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# BRAZIL

## A WASTE OF LIVES

### FEBEM JUVENILE DETENTION CENTRES, SÃO PAULO

#### *A human rights crisis, not a public security issue*

#### INTRODUCTION

An international expert on prison conditions, invited to accompany an Amnesty International delegation to Brazil in October 1999, wrote in his report of São Paulo's juvenile detention centres: "I should say as clearly as possible that I have never seen children kept in such appalling conditions...In my view the place should be closed down." A few days later, on 24 October, a riot broke out that shocked even those most hardened to the torture and neglect in São Paulo's juvenile detention system, the Foundation for the Well-Being of Minors,<sup>1</sup> FEBEM. Eighteen 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.

FEBEM has been the subject of scrutiny for decades. Thousands of adolescents<sup>2</sup> have passed through FEBEM detention units since the Foundation came into being in 1976. Throughout this time Amnesty International has received denunciations of torture, ill-treatment, and cruel, inhuman and degrading conditions of detention affecting hundreds of adolescents. A number of boys have died in violent circumstances because the São Paulo government has failed to protect their safety.

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<sup>1</sup> *Fundação do Bem-Estar do Menor.*

<sup>2</sup> Note on terminology: According to most international standards, anyone under the age of 18 is a child. Of the children discussed in this report, 90% are over 15. The average age for a child in detention in Brazil is 17. Some boys are themselves already parents. Amnesty International has therefore most frequently used the term favoured by Brazilian children's rights advocates in discussing young offenders: adolescents.

Throughout the decade since the launch of Brazil's much-fêted Statute of the Child and Adolescent, ECA,<sup>3</sup> public prosecutors, bar associations, parliamentary commissions of inquiry, state human rights councils, guardianship councils, FEBEM staff unions and human rights organizations have all submitted to the São Paulo authorities detailed reports, denouncing the inhuman and dehumanizing conditions in FEBEM detention units. They have all made concrete and detailed recommendations aimed at putting an end to the decades long pattern of violence, riots and escapes, and calling for the outdated repressive model of juvenile detention to be brought into line with Brazil's own Constitution and legislation regarding children and adolescents. Yet the São Paulo authorities have persistently avoided meeting their obligations to reform the juvenile detention system in line with the law, abandoning both FEBEM detainees and FEBEM staff to cope with a situation of violence and chaos.

In September and October of 1999, FEBEM experienced the worst crisis of its history. A spate of riots provoked by almost five-fold overcrowding and torture and ill-treatment culminated on 24 October in the taking hostage and assault of a number of *monitores* (warders), and the killing of four fellow-inmates. As a result of the unprecedented violence and the destruction to the complex caused by rioters, the São Paulo government has embarked upon a series of transfers of large numbers of adolescents into the adult prison system, and into hastily constructed and inappropriately conceived new FEBEM units, where rioting has continued. Amnesty International has received denunciations of torture and ill-treatment of large numbers of adolescents by police, prison guards and *monitores*.

Amnesty International has visited a number of juvenile detention centres in several states throughout Brazil, and has interviewed government officials, lawyers, judges, detention centre staff, human rights commissions and non-governmental organizations. An Amnesty International delegation visited FEBEM Imigrantes complex in March 1998, and again in October 1999, shortly before the major riots. On the second occasion the delegation was accompanied by an expert delegate - Dr. Roy King, Professor of Criminology at the University of Wales. Amnesty International's report released in June 1999, "No One Here Sleeps Safely" - Human Rights Violations Against Detainees, AI Index AMR 19/09/99, provides an overview of the human rights violations affecting both adult and juvenile detainees throughout Brazil, and the structural shortcomings perpetuating them. This document takes a closer look at the ongoing crisis in São Paulo's juvenile detention centres and examines the failure of FEBEM and the São Paulo government to pre-empt the crisis, despite warnings about the illegality and unsustainability of the system. It deals with the two main juvenile detention complexes in São Paulo's capital, Imigrantes and Tatuapé, in which the crisis began, and with the prisons and new units into which the adolescents have been transferred since October 1999.

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<sup>3</sup> *Estatuto da Criança e do Adolescente.*

At the time of writing this document, the São Paulo authorities had failed to bring the crisis under control. Rather than acknowledge and address the human rights violations underlying the spiral of violence and destruction in FEBEM units, the authorities have exploited legitimate public concern about violent crime, and have characterized the crisis purely as a public security issue. The steps taken by the authorities to deal with the vicious circle of torture and rioting has focused almost entirely on the containment of detainees in maximum security prison buildings.

The department of the Public Prosecution Service responsible for applying the ECA has brought two civil actions and nine petitions against FEBEM and the São Paulo government, based on the illegality of the installations to which the adolescents have been transferred, and the continuing failure to guarantee basic human rights, and the socio-educational treatment stipulated by the ECA. In each case, the Juvenile Court has granted court orders obliging the authorities to comply with the ECA. In each case, FEBEM and the São Paulo government have appealed, and in all but the first civil action, the State Appeals Court has suspended the Juvenile Court's decision. Amnesty International is concerned that, in upholding the government's argument that the issue is simply a matter public security, the State Appeals Court is being complicit in allowing grave human rights violations against large numbers of boys to continue. It is unclear what standards are being applied by the State Appeals court in persistently overturning lower court rulings based on detailed petitions invoking the Brazilian Constitution, national legislation and international human rights standards.

In November 1999, the São Paulo government launched a restructuring package for FEBEM. However, the current transfers policy and comments made to the media are in direct contradiction to official policy. Government statements have attempted to shift the blame onto every- and anyone else, publicly blaming the judiciary, human rights activists and FEBEM staff for the crisis, and have sought to undermine public prosecutors and human rights defenders by accusing them of inciting FEBEM inmates to riot. Amnesty International is particularly concerned that this smear campaign increases the risk to human rights defenders, a number of whom have already been the target of intimidation and death threats.

The crisis in São Paulo exposes a Brazil-wide failure to apply both Brazilian and international standards on children's welfare in juvenile detention centres. In recent years Amnesty International has documented routine human rights violations against young offenders in a number of states.

## **1. JUVENILE DETENTION IN BRAZIL**

The Statute of the Child and Adolescent, ECA, launched 10 years ago,<sup>4</sup> codifies articles 227 and 228 of the Constitution and brings Brazilian legislation on children into line with

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<sup>4</sup> 13 July 1990.

international standards.<sup>5</sup> Its core premise is that adolescents are in a stage of personal development, and that those who come into conflict with the law merit special attention aimed at returning them to society. Young offenders are defined by the ECA as children between the ages of 12 and 17 who have committed any criminal act under the adult penal code. Children do not receive a criminal sentence, but rather one of six types of "socio-educational" correctional orders: warning, reparation of damage; community service; probation; day release; and detention.

The ECA is very clear in stipulating that the authorities must avoid depriving children of their liberty unless there is no appropriate alternative. However, in practice, young offenders in Brazil are more likely than adults to receive a custodial sentence for the same criminal offence. First-time young offenders are also more likely to be held in detention while awaiting a court decision than adult offenders. Children may only be held provisionally pending a court hearing for 45 days, but this limit is often exceeded. Provisional detainees should be held separately from sentenced detainees, but this rarely occurs. The ECA also requires that detained children must be separated by age, seriousness of crime or by provisional or convicted status. This requirement is routinely ignored.

As well as guaranteeing basic human rights for detainees, such as adequate living conditions and medical care, the legislation requires that detainees receive individualized treatment focused on their rehabilitation and return to society. This must include education and professional training. The child should be detained in the same locality as its family, or as close to it as possible.

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<sup>5</sup> UN Convention of the Rights of the Child.  
UN Rules for the Protection of Juveniles Deprived of their Liberty.  
UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).  
UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

The ECA is a controversial piece of legislation, regarded by many Brazilians as being too lenient on young offenders, and as promoting delinquency. Brazil suffers from a high and apparently increasing level of violent crime. Fear of violent crime is a major concern for many Brazilians, and, in consequence, there is a generalized tolerance of human rights violations against criminal suspects. Torture, ill-treatment and even killing of criminal suspects is often presented by some authorities and certain sectors of the media as a necessary evil.<sup>6</sup> FEBEM detainees are popularly perceived to be violent criminals and a danger to society. In fact, fewer than 10% of juvenile detainees have committed crimes such as homicide or rape. The large majority have been charged with robbery. Sixty per cent are first time offenders.

In the state of São Paulo, responsibility for planning and executing detention programs for young offenders is delegated to the governmental entity FEBEM by force of Law 185 of 1973 and Decree 8777 of 1976. The Secretariat for Social Development Assistance is responsible for overseeing FEBEM. FEBEM is currently responsible for an average of 4000 adolescents under detention orders in the state of São Paulo.

