and mental vulnerability, are entitled to «special care and assistance» (Preamble).

Its four General Principles²⁹ provide clear standards for responses to violence committed against children. According to the UNICEF «Innocenti Digest» *Children and Violence*³⁰,

²⁴ *Ibidem*, p. 27.

²⁵ Human Rights Watch, *Cruel Confinement...*, cit., p. 2.

²⁶ *Ibidem*, p. 21.

²⁷ Human Rights Watch, *Brazil, Real Dungeons*, cit., p. 28.

²⁸ Convention on the Rights of the Child, 20 November, 1989, UN Doc. A/RES/44/25.

²⁹ The Committee on the Rights of the Child identified, in the Reporting Guidelines to Government (1996) and in its General Comment No. 5 (2003), the following articles as General Principles that should guide the effective implementation of the whole Convention: Article 2 (non-discrimination of children), Article 3 (best interest of the child as a primary consideration in all actions relating to children), Article 6 (survival and development), Article 12 (children's participation).

³⁰ UNICEF, *Children and Violence*, in «Innocenti Digest», no. 2, 1997.

particularly relevant in the context of juvenile justice, are the provisions related to the best interest of the child and children's participation. Article 3 states that the best interest of the child must be a primary consideration in all actions concerning children³¹. Therefore, the administration of juvenile justice and the placement and care of children in detention centres should always, in every step, every moment, every day, respond to this guiding principle.

During the day of general discussion devoted by the Committee on the Rights of the Child (CRC) to the question of the administration of juvenile justice³², it was reaffirmed the important value that the best interest of the child principle gains when related to the purpose of the whole system of juvenile justice. As provided by Article 40, such a system is aimed at reintegrating children, promoting them to assume a constructive role in society³³.

This focus is on children's short- and long-term interests as well as society's. There is enough evidence from many studies and researches that harsh and humiliating punishment is a significant factor in the development of violent attitudes and actions, it increases the likelihood of reoffending, and in particular of non-violent offenders becoming violent³⁴.

The other relevant general principle mentioned above is children's participation. It assumes great importance when is related to the call by international standards for the establishment of effective complaint mechanisms in each detention centre. I will talk about this in the «Recommendations» section of this paper.

Let's continue our assessment of the main standards for the protection of children from violence.

The CRC contains a specific article that explicitly deals with the issue of violence: Article 19. It guarantees children the right to protection from physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, that can derive from private acts of violence as well as from acts committed by state agents³⁵. In order to ensure such a protection, Brazil shall take all the necessary and appropriate legislative, administrative, social and educational measures.

On 13 July 1990, Brazil adopted the Statute of the Child and Adolescent (*Estatuto da Criança e do Adolescente - ECA*)³⁶ in order to bring its legislation on children into line with

³¹ CRC, Article 3 (1): «In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration».

³² Committee on the Rights of the Child, *Day of General Discussion on The Administration of Juvenile Justice*, CRC/C/43, 10th Session, 13 November 1995.

³³ CRC, Article 40 (1): «States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society».

³⁴ UNICEF, *Children and Violence*, cit., pp. 3-4.

³⁵ CRC, Article 19 (1): «States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child».

³⁶ *Estatuto da Criança e do Adolescente (ECA)*, Law No. 8,069 of 13 July 1990.

international standards.

Among all South America children legislations, this Statute is the most progressive in terms of protection accorded to children.

Its core premise is that children and adolescents are in a stage of personal development and, thus, are entitled to special care and assistance. Under the Statute, youths aged twelve through seventeen, whom it terms «adolescents», are charged under Brazil's juvenile justice law. According to ECA Title III («The Practice of Infractions»)³⁷, adolescents who come into conflict with the law merit special attention aimed at returning them to society. The legislation, in fact, requires that detainees receive individualised treatment focused on their rehabilitation. This must include education and professional training.

Article 124 of ECA lists the rights guaranteed to adolescents deprived of freedom. Among them, there is the clear right to be treated with respect and dignity³⁸.

A good legislation, however, it's not enough to assure the implementation of basic children's rights.

Other steps have to be taken by Brazil. These include, as already underlined above, administrative, social and educational measures³⁹. At this point, it's a matter of political will, something that seems to be missed in Brazil, where government and authorities have placed themselves above the law⁴⁰.

