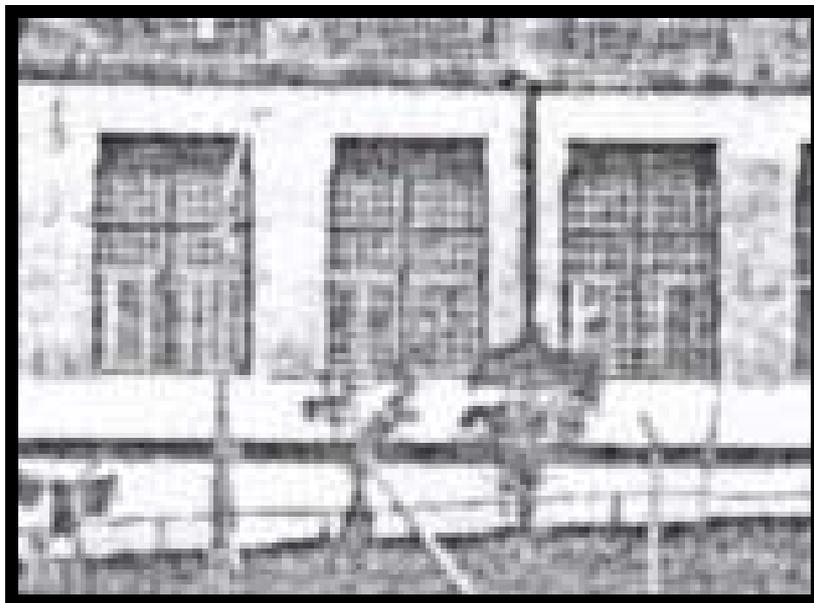




World Organisation Against Torture  
Organisation Mondiale Contre la Torture  
P.O. Box 21 - 8, rue du Vieux-Billard  
CH 1211 Geneva 8, Switzerland  
Tel. +41-22-809.49.39 Fax +41-22-809.49.29

# Children Deprived Of Their Liberty In Uruguay: WITH OR WITHOUT RIGHTS?



**Fact-finding mission report based on visits of detention centres  
and participation in a national seminar, Montevideo, Uruguay, 22-26 September 2003**

**organised by**

Comite de los Derechos del Niño, national coalition for the CRC

**coordinated by**

IELSUR, Plaza Independencia 1376 P.8

Tel. (05982)9085873 – 908 7803 - Fax (05982)902 1699

[ielsur@chasque.apc.org](mailto:ielsur@chasque.apc.org)

CP 11 100 / Montevideo – Uruguay

**with financial support from**

UNICEF

Researched and written by Séverine Jacomy, children's rights programme manager

Directed by: Eric Sottas, OMCT director

For further information please contact: [omct@omct.org](mailto:omct@omct.org)

Geneva, January 2004

We would like to thank all those who made this fact-finding mission possible. The initiative came from the “Working Group on Children Deprived of their Liberty” of the *Comite de los Derechos del Niño*. We would like to thank all its members for their very warm welcome and especially the coordinating team composed of ARCOIRIS, DNI and IELSUR. With a special thank to Luis Pedernera, and his colleagues from IELSUR, member of OMCT SOS-Torture network, thanks to which the collaboration was initiated. We are also grateful to Defence for Children (DNI) International Secretariat in Geneva and particularly to Martha Herrera, for her on-going encouragements and support.

We thank UNICEF for its involvement and financial support in this endeavour, in the framework on its child protection work worldwide.

We are very grateful for the care and time taken by all the personnel of the INAME who received us. We deeply appreciated the special attention given to our work by Mr. Martin Marzano, President of the INAME and Dr. Victoria Bega, vice-director of INTERJ-INAME.

We finally thank the boys and girls who welcomed us in their cells and trustingly shared their views and hopes with us.

# Table of Contents

I.	Introduction-----	4
II.	Background-----	5
III.	International framework-----	6
IV.	The juvenile justice system -----	9
	Grounds of arrest and police custody	
	Minimum age of criminal responsibility	
	The Court system	
	The administration of custodial sentences	
V.	Visits of detention centres -----	14
	Pre-trial detention: Centre “Puertas”	
	“Complejo Berro” main penitentiary colony for juveniles in Uruguay:	
	Centre “Piedras”	
	Centre “Ituzaingo”	
	Centre “SER (Servicio de Evaluacion y Rehabilitacion) Berro”	
	Centre “La Casona”	
	Detention centres in Montevideo:	
	Centre “Desafío” for under 15	
	Centre CIAF for women and girls	
	Semi-open centre Cimarrones	
VI.	Conclusion and Recommendations-----	23
VII.	Annexes-----	27

## I. Introduction

The World Organisation Against Torture (OMCT) was invited to visit centres of detention for minors in Uruguay, in parallel with its participation in a national seminar on «Children Deprived of their Liberty», organised by the Uruguayan NGO coalition on children's rights (*El Comité de los Derechos del Niño*), with support from UNICEF and Save the Children Sweden, on 24-25 September 2003 in Montevideo.

OMCT's mandate covers issues of torture, inhuman and degrading treatment or punishment, illegal detention and extrajudicial executions. OMCT also gives special attention to the articulation of such issues with other forms of violence against children, as well as with the full range of children's right enshrined in the UN Convention on the Rights of the Child.

During the week spent in Montevideo, we sought and received a wealth of information both from governmental and non-governmental sources, on the overall state of juvenile justice in Uruguay, as well as on the "culture of childhood" and the culture of human rights in which it partly originates. This information allowed us to comprehend the context in which the children we visited are deprived of their liberty. It brought to our attention allegations of some cases of police brutality against children and discrimination in the juvenile justice system, which we highlight in the first part of this report but could not inquire further. The present report focuses more in-depth on the conditions of detention, which OMCT was given the opportunity to monitor.

For these children who have fallen through the net of prevention and protection offered by their families, their communities and the State, deprivation of liberty is the end result, if not the dead end, of an entire process. The efficiency of the juvenile justice system, as well as the general health of the society can be measured against that background. To what extent does Uruguay comply with the provision that "*the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.*"(CRC, art. 37) ?

The following pages describe a very mixed panorama, from the very positive respect of the right to regular visits and contacts with relatives and beloved ones, to very worrying trends in the system of sentencing, transfers and disciplinary measures. We welcome the fact that doors of all detention centres for minors were opened to us and that all personnel welcomed the visit and participated actively in the process. We also express deep concerns regarding the poor material infrastructure and sanitary conditions of detention. The visit took place at the end of the winter season, when the temperature was very low and cold wind blowing. Many of the cells visited did not have windows and blankets were lacking. Hot water was available in all centres at the time of the visit, but alternative sources of information alleged that hot water and blankets had been fixed just prior to the visit. Indeed, the visit was announced and planned ahead, and it is clear that impromptu visits are also required and may reveal some variations in the quality of services monitored.

OMCT's conclusions and recommendations can be found at the end of this report and will be further discussed and monitored in collaboration with the Uruguayan authorities. But a word needs to be said about the people concerned by this report. First, the children. Most of them are adolescents, but many still show signs of childhood. All of them were open, polite,

trusting and sensitive. Some of them would need more individual and intensive educational support, but all appeared to have a great potential. We are therefore not speaking here of a generation of de-socialised, aggressive, and ignorant youth. As for professionals involved, we were impressed by their degree of commitment and openness, as well as by their lack of support, recognition and control from the rest of the system. Adults taking care of children in most difficult circumstances should receive the highest level of training, salary, consideration, and evaluation, not the lowest as this is the case for some of them. OMCT urges the government of Uruguay, as well as the media and civil society, to become both more involved and supportive of their work and status in society.

In addition, in a system guaranteeing human rights, norms and their implementation are, of course, key. But adequate, safe, accessible and age-appropriate remedies in cases of violations must also exist to safeguard these norms. Such remedies also act as prevention and deterrent of abuses. This does not appear to be functioning well for detained children in Uruguay. OMCT urges the authorities to address this issue as a priority.

Finally, some months after the visit, on 1st March 2004, a violent rebellion took place in one of the detention centres described in this report<sup>1</sup>. Thanks to NGO partners and media in Uruguay, OMCT was kept informed of developments and conclusions and recommendations of the present report include reference to these important events.

**II. Background**

Uruguay is a small Latin American country of 3.3 million inhabitants, 976 000 of which are under 18 years of age. Since its independence in the end of the 19<sup>th</sup> century, Uruguay has been a small prosperous Latin American State. José Batlle y Ordoñez, the country’s populist president of the first half of the 20th century took advantage of this healthy economic situation to propose and create a welfare state similar to those existing in Europe, supported by the then numerous middle class.

