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Brasília, June 9, 2015

HUMAN  
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WATCH

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Andre Moura,  
Federal Deputy, President of the Chamber of Deputies Special Commission  
on PEC 171/1993

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Laerte Bessa,  
Federal Deputy, Rapporteur of the Chamber of Deputies Special  
Commission on PEC 171/1993

Dear Renan Calheiros, Andre Moura , and Laerte Bessa,

I am writing to share Human Rights Watch's serious concerns regarding the proposed constitutional amendment that would lower the age of criminal majority in Brazil to 16, allowing children age 16 and above who are in conflict with the law to be tried and punished as adults. The amendment would violate Brazil's obligations under international law and undermine rather than strengthen the country's efforts to reduce crime.

Human Rights Watch is an international nongovernmental organization dedicated to protecting the human rights of people around the world. We work in over 90 countries and have staff based in 59 different locations around the world, including São Paulo, and work with governments and civil society to uphold human rights and the rule of law.

The proposed amendment, PEC 171/1993, would modify article 228 of the Constitution, which currently states that "[m]inors under eighteen years of age may not be held criminally liable and shall be subject to the rules of special legislation." By replacing the word "eighteen" with "sixteen," the amendment would result in 16- and 17-year-olds being tried in ordinary courts, rather than in the juvenile "socio-educational" system. The amendment would also result in juveniles being incarcerated with adults, both before trial and afterwards if they are convicted of a crime.

Many of those who support the amendment do so out of a legitimate desire to promote accountability and reduce crime in Brazil. Yet the belief that the amendment would advance these goals is based on several premises that are unfounded. One is that Brazilian children are now able to break the law with impunity, when in fact they are held accountable through the existing juvenile "socioeducational" system, which includes the possibility of deprivation of liberty—for serious offenses. Another is the claim that trying and punishing children as adults will deter them from engaging in crime,

when in fact available evidence indicates that this practice is likely to have precisely the opposite effect, increasing recidivism among child offenders. A third is the claim that the amendment would bring Brazil's justice system into line with the way other countries handle juvenile offenders, when in fact most nations have set the age of criminal majority at 18 or older.

We will consider each of these claims in turn. But first it is important to highlight the fact that, until now, Brazil has been at the forefront of the world trend to provide broader legal protections to children. It was the first country in Latin America to incorporate the Convention on the Rights of the Child into its national legislation, via the Statute of the Child and Adolescent in 1990, which made it a model for other countries in the region.<sup>1</sup> With the approval of PEC 171/1993, Brazil would abandon this position of leadership and betray its commitments under international law, while undermining both the rights of its children and, ultimately, the safety of its citizens. We urge you to reject the proposed amendment.

### **Are Brazilian adolescents currently able to commit crimes with impunity?**

Proponents of the amendment argue that it is needed to ensure that older children who break the law are held accountable for their actions. However, juvenile offenders are already being held responsible in Brazil through the country's juvenile "socio-educational" system, in which they can be held in confinement for up to three years.<sup>2</sup> This system seeks to promote accountability for child offenders based on the rules and proceedings established by the Statute of the Child and Adolescent, which are designed to be consistent with the offenders' mental development and conducive to their rehabilitation as law-abiding citizens.

To the extent that there is impunity in cases involving children, it reflects a broader absence of accountability for criminal activity in Brazil today. Levels of impunity for all crimes are high. For example, less than 8 percent of all homicides in the country are solved, according to the most recent official estimates.<sup>3</sup> There is no reason to believe that trying children as adults will change these results.

### **Would trying and punishing children as adults reduce crime in Brazil?**

Proponents of the amendment claim that the threat of being tried and punished as an adult will deter children from breaking the law and thereby help reduce crime rates in Brazil. Yet they have provided no evidence to substantiate this claim. Instead, some have pointed to the United States as a model, where similar arguments have been used for decades to justify trying juveniles as adults. The available evidence on this practice in the United States, however, does not support their position.

In 2007, a task force made up of independent experts and government officials in the United States conducted a systematic review of published scientific evidence concerning the effectiveness of laws and policies that allow juveniles to be prosecuted as adults. The task

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<sup>1</sup> UNICEF, "Comunicado do Diretor Regional do UNICEF para a América Latina e o Caribe, Bernt Aasen," [http://www.unicef.org/lac/media\\_29273.htm](http://www.unicef.org/lac/media_29273.htm) (accessed May 11, 2015).

<sup>2</sup> Statute of the Child and Adolescent, art. 121.

