

# AN OVERVIEW OF JUVENILE OFFENCES IN BRAZIL

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## I. INTRODUCTION

In Brazilian law, the term “minor offender” is not a suitable word to refer to juveniles under the age of criminal responsibility, according to the Law 8.069 of 07/13/1990, the Statute of Children and Adolescents. This statute deleted the word “minor” and figured “children and adolescents” as “subjects of rights”, considering them as central in the building of a democratic society, and not “mini adults”. The correct term is, therefore, juvenile in infraction situation (or in conflict with law), that is not something permanent, but that may change (after social reintegration).

The term “minor offender” is of legal origin and gained widespread use in the media. The problem is that the term “minor offender” is that the word “minor”, in Brazil, is already loaded with prejudices and accentuates the repression to the treatment of children and adolescents. According to the Statute of Children and Adolescents, the crimes committed by such juveniles are called offences or “infringement acts”, in conflict with law, and the penalties are called “socio-educational measures”.

## II. JUVENILES AND JUVENILE OFFENCES

The Statute of Children and Adolescents (1990) aims, in the Brazilian legal system, for the integral protection of children and adolescents, by implementing specific measures. It is, in Brazil, the legal and regulatory initiation of juvenile rights.

The juvenile offence is a condemnable act because it disrespects laws, public order, citizens' rights or property. There is only an offence if that corresponds to conduct that legally determines sanctions against its author. In the case of offences committed by children (under 12), protective measures applied. In this case, the responsibility to follow this situation is the Guardianship Council. But if the offence is committed by adolescents (12-18 years old), it should be sent to the Police for Juveniles, who must refer the case to the Public Prosecutor, who may apply one of the socio-educational measures provided in the Statute of Children and Adolescents.

## III. LEGISLATION

The Brazilian Federal Constitution of 1988<sup>1</sup> establishes the principle of “untouchable status of the child”, thus, penalties cannot be applied, requiring the creation of a specific law to regulate the situation<sup>2</sup>. A specific law was created: Law number 8.069/1990, the above-mentioned statute.

The statute makes a distinction between children in infringement situations, defined as individuals under 12 years of age and adolescents in infringement situations who are from 12 to 18 years old.

Children in infringement situations are susceptible to protective measures and cannot be imprisoned. According to Articles 101 and 105 of the Statute, such measures include, among others:

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<sup>1</sup>After 24 years of military dictatorship, this Constitution is known as “The Citizen” , because it respects all necessary and minimum rights for the people.

<sup>2</sup>As mentioned in the article 228 of the Brazilian Constitution: It is not penalty imputable under of 18 years, subject to the rules of a special law.

- forward to the parents;
- orientation;
- enrollment and compulsory attendance at public school;
- inclusion in a Community programme;
- request for medical, psychological or psychiatric treatment;
- inclusion in alcoholics and drug addicts' treatment programmes;
- shelter;
- placement in a foster family.

Adolescents (12-18 years old) in infringement situations are susceptible to socio-educational measures listed in Chapter IV of the statute, among which, is forced imprisonment (physical detention) for a period of up to three (3) years, according to article 121, § 3, of the statute.

In addition to imprisonment, other possible socio-educational measures are listed in Article 112 of the statute:

- warning is the verbal reprimand and signature of a term (art. 115);
- obligation to repair the damage if the teen has the ability to pay (art. 116);
- provision of services to the community — free tasks of general interest, with institutions, hospitals, schools etc., for a maximum time of six months and up to eight hours per week (art. 117);
- probation — offender monitoring by a supervisor for at least six months to oversee the social development of the teen and his family; their enrollment, attendance and school progress; and its professionalization and insertion in the labour market (arts. 118 and 119);
- regime of parole — no fixed term, but with obligatory release after 21 years old. The regime allows the realization of external tasks without judicial authorization. Juveniles are required to study and participate in vocational training. Juvenile parole can also be used as a transition phase between the detention procedure (closed system) and complete freedom (art. 120).

