



Omega Research Foundation



**Submission on the Prevalence of Torture in Correctional Centres.**

**Jointly Submitted to the Portfolio Committee on Correctional Services**

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**by the**

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The Institute for Security Studies' Arms Management Programme and the Omega Research Foundation welcome the chance to brief the Committee on "the prevalence of torture in correctional centres and how the DCS is faring as far as protecting inmates from torture".

We are of the view that it is difficult to comment on the first aspect of the enquiry—the prevalence of torture—without independent and comprehensive research and in the absence of effective reporting on the use of equipment. Whilst the Heads of Correctional Centres are under a statutory obligation to report the use of force or mechanical restraints on inmates to the Inspecting Judge, the most recent report by the Judicial Inspectorate noted with concern the "general disregard by many heads of centres of their statutory responsibility in this regard". Therefore, whilst noting the need for improvement in this area, this submission focuses mainly on the role of the DCS in protecting inmates from torture, an area which Omega and the Arms Management Programme have been involved in researching. This is crucial as Chapter 2 of the South African Constitution gives everyone the right "not to be tortured... (and) not to be treated or punished in a cruel, inhuman or degrading way".

In addressing this topic, the submission makes two key points.

- 1) In December 2010, in response to a ISS / Omega Research Foundation submission on this issue, the DCS noted that "the further curtailment of the use of force should not be done without proper investigation and consultation as to the need, if any, to take such steps" and undertook to "report back to the PC on the findings of the suggested inquiry after a period of 6 months".<sup>1</sup> This inquiry is an important step towards clarifying the types of equipment that can be used in Correctional Centres, and restricting or prohibiting the use of those that are particularly

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<sup>1</sup> Summary of submissions received and department responses thereto: Correctional Matters Amendment Bill, 41 of 2010.

problematic. **As the deadline for this inquiry has passed, we look forward to seeing its results as a matter of urgency.**

- 2) Irrespective of the results of this review, we contend that certain pieces of equipment—namely electroshock belts, stun shields, stun batons, leg irons and belly chains—authorised for use in Correctional Centres readily lend themselves to, or have no other purpose than, torture or other cruel, inhuman and degrading treatment. **The use of this equipment runs contrary to international norms and standards and has no place in modern-day correctional institutions.**

### **Torture and less lethal equipment and restraints**

It is sometimes necessary for correctional officials to use force, including specialist equipment such as batons, restraints and riot control agents. The Correctional Services Act and its amendments establish the principles underlying the use of force and the parameters within which force can be used—stating that “reasonable force” and “mechanical means of restraint” can be used “to ensure the security of the community, the safety of correctional officials and the safe custody” of all inmates and that “non-lethal incapacitating devices” can be used “if an inmate fails to lay down a weapon or some other dangerous instrument in spite of being ordered to do so; if the security of the correctional centre or safety of inmates or others is threatened by one or more inmates; or for the purpose of preventing an escape”.

However, there is also a risk that such equipment can be used for torture or other cruel, inhuman and degrading treatment, or to perpetrate excessive force. The Judicial Inspectorate for Correctional Services received over 2,000 complaints of assaults against prisoners by prison warders between April 2009 and March 2010<sup>2</sup> and found that “the unlawful use of force by correctional officials appear to be common practice within many of our correctional centres”.<sup>3</sup> Its 2009-2010 Annual Report also details 11 cases of homicide of inmates by officials, often involving the use of a range of equipment including; electroshock shields, batons, teargas and restraints. There may also be more cases of torture and Cruel Inhuman and Degrading Treatment that do not come to light, for example because they do not result in the death of an inmate.

It is clear that the issue of less lethal and restraint equipment, and its use, must be addressed if the DCS is to effectively prevent the torture of inmates and we now comment on certain pieces of equipment that are particularly problematic.

### **Electronically activated high security transport stun belts**

“Electronically activated high security transport stun belts” (also called “stun” or “shock belts”) encircle various parts of the subject’s body (usually the waist, but variants have been developed to fit on legs or arms) and deliver an electric shock when a remote control device is activated. Most models deliver a shock of up to 50, 000 volts and can deliver repeated shocks. One South African model can deliver up to “900 activations” or “2 hours continuous” shock.<sup>4</sup> The electrical current not only causes severe pain, with one survivor describing it as “very intense shocking pain... so intense I

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<sup>2</sup> Amnesty International *Annual Report 2011: South Africa*.