The country's economic prosperity decreased in the 1960s as state-supported enterprises suffered from corruption. The country slid into dictatorship and was thrown into turmoil by the Tupamaros, an urban guerrilla movement which appeared publicly in 1967. In 1971, the military was invited to participate in the government, Congress was dissolved, and



<sup>1</sup> See annex 3

the Tupamaros were wiped out. This was the start of a period of state sponsored violence, including systematic torture, disappearances and arbitrary detention of opponents. The dictatorship lasted from 1972 to 1985 when Julio María Sanguinetti finally won the presidential election. His government implied a return to democratic traditions and fostered a process of national reconciliation beginning with a widespread political amnesty. Human rights groups are still working today on unresolved disappearances and the fight against impunity<sup>2</sup>. Sanguinetti's government did not engage in radical economic reforms. In 1990, free-market reformer Luis Alberto Lacalle took office. However, in 1994, considerable opposition to Lacalle's plans for wage restraint, spending cuts and major state sell-offs paved the way for Sanguinetti to once again take control.

In 2002, Uruguay was reached by the economic crisis that had been raging in Argentina for some months already. The nation became bankrupt. Bank accounts were frozen, leading to repeated riots and the closure of many businesses. Emergency programmes of food distribution and housing had to be put in place. The World Bank approved a \$300 million loan as part of an emergency international initiative to help Uruguay cope with the situation prompted by international market forces themselves.

### **III. International framework**

Uruguay has ratified all major international human rights instruments. The Parliament has voted ratification of all these treaties. However, there appears to be a strong tension between legislative, executive as well as judicial powers as to whose prime responsibility it is to guarantee their implementation. This fosters stagnation and lack of positive action in the field of human rights. Another issue is that the legal system does not provide for the direct applicability of international instruments to which Uruguay is a party. Therefore international obligations still may be at risk of not being implemented if not integrated within the domestic law. Moreover, under the domestic legal system, treaties have the same status as ordinary law. As a result international obligations could possibly be superseded by subsequent domestic laws.

Despite the recent financial crisis (2001-2002) which has fostered abuses of economic and social rights as well as political and civil ones to a certain extent, people see violations of human rights as pertaining to the era of the dictatorship (1973-1985) and do not appear to perceive the relevance of international norms to their present situation. Hence, human rights NGOs still struggle with the issue of impunity in cases of torture and the need to educate the population, as well as police and military personnel about human rights.

Today, existing human rights complaints mechanisms are rarely used and general implementation of international norms is weak. This explains the lack of interest and follow-up on recurrent proposals by the executive to create a human rights ombudsman (*Defensor del Pueblo*). There is also a particular lack of attention to discrimination. It is only when socio-economic data were disaggregated that the country discovered a clear discrimination of Afro descendents, who compose 6% of the population. There is therefore a strong need for human rights education and international cooperation in this area, with particular emphasis on sensitisation of the Parliament itself.

---

<sup>2</sup> See *Uruguay – Nunca Mas*, SERPAJ, 1989, and also SERPAJ annual reports on human rights in Uruguay and “La Tortura: Situación actual en Uruguay”.

Some human rights NGOs in Uruguay argue that there exist isolated cases of torture in Uruguay today, that cannot be judicially addressed as such because of the legal vacuum. There are complaints of police brutality and ill-treatments, but no exact statistics are available and several cases may not be reported in fear of reprisals. Due to a recent campaign “against crime”, police brutality has had a tendency to increase. Reports of abuses are therefore also on the rise. For instance, SERPAJ argues that:

- There remains in Uruguay a general legislative vacuum that hampers the full implementation of the dispositions of the Pact of San Jose de Costa Rica.
- The law of Uruguay lacks a disposition that strictly defines torture in compliance with article 1.1 of the Pact of San Jose de Costa Rica
- The law of Uruguay contains dispositions on hierarchic obedience which are incompatible with article 2.3 of the Pact of San Jose de Costa Rica

Uruguay’s first report the Committee against Torture in 1996 was poorly followed-up and has not lead to any major changes so far. These recommendations were the following :

*92. The Committee welcomes the series of legal and administrative measures described in the report, which attest to the State party's determination to fulfil the obligations it assumed on promptly ratifying the Convention. It regrets, however, the considerable delay in implementing them.*

*93. The Committee reminds the State party that it must introduce the legal reforms needed to bring its internal legislation into conformity with the provisions of the Convention, in particular as regards the definition of torture as a specific offence and the elimination of obedience to a superior as justification for exculpation from the crime of torture.*

*94. It also urges the State party to improve the measures taken to prevent the torture of persons deprived of their liberty and to strengthen protection in prisons.*<sup>3</sup>

The Parliament is currently in favour of ratifying the Optional Protocol to the Convention Against Torture but, as a prerequisite, the executive power argues for the creation of a national mechanism which would act as a national monitoring body in cooperation with its international counterpart. A project of “prison ombudsman” (*defensor carcelario*) is waiting to be approved by the parliament. Even if this mechanism should preferably be supplemented by other national monitoring bodies<sup>4</sup>, it would be a crucial step and would better qualify Uruguay for adequate ratification and implementation. The mandate could include visits of detention centre for minors, but this is not specified in the present project.

Uruguay ratified the CRC on 20th November 1990 and presented its initial report to the UN Committee on the Rights of the Child (*hereafter* the Committee) in 1996. At the session, the Committee acknowledged that the low growth rate of Uruguay's population was detrimental to children in general, since older age groups had more weight in budgetary debates and children had no particular lobbying power. The delegation stressed as a remedy the

---

<sup>3</sup> Concluding observations of the Committee against Torture : Uruguay. 19/11/96. A/52/44,paras.81-94. (Concluding Observations/Comments)

<sup>3</sup> Article 3 of the Optional Protocol to the UN Convention Against Torture: “Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).”

importance of cooperation with UNICEF, since the return to democracy, especially in the field of education and pre-school care.

A problem of particular concern to all members of the Committee was the difference between Montevideo and the rest of the country in terms of access to services. The committee noted the gap between the fairly good indicators displayed by the country and the reality in the field. Problems of child prostitution and trafficking and the increase of child labour were gradually recognised and addressed in the country. The Committee argued that as Uruguay had a low child population, problems relating to children should not be insoluble. The delegation conceded the Committee's point, but pointed out at the time the country's scarcity of resources, and the financial crisis it was experiencing.

Today the country's economic situation has largely worsened and the State has had to make particular efforts to support its child population throughout the crisis. While the increase in the number of children coming in conflict with the law in such a difficult socioeconomic environment is clearly seen as an extra burden on the State, child protection must remain at the heart of the juvenile justice policy. Without denying the difficulties engendered by the economic crisis of 2002-2003, it must be noted that concerns were raised by the Committee back in 1996, when the Committee identified juvenile justice as a key area of reform in its concluding observations:

*C. Principal subjects of concern 14. The Committee expresses its concern at the prevalence in the country of the doctrine of "children in an irregular situation" which paves the way for the stigmatization and frequent institutionalization and deprivation of liberty of children on the basis of their economic and socially disadvantaged situation. The Committee regrets that the implementation of the provisions and principles of the Convention relating to the administration of juvenile justice has been given insufficient attention, both in legislation and in practice. In this regard, the Committee is concerned at the insufficient measures adopted to ensure, *inter alia*, that deprivation of liberty is only used as a measure of last resort, that children deprived of liberty are treated with humanity and in a manner which takes into account the needs of persons of their age, as well as that the rights to maintain contact with their families and to due process of law are ensured in conformity with article 40 of the Convention. Moreover, the Committee is concerned at the high number of institutionalized children and that insufficient measures have been taken to ensure effective alternatives to institutional care, and to promote their social reintegration.*

*D. Suggestions and recommendations 24. The Committee recommends that a system of administration of juvenile justice be established in the framework of the principles and provisions of the Convention, in particular its articles 37, 39 and 40, as well as other United Nations standards in this field, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty. In this connection, the Committee recommends that the State party consider seeking international assistance in this area from the High Commissioner/Centre for Human Rights and the Crime Prevention and Criminal Justice Division of the United Nations.*<sup>5</sup>

---

<sup>5</sup> Concluding observations of the Committee on the Rights of the Child : Uruguay. 30/10/96. CRC/C/15/Add.62. (Concluding Observations/Comments)

The Children's Code (Codigo del niño) of 1934 which remains today the main legal instrument on children's rights in Uruguay appears to be in direct contradiction with the CRC on certain issues, including juvenile justice. The government informally decided that the second periodic report due in 2001, should only be presented to the UN Committee once this Code would have been reformed. The Parliament thus embarked on a consultation process which has produced national debates and several drafts. Child rights NGOs and UNICEF argue that the present draft is not in compliance with the CRC. In the field of juvenile justice, several issues appear to be unsatisfactorily addressed in the current draft, notably in relation with the establishment of status offences and the treatment given to children deprived of parental care, principles of proportionality of sentences, the right to self-defence, respect to due process, and the principle of exception of deprivation of liberty<sup>6</sup>. Whether the current draft is adopted or not, the government is now planning to start preparing its report to the Committee in 2004 so that it is not further delayed. The government announced that the national NGO coalition will be consulted in this process.

#### **IV. Administration of juvenile justice**

##### *Grounds of arrest and police custody*

Children can be arrested by the police for penal offences. On the basis of the 1995 Law on Civil Security (Ley de Seguridad Ciudadana), they can also be arrested for status offences such as vagrancy.

Penal offences committed by minors are mainly crimes against property: theft and aggravated theft (in group, in presence of the victim, etc.). Violent theft and bodily harm constitute the main part of registered grave crimes committed by minors. The rest is composed of rare cases of grave crime (sexual offences, homicide, etc.).

During police custody of a maximum of 24 hours, the judge is informed of the case and orders transfer to an admission Centre with or without security measure, according to the status of the child and the offence committed.

Cases of ill-treatment of children in police stations have been reported by national NGOs in the past. Yet, the purpose of the mission did not encompass inquiry into this issue, which requires further international monitoring, reporting and possibly technical assistance.

##### *Minimum age of criminal responsibility*

In Uruguay, the age of criminal responsibility is set at 18. Juvenile offenders are thus not entitled to penal sanctions but a specialised juvenile justice system is in charge of devising "educational measures". According to the 1934 Code, the judge must address juveniles as a "good family father". He/She makes a judgement both on the basis of the seriousness of the offence and of the child's background. Penal offences are punishable of custodial measures with or without "security measures" (see distinction below). Status offences are punishable of custodial measures without security measures.

---

<sup>6</sup> See for instance *Comentarios de la UNICEF al proyecto de Código de la Niñez y la Adolescencia de la República Oriental del Uruguay Aprobado por la Cámara de Representantes el 18 de diciembre de 2001, a estudio de la Comisión de Constitución y Legislación de la Cámara de Senadores de Junio 2003*, and *Posición de la UNICEF respecto al proyecto de Código de la Niñez y la Adolescencia a estudio de la Cámara de Senadores de la República Oriental del Uruguay de 18 de diciembre 2003*.

These measures are implemented by the judicial power itself in some cases (such as suspended sanctions). But in most cases, they are implemented by the National Institute for Minors (Instituto Nacional de Menores, INAME) through its specialised agency the INTERJ (Instituto Nacional Tecnico de Rehabilitacion Juvenil).

Custodial sentences with security measures are currently applied from the age of 11. But most are given to adolescents between 15 and 18 years.

*The Court system*

The juvenile Court system is composed of 3 specialised judges, 4 specialised public lawyers and 4 attorneys based in Montevideo. In the rest of the country, there are no specialised bodies. Ordinary judges may judge cases involving minors in the province, and/or transfer them to Montevideo. This situation is therefore only partly in compliance with article 40 (3) of the CRC, which invites States Parties “to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law”.

***Children met in detention did not understand this system and were confused about who their lawyer was.***

Specialised public lawyers cover 98% of the cases addressed to juvenile judges, as most children come from a poor social background and can rarely afford a private lawyer. Each of them follows 60 to 80 cases of children deprived of their liberty at a time. They say that they visit each of them about 6 times a year, that is, about once every two months.

After an initial period of pre-trial detention of up to 30 days, or 45 days in some cases, children come before their judge for a preliminary hearing, in the presence of the attorney and the public lawyer. Although the judge and the attorney will remain in charge of the case in the following stages, the defence lawyers appear at hearing on rotation but follow cases according to their alphabetical order. Hence, in many cases, a child will see one lawyer at the hearing, but will be followed by a different one that he/she will meet at a later stage. Children met in detention did not understand this system and were confused about who their lawyer was.

At the preliminary hearing, the judge must decide whether or not to give a custodial sentence to the child, and if so, in a centre with or without security measure. If a custodial sentence is given, the judge will not decide upon its duration. The judge will receive reports or requests from the INTERJ centre where the child is detained and/or from the child’s lawyer in the following months, which will inform future decisions concerning the status and detention of the child. Hence, a child who is imprisoned further to a judicial decision does not know for how long he/she will be deprived of liberty. A final sentence is only given in about 50% of the cases after several months of detention. In other cases, the final judgement is only registered at the end of the detention period, only to confirm the duration of detention that was actually carried out. The average duration of imprisonment is about 1 year for average offences, depending on the conduct of the child in detention, the people in charge of his/her case, and his/her luck with requests and appeals.

Public lawyers and INTERJ staff argue that there are often delays in obtaining responses to appeals and requests (for change of status, authorisation for semi-liberty, etc.) and extra hearings.

***A child without parents present at the hearing sees his/her risk of being condemned to imprisonment double***

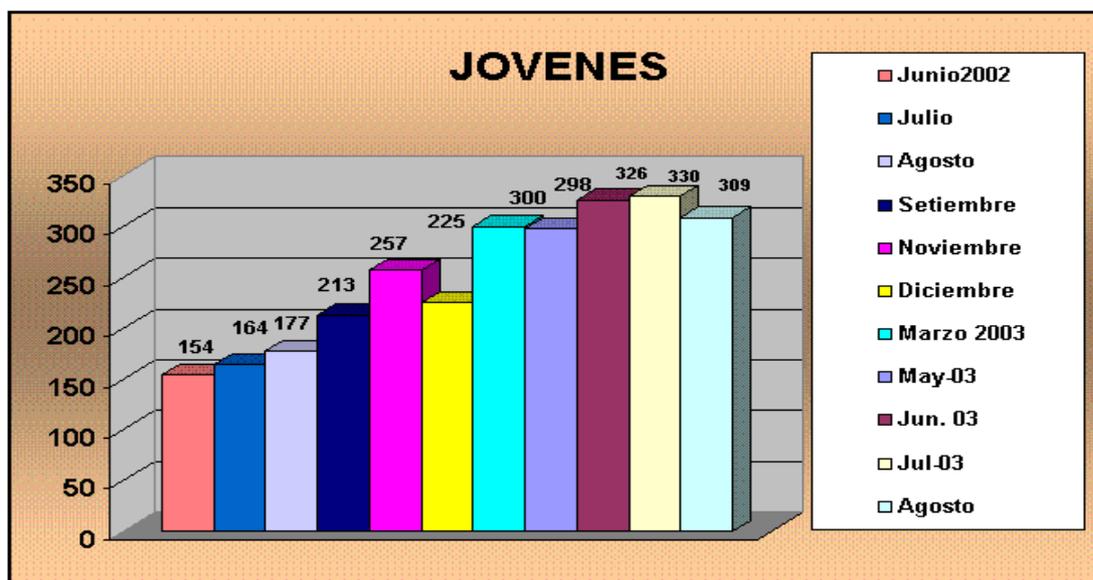
Judges and attorneys argue that they solve many cases with alternative non-custodial measures but that possibilities are limited. They should take into account principles of proportionality, progressiveness, age-appropriateness and anteriority. However, they clearly admit that one strong factor in their opting for imprisonment is the absence of strong parental commitment, illustrated by the absence of parents at the preliminary hearing. Attorney Dr. Bertolaza argues that a child without parents present at the hearing sees his/her risk of being condemned to imprisonment double.

Juvenile justice professionals also highlight the lack of options for children from the province. Even in cases of serious offences, they recognise that these children have a different profile from that of child offenders from Montevideo. If the judge opts for imprisonment, the child will be far from his/her family and be confronted to a new milieu that will not help his/her rehabilitation. Some concerns are also expressed for child offenders with mental disabilities for whom there are no special structures either.

*The administration of custodial sentences*

The INTERJ is the agency of the INAME<sup>7</sup> specialised in the care of children in conflict with the law sentenced by the judicial power to custodial or semi-custodial measures. In August 2003, the INTERJ attended 676 adolescents under its three mandates:

- 238 adolescents on probation
- 129 adolescents in custody without security measures
- 309 adolescents in custody with security measures



Evolution of custody with security measures of adolescents June 2002 and August 2003 (source: INAME)

<sup>7</sup> The INAME is the national organ in charge of all child protection issues and services in the country. Its headquarters and the majority of its services are in Montevideo, while 18 departmental sections cover the rest of the country. In 2003, its general child welfare mandate covers about 43 000 children throughout the country, from post natal care services to juvenile detention centres. INAME employs 3600 staff and subcontracts some 490 NGOs providing services to 34 000 of the children. The budget for subcontracted work carried out by NGOs has reached 1 200 000 US dollars per month. See also annex 2.

Re-education, re-socialisation and progressiveness are supposedly the foundations of these measures. They are implemented by the following institutions:

- 3 admission centres where children are diagnosed and dispatched to other centres;
- 9 centres for custody with or without security measures;
- The Berro Complex;
- Post-detention services
- External social, health, catering, education and security services.

