



From: Omega Research Foundation and Justiça Global

To: Brazilian Chamber of Deputies

Date: 20 October 2017

Re: JOINT SUBMISSION ON PL-6433

This submission seeks to analyse Bill PL-6433 from a human rights perspective, taking into account Brazil's international legal obligations, arising from international treaties which the State has ratified and the interpretation given to these treaties by international human rights bodies and torture prevention bodies. This submission has been developed jointly by the Omega Research Foundation and Justiça Global. The Omega Research Foundation (Omega) is an independent research organisation based in the United Kingdom that provides rigorous, objective, evidence-based research on the global manufacture, trade, and use of, military, security and police (MSP) equipment. Omega has trained and developed resources on MSP equipment for torture prevention monitoring bodies such as the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as well as at the national level in countries including Brazil. Justiça Global is a non-governmental human rights organization that works with the protection and promotion of human rights and the strengthening of civil society and democracy. Founded in November 1999, its actions aim to denounce human rights violations; focus on public policy-making processes, based on fundamental rights and gender and race equity; promote the strengthening of democratic institutions; and demand the guarantee of rights for the victims of human rights violations. Currently, Justiça Global is member of the National Committee for Prevention and Combat of Torture and of the National Council of Human Rights, as well it coordinates the Committee for Prevention and Combat of Torture of the State of Rio de Janeiro.

Purpose of the bill

Bill PL-6433 seeks to authorise the use of electric shock weapons, riot control equipment and firearms in juvenile detention facilities (socio-educational centres), as well as permitting the use of firearms during transfers of juvenile detainees and allowing juvenile detention centre staff to carry firearms outside of work.

Relevant international standards:

- **Best interests of the child:** The UN Convention on the Rights of the Child, which is legally binding on Brazil, establishes that all decisions concerning children must have their best interests as the primary consideration,¹ requiring States Parties to treat children in conflict with the law "in a manner consistent with the promotion of the child's sense of dignity and worth"². This is confirmed by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") which state "*The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.*" This focus means that juvenile justice must always prioritise rehabilitation and restorative justice over more traditional criminal justice objectives involving repression or

¹ Article 3 of the UN Convention on the Rights of the Child.

² Article 40 of the UN Convention on the Rights of the Child.



retribution, and as stated by the UN Committee for the Rights of the Child (UN CRC), “This can be done in concert with attention to effective public safety.”³

- **Vulnerability of children in conflict with the law:** The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) recognise the “high vulnerability” of children deprived of their liberty,⁴ and the UN CRC states that children must be treated differently to adults as differences in their physical and psychological development, and their emotional and educational needs constitute the basis for lesser culpability.⁵
- **Preventing violence in juvenile justice facilities:** It is in the best interests of children to strictly limit the use of violence by detention centre staff in juvenile detention facilities, as well as to limit any occurrence of physical violence carried out by children deprived of their liberty. Presumably it is for this reason that in December 2014, the Governments of Brazil and Chile submitted the Unified Resolution on the Twenty-First Pan American Child and Adolescent Congress, “Childhood and adolescence: Building peaceful environments”, which urged “Member States to strengthen mechanisms against the use of violence, threats, and physical punishments in educational systems and other institutions for the care and attention of children and adolescents”.⁶ Strengthening such mechanisms would contribute to states fulfilling their obligation to protect children’s rights, as violence within juvenile justice facilities “thwarts its achievement and is counterproductive to any efforts to rehabilitate and successfully reintegrate the child”.⁷
- **Weapons in juvenile justice facilities:** The Havana Rules provide that instruments of restraint and force can only be used in exceptional circumstances, and, more specifically, that “the carrying and use of weapons by personnel should be prohibited in any facility where juveniles are detained”.⁸ In line with this, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has recommended that staff working in juvenile detention facilities do not carry batons, incapacitating spray or instruments of restraint in order to avoid creating a prison-like environment.⁹ The Inter-American Commission on Human Rights has unequivocally endorsed these standards, stating: “The rule that expressly prohibits the carrying and use of weapons by personnel in any facility where children are detained, is an obligation requiring unqualified compliance on the States’ part.”¹⁰

Recommendation: The organisations presenting this submission consider that, if enacted, this bill would breach the State of Brazil’s international obligations and runs contrary to international law and human rights standards. As such, it should be rejected. Although we recognise the challenging

³ UN Committee on the Rights of the Child, General Comment No. 10 (2007), Children’s rights in juvenile justice, para. 10.

⁴ 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, para. 2.

⁵ UN Committee on the Rights of the Child, General Comment No. 10 (2007), Children’s rights in juvenile justice, para. 10.

⁶ Unified Resolution on the Twenty-First Pan American Child and Adolescent Congress, “Childhood and adolescence: Building peaceful environments”, (Submitted by the Delegation of the Federative Republic of Brazil and the Republic of Chile), CPNNA/RES 1 (XXI-14) (Dec. 2014).

⁷ UN Office on Drugs and Crime (UNODC), United Nations Model Strategies and Practical Measures on Violence against Children, p. 14.

⁸ Havana Rules, Rule 63-65.

⁹ CPT, “Juveniles deprived of their liberty under criminal legislation”, Extract from the 24th General Report of the CPT, published in 2015, para. 119.

¹⁰ Inter-American Commission on Human Rights, Rapporteurship on the Rights of the Child, Juvenile Justice and Human Rights in the Americas, 13 July 2011, p. 149.



environment facing juvenile detention centre staff, the bill's stated goals would be more effectively and safely reached by providing adequate training in de-escalation and appropriate restraint techniques and ensuring that illicit weapons are not smuggled into juvenile detention centres in the first place, as well as ensuring adequate staffing levels.

Analysis: The text presented to justify this bill begins by pointing out the alleged lack of protection for staff working in juvenile detention facilities, before going on to claim that retaliatory attacks by released juveniles against staff members are not uncommon. However, neither the bill nor the text presented with it as justification provide any evidence of a series of attacks against staff working in juvenile detention facilities either during or outside the course of their work. Even if such an evidence base did exist, arming juvenile justice staff would run counter to good practice and the Brazilian State's human rights obligations. Instead, added focus should be placed on alternatives to institutionalisation where possible, and the aim of juvenile detention facilities should be rehabilitation and successful reinsertion into society. By providing staff with professional training in verbal de-escalation to reduce tension and professional restraint techniques,¹¹ as well as ensuring adequate staffing levels and taking effective measures to prevent the ingress of illicit firearms and other weapons, the need to use weapons against juveniles deprived of their liberty should be obviated.

Children deprived of their liberty in Brazil already face high levels of violence, with the UN CRC expressing deep concern "about reports of widespread torture and ill-treatment of children in police stations and juvenile detention facilities."¹² The organisations presenting this submission recognise the challenging nature of working in the juvenile justice system; however, the measures proposed would result in more weapons being fed into the juvenile justice system, further escalating the cycle of violence and exposing an extremely vulnerable population to a heightened risk of torture and other cruel, inhuman or degrading treatment or punishment. It would also run contrary to international human rights standards, amounting to a regressive measure which would increase the risk of human rights violations against children deprived of their liberty.

While we believe that the foregoing is justification enough to reject the bill, we would also like to raise some further points in relation to specific parts of the bill.

1. Use of electric shock weapons on children:

The bill seeks to authorise juvenile detention centre staff to use "neuromuscular incapacitation (electroshock) devices". International human rights bodies and torture prevention monitors have stated that electric shock weapons should not be used on children. For example, in Concluding Observations issued to the United States of America (USA) in 2014, the UN Committee against Torture (UN CAT) recommended: "*The State party should revise the regulations governing the use of such weapons [electrical discharge weapons], with a view to establishing a high threshold for their use, and*

¹¹ CPT, "Juveniles deprived of their liberty under criminal legislation", Extract from the 24th General Report of the CPT, published in 2015, para. 120.

¹² Committee on Rights of the Child, Concluding observations on the combined second to fourth periodic reports of Brazil, UN doc. CRC/C/BRA/CO/2-4, 30 October 2015, para. 37.



*expressly prohibit their use on children and pregnant women.*¹³ Both the UN CRC¹⁴ and the CPT¹⁵ have also recommended that the use of electric shock weapons on children be prohibited.

We urge the Parliamentary Committee on Social Security and the Family (Comissão de Segurança Social e Família) to reject this bill as the use of electric shock weapons against children runs contrary to international human rights standards.

2. Language on neuromuscular incapacitation (electric shock) devices:

The term “arma de incapacitação neuromuscular (eletrochoque)” - neuromuscular incapacitation (electric shock) devices – present the risk that a broader range of weapons may be used. Electric shock weapons can be divided into two categories: 1) direct contact electric shock weapons (e.g. stun guns, stun batons, stun shields) are designed to enable the user to apply a high voltage electric shock directly by hand to an individual, causing compliance through pain. This category also includes body-worn electric shock equipment such as stun belts and stun cuffs which are considered tools of torture by the European Union and their trade is prohibited under EC Regulation 1236/2005¹⁶, but which are manufactured by companies in countries such as the USA and South Africa; and secondly 2) projectile electric shock weapons (i.e. Taser-type weapons) fire small metal darts (probes) attached to the weapon by thin wires, delivering an electric shock causing ‘neuromuscular incapacitation’ and almost immediate loss of control as well as extreme pain upon impact. Most projectile electric shock weapons can also display a spark across the electrodes and can be used as direct contact stun weapons.