<sup>3</sup> Judicial Inspectorate for Correctional Services (2010) *Annual Report for the period 1 April 2009 to 31 March 2010* p33.

<sup>4</sup> See the website of the South African manufacturer Force Group. <http://www.forcegroup.co.za/> (then click on products and “anti scape stun belt”) [Accessed 26/11/2010].

thought that I was actually dying”, but can cause short and long term physical side effects<sup>5</sup>, including urination, defecation, heartbeat irregularities and seizures.<sup>6</sup> The mere possibility that the device could be activated also causes the wearer a great deal of mental suffering.

The Omega Research Foundation knows of only a handful of other countries - such as the United States - where these devices are in use. Even in these countries, several departments have moved away from using them in light of such concerns.<sup>7</sup>

The use of such devices are not only unnecessary — with the application of more conventional restraints sufficient to prevent escape — but have been internationally condemned as unacceptable. On its visit to the United States, the UN Committee Against Torture recommended stun belts should be “abolish(ed)... as methods of restraining those in custody; their use almost invariably leads to breaches of article 16 of the Convention”;<sup>8</sup> the Council of Europe’s Committee for the Prevention of Torture opposes “the use of electric stun belts for controlling the movement of detained persons”<sup>9</sup>, and the European Commission has classified them as a device “which has no practical use other than for the purpose of torture and other cruel, inhuman or degrading treatment or punishment”.<sup>10</sup>

- **Recommendation: Omega and the ISS suggest that abolishing the use of these devices is an achievable and concrete step the DCS could take to help fulfil its constitutional duty to protect inmates from torture.**

#### **Stun shields and stun batons / guns**

The 2004 Regulation accompanying the Correctional Services Act states that “the only non-lethal incapacitating devices that may be used by a correctional official are the following... electronically activated devices”. Although the specific types of “electronically activated devices” are not defined, the B Orders appear to authorise the use of shock shields (electrified shields which deliver an electric shock when held against an individual) and “hand held stun devices”, including stun batons and stun guns which deliver an electric shock when pressed against an individual.

Such devices are prone to abuse in correctional facilities worldwide and South Africa is no exception. Given the under-reporting of use of force incidents, as noted by the Judicial Inspectorate, it is

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<sup>5</sup> Yoon, P. K (2003) ‘The “Stunning” Truth: Stun Belts Debilitate, They Prejudice, and They May Even Kill’ *Capital Defense Journal* volume 15, issue 2 p385.

<sup>6</sup> Ibid p386

<sup>7</sup> These departments include the New York City Department of Corrections and others. See Amnesty International (1999) *USA: Cruelty in Control? The Stun Belt and other Electro-shock Equipment in Law Enforcement* p11

<sup>8</sup> Cited in Amnesty International (2003) *The Pain Merchants: Security equipment and its use in torture and other ill-treatment* p41.

<sup>9</sup> Council of Europe (2010) *Press release: Council of Europe anti-torture committee calls for strict regulation of electrical discharge weapons* <http://www.cpt.coe.int/en/annual/press/2010-10-26-eng.htm> [Accessed 26/11/2010].

<sup>10</sup> COUNCIL REGULATION (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment: Annex 2.

impossible to assess the extent to which shock shields and stun guns / batons are being used and abused. However the indications are deeply concerning:

- The 2009/2010 report by the Judicial Inspectorate of Correctional Services records a case of an inmate who was “brutally assaulted by officials with batons, *electric shields* and booted feet” (emphasis added) and subsequently died from his injuries.
- It also records another death of inmate in which “officials used batons, crutches and *an electric-shield* even when (the subject was) mechanically restrained... Medical report records multiple injuries, including, to his back, limbs and chest”. (emphasis added).
- The UN Human Rights Committee found that the treatment meted out to an inmate by officials of St Alban Correctional Facility—which included beatings with “batons and *shock shields* while he was lying naked on the wet floor of the prison corridor... (causing) a dislocated jaw, irreversible damage to his teeth and wounds on his left arm and left side of his head”—constituted a violation of his right to be free from torture or cruel, inhuman or degrading treatment (emphasis added).<sup>11</sup>