Moving on with our assessment, the right of children to protection from violence is also found in the International Covenant on Civil and Political Rights (ICCPR). Under Article 24, children enjoy the right «to such measures of protection as are required by [their] status as minors»⁴¹. One aspect of «such measures», I believe is the obligation to protect children from violence, as delineated in the above-analysed Article 19. Consistent with this view is the Human Rights Committee's General Comment 17 on the scope of Article 24, which notes that states parties should take «every possible economic and social measure to prevent [children] from being subjected to acts of violence and cruel and inhuman treatment»⁴².

There is a further international standard that assumes great importance behind the gate and inside the cells of detention centres: the absolute ban on torture or other cruel, inhuman or

³⁷ *Título III: Da Prática de Ato Infracional.*

³⁸ ECA, Article 124: «São direitos do adolescente privado de liberdade, entre outros os seguintes: [...] ser tratado com respeito e dignidade».

³⁹ Such measures could be, for example, investment in staffing and adequate training in the law and the rights of children, decentralisation of the large holding complexes to small manageable units, effective mechanisms for children and their families to file complaints of abuse, addressing impunity, etc.

⁴⁰ E-mail from Valdenia Aparecida Paulino, 27 May 2005.

⁴¹ ICCPR, Article 24 (1): «Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State».

⁴² Human Rights Committee, *General Comment 17, Rights of the Child (Art. 24)*, 35th Session, 1994.

degrading treatment or punishment. It is found in Article 37 of the CRC⁴³, in Article 7 of the ICCPR⁴⁴ and in Article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁴⁵. Even though the ICCPR and the CAT don't deal specifically with the category of «children», children – as individuals – benefit from all the rights enunciated in Human Rights Treaties.

Apart from these binding international conventions, there are other three United Nations instruments that provide even more detailed standards: The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs), and the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). These instruments are not legally binding. However, they provide authoritative guidance on the content of international obligations in detention settings.

During the day of general discussion devoted by the Committee on the Rights of the Child to the question of the administration of juvenile justice, it has been underlined that the CRC has

to be considered in conjunction with other relevant international instruments namely the Beijing Rules, the Riyadh Guidelines and the Rules for the Protection of Juveniles Deprived of their Liberty. Those instruments complement and provide guidance for the implementation of the rights recognized by the Convention⁴⁶.

The UN Rules for the Protection of Juveniles, for example, forbid the use of closed confinement, placement in a dark cell, «or any other punishment that may compromise the physical or mental health of the juvenile concerned»⁴⁷. It also states that every facility, whether open or closed, should give due regard to children's need for «sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities»⁴⁸. In this regard, the UN Rules call for detention centres to provide children with «adequate communication with the outside world»⁴⁹; permit daily exercise, preferably in the open air⁵⁰; and integrate their education, work opportunities, and medical care as far as possible into the local community⁵¹.

⁴³ CRC, Article 37 (1): «No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age».

⁴⁴ ICCPR, Article 7: «No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation».

⁴⁵ CAT, Article 16: «Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment».

⁴⁶ Committee on the Rights of the Child, *Day of General Discussion...*, cit.

⁴⁷ UN Rules for the Protection of Juveniles Deprived of their Liberty, Article 67.

⁴⁸ *Ibidem*, Article 32.

⁴⁹ *Ibidem*, Article 59.

⁵⁰ *Ibidem*, Article 47.

⁵¹ *Ibidem*, Article 38 and Article 49.

The issue of disciplinary sanctions is also tackled. Disciplinary punishments should be imposed in strict accordance with established norms, which should identify conduct constituting an offence, delineate the type and duration of sanctions, and provide for appeals⁵².

The avoidance of merely punitive sanctions against juveniles is also implied in Rule 5 of the Beijing Rules, which states that «the juvenile justice system shall emphasize the well-being of the juvenile». The Rule also introduces the principle of proportionality: «any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence»⁵³. Thus, punishments must follow the principle of proportionality, and the use of force against children should be limited to exceptional cases, where all other methods have been exhausted and failed; it should never cause humiliation or degradation⁵⁴.

There are many other violations of basic children's rights occurring within the walls of detention centres that undermine the welfare of children, their development and that could even amount to torture or other cruel, inhuman or degrading treatment. They concern the dehumanising living conditions in detention centres, the violations of the right to health and to education.

The presente essay is focused on the direct use of violence against detained children by police and guards, therefore, I will not discuss here those other forms of negligence and abuse. However, I think it's important to know that they are very present. Overcrowding detention centres, lack of activities for recreation and exercise, lack of beds and mattresses, bad and not enough food and water, poor hygiene, failure to provide education and vocational training are all serious problems that children in detention centres have to face daily and that international NGOs report after every visit.