Since the October 1999 crisis, FEBEM and the São Paulo government have repeatedly sought to characterize young offenders held in Tatuapé and Imigrantes as violent and dangerous. However, the Director of Imigrantes told a parliamentary sub-commission in September 1999 that the large majority, 70%, of the adolescents were capable of rehabilitation – a figure confirmed by the Director of Tatuapé - and that 25% presented difficulties in this regard. According to the Director, 5% showed signs of suffering from mental illness. The holding of mentally-ill children in detention centres is strictly forbidden by the ECA.

#### *JUVENILE DETENTION IN OTHER BRAZILIAN STATES*

*The state of São Paulo is not alone in violating the basic human rights of young offenders. Amnesty International has documented serious violations in several other states.*

*In Rio de Janeiro, boys are held in overcrowded detention centres with no activities, and report regular beatings by monitores. A strict set of*

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<sup>6</sup> In the first three months of 2000 alone, the São Paulo Police Ombudsman reported 200 killings of criminal suspects. Torture by police in order to extract confessions or to control large populations of detainees is common. Police committing acts of violence are generally not brought to justice. Despite a three-year-old law criminalizing torture, Amnesty International delegates visiting São Paulo in March 2000 were unable to find a single conviction on that charge.

rules is employed in these units: boys are known by number, not by name; they must walk with their hands behind their backs; and, when ordered, must line up in order of age. One boy interviewed by AI reported being taken by *monitores* to a room where he was beaten around the head and stomach, apparently because he allowed a boy younger than himself to stand in front of him in the line. In recent months, human rights organizations have been refused access to juvenile detention centres.

An Amnesty International delegation visiting the Senador Raimundo Parente juvenile holding centre in Manaus, **Amazonas**, came across five boys being led by the staff out of a punishment cell. Most boys interviewed claimed to have been kept in this cell for days at a time, with up to six in the cell and no mattresses. Boys also described punishments such as being hit around the head, and being made to remove their T-shirt, run and throw themselves on the ground. Several told the delegation that they had been kept in police detention longer than the 24-hour legal limit, and had been beaten. When transferred to a special children's police station their injuries were not recorded.

The juvenile detention centre in Cariacica, **Espírito Santo**, was badly understaffed. On the day of Amnesty International's visit, the boys were locked up all day, as only one staff member was on duty. The cells were unpainted, damp and filthy. Many were without water or electricity, with blocked drains. Boys were crammed in, five to a cell, with a hole in the ground for a toilet. Most had skin complaints and some were suffering from dengue fever.

When Amnesty International visited the Paratibi juvenile detention centre in **Pernambuco**, it found that it was being staffed by a mixture of military police, private security guards and employees of a child welfare organization. Some boys complained to Amnesty International of ill-treatment by the director (a military police captain) and by private security guards, who allegedly beat them with sticks.



Officially, the government is committed to a program of decentralization of the large juvenile detention centres to smaller units around the state. In São Paulo, the legal requirement to hold adolescents in small units was codified in 1992 by decree 34.785 of April 1992, which commits the authorities to such a decentralization process. However, at the time of the October 1999 crisis, decentralization was stalled. The government complained that municipalities were reluctant to take on young offenders, and of 12 projected local detention centres, only one had been built. In November 1999, in reaction to the Imigrantes riot, the São Paulo government launched a restructuring program for FEBEM, dedicating 85 million *Reais* (approx US\$ 50 million) to the renovation of existing buildings and the construction of a number of new units. According to the government, there are currently 22 renovation and construction projects underway throughout the state which will redistribute the 4000 young offenders currently fulfilling detention orders. In addition, 200 internal investigations have been opened into allegations of ill-treatment, and 20 staff have been dismissed on the basis of such investigations. A further 670 FEBEM staff have been dismissed for other reasons in the last 12 months, and new staff are being contracted and trained. In June 2000, the Secretariat also opened a complaints department. It is not yet clear what mandate or level of independence this department will be given.

In practice, the actions and public comments of the São Paulo government appear to be in contradiction to its official policy. The two units opened recently, Parelheiros prison and Franco da Rocha, are large maximum security complexes – a far cry from the promised small units - and adolescents have been transferred into them without any infrastructure to provide for either their basic needs, or the socio-educational measures stipulated by the ECA. Dozens of adolescents have also suffered torture and ill-treatment during and after transfers. Amnesty International is particularly concerned that directors appointed to Franco da Rocha, Parelheiros and Pinheiros prison are alleged by adolescents to have participated in ill-treatment.

The program of renovation and construction has also raised questions regarding possible mis-use of public funds in the contracting out of some FEBEM services. A department of the Public Prosecution Service is currently looking into this issue. The rapidity with which boys were able to dismantle the brand-new Franco da Rocha detention centre also raises serious questions about the quality and design of the building.

Children's rights advocates have also called for a greater investment in projects which would enable courts to apply non-custodial sentences. At the moment, the non-custodial socio-educational measures outlined by the ECA are woefully under-resourced. As many as 90 adolescents on probation will share only one probation officer.

## **2. A CULTURE OF VIOLENCE AND HUMILIATION**

In the absence of adequate training and support for FEBEM staff, there is a culture of torture, ill-treatment and arbitrary punishments by *monitores* in juvenile detention centres. Chronically understaffed FEBEM employees and security staff under contract to FEBEM receive no training when put in charge of vastly disproportionate numbers of adolescents. FEBEM staff who have suffered hostage-taking incidents, or who have been attacked by adolescents, have been returned to the same unit within a matter of days without any back-up support from FEBEM. Some *monitores* have sustained serious injuries during riots. Amnesty International is not aware of any deaths of *monitores* at the hands of inmates.

There are no clear rules and regulations for either staff or inmates governing the administration of discipline. Punishments are arbitrary, and often deliberately designed to humiliate. Collective punishments are very common – if one boy breaks a rule, many boys are punished. This causes conflict between the adolescents, and can place the offending boy at risk from his fellow-inmates. Punishments include: confiscation of toothbrushes (often the only personal item an inmate has – worn around the neck on a piece of string); being made to face the wall with hands on the back of the neck for periods of up to a day; being made to lean with forehead against the against a wall, hands behind the back and feet about a metre apart, sometimes for several hours – a practice which causes severe discomfort and dizziness and may lead to fainting; being made to shuffle round and round the yard on the buttocks and being made to run round and round in circles with one hand on the ground.

#### THE CASE OF E.A.

*On 22 March 1994 E.A. was detained, together with a friend, by members of the military police on suspicion of having stolen a wristwatch. The boys were taken to a police station. However, E.A. managed to run away. According to his friend's statement, about 15 minutes later he was brought back to the police station by the military police officers who had originally detained him. The friend claims that E.A. showed clear signs of having been beaten. He was coughing up blood and a finger of his right hand appeared to be broken. E.A. was later taken by the police to FEBEM, Imigrantes.*

*According to his friend, when he saw E.A. again the following evening, he was moaning and asking to be taken to the infirmary. About 30 minutes later, E.A. returned to his cell and told his friend that he had been*

*beaten again by the monitores and that he had not received any medical attention. E.A.'s mother visited him on 27 March and stated that her son was then very ill. She said he had bruises on his arms, knees, thorax and lower abdomen. E.A. told his mother that he was urinating blood, coughing up blood and unable to swallow food. His mother insisted that E.A. should be taken to hospital, but the warders would not allow her to travel with him, saying, "mothers are not allowed in official cars." E.A.'s mother returned home, where, later that evening, she was advised by a FEBEM employee that her son had died in hospital, probably of AIDS. When she tried to claim his body, the distraught woman was sent to four different places across the city before they allowed her to retrieve it.*

Adolescents are frequently beaten, often at night. Some *monitores* keep a stash of iron bars and sticks for this purpose. Following beatings adolescents are often forced to take cold showers to reduce the appearance of bruises. Adolescents have been punished for "offences" such as speaking to each other during designated silent periods (eg. before, during and after meals and after lights out), and moving while watching television (they are expected to sit on their hands in absolute silence watching the same television channel for hours). Verbal humiliation by guards is also common, particularly insults relating to inmates' marginalised status, and towards their mothers.

Adolescents also transfer their own, often violent, codes of behaviour to the detention centres. Many come from a drug-trafficking gang culture in which status is connected to aggression, and bring their gang rivalries with them. The law stipulates that adolescents must be separated by seriousness of crime, age and physical size, but there is little or no attempt to undertake such separation, exposing smaller and unaggressive boys to the influence and victimization of the minority who are genuinely dangerous. Boys who refuse or are reluctant to take part in riots are intimidated, and may be singled out later. Boys who have committed certain crimes such as rape are stigmatized, as are those who are believed to have cooperated with the police or FEBEM staff. Such boys receive death threats, and are generally held in "security" in separate wings or cells. During riots they are particularly at risk from fellow inmates. *Monitores* are also a target of violence and death threats, especially those known for carrying out beatings, and there are frequent hostage-taking incidents.