It must be said that, although the notion of “with or without security measures” is central to the discourse on detention of adolescents in Uruguay, this refers to deprivation of liberty in both cases, but with varying degrees of discipline, activity, and trust. One extreme is full-time detention in very hard conditions, the other extreme is institutionalisation with some activities outside and some elements of autonomy. Yet, depending on the pedagogical or disciplinary approach of each unit, some centres “without” security measures actually appeared to us less rehabilitative than some “with”, and vice versa.

### *Detention*

While some NGOs are subcontracted by the INAME to implement alternatives to custody or to provide educational services (workshops) in custody, the INTERJ, is responsible for the overall management of the system of custodial measures. With the crisis, the number children sentenced to custodial measures has largely increased. The number of children attended by the INTERJ has doubled since January 2002.

***The number of children attended by the INTERJ has doubled since January 2002.***

All the different centres are presented as stages in a process of progress and reintegration, but can similarly be inverted and become a stairway to the purgatory.

In Montevideo, one centre is specialised in girls (CIAF). One part of the centre hosts them without security measures, and the other part, with security measures.

Two centres receive children under 15 years of age: the Desafio Centre (with security measures) and the Centre Oportunidades (without security measures).

For others (male from 15 to 18), the first stage is a reception / pre-trial detention centre called Puertas. From Puertas and once they have been at the preliminary hearing with the judge confirming their custody, children are distributed to other centres on the basis of their conduct, capacities and spaces available. The centre Cimarrones can host 12 boys in Montevideo and offer educational programmes in an open environment to gradually re-integrate them into society. The Berro complex (Complejo Berro), located at a 45 mn drive from Montevideo hosts a set of other centres including Centre Piedras, Ituzaingo, SER (Service of Evaluation and Rehabilitation – High security) and La Casona.

### *Disciplinary sanctions*

While the judge gives the initial sentence and authorisations for temporary and final release, the INTERJ-INAME has the discretionary power to transfer children from one centre to another and to apply disciplinary sanctions in custody with information to the judge. The

initial sentence given by the judge is based both on the seriousness of the offence and on the background of the child, but all further transfer or disciplinary measures made by the INTERJ-INAME and authorisations for release made by the judge are based on the child's conduct in custody.

While it proposes some education activities, this system is disciplinary rather than educational. It offers flexibility and real rehabilitation opportunities for some, including authors of serious crimes in cases of good conduct. But it can lead to very serious disciplinary sanctions for authors of minors offences. And, as explained earlier and stated by the authorities themselves, “no one knows when the custodial measure ends, not even the judge”.

***“No one knows when the custodial measure ends, not even the judge”.***

### *Staff*

The INTERJ-INAME employs some administrative staff, some qualified educational staff and some technical staff, pejoratively called “jailers” (“Ilaveros”). There appears to be strong imbalance in the status, dedication and activities of these professional groups. While there is a dialogue between the administration and the educational staff, in certain centres the latter seem to be lacking support. Yet, the fact that some key administrative staff come themselves from the field (INAME or NGO ), helps to reduce this gap. The educational staff has received a high education and some have attended the INAME training centre, which has a very good reputation. On the contrary, the technical staff has a low educational level, and possibly previous work experience in law enforcement services. There is therefore a tension between objectives and capacities to orientate the work with children in conflict with the law towards an education/ rehabilitative process or towards traditional repressive practices. The consequences of this tension can be felt in each and every staff member.

### *Cases of ill-treatments of children in detention*

Between 1996 and 2001, a number of cases have been reported to and investigated by the administration of the INTERJ-INAME. These cases were mostly instances of boys having been beaten or having suffered inhuman and degrading treatments at the hands of staff members of the Berro complex. As noted in complaints reiterated and finally brought before the penal court by NGO representatives, a core of alleged perpetrators and supervisors keeps on re-appearing in various complaints, as well as practices reported by several children in separate instances: “During the nightshift, as you knock the door cell to be taken to the toilets, you are taken out from the cell, taken to the lavatories, stripped from your clothes, beaten up, given a cold shower and taken back to your cell, where you are left without bed sheets nor mattress until the morning shift.”

In some instances, the INTERJ-INAME temporarily suspended or transferred alleged perpetrators from one centre to the other within the Berro complex. However, no further measures were taken and the incriminated staff members continued to work and remained a potential threat to the children.

The judicial procedures engaged by some individual representatives of child rights NGOs having received the testimonials from children during their visits to the detention centre also appear to be flawed. Their first complaint was brought to the juvenile court in 2001 and to the penal court in 2002. However, in July 2003, the INAME had only recently answered the

administrative investigation by describing sanitary conditions in the various institutions under its responsibility, but did not make any reference to the allegations of ill-treatment. And the secretariat of the penal court argued that it did not possess any files on the complaints. Hence, the complaints made both at administrative and at penal level seem to be in a dead end.

## **V. Visits of detention centres**

### **Pre-trial detention**

The Centre Puertas is the central institution for pre-trial detention of all boys over 15, while under 15 boys and all girls are held in pre-trial detention together with sentenced inmates (see below). In Puertas, children receive health checks and evaluation (or “diagnostic”) on the basis of which distribution to other centres will be decided. Children are kept in Puertas up to 30 days, which is the legal time limit for the first court hearing. In exceptional cases, this time limit can be extended to 45 days. This means that, in practice, all children having received a preliminary order of custody by the judge upon police communication will all spend between 2 to 6 weeks in full-time pre-trial detention, whatever the seriousness of their crime, the risks of collusion or the dangerousness of the offender.

Puertas is a very clean and controlled environment. There, much care is dedicated to adequate health check up and assistance including dental and drug addiction care, background psychosocial evaluations, preparation of files for the court hearing. Administrative offices and medical cabinets are at the heart of the premises.

However, there are no common rooms and no common activities for children. The rest of the whole centre is composed of cells and small patios. Children spend all their time in their cell, with no activity, except for 45mn of patio 3 times/day. There are two sets of 5 cells made to host 2 inmates, and currently hosting sometimes 3. At the time of the visit, 22 boys were held in detention in the centre. The centre also has a special annex where it holds a few adolescents in long-term detention on the basis of individual programmes which could not be undertaken in mainstream detention places. These are cases of grave sexual crimes and homicides.

During the visit, the boys are glad to have some recreation. They all speak very freely. Unlike in further detention centres, they look healthy and are still alert. But they are all extremely bored and do not appear to gain any benefit from their time in Puertas, other than medical care. Several of them have already gone through the whole process and are trying to behave in order not to be oriented to the worse detention centres after the Court hearing (see below). One boy explains how he has had a cocaine addiction since the age of 12 and is determined now to progress. For him, Puertas might be a good start in terms of weaning until his hearing with the judge, but he fears that the next stage of his detention might not be as helpful.

Hence, the administration of the centre prepares the key documents that will be used during the Court hearing and actually suggests where each child should be sent to, on the basis of his background, behaviour, physical state, etc. In practice, this means that all children in pre-trial detention are not presumed innocent and that their place and, therefore, conditions of further detention is actually decided by the penitentiary administration, with formal confirmation by the judge at the hearing. Similarly, the various transfers from one detention place to the other will all be decided by the penitentiary staff daily dealing with the children, with a mere authorisation and formal responsibility of the judge. When it comes to authorisations of

temporary or final release, the penitentiary staff depend on the decision of the judge, but that latter is also made on the basis of requests sent by the penitentiary. In other words, once children are in detention in Uruguay, their fate mainly lies in the hands of the penitentiary.

### **The Berro Complex**

The Berro complex is located at a 45 mn drive from Montevideo, accessible in the last kilometres by a rocky country-side road. Its different buildings are disseminated in a 290 hectares park with forest and rivers. Former property of an aristocratic family, it is an historical location for the detention of minors, which started there at the beginning of the 20<sup>th</sup> century under the authority of the Council for Minors (*Consejo de Menores*) until the INAME was created in 1988 and took over this responsibility. All the different centres are hosted separately in ancient and poorly restored building.

On September 23<sup>rd</sup> 2003, a delegation composed of 2 representatives of OMCT and 4 of the NGO *Comite de los Derechos del Niño* was welcomed and accompanied during the whole visit by the President of the INAME, the Director of the INAME, the Vice-Director of the INTERJ, and 2 other members of the Direction of the INTERJ.

#### Centro Piedras:

The centre intended for 32 children hosts 42 children, and has hosted in the recent past as many as 48.

Children are held in cells of 1 to 3 detainees. The cells are about 5-6 m<sup>2</sup>, most of them are on the first floor and secured by a series of 5 grid doors (1 at the entrance of the perimeter of the centre, 1 at the porch, 1 at the entrance of the building, 1 at the entrance of the common space on the first floor, 1 at the entrance of the 2 corridors leading to the cells). A few others cells are on the ground floor. Children spend the night in their cells. During the day, the cells are open onto a corridor and a common space. This space is composed of a small hall with one table, where 5 children are playing cards when we visit the centre, a meeting room, and a TV room where they take turns in 4 groups in the evening, a computer room and the “bathroom”. The bathroom is composed of 4 very basic showers and toilets facing each other, without door or curtain. Walls are of grey and damp concrete. There are no decoration in the building and in the cells. A member of the direction explains that it is forbidden to post anything on the walls as it is feared that the boys may hide hole carvings that would allow communication between cells or escape.

In the morning the boys tidy up their cell and go to the bathroom. They may then have a computer class or go to some workshop. But most of them appear to just spend their time between the hall and their cell, as well as under the porch at the entrance of the building, behind the building’s main grid. Some time is allocated to a walk, or football game, in the outdoor “patio” secured by a grid ceiling, or for body building in another outdoor space if it rains. No adequate sports equipment is available. The priority request formulated by the boys during the visit is to receive a proper ball to play football.

Some vocational or recreational activities are proposed but equipment, duration of activities and spaces available are disproportionate to the overall number of boys.

For instance, computer classes are given by the NGO NEXO for 3 groups of 3 boys 3 times a week from 1.30 to 4.30 p.m., that is, once a week for 9 boys (out of 42). Since it started, this service has benefited about 100 inmates. It used to be a general initiation for most of them, but has been changed into a more serious training for a smaller group selected on the basis of capacity, basic education and motivation. They are introduced to Word, Excel and Works software. They type up texts, insert images and are trained to develop simple budgets and accounts. It is intended to issue them a certificate at the end of their 6-7 months training. Those benefiting from these classes offer services to the others (typing their letters, etc.) and use this opportunity to prepare presents they give to their beloved ones when they receive visits. One boy shares a personal text he has just been taping up (see box).

Downstairs, one 17 year old boy who looks physically quite mature is in semi-detention. After having spent 4 months upstairs (“in security”) he is now entitled to 4 months of semi-detention, which means that he spends week-ends at home and the week in custody on the ground floor. His morale is not very high. Although he enjoys semi-detention, he does not know when his custody will end. He knows it depends on his conduct but has no certainty as to whether it will be after the 4 month period or later.

***“If one doesn’t believe in oneself, one cannot believe in miracles. I wonder what the colour of sadness is. What is the colours of dreams and what is the colour of love ? (..) Now that I am in between four walls and thinking about everything they used to tell me, I’m turning sad and bitter. That’s why I will find happiness to be with my family, which is the biggest thing there is in life. That’s why I want to be like a dove, and fly to triumph, and be with my family, which is the biggest thing... mum and dad.”***

Text by a 17 year old inmate  
of the Piedras detention centre.

At the time of the visit, 3 boys are “sanctioned” for having played a fight. They are confined together in their cell on the first floor for three days. We are introduced to them. They spontaneously inform us that the food is good and that the sanction is nearly over, that they have understood that they should not play that way, and that all is OK. They appear to be tense and not very mature (aged 17, 17 and 16). The youngest one is very eager to speak, notably about TV, saying that they only watch children’s programmes – which he seems to enjoy. These boys have clearly been briefed and impressed before the visit. In case of more serious disciplinary problems, children from Piedras are transferred to SER (see below).

### Ituzaingo

This centre is planned to host 18 adolescents. It currently hosts 30, and has in the past hosted up to 36. The staff is composed of 20 members, which means that there are 3 to 4 adults present permanently, that is, a ratio of 1 adult per 10 children, plus the director during the day.

The composition of the building is identical to that of Piedras. On the ground floor, teaching rooms have been turned into cells, because of overcrowding and because classes were no longer given anyway. Contrarily to Piedras, rooms are decorated and inmates proudly display their personal items.

During their “week of admission”, new inmates are not immediately allocated their cell so that the staff can evaluate their profile and behaviour in order to then move them to a cell where they have most chances of being well integrated.

The centre has its own pedagogical project, that has been gradually developed by its director and her technical team. They have moved the focus of the centre’s daily life and activities from an inward/custody focus to an outward/rehabilitation orientation, despite the fact that the centre is “with security measures”. Inside the main building, cells and common rooms remain open. Outside the building, grids are open during the day and the grid placed over the patio has been recycled for the chicken coop. In the past 30 months, there have only been 3 cases of escape, which actually took place during transfers to the polyclinic. Days out (to the cinema, theatre, or the beach) are organised for some inmates when possible. One inmate is proud to tell us that he has seen a play by Molière. But mostly, the centre has developed a series of “pedagogical activities” that have transformed the daily routine and the “philosophy” of the place. These are divided into 3 main activities:

- Wood work: Inmates are in charge of constructions, mainly of outdoor furniture and children’s games. This has allowed to furnish the area surrounding the building where inmates receive visits during the week-ends. It enables them to receive their families in an environment that is pleasant and of which they can be proud. In particular, 1/3 of the boys detained there have children themselves. They can now invite their children or young siblings to play in this little park, instead of meeting them indoors in a custodial setting. This construction workshop also allows to build necessary equipment for the other activities
- Vegetable garden: Opposite to the closed area of the building is a vegetable garden that the inmates have set up. It is very well cared for and produces vegetables and herbs which allow to improve the everyday food intake.
- Chicken coop: The centre has developed various activities around the care of farm animals, notably bunnies. But the chicken coop has proved to be the most manageable and useful option. Inmates take care of the animals and eggs are collected daily, which also improve their food intake.

The director tells us how she gradually introduced these changes. When she took her post, the number of staff was twice as important as today, but many of them had no interest in pedagogical or rehabilitation processes, or were even dangerous for the boys. She decided to dismiss those. Although the administration did not directly oppose these changes, these staff members were not replaced. Similarly, the director had some leeway in introducing new activities but she and her staff have to buy and bring the necessary material themselves.

The centre hosts inmates that have committed all sorts of offences from minor theft to most serious crimes. Their admission to the centre is not decided on the basis of their offence, but rather on their capacity and interest to respect and participate in the centre’s pedagogical activities and philosophy. Participation of at least 1 or 2 hours per day in the activities is compulsory.

When problems of discipline arise, the director favours discussions and mediation. In cases where this proves insufficient, inmates are sent to SER Berro, like in the other centres.

As in other centres of the Berro complex, the poor quality of the bathrooms, the absence of privacy and the lack of systematic formal education are in contradiction with international standards.

## SER Berro

The SER hosts inmates who are considered dangerous, those having committed sexual offences, and those sent from other centres for a limited period of time (usually one month) as a disciplinary measure.

The centre is surrounded by several series of grids and high security devices.

At the time of the visit, the centre hosts 92 boys. A few of them are in the patio, playing football. But it is admitted that the daily routine in SER consists of 23 hour/day in the cell and 1/2 hour of patio twice a day only. As soon as they are solicited, the boys engage in lively discussions with us. They show off as tough young men, but several of them also express sorrow and softness. The relationship with the staff is clearly tense and infused with strict discipline.

The OMCT delegates visit two cells in private. One cell hosts 4 boys in about 4 square meters. The cell is damp with water permanently dripping from a tap, cold air coming through a barred aperture. Bare electric wires are dangling from the ceiling down to the middle of the cell. Inmates use them for heating up water, without any precaution against electrocution. Two of the children are lying on the floor, while the two others are sleeping together on a single mattress. They appear to have skin diseases, severe loss of hair, and are unnaturally sleepy. The only boy awake explains that he and his friend have been given a disciplinary measure of one month isolation in this cell - already occupied by two other boys – for having sniffed glue in Ituzaingo. He has a good morale. He explains that he has a family back home that cares for him despite its economic difficulties. He has been in detention several times for theft and lost a finger in a vocational workshop. But he appreciated activities in Ituzaingo and accepts the disciplinary measure. He specifies that he does not take anti-depressors as others do.

A boy calls for attention from another cell. He is alone in the bare cell. He is 16 years old, still looks fresh and healthy unlike others. He has been transferred from the admission centre Puertas 20 days ago. He does not understand the rule of this new place. He is very depressed and fearful. He has clearly had problems with other inmates but does not want to say more. The director explains that he has been left alone in the cell “for his protection”, but when asked about details he argues that the direction of SER does not interfere in “problems among inmates”. When asked who his lawyer is, the director gives a man’s name, but the boy says he has only seen a woman so far. He is desperate for some individual support. His only family is his grandmother and he feels he cannot rely on her to bring his complaints somewhere or protect him while he is here.

***The direction of SER does not interfere in “problems among inmates”.***

Finally, a classroom is opened for the visit. Some boys are said to benefit from teaching, but the classroom is small and the date appearing on the black board indicates that it has not been used in the past few days.

As referred to in the introduction and conclusions of this report, a violent rebellion took place in SER Berro a few months after the visit.