<sup>3</sup> Data cited in Julio Jacobo Waiselfisz, "Mapa da Violência 2014," p. 136, [http://www.mapadaviolencia.org.br/pdf2014/Mapa2014\\_AtualizacaoHomicidios.pdf](http://www.mapadaviolencia.org.br/pdf2014/Mapa2014_AtualizacaoHomicidios.pdf) (accessed June 2, 2015).

force found that this practice “typically increases rather than decreases rates of violence” among the juvenile offenders and concluded that it is “counterproductive as a strategy for preventing or reducing juvenile violence and enhancing public safety.”<sup>4</sup>

Similarly, a 2010 report by the US Department of Justice examined six large-scale studies of the effects of prosecuting minors as adults and found that—according to all six—rates of recidivism were higher among juveniles who were tried in adult courts than among those tried in the juvenile system.<sup>5</sup> In the case of violent crimes, one study found that the recidivism rate was 100 percent greater for those tried in adult courts. The report concluded that processing minors through the regular justice system “does not engender community protection” but instead “substantially increases recidivism.”

The studies identified several factors that can contribute to this higher recidivism rate. One is the negative influences that minors encounter when incarcerated with adults, including the criminal mores and behaviors they may learn from older offenders. In the context of Brazil, this factor could be particularly problematic, especially in prisons that are controlled by violent gangs.<sup>6</sup> As Human Rights Watch recently documented in the state of Maranhão, prisoners may be under intense pressure to join gangs in order to protect themselves, and they are likely to maintain this affiliation even after they are released, if only because they still need the protection from rival gang members who will assume they are still enemies.<sup>7</sup>

Another factor identified in the studies was the reduced opportunities of rehabilitation and family support for youth incarcerated in adult prisons. This too is a factor relevant in Brazil, where only 10 percent of prisoners are enrolled in educational courses in prison (despite the fact that the majority of the prison population has not finished primary school).<sup>8</sup> While the existing socio-educational centers for juveniles can be improved, they do offer many more activities conducive to rehabilitation, including a second chance to finish school for children who dropped out due to poverty, family problems, or other reasons, and the opportunity to learn a trade through vocational courses.

Moreover, these socio-educational centers are required to provide drug-addiction treatment to young people, another key element that gives teenagers a chance to change their lives and reduces the likelihood that they will break the law after release. In contrast, none of the adult prisons visited by Human Rights Watch offered any such treatment and illegal drugs were generally accessible by inmates.

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<sup>4</sup> Robert Hahn et al., Department of Health and Human Services, Centers for Disease Control and Prevention, “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services,” November 30, 2007, <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm> (accessed May 11, 2015).

<sup>5</sup> Richard Redding, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, “Juvenile Transfer Laws: An Effective Deterrent to Delinquency?,” June 2010, <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf> (accessed May 11, 2015).

<sup>6</sup> See “Relatório Final. CPI do Sistema Carcerário”, Centro de Documentação e Informação da Câmara dos Deputados, 2009, [http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/2701/cpi\\_sistema\\_carcerario.pdf?sequence=5](http://bd.camara.gov.br/bd/bitstream/handle/bdcamara/2701/cpi_sistema_carcerario.pdf?sequence=5) (accessed May 20, 2015).

<sup>7</sup> Human Rights Watch’s report on Maranhão’s prisons is available at <http://www.hrw.org/news/2015/04/08/brazil-prison-crisis-spurs-rights-reform>

<sup>8</sup> Data from June 2013, the latest available, from the National Prison Department (Depen) at Brazil’s Ministry of Justice.

## Would the amendment bring Brazil in line with practices in the rest of the world?

Proponents of the amendment argue that the change in Brazil's Constitution would align the country with practices in other countries. Yet, in fact, only a small number of nations allow juveniles to be tried as adults.<sup>9</sup> In South America, only Surinam, Bolivia, Guyana, and Paraguay have those laws. In the United States, many states have recently moved to limit the practice of treating juvenile offenders the same as adults by passing laws expanding the jurisdiction of juvenile courts and increasing due process protections for children.<sup>10</sup>

A more important consideration, however, is the fact that the amendment would violate international norms that have been enshrined in human rights treaties ratified by Brazil. These include the [Convention on the Rights of the Child](#), which states that treatment of child offenders must take into account “the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”<sup>11</sup> The Committee on the Rights of the Child, the UN body that monitors implementation of the convention by its states parties, has stated that “every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice,” and called on states that try people under the age of 18 as adults to change their laws to end this practice.<sup>12</sup>