Direct contact electric shock weapons are inherently prone to abuse as they permit the holder to cause extreme pain to the victim at the touch of a button without leaving substantial marks. Designed to enforce compliance through pain rather than incapacitation, they have no legitimate law enforcement function which cannot be achieved through less harmful means. Some manufacturers of direct contact electric shock weapons claim that their products produce incapacitation. For example, a Chinese manufacturer claims its electric shock gloves produce the following effects: *“muscles will get strong reaction like shrink and spasm, and the man's brain will be blank to lose the ability of commanding the other parts of his body to act”*.¹⁷

¹³ UN Committee against Torture, 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.

¹⁴ Committee on the Rights of the Child, 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.

¹⁵ CPT, “Electrical Discharge Weapons”, Extract from the 20th General Report of the CPT, published in 2010, para. 79.

¹⁶ See Annex II, item 2.1 of consolidated version, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02005R1236-20161216&qid=1491378522823&from=EN> accessed 11 October 2017.

¹⁷ Company promotional material in Omega Research Foundation archives. Copy can be provided upon request.



SXD-QNS-90(B3)
E-Glove for police(waterproof & anti-cutting)

Product Parameter:
 1.Power on : long press for 2-3 seconds
 2.Power off : long press for 2-3 seconds
 3.Continuous standby time : 8 hours
 4.Continuous working time : 1 hour
 5.Charging time : 2 hours
 6.Working voltage : 3.7v
 7.Working temperature : -10~50 degree
 8.Net weight:260-650g/pair

Electrode Slices

Carbon Fiber Attack Shell
Waterproof Battery Bag
Velcro

Belly Neck Back Neck

Dangerous position can not to be caught : belly, neck, head, face, chest, crotch and other important body parts.

Wearing the e-glove, shaking hands or catching the wrist of suspect to make him lose defiance & attack ability in 2-3 seconds. Then the police man could arrest suspect easily and without any harm (must touch suspect's skin).

Screenshot of E-gloves marketed by a Chinese manufacturer which it claims causes the target's brain to go blank upon contact, resulting in inability to control other parts of the body.

Electric shock projectile weapons are designed to temporarily incapacitate the individual, but generally also cause severe pain. The electric shock delivered causes almost immediate neuromuscular effects and incapacitation, with the target collapsing without control. Secondary injuries from collapse/falls can be severe and life threatening. They cause different degrees of pain and incapacitation and occasionally lead to death. The effects vary depending on the power of the device, the physical condition and underlying health of the person targeted (e.g. a child, a person with a heart condition) and the environmental factors (e.g. moisture). Examples of misuse include sustained or prolonged use, multiple shocks and shocks to inappropriate or sensitive areas of the body such as the genitals.

The bill provides for the use of “neuromuscular incapacitation (electroshock) devices”. This vague formulation would potentially result in all of the weapons mentioned above, including body-worn electric shock weapons which are considered tools of torture in the European Union, being used against children. Paragraph 1. III of the bill provides for the use of neuromuscular incapacitation (electroshock) devices against “inmates behaving dangerously, to prevent an escape or rescue, *in which case the device must be connected by wires to the inmates’ clothing*”. This is the only scenario which requires the device to be connected to the target with wires. This suggests that weapons that deliver an electric shock through means other than by wired projectiles could potentially be used in the other scenarios listed in the bill.

As explained above, international human rights standards and torture prevention bodies have clearly stated that electric shock weapons should not be used on children. Should the legislature decide to disregard the Brazilian State’s human rights obligations and international good practice by enacting this bill, at the very least the language should be tightened to exclude all direct contact electric shock weapons as they do not meet any legitimate law enforcement objective which cannot be achieved



through less harmful means. This would require any projectile electric shock weapons authorised for use to have their direct contact (drive stun) mode disabled.

3. Threshold for the use of electric shock weapons:

The bill proposes authorising the use of electric shock weapons in a range of scenarios, while proposing the use of firearms in much more limited circumstances. The proposed threshold for the use of electric shock weapons is low, with notable examples including “uncooperative, unarmed inmates who cannot be immobilized manually or by mechanical means of restraint, but need to be restrained for reasons of ... lack of emotional control, if their behaviour or reaction endangers their own physical integrity, or that of the official or a third party” and “inmates behaving dangerously, to prevent an escape or rescue”. This would potentially allow the use of electric shock weapons in a broad range of circumstances.