According to the São Paulo government, 20 FEBEM staff have been dismissed in the last 12 months after internal investigations into allegations of ill-treatment. The Public Prosecution Service is currently conducting its own investigations into 62 cases of torture and ill-treatment – each often involving several victims and perpetrators. The Public Prosecution Service claims that a significant number of *monitores* subject to investigation remain on active duty in FEBEM detention centres.

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Amnesty International welcomes the São Paulo government's stated commitment to stamping out the practice of torture and ill-treatment by FEBEM staff, but notes that, so far, almost weekly denunciations of beatings affecting dozens of adolescents indicate that a semi-official tolerance of these practices continues to exist in FEBEM.

### 3. TWELVE MONTHS OF CHAOS

#### *CASE OF L.S. Aged 15*

*L.S. was being held in a wing put aside for ill inmates in Imigrantes. According to staff he was there because of a twisted ankle, but both he and his father claimed that he was there as a result of injuries sustained after a beating by monitores. On the morning of 8 July 1998, he complained of intense pain, shortness of breath and nausea, and appealed over and over again to staff to help him. No one did, and he died that night.*

*The original autopsy concluded that he died of natural causes, and made no mention of the bruises on his body. However, following an exhumation of his body, an independent autopsy conducted by four forensic pathologists established that he had died of cocaine poisoning. A criminal investigation was opened into the errors in the original autopsy, and into how and why L.S. had access to cocaine.*

*By July 1999, the FEBEM detention complexes were a powder-keg. Severe overcrowding, appalling conditions, and cruel punishments and beatings had rendered the system unsustainable. Imigrantes, built for 364, was housing 1648 adolescents – almost five times its capacity. Tatuapé was little better off, housing 1460 boys in a complex with a capacity for 800.*

*Overcrowding in Imigrantes and Tatuapé was so severe that the two by three metre dormitories were sleeping up to 25 at a time, with three or*

four adolescents sharing a mattress. The boys spilling over from the dormitories slept sitting up, in the corridors and even in bathrooms. Sheets were not provided, and covers were not washed. Several adolescents reported that when sheets were soiled with urine, they were simply put out in the sun to dry and were re-used. Adolescents were given a bar of soap per month to share between ten. Many adolescents avoided using soap altogether because of the risk of catching scabies or other skin diseases. A visit to Imigrantes in August by epidemiology inspectors found a high incidence of scabies – in one wing 103 of 337 were suffering from the disease. In each wing, an average of 350 adolescents had to queue to share eight to ten showers and were given less than a minute in which to clean themselves. There were no activities other than watching television and playing football both of which had to be carried out in shifts. Because of the difficulty of controlling such large numbers, those not engaged in either of these activities were required to remain seated at all times. In a visit to Imigrantes in October 1999, an Amnesty International delegation was able to verify for itself these appalling conditions, and concluded that holding boys in such cruel, inhuman and degrading circumstances amounted to torture and ill-treatment in and of itself. Conditions had deteriorated since a previous visit by Amnesty International in March 1998.

An absurdly low number of *monitores* were given the impossible task of attempting to control huge numbers of adolescents: 10 to 15 *monitores* were expected to oversee an average of 350 detainees. The president of the FEBEM *monitores* union, subsequently described conditions as "hell" and admitted that the strain of the job often results in *monitores* beating inmates, and that there was a high level of psychological problems

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amongst staff.<sup>7</sup> A FEBEM staff union representative also told Amnesty International, during a visit to FEBEM Imigrantes in October 1999, that violence is institutionalized in FEBEM, and that *monitores* were only dismissed in the most extreme cases, or, inversely, when they refused to cooperate with a regime in which a certain level of violence was the norm.

A judicial inspection of Imigrantes ordered by the Juvenile Court on 23 August 1999 heard complaints from some 70 adolescents that they had been beaten after a number of boys tried to start a riot on the night of 21 August. Several of them exhibited recent bruises. A subsequent inspection of the wings uncovered a cupboard containing sticks, canes, pieces of wood covered in towels, and covers rolled up tightly and tied with string, allegedly used by *monitores* to carry out beatings. Adolescents reported that they were forced to lie down while *monitores* ran past kicking and punching them. M.S.<sup>8</sup> was hit on the head with an iron bar, and had to have six stitches to his head. F.B. reported that as soon as he realised that there was an uproar in the neighbouring dormitory, he immediately took off his clothes and sat waiting with his hands on the back of his neck – as boys are required to do during any kind of disturbance. He and his fellow-inmates were then beaten. Following the beating they were left to sit naked and denied food until 1900 the following day, when they were made to take cold showers to reduce bruising. R.Z. alleged that boys were having to sleep in the bathroom which had been leaking sewage since one of the *monitores*

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<sup>7</sup> Veja, 6 October 1999, "Águila é o inferno."

<sup>8</sup> The ECA prohibits the identification of juvenile detainees.

wrenched a lavatory bowl out of the floor and threw it at boys. R.C. alleges that following the beatings he was threatened by one of the *monitores* not to say anything, and that following the inspection visit warned him that "the judge leaves, but I stay, and when his back's turned I'll beat you [plural] to breaking point."<sup>9</sup>

#### CASE OF R.S.

On Christmas Eve (24 December) 1998 - always a tense time in juvenile detention centres - a number of boys tried to escape from Tatuapé by locking *monitores* into a room, after *monitores* took their television away. *Monitores* managed to get out of the room, and apprehended the boys before they could get out of the complex. Amnesty International heard reports from boys not involved in the escape attempt, that when they realised what was going on, a number of boys tried to barricade themselves in their room with cupboards, in order to avoid reprisals. They alleged that, in order to try to get them out, *monitores* set fire to the doors. R.S. died in the resulting fire, and a number of other boys suffered serious burns. A number of *monitores* are currently being investigated on charges of murder.

On the night of 11 September 1999, boys in Wing D of Imigrantes rioted, set fire to part of the wing, and took hostage some of the *monitores*. Public prosecutors were at the scene, trying to negotiate the release of the hostages. Meanwhile, TV Globo, a national television network, flying a film crew over the complex by helicopter, caught live on film dozens of boys in another wing, Wing B, running from their dormitories across the prison yard, pursued by *monitores* wielding sticks – some of whom were hooded. As they ran, boys removed their clothes, and huddled together in the corner of the yard, sitting with their hands on the back of their necks. *Monitores* were filmed running at and over crouched boys kicking, punching and beating them with sticks.

#### THE CASE OF A.O. Aged 17

On her last visit to see A. O. in Imigrantes, his sister found him crying and terrified and asking her to do something to get him moved to another wing. As they said good-bye, he told her, "if there's another riot, you won't see me again." A.O.'s sister immediately sought out a social worker, who assured her that there was nothing to worry about. Not long after, he was dead.

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<sup>9</sup> "O juiz vai embora, mas eu fico; e quando ele virar as costas, eu vou quebrar vocês na paulada."

*A.O., an epileptic, came from a poverty-stricken family, and had become a drug-user. It was his second time in FEBEM. Charged with robbery, he had been released by judicial order and placed on probation, but had been re-interned provisionally after he was caught by police with a group of boys in possession of a gun. A.O. had been seriously depressed for some time. Children's rights defenders accompanying his case were very worried about his physical and mental health, as he had been refusing to eat. Because of their concern, they put in a request for the date of his hearing to be brought forward. They never received a reply to their request. A.O. was one of four boys tortured and killed by fellow-inmates on 25 October 1999. Two days later, when his scheduled hearing came up, the judge had not even been informed of his death.*

Public prosecutors left the complex in the early hours of the morning and returned only a few hours later. By the time they had returned, around 650 boys – mainly from Wing B – had escaped. The fact that such a large number of boys, last seen rounded up and naked, had managed to escape in such a short time has drawn allegations that *monitores* facilitated the escapes to prevent boys from testifying against them. Forty *monitores* were identified from the television images, and are currently the subject of a police inquiry. Fourteen were dismissed from FEBEM in June 2000, following internal disciplinary proceedings. Following the 11 September riot, around 1000 boys escaped within a two-week period in 12 separate incidents. Boys recaptured after escapes reported that they were beaten by military police.

Matters came to a head in October, when, in protest against work conditions and the dismissal of 19 *monitores* (some of whom had been accused of ill-treatment on the basis of the TV images) the FEBEM staff union, Sintraemfa, announced on 21 October that *monitores* intended to strike. Families of detainees who had been informed by Sintraemfa that internal security during the strike would be carried out by military police riot troops, passed the information on to adolescents in Imigrantes, sparking off the worst riot in FEBEM's history.

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 Imigrantes complex had been completely destroyed. During the riot, around 16 *monitores* were taken hostage and beaten. A number of fellow-inmates were also tortured, and four killed with a brutality which shocked even those who had worked in the system for years. 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* and fellow-inmates for the television cameras. Anxious parents waiting outside the gates of the complex desperate for news were fired on with rubber bullets by police riot troops.