Similarly, the Human Rights Committee and the Committee against Torture, the UN bodies that monitor the implementation of the [International Covenant on Civil and Political Rights](#) (ICCPR) and of the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), respectively, and the Working Group on Arbitrary Detention, another UN body that investigates cases of arbitrary arrest and detention, have also called on states never to try children as adults and to reform legislation that permits that practice.<sup>13</sup> The Inter-American Court of Human Rights has also said that people under 18 years of age

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<sup>9</sup> Gisela Santos de Alencar Hathaway, “O Brasil no regime internacional dos direitos humanos de crianças, adolescentes e jovens: Comparação de Parâmetros de Justiça Juvenil,” Consultoria Legislativa da Câmara dos Deputados, April 2015. See also Connie de la Vega, Amanda Solter, Soo-Ryun Kwon, and Dana Marie Isaac, *Cruel and Unusual: U.S. Sentencing Practices in a Global Context* (San Francisco: University of San Francisco School of Law, Center for Law and Global Justice, 2014).

<sup>10</sup> National Conference of State Legislatures, “Trends in Juvenile Justice State Legislation 2001-2011,” June 2012 <http://www.ncsl.org/documents/cj/TrendsInJuvenileJustice.pdf> (accessed on May 30, 2015). For updated information see the National Conference of State Legislatures’ website at <http://www.ncsl.org/research/civil-and-criminal-justice/2014-juvenile-justice-state-legislation.aspx>.

<sup>11</sup> CRC, art. 40(1).

<sup>12</sup> CRC General Comment 10, para. 38.

<sup>13</sup> See, for example, Human Rights Committee, *Concluding Observations: Belgium*, U.N. Doc. CCPR/C/BEL/CO/5 (November 15, 2010), para. 23 (“The State party should review its legislation with a view to preventing minors between the ages of 16 and 18 from being tried as adults.”); Committee against Torture, *Concluding Observations: Ethiopia*, U.N. Doc. CAT/C/ETH/CO/1 (January 20, 2011), para. 27 (recommending that the state “classify persons above 15 and under 18 years of age as “young persons” who are subject to the lighter penalties in articles 157-168 of the Criminal Code and may not be kept in custody with adult criminals”); Committee against Torture, *Concluding Observations: Luxembourg*, U.N. Doc. CAT/C/LUX/CO/5 (16 July 2007), para. 10 (calling on state to “do everything possible to ensure that minors are never tried as adults”); Human Rights Council, *Report of the Working Group on Arbitrary Detention: Mission to Malta (19 to 23 January 2009)*, U.N. Doc. A/HRC/13/30/Add.2 (January 18, 2010), para. 31 (expressing concern at “the exclusion of children between 16 and 18 years of age from the juvenile justice system”).

must be subject “only to specific jurisdictional bodies distinct from those for adults,”<sup>14</sup> and the Inter-American Commission on Human Rights concluded that “under international law, only those over 18 years of age can be held criminally responsible as adults.”<sup>15</sup>

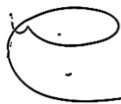
Approval of the amendment would allow for the incarceration of adolescents with adults, another violation of international law. The ICCPR and the Convention on the Rights of the Child require that children under age 18 be separated from adults if they are held in pretrial detention and also once they are convicted of a crime.<sup>16</sup> Segregating children in separate cells or cellblocks within an adult prison is not enough under international law, according to the Committee on the Rights of the Child, which stated that minors “shall not be placed in an adult prison or other facility for adults.”<sup>17</sup> The Committee indicated that placing them in adult prisons “compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate.”<sup>18</sup> They should be kept in special facilities, with child-centered policies and staff, including medical and mental health professionals, trained to work with adolescents.

In sum, children who break the law can and should be held accountable, but in an individualized manner that promotes their rehabilitation and is consistent with international human rights norms. Trying and punishing them as adults is not the answer to the public security problems facing Brazil.

Based on available evidence, this practice will only increase recidivism and undermine efforts to reduce crime throughout the country.

We respectfully urge you, therefore, to reject Draft Law PEC 171/1993. Thank you for your attention to this very important matter.

Sincerely,



Maria Laura Canineu  
Human Rights Watch Brazil Director

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CC:

Dilma Rousseff,  
President of Brazil

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<sup>14</sup> Inter-American Court of Human Rights, *Mendoza Case*, Judgement of May 14, 2013. Ct. H.R. Ser. C, No. 260 (2013), para. 147.

<sup>15</sup> Inter-American Commission Rapporteurship on the Rights of the Child, *Juvenile Justice and Human Rights in the Americas* (2011), para. 39.

<sup>16</sup> ICCPR, art. 10(2) and (3) and CRC, art. 37(c)

<sup>17</sup> CRC General Comment 10, para. 85.

<sup>18</sup> *Ibid.*

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