4. Recommendations

It is not the *monitores* [guards] who destroy things. It is not the police. They arrived [in Franco da Rocha, a detention center in São Paulo] last week and there have already been two rebellions. Rebellions against what? You've never heard a complaint about the

⁵² *Ibidem*, Article 68.

⁵³ The Beijing Rules, Rule 5: «The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence».

⁵⁴ UN Rules for the Protection of Juveniles Deprived of their Liberty, cit., Article 64: «Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority».

food in FEBEM. I've never read in any newspaper any complaint against the food. Well, what are they complaining about, then?

São Paulo State Governor⁵⁵

In most part of Brazil, according to international NGOs, to human rights defenders and to children themselves, the legislation, international and national, is a dead letter.

The ultimate aim of every phase of the juvenile justice system is to reintegrate children and adolescents into the community, and to help them lead productive lives in the future.

Detention centres in Brazil are far away from this goal.

My first recommendation goes in this sense. I think the federal government and the state governments should undertake a complete review of their policy with regard to juvenile detention, taking full account of the grave violations of the most basic children's rights.

A revised policy should tackle the main obstacles and impediments to the full implementation of international and national standards. One of this has been recognised to be the too often low professional status, poor working conditions and inadequate training of law enforcement officials.

Therefore my first recommendation is that all those having official contact with children and adolescents in the justice system, including police, lawyers, social workers, court personnel and the staff of detention centres, must be specially trained to understand children's rights and to protect these rights with respect and compassion.

Many abuses in juvenile detention centres occur because they are closed institutions subject to little outside scrutiny. Abuses are less likely to happen if officials know that outsiders will inspect their facilities and call attention to children's rights violations. Thus, my second advice, in line with several international NGOs' recommendations, is that judges, magistrates and other outside monitors (human rights groups, legislative commissions, etc.) should effectuate regular visits in detention centres and should be always allowed to speak to detained children.

Here we move to my third point: the right of children to be heard and taken into serious consideration⁵⁶. Without entering too much deeply into the analysis of this important provision, I just would like to quote what the Committee on the Rights

⁵⁵ Amnesty International USA, *A Waste of Lives*, in «Amnesty International USA Reports», July 2000, available at <http://www.amnestyusa.org>.

⁵⁶ The right of participation is set by Article 12 of the CRC. As already explained above, this article has been identified by the Committee as a General Principle of the Convention.

of the Child said in its General Comment N.5: «Listening to children should not be seen as an end in itself, but rather as a means by which States make their interactions with children and their actions on behalf of children ever more sensitive to the implementation of children's rights»⁵⁷.

Within the juvenile justice system, the access to an effective complaints procedure is essential to hear the voices of detained children. In fact, only listening to them and taking into serious consideration what they have to say, can make their best interest a possible goal.

In its Concluding Observations of October 2004, following Brazil's report submission, the Committee on the Rights of the Child urged Brazil to establish child-friendly procedures and mechanisms to deal with complaints of child abuses in detention centres, in order to transform detention centres into «services for the re-education, rehabilitation and reintegration of adolescents»⁵⁸.

Effective complaint process includes: the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority, or other proper authorities⁵⁹.

The right to be informed of the response to a request or complaint without delay⁶⁰.

The right to regular assistance from family members, legal counsellors, humanitarian groups, or others in order to make complaints. In particular, illiterate children should receive the assistance they need to make complaints⁶¹.

In addition, several international NGOs recommend the establishment of an independent office, such as an ombudsman, to receive and investigate complaints made by children deprived of their liberty⁶².

Finally, detention centre staff members, guards and police officers implicated in acts of torture or ill-treatment should be brought to justice. The long and sad story of impunity should end.

All the measures above listed can clearly push towards a detention centre system that fully respects children's rights.

However, I think the best way to prevent abuses against detained children is investing in alternatives to detention. ECA provides that youth may be sentenced to any of six «socio-educational measures»: warning, reparations, community

⁵⁷ Committee on the Rights of the Child, *General Comment N.5, General Measures of Implementation of the Convention on the Rights of the Child (Art. 4, 42 and 44, para. 6)*, 34th Session, 19 September-3 October 2003.

⁵⁸ Committee on the Rights of the Child, *Concluding Observations, CRC/C/15/Add.241*, October 2004.

⁵⁹ UN Rules for the Protection of Juveniles Deprived of their Liberty, cit., Article 76: «Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay».

⁶⁰ *Ibidem*.