The four boys who died, all of whom had been in "security", suffered unprecedented violence at the hands of their fellow-inmates. One boy's eyes were perforated with a stiletto. Inmates subsequently burned two of their victims bodies, and, in a gesture of shocking barbarity, tore one boy's head and a leg from his carbonized corpse and hurled them over the wall where they landed at the feet of public prosecutors attempting to negotiate the release of the hostages.

The hostages were finally released after rioters negotiated a number of transfers out of Imigrantes. Twenty-three were subsequently transferred to Ribeirão Preto, a town in the interior of São Paulo, and 21 to the Raposo Tavares unit, where conditions are considerably better. Several of the released *monitores* received hospital treatment. One had been thrown from a 5 metre high wall. Another suffered concussion after being beaten by boys with sticks. A third suffered a fractured elbow. The riot left hundreds of boys in even worse living conditions than before, and there were reports of ill-treatment by police riot troops. Parents reported that a number of boys alleged that police had forced them to drink urine in reprisal for the riot.

Public opinion was understandably horrified by the violence. An already widespread fear of violent crime was exacerbated by the waves of escapes. The São Paulo government fueled this fear, when, following the September riots and escapes, the Public Security Secretary announced that crime rates had gone up by 10%. The São Paulo government's security-focused policy has been largely in response to this public concern.

### **3.1 Emergency transfers and transfers to new units**

**"Things will continue at the same pace as they were. There's no way to control them, other than the way we're doing it now."**

**São Paulo Governor, Dr. Mario Covas.<sup>10</sup>**

Soon after the riot, the authorities embarked on a series of transfers of large numbers of adolescents out of the Imigrantes and Tatuapé complexes into adult penal facilities. It also embarked upon the hasty construction and reform of large maximum security prison-style complexes. Both measures are in contravention of the ECA.

The São Paulo government has focused almost entirely on security, increasing the height of walls, putting in extra gates and installing security cameras. The authorities have claimed that all the adolescents transferred are extremely dangerous, but Amnesty International has received allegations that there are, in fact, no criteria for selection for transfer, and that boys

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<sup>10</sup> *"As coisas vão continuar no ritmo que estavam. Não tem como controlar, a não ser do jeito que se está fazendo."* Widely reported in the press on 25 October 1999.

are being transferred without being evaluated or being informed as to the reasons for their transfer.

The government has argued that these are temporary emergency measures, but at the time of writing this document, eight months after the October crisis, hundreds of boys continued to report torture and ill-treatment at the hands of *monitores*, prison guards and military police, and continued to be held in poor conditions, with insufficient medical care and without educational or recreational activities. Adolescents have not been separated by age, seriousness of offence or physical size. Transfers have been so chaotic that adolescents' records have not gone to new units with them. For some of those transferred, who were already serving sentences and receiving some education and welfare assistance, the transfers have meant a considerable deterioration in their conditions of detention. Children's rights defenders have protested at the spending of millions of *Reais* on large maximum security installations, when the funds might have been used for the promised construction of small units.

The Public Prosecution Service has brought two civil actions and nine petitions against FEBEM and the São Paulo government, based on the illegality of the installations to which the adolescents have been transferred, and the continuing failure to guarantee basic human rights, and the socio-educational treatment stipulated by the ECA. In each case, the Juvenile Court has granted court orders obliging the authorities to comply with the ECA. In each case, FEBEM and the São Paulo government have appealed, and in all but the first civil action, the State Appeals Court has suspended the Juvenile Court's decision. Amnesty International is concerned that, in upholding the government's argument that the issue is simply a matter public security, the State Appeals Court is being complicit in allowing grave human rights violations against large numbers of boys to continue.

### **3.2 Criminal Observation Centre (COC)<sup>11</sup>**

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<sup>11</sup> *Centro de Observação Criminológica.*

Immediately following the riot, 130 boys, many of them still under 18, were transferred into the Criminal Observation Centre, part of the adult prison system. Public prosecutors protested against the transfer, and brought an action against FEBEM and the São Paulo government calling for the adolescents to be transferred out of the adult system urgently. The Juvenile Court found in an inspection visit that conditions in the COC were hygienic and that "nothing indicates that the basic rights of the adolescents are being violated."<sup>12</sup> However, it also found the situation "far from ideal,"<sup>13</sup> even taking into account that the arrangement was due to the state of emergency, and ordered the boys to be transferred out of the COC within 15 days. FEBEM and the São Paulo government appealed against the decision. The appeal was upheld by the State Appeals Court, and the Juvenile Court's decision suspended, on the basis that the appeal was based "exclusively to avoid risk of damage to public order, security, health and funds."<sup>14</sup>

In January, an inspection by the Public Prosecution Service found that 120 boys were being kept locked up in their cells for several hours a day, and that for the rest of the time had only football or television as activities. One adolescent claimed that he had been incarcerated in FEBEM for two years, and that, in all that time, he had never been registered on any educational or professional course. The Director of the unit reported that the presence of the boys had created a climate of tension among adult prisoners, as they were occupying the cells normally used to evaluate prisoners due for review of their sentences, preventing some prisoners from being transferred out of the prison. In the absence of *monitores*, they were being overseen by prison guards, and boys complained that they had been receiving threats from night shift guards. On 18 November 1999, A.S. was beaten by three prison guards with iron bars. During the course of the beatings, guards pushed his head into a lavatory bowl and flushed it. The guards involved are currently facing disciplinary proceedings and are the subject of a police investigation on charges of torture.

The Public Prosecution Service brought another petition against FEBEM and the São Paulo government, taking into account that the boys were likely to be in the COC for at least a year, requesting the installation of units and staffing for education, social and psychological assistance, medical care, and calling for an increase in the number of *monitores* and the separation of adolescents by age, physical size and seriousness of crime. Once again, the State Appeals Court suspended an order by the Juvenile Court to comply.

### **3.3 Santo André Public Jail<sup>15</sup>**

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<sup>12</sup> "Não há notícia de que os direitos fundamentais dos adolescentes estejam sendo violados."

<sup>13</sup> "Muito longe de ser a ideal."

<sup>14</sup> "Exclusivamente para evitar risco de dano a ordem, segurança, saúde e economia públicas."

<sup>15</sup> *Cadeião Santo André.*

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**THE CASE OF F. S. Aged 17.**

*F.S. was ill-treated by monitores and police when he was transferred from Tatuapé to Santo Andre. While recounting his testimony to public prosecutors, he also told them that he was unpopular with the other adolescents because he tried to stick to the rules and obey the monitores.*

*His unpopularity had horrific consequences. On 26 November 1999 a number of his cell-mates raped him. F.S. claimed that, although the attack went on for an hour, monitores never intervened. F.S., the father of a child, told public prosecutors that he felt that the rape made it difficult to face his family. He was transferred to other unit, and was to receive psychiatric therapy, but ran away when he was taken to hospital to treat a hernia. The next time that the authorities had news of him, it was to hear that he had died on 23 March 2000, from a gunshot wound to the head.*

On 24 November 1999, 405 boys were transferred by military police riot troops from Tatuapé to Santo André public jail. Representatives of the local guardianship council, legally mandated to monitor the application of the ECA, oversaw the transfers. They noted that military police verbally abused the boys, and that they offered them water, and then did not bring them any, but made a great show of drinking loudly themselves. When they returned the following day, police attempted to prevent access to the area where boys were being searched. When they gained access they found that boys were being made to squat naked during the search. A large number of adolescents allege that upon arrival they were taught "the rules of the house" by being forced to run a gauntlet of *monitores*, who beat them with iron bars and sticks. They were also obliged to sit on the floor stripped to their underpants with their hands below their legs and received kicks and blows to the head. They were then made to take cold showers to reduce the appearance of bruising. A.R. alleged that after he had been returned to his cell, one of the *monitores* provoked him by calling his mother a "whore". When he protested, the *monitor* took him to the bathroom, and beat him. Medical examinations of 95 boys, made two days after the transfer showed that only 16 of them did not bear the marks of beatings.

In a meeting with representatives of the São Paulo government and FEBEM on 22 November, children's rights advocates had been assured that, although the public jail was inadequate for the socio-educational program stipulated by the ECA, the jail would be kept below its full capacity so that educational and social assistance units could be set up, and that there would be clear rules and regulations governing activities. However, it soon

became clear that these promises would not be met. On 6 December a judicial inspection found that boys did not have access to psychologists or social workers. They also found that defence lawyers did not have access to almost 90% of the boys' cases, because their reports had not been transferred along with them. Thirty-four boys being kept in "security", were being held in two 12 metre square cells. There was a striking understaffing of *monitores*, with eight to nine *monitores* overseeing 300 boys.

