

**Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

I herewith would like to bring to the attention of your Excellency's Government, and to the Chamber of Deputies, my concerns with regard to information I have received on the current proposed bill PL-6433/16. The bill seeks to amend article 125 of Law No. 8,069 of 13 July 1990. My concerns with regard to the proposed amendments are threefold:

First, and foremost, I am concerned that the amended law would authorize the employment of "neuromuscular incapacitation (electroshock) devices", including body worn devices (stun belts). While recognizing the challenging environment prevailing in juvenile detention centres in Brazil, and that there may be situations where appropriate measures of control and/or restraint may be necessary to ensure security in custodial settings, experience shows that, in practice, electric shock weapons carry a high risk of unlawful "overuse" in situations in which the desired purpose could reasonably be achieved through less coercive, less dangerous and less harmful means. I would thus strongly recommend to reconsider the introduction of such devices in juvenile detention centres.

Second, the proposed amendment would authorize juvenile detention centres staff to use armed escorts during the transfer of detainees. In my view, this is likely to create an unnecessarily intimidating and stigmatizing atmosphere and, therefore, should be avoided to the greatest extent possible.

Third, the amended law would authorize the use of riot control equipment in the juvenile detention centres. The proposed amendment does not clearly distinguish between protective riot control equipment and tools of a more offensive nature. I am therefore concerned that this may lead to the introduction of crowd control equipment in juvenile detention centres that is clearly inappropriate for use in such institutions, such as tear gas and other chemical irritants, weapon-launched kinetic impact ammunition, or flashbang grenades.

In this respect, I wish to draw your attention to the international norms relating to the humane treatment of children deprived of their liberty as enshrined in Art. 37 of the Convention on the Rights of the Child (CRC) and further expounded by the UN

Committee on the Rights of the Child (UN CRC)<sup>1</sup>, as well as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules).<sup>2</sup> Accordingly, restraints and force can only be used in exceptional circumstances, as a last resort and exclusively to prevent harm to the child or others. The Havana Rules explicitly state that “the carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained”.<sup>3</sup>

Similarly, international human rights bodies have repeatedly stated that electric shock weapons should not be used on children. For instance, in the concluding Observations issued to the United States of America (USA) in 2014, the UN Committee against Torture (UN CAT) recommended: “The State [to] revise the regulations governing the use of such weapons [electrical discharge weapons], with a view to establishing a high threshold for their use, and expressly prohibit their use on children and pregnant women”<sup>4</sup> The UN Committee on the Rights of the Child has also recommended in its concluding Observations to the United Kingdom “that the use of electric shock weapons on children be prohibited”.<sup>5</sup>

These bodies and specialized organizations have repeatedly highlighted the risk of cruel, inhuman or degrading treatment or punishment associated with the use of electrical discharge weapons, not only for juveniles deprived of their liberty, or subjected to the criminal justice system, but to all persons in custodial or extra-custodial settings that may be subjected to the use of such devices.<sup>6</sup> As stated in my latest report to the United Nations General Assembly (A/72/178), I fully share that opinion with regard to electric shock devices in general. Moreover, I am of the view that body worn electric shock devices, such as stun belts, are inherently cruel, inhuman and degrading weapons that must not be used under any circumstances.<sup>7</sup>

In conclusion, my concern is that, if adopted by Parliament, the proposed amendments could place adolescents deprived of their liberty in an extremely vulnerable position and create an environment conducive to cruel, inhuman or degrading treatment, in violation of Brazil's obligations to prevent such acts under Article 16 of the UN Convention against torture. I am of the view that the bill's objectives would be more effectively reached by putting in place proper safeguards to prevent ingress of firearms and other weapons, ensuring adequate numbers of staff, as well as regular training in de-escalation and appropriate restraint techniques.

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<sup>1</sup> CRC, General Comment No 10 (2007) "Children's rights in juvenile justice" (CRC/C/GC/10) paras 78-89.

<sup>2</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Resolution adopted by the UN General Assembly on 14 December 1990, UN doc. A/RES/45/113.

<sup>3</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Resolution adopted by the UN General Assembly on 14 December 1990, UN doc. A/RES/45/113, Havana Rules, Rule 63-65.

<sup>4</sup> CAT Concluding observations on the combined third to fifth periodic reports of the United States of America, UN doc. CAT/C/USA/CO/3-5, 19 December 2014, para. 27.

<sup>5</sup> CRC Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland, UN doc. CRC/C/GBR/CO/5, 12 July 2016, para. 40.

<sup>6</sup> CAT/C/AUS/CO/4-5, para. 13; CAT/C/USA/CO/3-5, para. 27

<sup>7</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment UN doc. A/72/178 20 July 2017 para.54

I therefore urge your Excellency's Government to ensure full compliance of the law with Brazil's international human rights obligations and to have as a primary consideration the best interest of the child at all times. Conscious of the challenges faced by staff in juvenile detention centers, and the need to protect inmates against potentially abuse, I offer my technical assistance to advise your Excellency's Government and the Parliament in reviewing security concerns in these centers and exploring the adoption of less harmful means and methods of law enforcement.

Please accept, Excellency, the assurances of my highest consideration.

Nils Melzer  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment