

## 30<sup>th</sup> session of the Human Rights Council

Geneva, 14 September – 2 October 2015

### Item 3: Interactive Dialogue with the Working Group on Arbitrary Detention

**Mr. President,**

In Brazil, articles 23 of the 1940 Penal Code and 228 of the 1988 Federal Constitution set the age of criminal majority for children and adolescents to 18. Notwithstanding, the constitutional amendment 171/1993 adopted twice in July and August 2015 by the Chamber of Representatives aims at reducing the age from 18 to 16, which allows for treatment of children under adults regime, either in court or while in detention.

This ongoing legislative reform process is incompatible with UN recommendations to the country and a step backwards from Brazil's national and international commitments. In addition, it contributes to further stigmatizing adolescents as criminals while playing with negative prejudice of the public opinion towards children in conflict with the law.

The escalation of violence and the number of children and adolescents in conflict with the law are the result of multiple factors, including school drop-out and high rate of unemployment among young people, families' desegregations, extreme poverty of the majority of the population, especially Afro descendants and indigenous people, leading to multifaceted violence as well as difficulties in accessing economic, social, cultural, civil and political rights yet guaranteed as a matter of priority to children and adolescents by article 227 of the Constitution.

If the amendment is endorsed by the Senate, its immediate consequences will be over-incarceration and overcrowding risks. Indeed, applying the adult justice regime to children and adolescents aged 16-18 will increase prison population as the reform aims at establishing a repressive approach to supposedly deter from offence commission and maintain adolescents offenders in detention. On the contrary, the Working Group on Arbitrary Detention in 2013<sup>1</sup> and the Special Rapporteur on Torture during his August 2015 *in situ* visit to Brazil<sup>2</sup> have highlighted how overcrowding increases the level of violence, torture, inhuman and degrading treatments, jeopardizes children's mental and physical health, integrity and security, and results in inhumane sanitary conditions. Overcrowding conditions also deny access to essential services such as food, medical care, as well as opportunities for visits, and ultimately may compromise reintegration efforts.

Our organizations recommend that Brazil:

- **Ends the ongoing constitutional reform process aiming at lowering the age of criminal majority for children and adolescents;**
- **Tackles the root-causes of insecurity and violence against children and adolescents as well as their involvement in criminal activities by providing *inter alia* alternative care to children and adolescents deprived of family protection, and implements programs fostering access to education for all children, effective support to families, and vocational training for adolescents.**
- **Strengthens and extends the implementation of Law 12.594/2012 on the *Sistema Nacional de Atendimento Socioeducativo (SINASE)* providing for a restorative justice approach that peacefully settles cases between victims and offenders, families and communities in order to heal feelings, restore relationships, and work on responsibility and redress.**

**Thank you Mr. President.**

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<sup>1</sup> A/HRC/27/48/Add.3 (2013), §§ 84-100 & 120-128.

<sup>2</sup> See press release from Juan Ernesto Méndez, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, August 2015.

Signed by:



**Defence for  
Children International**  
*the worldwide movement for children's rights*



**OMCT**  
**SOS-Torture Network**



**Company of the  
Daughters of Charity of  
St. Vincent de Paul**