The report of the judicial inspection concluded:

"it is evident that there is no socio-educational process ongoing in the establishment, which, we repeat, does not even have the basic infrastructure to hold the adolescents. Because it does not have a sufficient number of staff, and because the adolescents are not following any program of activity, disorder has set in and the control of a large part of the buildings has been taken over by the inmates themselves. The tension of the adolescents is visible, as is the situation of risk and inactivity that they are experiencing, which makes their transfer to adequate units urgently necessary."<sup>16</sup>

The Public Prosecution Service brought a petition against FEBEM and the São Paulo government calling for the suspension of further transfers into Santo André, and a period of 30 days in which to move the adolescents to appropriate units. Once again this was upheld by the Juvenile Court, and once again it was suspended by the State Appeals Court. Another petition calling, in the case that adolescents were to remain there, for adequate medical, educational and other facilities, upheld by the Juvenile Court, was also suspended by the higher court.

### 3.4 Pinheiros prison<sup>17</sup>

Another emergency unit was set up in Pinheiros to receive adolescents from Imigrantes.

On 19 November 1999, public prosecutors carried out an inspection after denunciations from a children's rights group that boys had been ill-treated. According to F.A., *monitores* called in riot troops after lunch on 15 November, when boys who had not been

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<sup>16</sup> "É evidente que não há nenhum processo sócio-educativo em curso no estabelecimento dos adolescentes que, repita-se, não dispõe sequer de infra-estrutura para o acolhimento dos adolescentes. Em não havendo número suficiente de funcionários e em não havendo nenhuma programação a ser seguida pelos jovens, instaurou-se a desordem e o controle de boa parte das instalações foi assumido pelos próprios internos. São visíveis a tensão dos adolescentes, a situação de risco e a ociosidade vividas por eles, o que torna urgente e imprescindível sua transferência para unidades adequadas."

<sup>17</sup> Cadeião Pinheiros.

let out of their cells since their arrival, started banging on the bars calling to be let out into the yard. Once the riot troops left, *monitores* invaded their cells, beating them with sticks and iron bars. One *monitor*, wearing wooden-soled boots, is alleged to have kicked several boys in the head, back and stomach. Following the beatings, *monitores* are alleged to have taken all the boys' clothes, mattresses and bed-clothes, leaving them to sleep naked on the cement, and without giving them their evening meal.

A judicial inspection carried out on 14 December found poor levels of hygiene, exacerbated by the fact that there had been no water since the previous day, so that boys had not been able to drink or wash for two days. Inspectors also noted that boys were not being separated by age, physical size or seriousness of crime, and, worse still, that boys under death threats from fellow-inmates were not being held separately. Boys were being held in their cells all day. The work conditions of psychologists and social workers were inappropriate for the nature of their work – all eight of them having to share one room and conduct treatment without privacy for the boys.

The judicial inspection concluded that:

"In transferring adolescents to this place, they are being subjected to cruelty, disrespect, radically infringing the ECA and universal human rights. We note that the staff also suffer the same violations, because these are not the conditions in which they worked previously, and they have not been prepared or trained for this change."<sup>18</sup>

A petition to move the adolescents to adequate units brought by the Public Prosecution Service and upheld by the Juvenile Court was once again overturned by the State Appeals Court, as was a further petition calling for Pinheiros to be brought into line with the ECA, if boys were to be held there for an extended period of time.

### 3.5 Tatuapé complex

Human rights violations continue in Tatuapé complex. Following a riot in the complex's Therapeutic Referral Unit, URT,<sup>19</sup> on 19 February 2000, public prosecutors undertook an inspection. Adolescents claimed that the unit was being used for punishment, and that the

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<sup>18</sup> "Ao transferir adolescentes para este local, impõem-se a eles crueldade, desrespeito, transgredindo-se o ECA e os Direitos Humanos Universais de forma radical. Observamos que os funcionários também sofrem a mesma violência, pois não é o ambiente que trabalharam anteriormente, não tendo tido preparo nem treinamento para esta transformação."

<sup>19</sup> *Unidade de Referência Terapêutica.*

riot was caused by torture and ill-treatment there. The unit was referred to by the boys as the "Dungeon." Public prosecutors found on arrival that boys were wearing only underpants and that they were being held four to five in tiny cells containing only one concrete bed. Boys were only allowed out of these cells for 30 minutes a day. One boy, M.N., alleges that on arrival in the URT in December 1999, he was beaten by *monitores* and placed in a cell with a solid iron door and no window. He was confined alone in this cell for more 31 days, and allowed out only to collect his food and take it back to the cell.

Boys claimed that ill-treatment had been going on for months. Beatings were carried out mainly at night by a group of *monitores* from different units of the complex, referred to as the "ninjas". Members of this group dress entirely in black and obscure their faces with balaclavas.

A.S. alleged that on the night of 22 October the unit was invaded by the "ninjas" in reprisal for some indiscipline by a group of boys earlier in the day. Boys were made to strip to their underpants and "do the kangaroo": jump three times to see if anything falls out of their underpants. Then he and ten others were called out and ordered hop on one leg in a line. One boy who refused was beaten. The boys were then returned to the unit where they were lined up with their backs against the wall and beaten in the stomach. Afterwards, they were all made to stand under a cold shower for half an hour. According to S.J., the following day the boys were refused access to the bathrooms. One boy who banged on the door calling to be allowed to go to the bathroom was beaten by *monitores*.

The Director of the unit said that boys were transferred to the unit on the recommendation of *monitores* for being trouble-makers and inciters of riots. Boys claimed that they were not informed of the reasons for being transferred there, how long they were to stay there, or where they would be going to next.

A decision by the Juvenile Court ordering the closure of the unit and the transfer of the adolescents to appropriate locations was suspended by the State Appeals Court.

In May 2000, Tatuapé complex, still suffering severe overcrowding with a population of 1200 adolescents, once again descended into a spate of riots, and riot troops were called in to take control of the complex. A number of boys fled during the riots, and a police commander alleged that they had been let out by FEBEM staff. The Director of FEBEM and the Secretary of Social Development Assistance engaged in a war of words with FEBEM staff following the riots, claiming that they had provoked anxiety and anger among the boys with rumours about transfers to Parelheiros prison, because FEBEM staff themselves did not want to be transferred to other units. The FEBEM staff union, Sintraemfa, on the other hand, accused the president of FEBEM and the Secretary of Social Development Assistance of forcing a situation of instability in Tatuapé in order to be able to justify the transfer of adolescents to Pararlheiros prison.

As this document was going to print, Amnesty International received information of a riot on 11 June, during which a female *monitor* was thrown from the roof by inmates, breaking both legs.

### 3.6 Franco da Rocha detention centre

In November 1999, following the destruction of the Imigrantes complex, the São Paulo government embarked on the construction of a new complex in Franco da Rocha, destined to incarcerate 960 adolescents. In May 2000 FEBEM began to transfer adolescents to the uncompleted construction, without having installed the infrastructure and staff necessary to provide either for basic needs, or for education, recreation and case accompaniment. Despite high spending on bars, gates and surveillance equipment, within two weeks a spate of riots broke out in protest against torture, ill-treatment and poor conditions of detention. During the riots, boys were able to dismantle concrete beds and knock holes through the walls between the cells, raising questions about the quality of the construction. A number of boys have been able to escape simply by climbing a fence onto the roof.

Since the first transfers began, adolescents have been reporting ill-treatment by FEBEM staff and police. On 4 May adolescents told public prosecutors that on arrival they had been made to run a gauntlet of *monitores* and police, and that on the night of 3 May a number of *monitores* had invaded wing G and beaten 12 boys. Twenty-eight of 36 boys in wing G had bruising, mainly on their backs. They also complained that there was insufficient soap, toothbrushes and bed linen to go around. A judicial inspection found that adolescents were locked up in their cells for several days at a time, and were in a state of anxiety because they were not receiving any information about transfers or their legal proceedings. Social workers and psychologists were attempting to work with incomplete information about who was actually being transferred in and out of the centre. Boys were not being separated by age or seriousness of crime.

The nurse's log reflected a concern with boys' mental health:

"J.S. showed signs of tremors, and feeling faint, he became unconscious for some minutes, and was very scared and nervous. He urgently needs a psychological evaluation."<sup>20</sup>

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<sup>20</sup> "J.S. apresentou tremores, ameaço de desmaio, o mesmo ficou inconsciente por alguns minutos, demonstrou muito medo e nervoso, o adolescente necessita urgente de avaliação psicológica."



"In the faces of those interviewed, and in the shaking hands of some of them, we could observe the emotional damage that this environment is causing."<sup>21</sup>

The Public Prosecution Service requested a court order calling for improvement of infrastructure and staffing. It also called for the dismissal of the unit's director, a man alleged by many of the adolescents to have directly participated in acts of ill-treatment. The Juvenile Court granted the order. On 9 June the State Appeals Court suspended the court order. FEBEM subsequently announced that it would not be opening a new investigation into allegations that the Director of the unit had been involved in ill-treatment, as previous internal inquiries had concluded that there was no evidence against him.

### **3.7 Parelheiros prison<sup>22</sup>**

In recent months the government of São Paulo has spent around 2 million *Reais* on reforming Parelheiros. It intends to incarcerate 400 adolescents there. Children's rights advocates have protested that the building is a *de facto* maximum security prison, and, as such, not only contravenes the letter and the spirit of the ECA, but is in direct contradiction to the authorities' stated commitment to the decentralization of large complexes to municipalities, where adolescents may receive individualized attention close to their own communities. Adolescents in Parelheiros prison, located about 50 km from central São Paulo, are likely to have even less contact with their families before. The travel costs are unaffordable to many families, and difficulties of distance and cost are exacerbated by the 3.5 kilometres distance of the prison from the nearest bus stop.

The government has made much of the construction of two, seven by three metre pools as evidence of its new approach. However, most of the money has been spent on installing more bars and gates. Inspections carried out by lawyers and children's rights advocates have found areas destined for education and recreation to be poorly conceived and, in parts, in a bad state of disrepair. There is nothing to indicate that Parelheiros represents any change in the FEBEM policy of containment, rather than investment in rehabilitation, and that the problems and human rights violations of the other units will

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<sup>21</sup> *"Nas faces dos entrevistados e nas mãos tremulas de alguns pudemos observar os danos emocionais que este ambiente vem causando."*

<sup>22</sup> *Presídio de Parelheiros*

not simply be transported to Parelheiros. The Director appointed to Parelheiros has been the subject of a police inquiry into ill-treatment.

On 2 May 2000 a court order preventing the transfer of adolescents to Parelheiros was suspended by the State Appeals Court. Transfers into the unit began in June 2000.

#### 4. A DECADE OF WARNINGS

**"Everything in the institution is wrong. It's a mistake to think that the institution is the solution, it's expensive for society and doesn't resolve anything for the child."<sup>23</sup>**

**Martha Godinho, Ex-Secretary for Social Development Assistance**

During the ten years since the launch of the ECA, public prosecutors, bar associations, parliamentary commissions of inquiry, state human rights councils, guardianship councils and human rights organizations have undertaken innumerable inspection visits and submitted to the São Paulo authorities innumerable detailed reports, denouncing the inhuman and dehumanizing conditions in FEBEM units.

Three bodies have the power to apply and monitor ECA, and may undertake unannounced inspection visits in closed institutions at any time: the Public Prosecution Service, the judiciary and guardianship councils elected in local communities. Federal and state deputies may also undertake inspections. Mechanisms for the implementation of the ECA include elected councils at federal, state and municipal level, made up of government and civil society representatives. These are mandated to take decisions on policies affecting children in their jurisdiction and the allocation of funds. At municipal level they have a regulatory role: they annually inspect children's shelters and institutions to check that they are operating in compliance with ECA standards and issue authorizations for these establishments to function.

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<sup>23</sup> "Está tudo errado na instituição, enganoso pensar que instituição é solução, é cara para a sociedade e não resolve nada para a criança." Speaking to *TV Record* after the November 1997 riot.

In São Paulo such authorization has been withheld. The Municipal Council for the Rights of the Children and Adolescents of São Paulo, CMDCA, has withheld registration from FEBEM's programs of detention. The State Council for the Rights of Children and Adolescents, CONDECA, has made a series of recommendations to the authorities in a resolution<sup>24</sup> based on the "undeniable inefficiency of the socio-educational programs."<sup>25</sup>

In São Paulo, all these institutions have found FEBEM to be violating not only the ECA, but also adolescents' most basic human rights. All have made recommendations calling for investment in staffing and adequate training, and for the decentralisation of the large holding complexes to small manageable units. All have decried the illegality of the way in which the São Paulo government is managing FEBEM. Yet the government has persistently ignored the constant warnings and has, in effect, placed itself above the law.

#### **4.1 Brief chronology of a crisis forewarned**

13 July 1990                      The ECA, based on international standards, is launched to great acclaim as an important step forward for human rights in Brazil.

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<sup>24</sup> No 18, 8/1/99, Published in the *Diário Oficial* 2/2/00.

<sup>25</sup> "Inegável ineficiência dos programas sócio-educativos."

14 October 1992 The Public Prosecution Service brings a civil action against FEBEM and the São Paulo government on the basis of its failure to comply to the ECA in a unit in Tatuapé complex – UAP-1. Visits by public prosecutors and by the Bar Association's Human Rights Commission find severe overcrowding. They also note that numbers of social workers, psychologists and *monitores* are insufficient to care for the detainees. The adolescents reported that they had to queue for an hour or more when they wished to use showers or lavatories. There was no medical doctor, and any medical treatment was administered by an auxiliary nurse. In a document submitted to the Director of Tatuapé, the Coordinator of UAP-1 warns that it is impossible to "maintain this population level."<sup>26</sup>

The action calls for the determination of a time-limit in which FEBEM would be required to take steps to resolve overcrowding and to contract sufficient staff.

October 1992 A riot destroys parts of Tatuapé. Adolescents are transferred to the Imigrantes complex, in what is intended to be a temporary measure.

30 March 1993 At least 40 adolescents are beaten and suffer other forms of ill-treatment at the hands of *monitores*, military police and members of a private security firm under contract to FEBEM after quelling a riot in Tatuapé. Six adolescents are hospitalised. The operation is commanded by a chief of security who was already under investigation for allegations of beatings and ill-treatment of detainees in 1991. An investigation into the beatings is subsequently archived.

18 August 1995 The Juvenile Court upholds the Public Prosecution Service's petition and orders FEBEM and the São Paulo government to take a series of measures to improve conditions in FEBEM units.

In a 68-page sentence the judge condemns continued appalling and chronic understaffing in Imigrantes, and notes that the state government is negligent in its "unjustified withholding of funds which has led FEBEM to the unsustainable and chaotic precariousness which is destroying it."<sup>27</sup>

<sup>26</sup> "Manter esse patamar populacional."

<sup>27</sup> "Por meio da injustificada sonegação de verbas que levaram a FEBEM-SP à insustentável e caótica precariedade que a assola."

FEBEM and the São Paulo government subsequently appeal against this decision. The appeal is rejected in 1997 by the State Appeals Court. Further appeals at federal level are currently pending in the Federal Supreme Court and the Supreme Court of Justice.

- 16 September 1997 A cross-party state Parliamentary Commission of Inquiry is set up to investigate the cause of daily escapes from Imigrantes and Tatuapé, administrative irregularities in the contracting of staff, and illegal medical practices within FEBEM.
- 5 November 1997 A riot and mass break-out in FEBEM is ended by the arrival of the military police riot squad. Boys are made to line up, naked apart from their underwear, and are left for hours in the blazing sun with no food or water. Boys also allege that military police rounding up escaped inmates had beaten them.
- 21 March 1998 An Amnesty International delegation visiting Imigrantes complex verifies cruel, inhuman and degrading conditions of detention: it finds severe overcrowding; adolescents mixed regardless of provisional or sentenced status, age, physical size or seriousness of crime; a complete lack of activity affecting hundreds of boys; adolescents' total ignorance as to the progress of their cases; and unsatisfactory hygiene. The delegation also hears reports from adolescents of beatings by *monitores* with sticks and iron bars. Amnesty International delegates found such items hidden outside the gates, appearing to support the boys' allegations.
- 2 March 1999 The report of the Parliamentary Commission of Inquiry into FEBEM notes the "overriding and urgent necessity to change FEBEM"<sup>28</sup> to bring it in line with the ECA, and makes a series of recommendations. The recommendation to dismiss the president of FEBEM was subsequently removed in a revised version of the report, following disagreement within the commission.
- 23 June 1999 Amnesty International publishes report: *Brazil: No One Here Sleeps Safely: Human rights violations against detainees*, AMR 19/09/99, which includes information regarding human rights violations against young offenders throughout Brazil, including in Imigrantes and Tatuapé.

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<sup>28</sup> "A imperiosa e urgente necessidade de mudar a FEBEM."

- 30 August 1999 The Public Prosecution Service brings a petition against FEBEM and the São Paulo government regarding the failure to apply the ECA in Imigrantes, on the basis of technical reports submitted by the Buildings Control Department, CONTRU, health and safety inspectors, the fire service, epidemiology inspectors, and experts employed by the Public Prosecution Service. The various reports describe a situation of complete break-down in health and safety. The Public Prosecution Service calls for improvements to be made to the physical structure of the building in line with the recommendations made by CONTRU and the fire service; for a sufficient number of *monitores* to deal with the large numbers of adolescents; for personal hygiene supplies to be provided to the adolescents; and for sufficient staff to provide education and accompaniment of individual adolescents. It also documents an incident of ill-treatment against up to 70 boys.
- 30 August 1999 The Juvenile Court upholds the Public Prosecution Service's petition and sets time limits for FEBEM and the São Paulo government to comply.
- 3 September 1999 The State Appeals Court upholds an appeal by FEBEM and the São Paulo government and suspends the Juvenile Court's decision.
- 11 September 1999 The current crisis is sparked by a riot in Imigrantes.