## La Casona

La Casona is the most open centre in the Berro complex. It hosts 24 boys for a duration of 6-8 months up to a year. Boys who stay there have usually gone through several other centres, and tested the various disciplinary measures. Here, they live in rooms of 4-5 inmates, not in cells anymore. They participate in vocational workshops during the day. But there is an atmosphere of boredom. Boys say they are now basically waiting for the end of their sentence, trying not to jeopardize their chances of leaving soon (which depend on the staff's will to send a request to the judge and on the judge's will to answer favourably in a short time).

## The Berro polyclinic

The polyclinic hosts the different medical services of the whole complex. When children are ill, they are taken for consultation and treatment from the centre where they are held in detention. But they do not stay there, as the polyclinic is not secured for residency. One positive element of the service is the ontological equipment and personnel. As can also be witnessed in another centre in Montevideo, there has been some investment in the past in some good equipment for dental surgery. Some of the boys who arrive with very poor teeth can therefore receive full treatment. As for general and mental health, doctors tour the different detention centres for regular check ups. They report difficulties with skin and other contagious diseases which they find hard to curb.

## El Rincon

At the end of the visit, the administration shows us a new building in renovation which will host another 20-30 inmates in the near future. The intention is that the cells be bigger and security and comfort more adequate than in present centres. The direction expresses the dilemma of wishing there would be less children detained, while more space has to be provided for newcomers sent by the judiciary.

## **Detention centres in Montevideo**

### Desafio

The centre hosts 28 children who are between 12 and 15 years old, sentenced to custody with security measures. When children turn 15 years old, their transfer to other centres is not automatic but depends on the child's maturity and behaviour.

The team appears to be motivated. The director has been in post for 7 years, and is surrounded by a team of female professionals composed of 2 social workers and 1 psychologist. There is also a strong medical team (2 psychiatrists, 1 doctor, 2 nurses) covering the centre, as well as 2 teachers, 2 workshop educators, 1 sports educator. They work daily in the centre and also follow-up those who have been released. The whole team, including the technical staff, meet every Tuesday to discuss organisation and current issues.

The team points out their frustrations with the judicial power. Permissions or decisions from the judge on the basis of their reports and requests are often slow or inadequate. In some cases, they take the personal responsibility of taking children out, when the authorisation has not come in time, such as in the case of a child whose mother was dying. They also describe

the paradox of the judicial powers which tends to be more severe “for educational purpose” with younger children and therefore order detention more easily and for longer periods. Moreover, they highlight the fact that there are hardly any programmes of probation for children under 15 years of age. At the same time, they themselves are very preoccupied with security, and see the prevention of escapes as a central concern.

The centre is a former convent. It is in poor material state. The rooms are very clean at the time of the visits, and they have no doors. Yet, the bathroom, showers and toilets, without doors, smell and are in a very poor state. The centre is organised in 3 modules: one for recent admissions, one for permanent stay, one for long term stay. The centre is equipped with classes, a woodwork workshop, a small vegetable garden. One bunny and 2 dogs live there.

Children can receive visits once a week. The staff hopes to develop a project for more visits but they fear the lack of mobilisation on the part of parents.

The disciplinary sanctions in case of bad conduct in this centre are said to be limited to minor restrictions (no TV, no cigarettes, etc.) and are accompanied by intense discussions and responsabilisation of the children.

Information exchange with children in this centre is limited. Once again, the focus of many discussions is the duration of the sentence. Several of them take the opportunity of the delegation’s visit to ask about their case, to find out about some potential decision of the judge.

The presence in the centre of young interns, studying social work, is an opening to the outside world and a precious element of independent monitoring of the situation there.

### Opportunities

This is the centre for children under 15 sentenced to a custody measure “without security measures”. These children used to be sent to the “Garibaldi” centre where they were hosted together with children institutionalised under administrative protection mandates. But as those placed for delinquency tended to escape, this new centre has been created specifically for them in early 2003. It currently hosts 17 children. The atmosphere is playful. Doors are open and the staff appears to be motivated and attached to the children. 2 teachers regular attend the centre to provide basic education.

### CIAF

CIAF is the detention centre for girls. As there is only one such centre in the whole of Uruguay, the admission section, the cells for disciplinary measures, the section for girls detained with security measures and the section for those detained without, are all integrated in the same building. This has advantages and disadvantages. It avoids discontinuity in care and attachment with educational staff, disruption in rehabilitative processes, adaptation problems and trauma from disparities in the treatment received in different centres that boys may suffer. On the less positive side, it gives a strong penitentiary identity to the whole institution, although some girls theoretically benefit from a more rehabilitative approach.

Unlike in boys’ detention centres, the inmates may receive up to 3 visits per week. But the rest of the routine is quite similar to that of boys, with maybe a more systematic attendance of

classes – including individual teaching - and quite a varied range of vocational (traditionally female) workshops: jewellery, hairdressing, cooking, tailoring, etc. Some individual cells host girls having received a disciplinary measure for up to one month confinement and those in observation/admission period of 20 days.

The conditions of detention in CIAF appear slightly better to those of most boy's centres. Bathrooms are more acceptable and cells are decorated. But common rooms and workshop rooms are bare and inhospitable. The relationship with the staff also seems better than in most centres.

The most worrying issue is that of pregnancy and young mothers. At the time of the visit, one girl is confined to the disciplinary section for some serious behaviour problems. She looks depressed and does not seem willing to communicate. Other girls inform us that she has a one year old baby that she has not seen for 3 months. In another section, at least one of the girls is pregnant. She is near the end of her term. The staff say that a request has been sent to the judge for her temporary release to give birth out of custody. But no one can ascertain that the answer will arrive before her term is over. The girl thus does not know whether or not she will give birth in detention. A staff member tells how, in the previous year, a permission was not received in time and a girl gave birth in the CIAF premises, which are not adequately equipped. It is also unclear what measures are taken to ensure post natal mother and baby care. The absence of any clear vision of the immediate future for these girls must be a heavy factor of distress in addition to the mere effects of deprivation of liberty.

### Cimarrones

This centre of custody “with security measures”, which focuses on education and vocational training, differs from the others detention centres visited in terms of its philosophy, as well as its material means and the profile of its inmates.

In theory, all adolescents in conflict with the law in Uruguay are to be gradually reintegrated into normal social life, thanks to evaluation systems, measures and programmes adapted to them. In that context, Cimarrones is meant to be the final stage in the overall process proposed by INAME-INTERJ, which would guarantee a successful reintegration. In practice, this centre is rather a pilot project, benefiting so far a limited number of adolescents.

The centre is a family-type house in the centre of Montevideo, with bedrooms, dining room and workshops. It can host up to 12 boys aged between 15 and 18. In order to be accepted/selected, they must fulfil certain criteria:

- demonstrate interest and desire to participate in this education and rehabilitative experiment and to behave correspondingly;
- not to have psychiatric problems that would impede their adaptation to the proposed model
- be able to develop a new attitude towards life, social environment, work, studies, family;
- develop rapidly minimal skills allowing their integration in a work environment

A full team is employed to manage the project. This qualified and multidisciplinary staff composition allows for a much better quality of management and accompaniment of the adolescents than in other detention centres.

The programme has 3 stages:

- 1) period of deprivation of liberty, during which the adolescent is accompanied to define and implement his own objectives in the professional, family, and school contexts;
- 2) accompaniment and orientation of the adolescent still following the education programme of the centre but placed back under the responsibility of his parents
- 3) community work, obtained with reference from the centre.

Violence control both between professionals and adolescents and among adolescents is an important focus of the staff's work. The fact that the centre's work is much oriented towards work creates an atmosphere that is anyway very different from other centres. Still, the centre's staff and director are affected by economic difficulties resulting from the general economic crisis. It is a challenge to maintain the level of resources necessary for such an environment benefiting such a limited number of adolescents. And despite successful programmes and reintegration, finding a professional future of an adolescent coming the centre is a challenge in the present economic context where unemployment is high at all levels of society.

## **Conclusions and recommendations:**

On the grounds of visits and meetings completed in September 2003 and in the light of more recent events having taken place in centres of detention of minors in Uruguay (March 2004), the World Organisation Against Torture (OMCT) makes the following evaluation of the implementation of provisions of the Convention on the Rights of the Child (CRC) in this context:

CRC General Principles (*survival and development, best interest of the child, non-discrimination, participation*): OMCT welcomes the global commitment to these general principles demonstrated by Uruguayan authorities in the field of juvenile justice. However, OMCT is deeply concerned by policy and practice that impede non-discrimination, in that they stigmatise children from low socio-economic background and/or deprived of adequate parental care. OMCT is also concerned by the fact that general principles of survival, development and best interest are less strictly observed with most serious or difficult offenders, whereas they are entitled to the same degree of provisions and protection as all under 18. Finally, OMCT welcomes the spontaneous and courageous integration of participation principles in the activities proposed by some detention centres, but deeply regrets the lack of systematic attention to participation rights in the overall system and the total absence of child representation in management organs, as a strong tool for efficient reform and conflict-prevention, as well as a right.