International torture prevention monitors agree that the same use of force guidelines applicable to firearms should apply to electric shock projectile weapons. According to the UN CAT, states “*should ensure that electrical discharge weapons are used exclusively in extreme and limited situations — where there is a real and immediate threat to life or risk of serious injury — as a substitute for lethal weapons, and by trained law enforcement personnel only*”, while also stating that such weapons “*should be inadmissible in the equipment of custodial staff in prisons or any other place of deprivation of liberty*”.¹⁸ Similarly, the CPT has recommended that the criteria governing the use of electric shock weapons should be directly inspired by those applicable to firearms.¹⁹

Custodial staff in places of detention should not be equipped with electric shock weapons, and this is particularly important in juvenile detention facilities. Should the legislature decide to disregard this, the use of electric shock weapons should be strictly limited to situations where there is a real and immediate threat to life or risk of serious injury.

4. Carrying of firearms during transfers:

The bill seeks to authorise “armed custody, in the event of transfer from an establishment and transporting of dangerous inmates”.

This wording suggests that the purpose of this provision is to protect juvenile detention centre staff from the person being transferred. However, if staffing levels are adequate and proper safeguards are put in place to prevent the ingress of firearms and other weapons into juvenile detention facilities, staff should not need firearms for the transporting of “dangerous inmates”. If, on the other hand, firearms are required due to firm evidence of armed attacks carried out during such transfers, either targeting the juvenile being transferred or in an attempt to free them from custody, then the focus of the provision should change to protecting the juvenile being transferred and enabling staff to repel external attacks. If this were the case, rigorous training and strict protocols on the use of firearms would be essential, including adequate oversight and monitoring. Custodial staff immediately responsible for the juvenile being transferred should not be armed with firearms in order to avoid creating a repressive, prison-like, potentially socially stigmatising atmosphere. Furthermore, measures should be taken to avoid the ingress of any weapons carried during transfers into juvenile detention facilities. If an armed guard for a transport is required, based on a rigorous risk assessment,

¹⁸ UN Committee against Torture, 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.

¹⁹ CPT, Visit to Slovenia from 28 March to 4 April 2017, CPT/Inf (2017) 27, para. 22.



then this should be from an external force and not be in close confines with the juvenile being transported.

5. Language on riot control equipment

The bill seeks to allow for the use of riot control equipment, “including shields and helmets” (“equipamentos de controle de tumultos, como escudos e capacetes, no interior dos estabelecimentos, em caso de rebelião, motim ou sublevação”). This language is too broad and could lead to the introduction of offensive equipment designed for crowd control into juvenile detention centres. Such equipment includes 38-40mm launchers (which have been seen in the possession of prison staff/emergency taskforce staff in adult places of detention in Brazil)²⁰, chemical irritant (tear gas) grenades, explosive stun/flashbang grenades, weapon-launched kinetic impact ammunition (rubber bullets), etc. This would run counter to the Havana Rules which prohibit the carrying and use of weapons by personnel in juvenile detention facilities. Furthermore, offensive crowd control equipment is largely designed for use in open spaces; its use in places of detention is inappropriate in all but the most exceptional of circumstances and could amount to excessive force which may result in unwarranted injuries.

While the provision of helmets and shields as protective equipment may be permissible under international human rights law and policing standards, primarily for the protection of juvenile detainees’ rights, it is important to differentiate between such equipment and other equipment of an offensive nature. If the intention of the bill is to allow protective riot control shields and helmets to be used in case of riots, specific language to this effect should replace the broader language currently proposed.

6. Authorising juvenile detention centre staff to carry firearms outside of work

This submission will not analyse in detail the proposal to authorise juvenile detention centre staff to carry firearms outside of work. However for such a decision to be justified, a solid evidence base would be required. The justification accompanying the bill claims that “It is not uncommon, either, for adolescents to serve sentences of up to three years, having become adults by the time they are released and carrying out retaliations against their former detainers.” Even if there were verifiable statistical data, which is not the case, this justification would be insufficient to warrant the measure proposed, given that authorizing staff to carry guns would not guarantee or increase their security. In fact, many studies show that carrying a gun increases the risk of getting shot and killed. On the other hand, if the legislature decides to approve this proposal in spite of the strong arguments against doing so, the legislation should explicitly state that personal weapons acquired by juvenile detention centre staff are prohibited inside facilities and measures to ensure thorough screening of staff for unauthorised weapons upon entering and leaving the workplace should be strengthened.

²⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil, UN doc. A/HRC/31/57/Add.4, 29 January 2016, para. 52.