## 5. UNDERMINING HUMAN RIGHTS DEFENDERS

Amnesty International is particularly concerned at public statements aimed at undermining human rights defenders and children's rights lawyers. On 15 May 2000 the head of the Legislative Assembly's Human Rights Commission, Renato Simões and a representative of the State Human Rights Council, CONDEPE, Father Júlio Lancellotti, were illegally refused entry to Franco da Rocha following a telephone conversation between the president of FEBEM and the unit's director. They were only able to gain access to the unit after telephone calls were made to the Secretary for Social Development Assistance. After they left, a riot broke out. The Governor subsequently made public statements accusing Renato Simões and Father Júlio Lancellotti of inciting the riot. He also blamed a public prosecutor, Dr. Ebenézer Salgado Soares, even though he had not actually been at the unit.

Such insinuations increase the risk to human rights defenders. Members of non-governmental organizations accompanying adolescents' cases have already been the victims of threats and intimidation. Father Júlio Lancellotti and Valdênia Aparecida Paulino have received anonymous telephone calls threatening them in relation to their work on behalf of FEBEM inmates. FEBEM staff have also acted in an intimidatory manner towards them and other defenders, barring them entry to the units, or, once in the units, locking them in prison yards with the adolescents and attempting to provoke adolescents to take them hostage.

The São Paulo government has also publicly criticized public prosecutors for distributing to the media photographs and film footage of marks of torture, and appalling conditions.

## CONCLUSIONS AND RECOMMENDATIONS

"It is not the *monitores* who destroy things. It is not the police. They arrived [in Franco da Rocha] last week and there have already been two rebellions. Rebellions against what? You've never heard a complaint about the 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 Governor, Dr. Mario Covas<sup>29</sup>

Amnesty International recognises that the adolescents under detention order in FEBEM units may have committed serious crimes, that some of them may well present a genuine danger to society, and that the São Paulo authorities have the duty to protect the public against violent crime. Amnesty International also recognises the enormous difficulties faced by the São Paulo authorities in attempting to solve institutional problems entrenched during decades of neglect by successive state governments, and that a permanent solution cannot be reached within a very short time-span. However, Amnesty International has also noted an astounding refusal by the São Paulo government to acknowledge the continuing torture, ill-treatment and cruel, inhuman and degrading conditions of detention at the root of the current crisis, and believes that the failure to confront these issues is perpetuating grave human rights violations, affecting the lives of thousands.

The transfer of hundreds of adolescents into large maximum security prison-style complexes, the continuing reports of torture and ill-treatment by police and *monitores*, and the failure to provide adequate infrastructure for the care and rehabilitation of young offenders, exposes a deep contradiction between the São Paulo government's stated policy and practice. Despite the program of change launched last November, comments to the press by the Governor, Secretary for Social Development Assistance and the President of FEBEM reveal a policy vacuum, and a lack of political will to reform juvenile detention in São Paulo. They have attempted to cast blame for the crisis on the courts, public prosecutors, children's rights activists, opposition state parliamentarians and FEBEM staff. Amnesty International is particularly concerned that these moves to shift the blame place children's rights defenders at increased risk of threats and intimidation.

The São Paulo government has also sought to over-emphasize the danger to society of FEBEM inmates, in an attempt to shift attention away from torture and ill-treatment, and to pander to public fears about violent crime. It has argued that there is not a problem with the

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<sup>29</sup> In response to a question regarding whether the government intended to place limits on replacing objects destroyed by FEBEM inmates. From comments made during a press conference, reproduced in the *Folha de São Paulo*, May 2000.

"*Não são os monitores que arreventam. Não é a policia que arreventa. Entraram [em Franco da Rocha] na semana passada e ja fizeram duas rebeliões la. Rebelião contra o que? Vocês nunca ouviram uma reclamação sobre comida na FEBEM. Nunca li ou ouvi em jornal nenhum reclamação contra comida. Bom, então reclamam do que?*"



institution of FEBEM itself, claiming that the majority of FEBEM units are not problematic, that only three FEBEM detention centres are in crisis, and that this reflects the aggressive and dangerous nature of the detainees. Amnesty International is unaware of any public statement recognising that successive São Paulo governments have failed in their duty of care towards thousands of adolescents.

Amnesty International is concerned that the São Paulo government has been able to circumvent legislation protecting children and adolescents, and that it has been able to ignore the institutions mandated to oversee the application of the legislation: the Juvenile Court, Public Prosecution Service and guardianship councils. The organization is further concerned that the State Appeals Court has supported the government in its refusal to apply the ECA in a number of FEBEM detention centres, thus allowing the violation of adolescents' basic human rights.

No program of building construction will end the vicious circle of violence within the FEBEM juvenile detention system. The focus on public security has obscured issues of chronic understaffing, lack of training and lack of back-up support for FEBEM staff. It has also obscured a generalized tolerance of torture and ill-treatment of young offenders. The São Paulo government should urgently address the cause and nature of the human rights violations entrenched within FEBEM.

The problems encountered within FEBEM São Paulo are echoed throughout Brazil. It is now ten years since the launch of the ECA, but as far as juvenile detention is concerned, in most parts of the country the legislation is a dead letter. The Federal government has a responsibility to ensure the application of this important legislation throughout the federation.

## **RECOMMENDATIONS TO THE SÃO PAULO GOVERNMENT**

The São Paulo government should undertake an urgent and thorough review of its policy with regard to juvenile detention, taking full account of the grave violations of the most basic rights of hundreds of adolescents. A revised policy should comply fully with the standards set out in the ECA.

### **FEBEM Staff**

- Any FEBEM staff member, police officer or prison guard implicated in acts of torture or ill-treatment against inmates should immediately be suspended from duty pending a full inquiry. Staff members found responsible for torture or ill-treatment should be brought to justice.
- An urgent investment should be made in both technical staff and warders, addressing recruitment of sufficient numbers, a training program which equips them to deal with

a difficult work environment, and support systems for staff who are victims of aggression by FEBEM inmates.

- Clear rules and regulations governing the discipline of FEBEM detainees should be drawn up and made available to both FEBEM staff and inmates.

### **Police and Prison guards**

- Allegations that police and prison guards have tortured and ill-treated adolescents during and after transfers should be investigated immediately.
- Any police officer or prison guard implicated in acts of torture and ill-treatment should be immediately suspended from duty pending a full inquiry.
- Any police officer or prison guard found responsible for torture and ill-treatment should be brought to justice.

### **FEBEM detention centres**

- Immediate steps should be taken to address over-crowding and poor hygiene.
- All FEBEM units should be equipped to provide adequate medical and dental care.
- The program of decentralization of the FEBEM juvenile detention system into small, manageable, municipal units should be completed without further delay.
- The transfer of adolescents into the adult prison system and into units unequipped to provide basic care should end immediately.

### **Adolescents in detention**

- Adolescents detained pending a court's decision should be separated from those already convicted of an offence.
- FEBEM inmates should be separated by age, seriousness of offence and physical size, and by provisional or sentenced status.
- FEBEM inmates should be given access to information about the progress of their cases.

- Adolescents suffering from mental illness should not be held in juvenile detention centres.

#### **Socio-educational measures**

- The São Paulo government should allocate resources for the immediate recruitment and training of sufficient numbers of teachers, trainers, social workers and psychologists in order to fulfil their obligation to provide individualized treatment of adolescents aimed at returning them to society.
- The São Paulo government should invest in programs for the application of non-custodial punishments to allow the Public Prosecution Service and the courts more sentencing options for young offenders.
- The São Paulo government should examine alternatives to detention for young offenders awaiting a court decision.

#### **Children's rights defenders**

- Representatives of bodies legally mandated to monitor juvenile detention centres should be given immediate and unconditional access without fear of obstruction or intimidation.
- Allegations that children's rights defenders have been threatened and intimidated should be investigated, and anyone found responsible disciplined or charged.
- Public statements by government officials aimed at discrediting the work of children's rights defenders place them at personal risk, and should cease immediately.

#### **RECOMMENDATION TO THE FEDERAL GOVERNMENT**

- The Federal government should undertake an immediate review of the application of the ECA and take action to address its failure in protecting young offenders against grave human rights violations.

**APPENDIX****Statute of the Child and Adolescent****Title III****The Practice of Infractions****Chapter I  
General Provisions**

- Art. 103. An infraction is understood as conduct described as crime or misdemeanour.
- Art. 104. Subject to the measures specified in this Law, minors of less than eighteen years of age are not penally imputable.
- Paragraph.* For the purposes of this Law, the age of the adolescent on the date of the fact should be considered.
- Art. 105. The measures specified in art. 101 will correspond to the infraction practised by a child.