In all cities (or when small, in the larger towns nearby), there are Judicial Courts of Children and Youth to monitor and (try to)<sup>3</sup> apply the measures written in the statutes. For adolescents, there's a recent Law from 01/18/2012, in complement to the statute, that establishes the National System of Educational Service (number 12594) that regulates the enforcement of socio-educational measures for those juvenile offenders who commit an offence.

#### **A. The Brazilian Discussion About Lowering the Age of Criminal Responsibility**

In Brazil, the age of criminal responsibility is a contemporary theme and quite controversial among legislators, jurists and Brazilians in general. Due to the fact of increased crime in Brazil, the media explores these crimes, even those of juvenile offences, which causes the Brazilian population (87%<sup>4</sup>) to support lowering the age of criminal responsibility from 18 to 16 years old. Debates arise in all spheres of power. It is also a problem that the government machine has no such structural capacity, as to house

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<sup>3</sup>There are not enough professionals to monitor all the juvenile offenders properly. Also, these juveniles normally keep living in inappropriate places (families, neighbours, unemployed etc.).

<sup>4</sup>Brazilian Pole Institute Data Folha, *Pole of June/2016*, (São Paulo, SP, Brazil, 2015). <[http://brasil.elpais.com/brasil/2015/06/24/politica/1435122043\\_792635.html](http://brasil.elpais.com/brasil/2015/06/24/politica/1435122043_792635.html)> Accessed 27 May 2016.

many juveniles in adult prisons — and socio-educational conditions are precarious in those facilities.

In August 2016, after being approved by the House of Representatives to lower the age of criminal responsibility to 16 years old for some crimes, such as assault and battery followed by death, intentional murder and heinous crime<sup>5</sup>, in November of last year it was, in the second stage of approval, disapproved by the Senate. Currently the debate is halted due the discussions of Brazil's presidential impeachment. Even so, the discussion remains.

#### **IV. BRAZILIAN JUVENILE PROTECTION AND INTERNATIONAL STANDARDS**

The Statute of Child and Adolescent was established by Brazilian Law 8.069 on 07/13/1990. It regulates the rights of children and adolescents inspired by the guidelines provided in the Brazilian Federal Constitution of 1988 and internalizes a series of international standards: the Declaration of the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Guidelines for Prevention of Juvenile Delinquency.

The Beijing Rules were adopted by a resolution of the General Assembly of the United Nations on treatment of young people who commit offences, or to which is alleged to have committed an offence. The Beijing Rules were adopted by the UN General Assembly on 11/29/1985, through Resolution number 40/33.

The Declaration of Children's Rights was proclaimed by the General Assembly resolution number 1386 of 11/20/1959. Its basis is that the rights of freedom, study, play and social interaction of children must be respected, and these rights are stated in ten principles.

Brazil, as a UN member since 1945, adopted the Beijing Rules and Declaration of Children's Rights and enforced them by the Statute of Children and Adolescent (from 1990). Thus, the various characteristics found in the Brazilian Statute of Children and Adolescent consider the peculiar situation of juveniles who are still in physical, social and psychological development. The Law 12594/2012, complementing the Statute in the socio-educational measures, also considers these aspects.

#### **V. JUDICIAL PROCEDURE**

We cannot treat adults and juveniles in the same way, as they are subject to various legal systems. The Statute, with the rights of Children and Youth, has its own and unique legal framework derived from the nature and relationships that it aims to protect.

Considering juveniles, criminal laws (Brazilian Penal Code etc.) are only a reference for verifying if the juvenile's conduct is characterized in an offence, so that they may be held responsible. The juvenile "does not commit crimes" (as adults); juvenile commit "offences" (or "infringement acts"). And the condemnation is enforced by one or more "socio-educational measures", while the adult receives a "penalty".

This means that a juvenile of only twelve (12) years of age who committed a crime or misdemeanour, called an offence (or infringement acts), may be arrested under the act, suffer an accusation by a prosecutor and have a lawyer (a free Public Defender) to defend him. The juvenile will be judged by a judge, whose decision (condemnation) to recognize the facts of the offence will authorize the application of one or more socio-educational measures (called the juvenile's penalties, as written above), noting that condemnation in his criminal record.

#### **VI. COMPARISON WITH THE ADULT PRISON SYSTEM**

Of the total of 607,000 offenders and criminals imprisoned in Brazil<sup>6</sup>, 3.6 % are juveniles (almost 22,000)

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<sup>5</sup>According to Brazilian law number 8.072/1990, like aggravated robbery; vulnerable rape (like child); torture; terrorism, genocide, drug trafficking etc.

<sup>6</sup>Federal Prison Department, *INFOPEN Report* (Brasilia, DF, Brazil, 2014). <<http://www.justica.gov.br/noticias/mj-divulgar-novo-relatorio-do-infopen-nesta-terca-feira/relatorio-depen-versao-web.pdf>> Accessed 30 May 2016.

under 18 who are imprisoned in a Juvenile Protection House (Brazilian juvenile “prisons”) or are released on parole socio-educational measures.

Among juveniles who have committed offences, most are not confined: they receive sentences of probation, community service, repair damage or just a warning. Even among the 22,000 inmates, three thousand are placed on parole. According to the Brazilian National Council of Justice<sup>7</sup>, about 43% of these juveniles end up becoming repeat offenders, i.e., committing new crimes while living in Juvenile Protection Houses. Regarding the adult prison system, the recurrence is about 70%.

The juveniles who committed the most serious crimes such as murder, robbery or armed robbery are imprisoned. In such cases, according to data from the Council, the average imprisonment time of juvenile offenders is a year and a half (the limit is three years).

Brazilian state prisons (for adults), in most cases, are overcrowded and do not have a proper rehabilitation structure even for adults. On the other hand, the Juvenile Houses, even not being the appropriate spaces for rehabilitation of juvenile, it is still a better structure for a juvenile in psychological and physical development. At these Houses, the juvenile has access to doctors, psychologists, dentists, regular visits from their families, regular food, etc. Of course, in some exceptions, these Juvenile Houses are real adult prisons, and it can be observed that “real adult offenders” are being made in these places. In this case, there are failures of government policies.

## VII. PROFILE OF JUVENILE OFFENDERS IN BRAZIL

In Brazil, due to historical aspects, mainly slavery and racial prejudice, marginalized social groups can be observed in the country. Usually with black skin, poor, with Africans’ religions etc. Consequently, by being marginalized, people migrate and move to peripheral regions of the cities. Normally, by being poor, with bad access to public services, it can be noticed that the citizen is removed from society, and this may create a social environment that leads to violence.

Sociologists point out two main aspects to juvenile violence in Brazil. One is poor education. Since good education is paid (and expensive), the juveniles do not prepare themselves for the labour market. And the second aspect is a consequence of the first: “the juvenile offenders did not become robbers because they don’t have a shoe, but because you want to have a designer shoes”, says Michel Misse, sociologist at Federal University of Rio de Janeiro. The juvenile just wants to participate in the world around him.

According to the IPEA, there are about 60,000 juveniles under socio-educational measures in Brazil, and almost 22,000 are imprisoned and about 12,000 are on parole or probation.

### A. Some Numbers

Statistics from June 2015 show that juvenile offenders are black males, 16 to 18 years of age who do not attend school and live in poverty. This is the profile outlined by IPEA<sup>8</sup> (Brazilian Institute of Applied Economic Research).

Continuing, 95% are male; 66% live in extremely poor families; 60% are black; 60% are 16 to 18 years old and 51% did not attend school at the time of the offence.

The main offences committed by juveniles are theft and drug trafficking. Less than 10% commit murder or theft followed by death.

Infractions are distributed as follows: 40% of them are deprived of liberty for aggravated robbery (with violence against persons); 23,5% for drug trafficking; 8,75% for murder; 5,6% for death threats; 3% for

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<sup>7</sup>National Council of Justice, *National Overview of the Socio-Educational Measures Implementing and Imprisonment* (Brasilia, DF, Brazil, 2015) <<http://www.cnj.jus.br/noticias/cnj/62380-modelo-inovador-garante-menor-indice-de-reincidencia-criminal-de-jovens-em-pernambuco>> Accessed 29 May 2016.