⁶¹ *Ibidem*, Article 78: «Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints».

⁶² Such a recommendation is made also by Article 77 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs).

service, probation, semiliberty and confinement in a detention centre⁶³. Detention is supposed to be the last resort⁶⁴. However, this doesn't happen very often for, mainly, two reasons. One is the lack of infrastructure and personnel to administer the «open» socio-educational measures. The other reason is that judges, in particular those in rural areas, don't have an understanding of the ECA, they still follow the Old Minors' Code⁶⁵.

That's why special training for judges and investment in projects that would enable courts to apply non-custodial sentences, are also seen by the Committee on the Rights of the Child as necessary steps⁶⁶.

The recommendations discussed here and those very detailed made by the human rights treaty bodies and by international NGOs are clear paths that Brazil should follow to end its repressive model of juvenile detention and to bring it into line with Brazil's own legislation and with international standards.

5. Conclusion: The Way Forward

Life is beautiful, but not inside a cell
(written on a wall in one of the detention centres
in the State of Pará, Brazil)⁶⁷

The violence against juvenile delinquents in Rio's detention centres has created a new phenomenon: in the last five months, the state public defender's office has found eighteen adolescents who preferred to complete their punishment among adults in police stations or prisons rather than submit to socio-educational measures in state [juvenile detention] facilities. That is, each month at least three youths pretend to be adults when they are taken prisoner by the police. Discovered by public defenders or by non-governmental organizations, they say that it is better to be in the state prison system – implicated in recent months by denunciations of torture, death, and corruption – than to be detained in Department of Socio-Educational Action (DEGASE, the name of detention centres in Rio de Janeiro) institutions⁶⁸.

This new phenomenon shows to everybody the horror story of violence that hides behind the bars of juvenil detention centres and, above all, the fear and the sufferings children are exposed to.

⁶³ *Estatuto da Criança e do Adolescente*, cit., Article 112.

⁶⁴ This conforms to the standard set forth in the CRC, Article 37 (b), which provides that «arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time».

⁶⁵ E-mail from Valdenia Aparecida Paulino, 27 May 2005.

⁶⁶ Committee on the Rights of the Child, *Concluding Observations*, cit.

⁶⁷ Human Rights Watch, *Cruel Confinement...*, cit., p. 30.

⁶⁸ Human Rights Watch, *Brazil, Real Dungeons*, cit., p. 44.

It testifies the failure of Brazil to comply with national and international standards on children's welfare in juvenile facilities.

Adolescents in detention centres may have committed serious crimes, some of them may represent a genuine danger to society. The federal and the states governments have the duty to protect the public against violent crime. However, they can't fail to confront the continuing torture, ill-treatment and cruel, inhuman and degrading conditions of detention that affect the lives of thousands of children; this would mean perpetuating grave human rights violations and trapping children in a spiral of violence and destruction. Harsh and humiliating punishments, in fact, are significant factor in the development of high levels of aggressiveness, violent attitudes and actions.

It's really necessary to break this circle of violence. However, it is a very hard challenge that cannot be pursued without reaching and removing the roots of the violence itself. This not only means reform the repressive model of juvenile justice, as the recommendations in the previous section suggested. But it also means face an economic and social system that is producing poverty, misery, hunger and that therefore presents itself as aggressive and violent to the downtrodden.

What is required is a strategic approach that shifts the weight of society's resources to allocate them decisively to social investment: adequate standard of living and access to education are important elements of prevention.

In the State of Rio de Janeiro, for example, over one-third of youths are arrested for drug offences, including drug trafficking⁶⁹. Strategies to reduce youth involvement in drug trafficking would include: improving children's access to education, reducing the role of the drug gangs in their lives, providing them with vocational training, and working with employers to develop job programs that give them real alternatives to involvement in the drug trade.

And this is even more true inside detention centres. If Rio de Janeiro's juvenile detention centres were fulfilling their «socio-educational» mission, they would make efforts to address youth involvement in drug trafficking through rehabilitation programs, in line with a key purpose of the juvenile justice system. That would be protecting children. And Brazil has an obligation to protect its children, also the most disadvantaged

⁶⁹ *Ibidem*, p. 57.

ones. Such an obligation, requires more than having laws on the books. Brazil has to take all the appropriate measures to promote physical and psychological recovery and social reintegration of any child victim of neglect, exploitation, or abuse⁷⁰.

Therefore, children should be entitled to special care, assistance and protection.

We should never reach the point in which they have to claim to be adults in order to avoid cruel violence.

They should have the right to say and sing: «life is beautiful» and not just write it on the wall of a desolate cell.

Bibliography

- Amnesty International USA, *No One Here Sleeps Safely*, in «Amnesty International USA Reports», June 1999, available at <http://www.amnestyusa.org>.
- Amnesty International USA, *A Waste of Lives*, in «Amnesty International USA Reports», July 2000, available at <http://www.amnestyusa.org>.
- S. Bartlette et al., *Cities for Children*, London, Eartscan Publications, 1999.
- S. Detrick, *The United Convention on the Rights of the Child: A Guide to the «Travaux Préparatoires»*, Dordrecht, Martinus Nijhoff Publishers, 1992.
- T. Gibb, *Rio, Worse than a War Zone*, in «BBC News», 9 September 2002.
- T. Hecht, *At Home in the Street: Street Children of Northeast Brazil*, Cambridge, Cambridge University Press, 1998.
- Human Rights Watch, *Easy Targets: Violence Against Children World-Wide*, in «Human Rights Watch Publications», September 2001, available at <http://www.hrw.org>
- Human Rights Watch, *Cruel Confinement: Abuses Against Detained Children in Northern Brazil*, in «Human Rights Watch Publications», vol. 15, no. 1 (B), April 2003, available at <http://www.hrw.org>
- Human Rights Watch, *Brazil, Real Dungeons*, in «Human Rights Watch Publications», vol. 16, no. 7 (B), December 2004, available at <http://www.hrw.org>
- D. Naryan, P. Petesch (eds.), *Voices of the Poor From Many Lands*, Washington D.C., World Bank, 2002.
- M. Nowak, *Introduction to the International Human Rights Regime*, Leiden, Martinus Nijhoff Publishers, 2003.
- K. Rupesinghe, M. Rubio C. (eds.), *The Culture of Violence*, New York, United Nations University Press, 1994.
- UNICEF, *Children and Violence*, in «Innocenti Digest», no. 2, 1997.
- UNICEF, *Juvenile Justice*, in «Innocenti Digest», no. 3, 1997.
- UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, prepared for UNICEF by Rachel Hodgkin and Peter Newell, 1998.
- A. Urani, J. de Souza e Silva, *Brazil, Children in Drug Trafficking: A Rapid Assessment*, Geneva, International Labor Organisation, 2002.
- World Health Organisation, *Report of the WHO Task Force on Violence and Health*, WHO, June 1996.

Treaties and Documents

Committee on the Rights of the Child, *General Guidelines Regarding the*

⁷⁰ CRC, Article 39: «States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child».

Form and Contents of Initial Reports to be submitted by States Parties Under Article 44, Paragraph 1(a), of the Convention on the Rights of the Child, CRC/C/5, 15 October 1991.

Committee on the Rights of the Child, *General Guidelines Regarding the Form and Contents of Periodic Reports to be submitted by States Parties Under Article 44, Paragraph 1(b), of the Convention on the Rights of the Child*, CRC/C/58, 20 November 1996.

Committee on the Rights of the Child, *Day of General Discussion on The Administration of Juvenile Justice*, CRC/C/43, 10th Session, 13 November 1995.

Committee on the Rights of the Child, *Day of General Discussion on State Violence against Children*, CRC/C/97, 25th Session, 22 September 2000.

Committee on the Rights of the Child, *General Comment N.5, General measures of implementation of the Convention on the Rights of the Child (Art.4, 42 and 44, para.6)*, 34th Session, 19 September-3 October 2003.

Committee on the Rights of the Child, *Concluding Observations*, CRC/C/15/Add.241, October 2004.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, 1465 UNTS 85.

Convention on the Rights of the Child, 20 November, 1989, UN Doc. A/RES/44/25.

Estatuto da Criança e do Adolescente, Law No. 8,069 of July 13, 1990.

Human Rights Committee, *General Comment 17, Rights of the Child (Art. 24)*, 35th Session, 1994.

International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171.

UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), GA Res. 45/112, 1990.

UN Rules for the Protection of Juveniles Deprived of their Liberty, GA Res. 45/133, 1990.

UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), GA Res. 40/33, 1985.

E-mail Letters

E-mail from Valdenia Aparecida Paulino, 20 May 2005.

E-mail from Valdenia Aparecida Paulino, 27 May 2005.

Web Sites

www.amnestyusa.org

www.hrw.org

www.ochr.org

www.omct.org

www.unicef.org

www.unicef-icdc.org

www.worldbank.org