CRC Article 19 (*protection from violence, abuse and neglect*): OMCT is alarmed by the absence of information on violence among minors in detention and questions the due diligence of State agents in such cases;

CRC Article 37 (*protection from torture, inhuman and degrading treatment or punishment*): While the prohibition of torture in the legislation is not fully satisfactory and child-specific reference are lacking, the visit has not revealed cases of torture of children. However, OMCT notes the absence of adequate and child sensitive complaint mechanisms and concerns as to the inhuman and degrading treatment to which certain conditions of detention may amount to.

CRC Article 40 (*administration of juvenile justice*): OMCT welcomes the high level of specialisation, training and commitment of professionals employed in the juvenile justice system, except the lack of qualifications of some law enforcement and penitentiary staff in direct contact with children in conflict with the law. OMCT notes serious limitations to the right to defence and due process in the application of disciplinary measures in detention. OMCT welcomes the fact that durations of deprivation of liberty for minors are usually below international practice, but OMCT deeply regrets the lack of determination and information on the planned duration of the sentence and the fact the deprivation of liberty is not used as a measure of last resort due to the lack of alternatives to imprisonment available in the country. Finally OMCT applauds efforts made to maintain contacts between adolescents in detention and their families, including their own children.

In light of these observations, it is clear that a more detailed analysis of the implementation of international standards in juvenile justice (United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), and the United Nations Rules for the Protection of Juveniles Deprived of the Liberty) could be made and would present a more detailed panorama.

In view of these conclusions, OMCT would highly recommend the following:

To the Parliament:

- Adopt the project of **prison ombudsman**, including a focus on children deprived of their liberty in its mandate, and establishing this post and support team so as to enable immediate and dynamic work in that field, including the possibility to receive and act upon individual complaints;
- Review **conformity of the draft new “Codigo del Niño” with international standards in juvenile justice**, in particular concerning the establishment of status offences and the treatment given to children deprived of parental care, principles of proportionality of sentences, the right to self-defence and respect to due process, and the principle of exception of deprivation of liberty.

OMCT urges parliamentarians to propose and vote as a matter of urgency a new budget for the **development of prevention and alternative measures to imprisonment** for children in conflict with the law in Uruguay, as well as an increase of budget for improvement of material and sanitary conditions of detention in the whole country.

To the Government:

- Develop a **national strategy** for the development of alternatives to imprisonment for children in conflict with the law, including roles and responsibilities of **NGOs both as service providers and watchdog**;
- Develop and propose programmes of **international cooperation in juvenile justice** in partnership with intergovernmental agencies and other governments;
- **produce and analyse disaggregated national statistics** on children in conflict with the law

OMCT urges the government to **guarantee the legality and conformity with international juvenile justice standards of all judicial and administrative decisions concerning adolescents involved in the March 1<sup>st</sup> rebellion or any further such procedure.**

To the Judiciary:

- Reduce sentences of deprivation of liberty to a strict minimum, so as to guarantee that it remains a **measure of last resort**, and especially that **children deprived of parental care are not imprisoned for that reason**;
- Make more extensive use of **alternative sanctions and restorative approaches** such as probation and mediation, in close collaboration with INAME services and mandated NGOs;
- Establish a mechanism of **interdisciplinary consultations** between the judiciary, the police, educational and psychosocial services and NGOs, so as to strategise collectively and share information on cases and practice;
- **Visit detention centres** on a regular basis.

OMCT is very concerned about the **absence of prompt reaction** exhibited by the judiciary as regards allegations of past acts of ill-treatments committed against children in detention in the Berro Complex brought to its attention over the past months. OMCT **welcomes the opening of a penal procedure against one INAME staff member and one police officer** charged for severe ill-treatment of a minor fugitive, prior to the great Berro rebellion of March 1<sup>st</sup> 2004.

Beyond **fighting impunity**, these cases present a character of **urgency in terms of prevention of further abuses**, which has been overlooked. OMCT urges that any INAME staff member alleged to have committed acts of ill-treatment be **immediately suspended**, and expelled from any official function in relation with children if found guilty. OMCT also recommends that a global investigation on child protection in the Berro Complex be undertaken and that the **composition of its staff be adequately and urgently reformed**. OMCT also urges the judiciary to **control the effective return and integrity of all** the adolescents having returned to the Berro Complex after their temporary transfer to adult detention facilities further to the March 1<sup>st</sup> rebellion.

#### To defence lawyers

- **Modify the organisation of follow-up** so that children are followed by the defence lawyer that they meet in court (similarly to the judges and attorneys);
- Provide each attended child and their parents/guardians with **contact details and clear information** about what the role of defence lawyer is;

OMCT urges defence lawyers to undertake **a visit of all detainees of SER Berro** in the coming weeks.

#### To the INTERJ-INAME

- Establish a system of staff **recruitment based on experience and qualifications** in child care, child protection and child rights;
- Develop internal **child protection policy** and inform all staff members of its content, outlining a clear code of conduct for staff, including a clause of suspension of any staff member subject of complaints or allegations of ill-treatment against children in detention, and immediate dismissal upon confirmation of such allegations (either by the administration or by the judiciary)
- Develop a **child friendly version of the internal regulations** of the INTERJ, not only including rules and sanctions but also information on recreational and vocational activities to which children are entitled to, and guarantee that this is adequately communicated to any new intern;
- Create an internal service of **systematic psychosocial consultation and support**, as well as **annual evaluation, training and up-grading**, for all staff employed by the INTERJ;
- **Abolish the system of transfer** (notably to SER Berro) as a disciplinary measure
- Guarantee the **participation of a child's defence lawyer in any new judicial or administrative decision** on his/her status and treatment
- Provide **better material and sanitary conditions** of detention and develop **participatory approaches** to daily routine, decoration and improvement of infrastructure, on the model of the Ituzaingo centre, with adequate financial and pedagogical support;
- To **create a consultative mechanism** attached to the INTERJ administration, and additionally to the Berro Complex, where representative of each professional corporation and child representatives will have the opportunity to present and defend their proposal and concerns on a regular basis (monthly);
- Reactivate **formal education** in all detention centres;
- Create a **mobile team to offer psycho-educational support and activities** to all detentions centres, including group talks, self-assessment exercises, artistic expression, etc.

- Allow **visits without prior warning** by the prison ombudsman, concerned national and international NGOs.

Undertake a comprehensive evaluation of the factors of the March 1<sup>st</sup> rebellion, as well as of the specific requests made by adolescents on that occasion, and develop a reform strategy in **consultation with the different players, including child representatives and NGO representatives**, to be presented to the direction of INAME-INTERJ and included in further budgetary proposals to the government, in light of the above mentioned recommendations.

To NGOs specialised in juvenile justice:

- Intensify the **frequency of visits** to detention centres;
- Participate systematically in **interdisciplinary consultations** on juvenile justice;
- Organise the participation of **children in conflict with the law or former child detainees** in consultations and project development in order to include their input and views in future activities and developments.
- Continue to **inform** the international community of the evolution of juvenile justice related issues in Uruguay.

To intergovernmental organisations:

- **develop close monitoring** of the implementation of international standards in juvenile justice worldwide, including in Uruguay;
- **encourage bilateral and multilateral cooperation** in the field of juvenile justice by providing technical assistance and financial resources to such initiatives;
- **request and analyse disaggregated national statistics** on children in conflict with the law, including children in detention worldwide, including in Uruguay, in order to provide a mapping of the global situation;
- **condemn violations of children's rights** in contexts of juvenile justice, and especially in detention.

## **Annex 1**

### **Agenda of visit by OMCT delegation**

#### Monday 22 September

- Meeting with Sylvia Izquierdo, Cancilleria – Head of human Rights Section
- Multidisciplinary meeting with child lawyers (defensores de oficio), social workers of NGOs working in detention centres for minors, and State social workers, lawyers.

#### Tuesday 23 September

Visit of “Complejo Berro” main penitentiary colony of Uruguay:

- Introduction by:  
Martin Marzano President of the INAME (Instituto Nacional de Menores ?)  
Victoria Bega INTERJ – INAME (...)
- Visits of various sections of Berro:  
Centre “Piedras”  
Centre “Ituzaingo”  
Centre “SER (Servicio de Evaluacion y Rehabilitacion) Berro”  
Centre “La Casona”

#### Wednesday 24 September

Seminar

#### Thursday 25 September

Seminar

#### Friday 26 September

Visit of detention centres in Montevideo:

Centre “Puertas” of pre-trial detention and evaluation  
Centre “Desafío” for under 15  
Centre CIAF for women and girls  
Semi-open centre Cimarrones

Meeting with IELSUR and SERPAJ representatives of follow-up to the visit

## **Annex 2**

### **Services administered directly by the INAME or through conventions include:**

#### Part-time services:

- Centre of evaluation and orientation
- Child and family care service monitoring foster care families
- Pre-school day care centres (0-5 years old)
- Centre CAIF of stimulation, early intervention and orientation (0-5 years old)
- Children's clubs of recreation, socialisation and pedagogical support (for mainstream school aged children)
- Youth clubs (12-18 years old)
- Programme for street children offering material and psychosocial support (4-18 years old)
- Night shelters for children and families living on the street (0-18 with or without parents)
- Day centres for children with mental disability or mental health problems
- Centre for victims of ill-treatment or abuse
- Day centre for drug addicted adolescents
- Centre of reinsertion for children deprived of their liberty, or in semi-liberty, offering opportunities of apprenticeship, and other socio-cultural activities
- Programme of alternatives to institutionalisation

#### 24-hours services:

- Full-time care centres (all ages, administrative placement)
- Special education centres and psychiatric clinics (for 0-18 years children with mental disability or mental health problems)
- Care centres for drug addicted adolescents and therapeutic communities for children with behavioural and/or substance abuse problems
- Mother and baby units, for young mothers (13-21 year old) in vulnerable situation
- Foster family placement service
- Centres with security measures for children in conflict with the law
- Centres without security measures for children in conflict with the law

Blue line : national hot-line for children in situation of ill-treatment

CON BALAS DE GOMA Y GASES LACRIMÓGENOS EVITARON FUGA MASIVA

# Cruento motín estalló en la Colonia Berro con el saldo de varios policías y menores heridos

*Un violento motín estalló en las primeras horas de la tarde de ayer en la Colonia Berro. Los internos totalmente descontrolados como nunca se les vio, según las autoridades, enfrentaron a la Policía con varillas de hierro y puñetazos, registrándose varios heridos entre integrantes de los dos bandos.*

Finalmente tras una batalla, así fue catalogado el enfrentamiento, los jóvenes fueron reducidos y los bomberos apagaron el fuego que iniciaron en el pabellón de seguridad a quemar colchones y otros artículos.

Esta situación comenzó a generarse el pasado viernes pero la tensión aumentó en la noche del domingo al estallar un incidente también reprimido por la Policía.

Tales episodios derivaron en el cruento motín de ayer en el cual los funcionarios emplearon balas de goma y gases lacrimógenos.

Pero como señalamos los hechos se iniciaron en las primeras horas de la tarde del pasado viernes cuando los encargados de la Colonia Berro fueron informados por la guardia policial perimetral del establecimiento que dos menores se habían dado a la fuga.

De inmediato se montó un amplio operativo en el cual participaron efectivos de la Jefatura de Camineros, Policía Caminera y personal del Iname. En el interior del local lograron ubicar a uno de los menores de iniciales J.L.A.M., de 17 que no había logrado abandonar los límites del recinto.

Se prosiguieron las diligencias en procura del otro joven, a quien divisaron cuando se desplazaba en un equino que había robado para concretar la huida.

A altura del kilómetro 26 de la ruta 74, la Policía lo alcanzó y lo logró detenerlo, trasladándolo a una dependencia policial. El menor P.D.G.C., de 17 años, señaló que cuando se encontraba allí fue golpeado por un funcionario del Iname H.O.B., casado, de 41 años y un funcionario policial, C.G.T.R., de 22 años.

Al parecer testigos confirmaron la denuncia y ambos comparecieron ante la Justicia que decretó sus procesamientos sin prisión por el cargo de "un delito de lesiones especialmente agravado".

Pero esto no terminó aquí porque la tensión estaba en el ambiente.

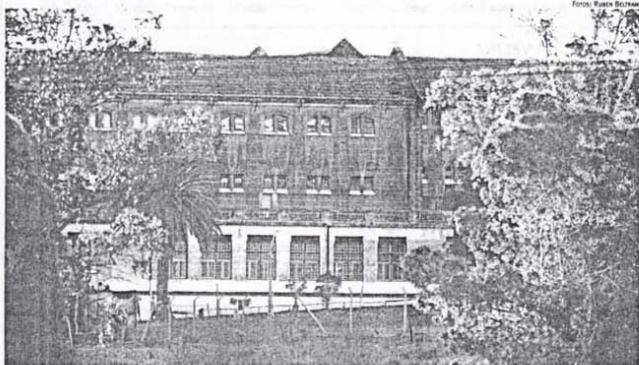
Y en la noche del domingo estalló un incidente en el cual varios menores quemaron colchones. Esto motivó la intervención policial y de los funcionarios de custodia del Iname que con la ayuda de bomberos lograron extinguir el fuego antes que se propagara y controlaron la situación, al retornar a los jóvenes a sus celdas.



Bomberos fueron convocados a la Colonia Berro para combatir el incendio provocado por los menores en el Pabellón de Seguridad.



Efectivos de la Policía Caminera cerraron las rutas ante la posibilidad de una fuga masiva.



La Colonia Berro donde en las primeras horas de la tarde de ayer estalló un motín que ocasionó varios heridos.

## Sesenta jóvenes serán trasladados al Penal de Libertad hasta repararse daños

"La situación está controlada y vamos a trasladar a estos adolescentes a un edificio que nos dé seguridad, por el tiempo necesario que nos permita reparar todo los daños que se provocaron en este pabellón. Pensamos que podría alcanzar a una semana" manifestó el licenciado Sergio Migliorata, director del Instituto Técnico de Rehabilitación Juvenil.

Sesenta jóvenes fueron conducidos anoche al Penal de Libertad. "Las normas a que están sometidos serán básicamente las de un adulto, pero en un área separada, bajo control educativo y administrativo del Iname", señaló. Sobre el motín, Migliorata expresó que "los menores estaban armados con cosas que se pueden obtener en un servicio como éste, con varillas que provienen de las losas de hormigón que se rompieron y chapas de las áreas de ventilación".

En presencia de los magistrados Penal y de Menores de Pando, las fuerzas de la Policía ingresaron al edificio. Se utilizaron primero gases lacrimógenos pero eso dio poco resultado porque los menores estaban en un espacio abierto, también en los techos. "Luego-dijo el funcionario del



Sergio Migliorata: "Nunca vi a los jóvenes en esa actitud tan violenta".

Iname- ingresó un carro de bomberos ya que los menores intentaban prender fuego a garrafas de supergás de 45 kilos que subieron al techo".

Subrayó que "los policías penetraron y los jóvenes los enfrentaron en una actitud de violencia que nunca había visto, los insultaron, los atacaron y finalmente fueron reducidos y esposados". Migliorata enfatizó que "intentamos hasta el último minuto manejar la situación como siempre he-

mos hecho sin la utilización de la fuerza pública y esta vez fracasamos, estaban en una actitud necia por lo cual no había diálogo posible. No quedó otra alternativa que recurrir a la fuerza pública para controlar la situación, también en apoyo de varios jóvenes ajenos a lo que sucedía que estaban en una posición de rehenes. Hubo varios contusos en ambas partes, nada graves, pero son lesiones producto del enfrentamiento".

### CRUENTO MOTÍN

Sin embargo ayer las cosas cambiaron sustancialmente, porque estos picos de tensión estallaron con inusitada violencia. Cerca de 60 menores de los 85 que se encuentran internados en la Colonia Berro, se amotinaron poco después del mediodía y se hicieron fuertes en el pabellón de máxima seguridad.

De nada valieron los intentos de diálogo por parte de las autoridades de ese establecimiento y del Iname.

Comenzaron a prender fuego a los colchones y el fuego se extendió tomando la mampostería.

Los bomberos no podía acercarse porque eran víctimas de ataques con objetos contundentes.

Al no tener respuesta de los jóvenes y presumiendo que todo estaba planificado para concretar una fuga máxima, se solicitó la presencia policial para controlar la situación.

Equipos de choque de la Guardia de Granaderos, avanzaron sobre el reducto de los amotinados, que totalmente descompensados como nunca se les había visto, según dijeron las propias autoridades, enfrentaron a los policías armados con varillas de hierro, piedras y todo tipo de objetos contundentes.

Fue una batalla campal en la cual los policías abrieron fuego contra los menores con balas de goma y arrojaron gases lacrimógenos para tratar de controlarlos.

Los jóvenes, varios de ellos internados allí por delitos de homicidio, lucharon cuerpo a cuerpo con los funcionarios tratando de resistir, pero ya el resultado del enfrentamiento estaba echado desde el principio y los amotinados fueron reducidos. Los bomberos apagaron el fuego que provocó importantes daños en el pabellón.

### TRASLADOS

El motín determinó que las autoridades del Iname dispusieran que para evitar este tipo de hechos, tenían que trasladar a los mas revoltosos y por otra parte peligrosos.

Así anoche comenzaron a ser derivados para el Penal de Libertad 60 menores que intervinieron en forma violenta en lo sucedido. Se espera que con esta medida vuelva la calma a ese establecimiento.