**Chapter II  
Individual Rights**

- Art. 106. No adolescent will be deprived of his freedom unless in *flagrante delicto* or by written and well-founded order of the proper judicial authority.
- Paragraph.* The adolescent has the right to identification of those responsible for his apprehension and should be informed of his rights.
- Art. 107. The apprehension of any adolescent and the place to which he is committed will be notified forthwith to the proper judicial authority and the family of the person apprehended or to the person indicated by him.
- Paragraph.* The possibility of immediate release will be examined forthwith subject to the penalty of liability.
- Art. 108. Internment before sentencing can be determined for a maximum period of forty-five days.
- Paragraph.* The decision should be well-founded and based on sufficient indication of authorship and materialities and the essential necessity of the measure should be demonstrated.

- Art. 109. The civilly identified adolescent will not be submitted to compulsory identification by the police, protection and judicial entities, unless for purposes of confrontation when there is well-founded doubt.

### Chapter III Procedural Guaranties

- Art. 110. No adolescent will be deprived of his freedom without due legal process.

- Art. 111. Among others, the following guaranties are ensured to the adolescent:

- I - full and formal knowledge of the imputation of an infraction by arraignment or equivalent means;
- II - equality in the procedural relationship, with the right to confront victims and witnesses and produce the evidence required for defence;
- III - technical defence by a lawyer;
- IV - gratuitous and full legal assistance to those in need, according to the terms of the law;
- V - the right to be heard personally by the proper authority;
- VI - the right to request the presence of his parents or guardian at any stage of the proceedings.

### Chapter IV Socioeducational Measures

#### *Section I General Provisions*

- Art. 112. Once the practice of an infraction is found to exist, the proper authority may apply the following measures to the adolescent:

- I - admonition;
- II - obligation to repair the damage;
- III - rendering of community service;
- IV - assisted freedom;
- V - inclusion in a system of semiliberty;
- VI - internment in an educational institution;
- VII - any of the measures specified in art. 101, I to VI.

- Paragraph 1.* The measure applied to the adolescent will give due consideration to his capacity to comply with the same, the circumstances and gravity of the infraction.

- Paragraph 2.* In no case and under no pretext whatsoever will the rendering of forced labour be permitted.
- Paragraph 3.* Adolescents who are bearers of disease or mental deficiencies will receive individual and specialized treatment in a place suited to their conditions.
- Art. 113. The provision in arts. 99 and 100 apply to this Chapter.
- Art. 114. Imposition of the measures specified in items II to VI of art. 112 presupposes the existence of sufficient proof of authorship and materiality of the infraction, with the exception of cases of remission according to the terms of art. 127.
- Paragraph.* Admonition may be applied whenever there is proof of materiality and sufficient of authorship.

*Section II  
Admonition*

- Art. 115. The admonition will be verbal and will be expressed in writing and signed.

*Section III  
The Obligation to Repair Damage*

- Art. 116. In the case of an infraction with patrimonial effects, the authority may, should the case arise, determine that the adolescent restore the thing, see to reimbursement of the damage or, in another way, compensate the victim's loss.
- Paragraph.* Should this be clearly impossible, the measure may be substituted by another suitable measure.

*Section IV  
The Rendering of Services to the Community*

- Art. 117. The rendering of community services consists in the carrying out of gratuitous tasks of general interest for a period of not more than six months, at entities of assistance, hospitals, schools and other like institutions, as well as in community and governmental programs.
- Paragraph.* The tasks will be designated according to the aptitudes of the adolescent and should be carried out during a maximum period of eight hours per week, on Saturdays, Sundays and holidays or on working days, in such a way as not to hamper attendance at school or normal working hours.

*Section V*

*Assisted Freedom*

Art. 118. Assisted freedom will be adopted whenever it is considered to be the most suitable measure for the monitoring, aiding and orientation of the adolescent.

*Paragraph 1.* The authority will designate a trained person to monitor the case and such a person may be recommended by a treatment entity or program.

*Paragraph 2.* Assisted freedom will be determined for a minimum period of six months and can be extended, revoked or substituted by another measure at any time, once the councillor, Office of the Attorney General and defender have been duly heard.

Art. 119. With the support and supervision of the proper authority, it is the task of the councillor to perform the following duties, among others:

- I - socially promote the adolescent and his family, providing them with orientation and, if necessary, including them in a government or community program of aid and social assistance;
- II - supervise the school attendance and achievement of the adolescent and, if necessary, see to his enrollment;
- III - take steps to see to the vocational training of the adolescent and his insertion into the job market;
- IV - present case reports.

*Section VI*

*The System of Semiliberty*

Art. 120. The system of semiliberty can be determined from the beginning or as a form of transition to the open system, thus making carrying out of external activities possible, independently of judicial authorization.

*Paragraph 1.* Education and vocational training are obligatory and, whenever possible, resources existent in the community should be utilized.

*Paragraph 2.* The measure is not subject to determined periods of time and, in that which is suitable, the provisions related to internment apply.

*Section VII*

*Internment*

Art. 121. Subject to the principle of brevity, exceptionality and respect for the peculiar condition of the person in development, internment is a measure that deprives one of freedom.

- Paragraph 1.* The carrying out of external activities will be permitted at the discretion of the technical staff of the entity, unless there has been an express and contrary judicial determination.
- Paragraph 2.* The measure is not subject to specific time periods and maintenance of the measure should be re-evaluated at least every six months, on the basis of a well-founded decision.
- Paragraph 3.* In no case can the maximum period of internment exceed three years.
- Paragraph 4.* Once the limit determined in the previous paragraph has been reached, the adolescent should be released, placed in a system of semiliberty or assisted liberty.
- Paragraph 5.* Release will be compulsory at the age of twenty-one.
- Paragraph 6.* In any case, suspension of internment will be preceded by judicial authorization, once the Office of the Attorney General has been duly heard.
- Art. 122. The measure of internment may only be applied when:
- I - the case involves an infraction committed by means of grave threat or violence to a person;
  - II - the case involves repetition in the commitment of other grave infractions;
  - III - the case involves reiterated and unjustified noncompliance with the previously imposed measure.
- Paragraph 1.* In the case of item III of this article, the period of internment may not be more than three months.
- Paragraph 2.* In no case whatsoever will internment be applied when another suitable measure is available.
- Art. 123. Internment should be fulfilled at an entity exclusively reserved for adolescents, in a location that is separate from that reserved for purposes of shelter, with rigorous separation on the basis of criteria of age, physical build and temperament and the gravity of the infractions.
- Paragraph.* During the period of internment, including temporary internment, pedagogical activities will be obligatory.
- Art. 124. The rights of the adolescent deprived of freedom are the following, among others:
- I - to meet personally with the representative of the Office of the Attorney General;
  - II - to petition any authority directly;
  - III - to meet privately with his defender;
  - IV - to be informed of the status of his process whenever he so requests;
  - V - to be treated with respect and dignity;
  - VI - to remain interned in the same locality or in that which is closest to the domicile of his parents or guardian;



- VII - to receive visits, at least weekly;
- VIII - to correspond with family members and friends;
- IX - to have access to the objects required for hygiene and personal cleanliness;
- X - to live in lodgings in adequate conditions of hygiene and health;
- XI - to receive schooling and vocational training;
- XII - to carry out cultural, sports and leisure activities;
- XIII - to have access to the communications media;
- XIV - to receive religious assistance according to his own belief, whenever he so desires;
- XV - to retain possession of his personal objects and to have a secure place in which may be deposited in the keeping of the entity;
- XVI - to receive his personal documents required for life in society, upon departure from the entity.

*Paragraph 1.* In no case will incommunicability be permitted.

*Paragraph 2.* The judicial authority may temporarily suspend visits, including those of parents or guardian, if there are serious and well-founded reasons why such visits would be prejudicial to the interests of the adolescent.

Art. 125. It is the duty of the State to see to the physical and mental integrity of the interned and the State has the task of adopting suitable measures of confinement and security.

#### *Chapter V Remission*

Art. 126. Before initiation of the judicial proceedings aimed at investigating the infraction, the representative of the Office of the Attorney General may, in response to the circumstances and consequences of the fact, to the social context and personality of the adolescent and to this greater or lesser participation in the infraction, grant remission as a form of exclusion from the proceedings.

*Paragraph.* Once the proceedings have been initiated, the granting of remission by the judicial authority will result in the suspension or extinction of such proceedings.

Art. 127. Remission does not necessarily imply recognition or corroboration of responsibility, nor does it prevail for purposes of antecedents, and may occasion include application of any of the measures specified in law except placement in the system of semiliberty and internment.

Art. 128. The measure applied by reason of remission may be judicially reviewed at any time, on the basis of an express request on the part of the adolescent or his legal representative or of the Office of the Attorney General.