<sup>8</sup>Institute of Applied Economic Research, *Technique Note* (São Paulo, SP, Brazil, 2015). <[http://www.ipea.gov.br/portal/images/stories/PDFs/nota\\_tecnica/150616\\_ntdisoc\\_n20](http://www.ipea.gov.br/portal/images/stories/PDFs/nota_tecnica/150616_ntdisoc_n20)> Accessed 29 May 2016.

attempted murder; 3,4% for theft without violence; 2,3% for firearm possession; 1,9% for assault and battery followed by death; 1,1% for rape; 0,9% for personal injury and 0,1% for kidnapping.

In 2015, there were 22,000 juveniles imprisoned, “the most severe of the socio-educational measures”, according to IPEA.

Thus, what is intended with the above is to understand that is not enough for the law to be more severe to punish the offenders, neither justifying the actions of these juvenile offenders with their poverty and social pathologies (social environment), but, what is important, is to know the origin of the causes that stimulate the offences of these juveniles.

### VIII. REINTEGRATION: COMMUNITY INVOLVEMENT

The social and educational measures, as provided in the statute, aim to reintegrate the juvenile offender in social cohesion, wishing that they satisfactorily complete the measures by inserting them in society with new ideas and perspectives, in order to become an adult able to live together productively in their social and family environment.

The rehabilitation that is desired through socio-educational measures is the integration of the juvenile in the social, family and school world. On the other hand, it should not be forgotten that often criminality is produced by society itself.

As wrote the Italian professor Alessandro Baratta:

(...) before speaking in education and social rehabilitation is necessary, therefore, to do an examination of the value system and the behaviour models present in the society in which is wanted to insert the juvenile after the imprisonment. Such an examination only lead to the conclusion that the real re-education should begin with the society, than before with the condemned. Before you want to change the excluded, you must modify the exclusionary society, thus reaching the root of the exclusion mechanism [the real problem].<sup>9</sup>

Thus, to achieve social reintegration, society has an important role, by the time those who have committed an offence, that were away from social living, will reenter in this social environment.

Therefore, it is necessary for the enforcement of the law connected to the public policies for a participatory society, because the problems of the juvenile offenders exceeded the sphere of family and are in the scope of all society. It is important to gather all social control instruments and implement public policies with the objective of social progress, thus respecting the basic rights that the Brazilian Constitution (and Statute of Child and Adolescent) guarantees to the child and adolescent.

### IX. CONCLUSION

The Statute of the Child and Adolescent conceives all social and educational measures from a rehabilitation perspective for a juvenile offender. Thus, Juvenile Houses that perform socio-educational measures are required to observe this law.

The socio-educational measures, specifically imprisonment, reinforce social exclusion and maintain values for deviated conduct.

Thus, such issue should be analyzed with caution and meticulous studies for the implementation of measures to benefit the entire society and attenuate the problem of juvenile offenders, and with time allow them to be reintegrated in this society. This will be only possible with an effective socio-educational policy, the collaboration of government, restructuring the Juvenile Protection Houses, educational programmes, professional training for low-income youth, increase access to health (psychologists and psychiatrists),

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<sup>9</sup>BARATTA, Alessandro. *Criminologia Crítica e Crítica do Direito Penal: Introdução à Sociologia do Direito Penal*. Tradução Juarez Cirino dos Santos. Rio de Janeiro, Brazil, 2002.

164TH INTERNATIONAL TRAINING COURSE  
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improve the process of the enforcement of the measures against the juveniles offenders, better judicial service to juveniles, an improvement of projects that consider probation as social reintegration of the juvenile and, finally, a more effective participation of society in partnership with government and non-government agencies, seeking effective solutions with less consequences and less harmful to society and to the juvenile offender.