International best practice specifies limited, or no, use of these devices. For example, the Council of Europe’s Committee on the Prevention of Torture states that “only very exceptional circumstances... might justify the resort to EDWs’ (electrical discharge weapons) in correctional centres and that “there should be no question of any form of EDW being standard issue for staff working in direct contact with persons held in prisons or any other place of deprivation of liberty”.<sup>12</sup>

South African bodies have also expressed concerns; following an incident at Tembisa Station in 1996, where the use of stun batons on commuters prompted a stampede in which 15 people died, the Committee of Inquiry recommended that “the use of electric batons be banned in South Africa. This should remain the case until a regulatory framework exists for the manufacture, sale and use of electric batons and reliable and independent medical and legal research establishes that the use of the electric baton on any person would not subject such a person to cruel, inhuman and degrading treatment or punishment”.<sup>13</sup> Since these recommendations were written, no such research been done.

- **Recommendation: ISS and Omega recommend stun shields and stun guns / batons should be prohibited for use in Correctional Centres. Other alternatives, such as non-electrified capture shields, should be assessed for use instead.**

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<sup>11</sup> UN International Covenant on Civil and Political Rights Human Rights Committee (2010) Communication No. 1818/2008.

<sup>12</sup> Council of Europe European Committee for the Prevention of Torture (2010) p36.

<sup>13</sup> The Report of the Joint Committee of Inquiry into the Background, Circumstances and Actions resulting in the death and injury of Rail Commuters at Tembisa Station on 31 July 1996. August 1996 [quoted in UN Economic and Social Council: Commission on Human Rights (2003) *Civil and Political Rights, including the question of torture and detention: Study on the situation of trade in and production of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms, submitted by Theo van Boven, Special Rapporteur on torture, pursuant to resolution 2002/38 of the Commission on Human Rights E/CN.4/2003/69 p9.*]

## Mechanical restraints

The UN Standard Minimum Rules on the Treatment of Prisoners states that “chains and irons shall not be used as restraints”. Some devices classed as leg irons—shown in the photos below<sup>14</sup>--have a rigid metal bar separating the two cuffs. Others have heavy, fixed cuffs or are weighted. Belly chains, which go round the waist of an inmate, have a range of uses, including chaining the subject to a fixed object, or linking several restraints (e.g. hand and leg cuffs) together to further restrict movement. Such devices have no place in a modern correctional service. They are not needed for effective inmate management, cause unnecessary discomfort and place unwarranted restrictions on movement. They can also be considered inherently degrading. A ruling by the Namibian Supreme Court found that “placing a prisoner in leg irons and chains... at least constitutes degrading treatment.” It is a “humiliating experience, which reduces the person placed in irons to the level of a hobbled animal”.<sup>15</sup>



- **Recommendation: We recommend that the use of chains and leg irons be prohibited in Correctional Centres. This would not affect the ability of Correctional Officers to effectively use legitimate means of restraint where necessary and appropriate. However, it would help ensure that these more problematic restraints, condemned nationally and internationally, are not used or abused.**

**For more information** on this issue, please don't hesitate to contact either Noel Stott at the ISS or Robin Ballantyne at the Omega Research Foundation on the details above. We also refer you to our previous submission on the Correctional Matters Amendment Bill, which provides further details on the use and potential abuse of restraining equipment in Correctional Centres.

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<sup>14</sup> Photo credits: A range of leg irons currently marketed. On the left is a “Spreader Bar”, the middle image shows weighted leg cuffs, and on the right is leg irons with fixed cuffs. Copyright: Robin Ballantyne / Omega Research Foundation and Company websites.

<sup>15</sup> *Namunjepo and Others v Commanding Officer, Windhoek Prison and Another (SA 3/98)* [1999] NASC 3; 2000 (6) BCLR 671 (NmS) (9 July 1999).