



Submission to the United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee for the LOIs Lists of Issues - South Africa

CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 65 Session (12 November 2018 - 07 December 2018)

Omega Research Foundation (UK), Institute of Security Studies
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Introduction

This submission to the United Nations' Committee against Torture (CAT) is intended to inform the preparation of the CAT List of Issues (LOIs) for South Africa prior to its 67th Session to be held 12 Nov - 07 December 2018. It outlines issues of concern relating to the manufacture, trade and use of certain types of military, security and policing equipment which could be deemed to contravene Articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment (the Convention).

Articles 2 and 16 of the Convention require each State party to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction” (Article 2) and to take the same measures against “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Article 16).

This submission contains information concerning the manufacture, acquisition, or use of a number of different types of military, security or police equipment deemed “of concern” by the Omega Research Foundation, the Institute for Security Studies (ISS) and the Legal Resources Centre (LRC). It is premised on the understanding that:

- (a) *Certain types of equipment have no legitimate law enforcement function and as such can only be used to commit torture or other cruel, inhuman or degrading treatment or punishment in violation of Article 2 or 16 of the Convention. This equipment includes, but is not limited to: spiked batons, weighted leg cuffs, body worn electric shock equipment and direct contact electric shock weapons.*
- (b) *Certain types of equipment considered to have a legitimate law enforcement function when used in compliance with international human rights laws and standards can also be used to commit torture or other cruel, inhuman or degrading treatment or punishment in violation of Articles 2 or 16 of the Convention. This equipment includes, but is not limited to: handcuffs, batons, pepper sprays, tear gas and certain crowd control weapons.*
- (c) *The use of excessive force by law enforcement or correctional officials can constitute torture or other cruel, inhuman or degrading treatment or punishment and as such can violate Articles 2 or 16 of the Convention; this includes during the dispersal of protests using riot control agents or other chemical irritants or weapons.¹*
- (d) *All States have a responsibility to ensure equipment manufactured or traded in/from their territories is not used to commit human rights abuses at home or abroad. Robust, transparent and accountable export controls, end-use certification processes, and internal legislative, administrative and judicial mechanisms should be implemented to help prevent such abuses.*

¹ See for example, Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, A/72/178; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66; Physicians for Human Rights (2012) *Weaponizing Tear Gas: Bahrain's Unprecedented Use of Toxic Chemical Agents Against Civilians*, https://s3.amazonaws.com/PHR_Reports/Bahrain-TearGas-Aug2012-small.pdf; Mendez, J (2013) *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment: Mission to Morocco*, A/HRC/22/53/Add.2, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add-2_en.pdf, Amnesty International (2015) *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine*, AI Index: ASA 16/003/2015, <https://www.amnesty.org/download/Documents/ASA1600032015ENGLISH.PDF>, all accessed 05/03/2015

The manufacture, trade and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment

The United Nations General Assembly has for many years called upon all States to “take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment”.²

This has been incorporated by the CAT into the lists of issues prior to the submission of periodic reports by States Parties, including for the second periodic report of South Africa:

*“Other Issues 30. Please provide information on the measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment.”*³

This question was not answered by South Africa in its second periodic report.⁴

South Africa is also bound by the African Commission on Human and People’s Rights’ Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa. Guideline 14 states: “States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.”⁵

At an international level this issue has been given added impetus by the international Alliance for Torture-Free Trade, which was launched at an event during the United Nations General Assembly Ministerial Week in New York in September 2017. The initiative – jointly sponsored by Argentina, the European Union and Mongolia, with a current total of 60 participating countries who have signed a political declaration – aims to stop the trade in goods used to carry out the death penalty and to commit torture or other cruel, inhuman or degrading treatment or punishment.⁶ South Africa is not currently a signatory to the political declaration.

² Resolution on torture and other cruel, inhuman or degrading treatment or punishment, 6 November 2017, Third Committee, Seventy-second session, A/C.3/72/L.20/Rev.1, pp 19

³ List of issues prior to the submission of the second periodic report of South Africa, 2009, CAT/C/ZAF/Q/2

⁴ Second periodic report submitted by South Africa under article 19 of the Convention, due in 2009, CAT/C/ZAF/2

⁵ Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa

<http://www.achpr.org/mechanisms/cpta/robben-island-guidelines/>

⁶ See <http://www.torturefreetrade.org/> and http://www.torturefreetrade.org/documents/170918_Political-Declaration-Torture-Free.pdf

Examples of manufacture and trade of equipment of concern in South Africa

In a 2016 study examining electric shock weapons, as an example of security equipment that needs stronger trade control measures, the Omega Research Foundation and the ISS found that various types of electric shock devices are authorised for use by law enforcement officials in South Africa. These include stun belts, stun shields, stun batons, stun guns and projectile electric shock weapons. However, across the world, the use of such devices by law enforcement officials has been associated with serious abuses, which have resulted in torture or cruel, inhuman or degrading treatment, injury, and even death.

These devices are often perceived as less-lethal alternatives to firearms. But there is a gap in South African legislation regarding the control of these and other types of law enforcement equipment that can facilitate torture and ill treatment.

South African company R.M. International Trading Enterprises has been involved in “all facets of international trading”, specialising in the manufacture and supply of security equipment exclusively to international markets.⁷ Its product range of electric shock equipment includes a “stun gun-shock baton”⁸ and a ‘riot stun shield’.⁹ The company describes itself as “a leading force supplying scores of companies in Africa and the Gulf”.¹⁰ It is not clear whether the company exports electric shock equipment from South Africa, or acts as a broker facilitating purchases between other countries.

Liquid Bullet, another South African company, sells stun batons and stun guns to the “local security industry”.¹¹ The company has branches in other parts of Africa, including Namibia, Nigeria, Tanzania, Swaziland and Zimbabwe.¹²

Johannesburg-based Force Products has produced a range of electric shock equipment, including stun belts, stun shields, stun guns and stun batons. The company has supplied South Africa’s Department of Correctional Services with stun belts and stun shields.¹³ Assegai Trading, another South African company, advertises Force Products’ stun equipment on its website.¹⁴ Some foreign companies are known to distribute Force Products electric shock equipment. For example, Indian company SRG Techno lists Force Products stun belts, stun batons and stun shields on its website.¹⁵

Other South African companies act as suppliers of electric shock weapons for companies based abroad. For example, Dos Group advertises Chinese-made stun guns on its website.¹⁶

⁷ R.M. International Trading Enterprises, http://rmiteinternational.com/index_files/Page344.htm

⁸ R.M. International Trading Enterprises, http://rmiteinternational.com/index_files/Page1306.htm

⁹ R.M. International Trading Enterprises, http://rmiteinternational.com/index_files/Page745.htm

¹⁰ R.M. International Trading Enterprises, http://rmiteinternational.com/index_files/Page344.htm

¹¹ Liquid Bullet, company overview, [www.liquidbullet.net/index.php?option=com_content&view=article&id=1&Itemid=2](http://liquidbullet.net/index.php?option=com_content&view=article&id=1&Itemid=2)

¹² Liquid Bullet, contact us, <http://liquidbullet.net/Pages/Contact-Us.asp>

¹³ Force Products, www.forcegroup.co.za/index.php?page=2. At time of writing unavailable, last crawled 13/6/2018.

¹⁴ Assegai Trading, Force Equalizer range handheld shock devices, www.assegaitrading.co.za/riot_force_batons.htm.

¹⁵ SRG Techno, Force – Shock System, http://srgtechno.co.in/nonlethal_full.php?id=4

¹⁶ Dos Group, stun guns, <http://www.dosgroup.com/stunguns/>

Incidents of concern in detention in South Africa

G4S – Mangaung Correctional Centre

During 2015 the Legal Resources Centre (LRC) received several case files from Leigh Day regarding allegations of abuse at the Mangaung Correctional Centre, a private maximum security detention centre. The Mangaung Correctional Centre was operated by the South African subsidiary of the G4S security group.

At present the LRC has more than 35 files which detail the alleged torture and/or other cruel, inhuman or degrading treatment or punishment at the hands of G4S employees or agents at the Mangaung Correctional Centre. The torture and/or other cruel, inhuman or degrading treatment or punishment was inflicted on detainees using various combinations of:

1. Punching, slapping and kicking (sometimes enough to cause broken bones, lost teeth and wounds requiring stitches);
2. Beating with batons and other objects;
3. Throttling;
4. Grabbing of testicles;
5. Cuffing with metal and plastic cuffs causing injuries;
6. Deliberate shooting of rubber bullets at inmates;
7. Deliberate spraying of pepper spray in inmates' eyes;
8. Twisting of limbs;
9. Use of electric shock through a range of devices to subject clients to electric shock including on their face, testicles and naked body. Some clients lost consciousness or control of their bodily functions as a result of the electric shock;
10. Use of electric stun belt;
11. Forced stripping and dowsing with water;
12. Forced exercise (frog jumps and push ups);
13. Racial and other verbal abuse and threats;
14. Prolonged and unlawful isolation;
15. Denial of medication; and
16. Forced injections.

The G4S employees or agents were exercising public power and performing a public function in detaining the individuals concerned and thus ought to be considered organs of state.¹⁷ To date the LRC is unaware of any of the G4S employees or agents being criminally charged or convicted, despite complaints being laid with the South African Police Service by several complainants.

¹⁷ The definition of organ of state was extrapolated by the South African Constitutional Court in *AllPay Consolidated Investment Holdings (Pty) Ltd v Chief Executive Officer, South African Social Security Agency* 2014 (4) SA 179 (CC) at paras 52 - 60

Excessive Use of Force involving the South African Police Service (SAPS)

Torture and/or other ill-treatment using electric shock weapons

There have been reports of the use of electric shock equipment linked to acts of torture by the SAPS. Ten SAPS members were charged with the murder and torture of Khuthazile Mbendu, who was wanted in connection with theft. Mbendu died on 8 December 2014, after allegedly being tortured with a “tazer [sic] shock device” while on the way to the police station.¹⁸ In April 2016, police are reported to have used stun guns in an attempt to disperse protesting students at Rhodes University.¹⁹ In *Gobuamang v Minister of Police*, the plaintiff stated that a police officer “‘shocked him with an electric device’, which he described as being two-pronged, which pierced his buttock and caused him to suffer excruciating pain. He continued to feel this pain for some four to five days thereafter.”²⁰

#FeesMustFall, University of the Witwatersrand – September-November 2016

Corroborated evidence and expert analysis on the use of force by members of the SAPS during the 2016 student protests at the University of the Witwatersrand, Johannesburg, indicates human rights violations by the SAPS.²¹ This includes “unjustified use of force and the misuse of permissible weapons in response to peaceful assembly or against individuals who posed no apparent threat to the police or other”.²² On 21 September, for example, a stun grenade was misused by the SAPS – causing severe injuries to two participants in the demonstration. Injuries included longer-term loss of hearing on the right side of one of the participants and burns on both participants.

Following a negotiations breakdown between the police and student leadership on 4 October, weapons including stun grenades and rubber bullets were fired indiscriminately by the police.²³ A number of individuals were hit and injured in the process.

It is reported that the police frequently used tear gas, water cannons, stun grenades and rubber bullets against protesting students.²⁴ The SAPS’ use of rubber bullets or other weapons under unjustified circumstances caused injuries to a number of students.

¹⁸ Jenni Evans, 10 police officers charged with murder, torture, 27 August 2015, www.news24.com/SouthAfrica/News/10-police-officers-charged-with-murder-torture-20150827; Dineo Bendile, 10 cops formally charged with murder of tortured detainee, 27 August 2015, <http://ewn.co.za/2015/08/27/10-cops-formally-charged-with-murder-of-Tembisa-detainee>; Sashin Naidoo, Family of police torture victim wants justice, 2 September 2015, www.sabc.co.za/news/a/9ab9d08049b2c15e88_1ddeba369cf722/Family-of-police-torture-victim-wants-justice-20150209

¹⁹ South Africa anti-rape protests: Rhodes University students arrested, *BBC News*, 20 April 2016, www.bbc.com/news/world-africa-36090431

²⁰ *S v. Mgabhi* (161/07) [2008] ZAGPHC 470 (1 December 2008), www.saflii.org/za/cases/ZAGPHC/2008/470.html.

²¹ Socio-Economic Rights Institute of South Africa, A double harm: police misuse of force and barriers to necessary health care services: responses to student protests at the University of the Witwatersrand, September to November 2016, October 2017, https://seri-sa.org/images/A_Double_Harm_Wits_Report_FINAL.pdf

²² Socio-Economic Rights Institute of South Africa, A double harm: police misuse of force and barriers to necessary health care services: responses to student protests at the University of the Witwatersrand, September to November 2016, October 2017, https://seri-sa.org/images/A_Double_Harm_Wits_Report_FINAL.pdf

²³ Socio-Economic Rights Institute of South Africa, A double harm: police misuse of force and barriers to necessary health care services: responses to student protests at the University of the Witwatersrand, September to November 2016, October 2017, https://seri-sa.org/images/A_Double_Harm_Wits_Report_FINAL.pdf

²⁴ Socio-Economic Rights Institute of South Africa, A double harm: police misuse of force and barriers to necessary health care services: responses to student protests at the University of the Witwatersrand, September to November 2016, October 2017, https://seri-sa.org/images/A_Double_Harm_Wits_Report_FINAL.pdf

The excessive use of force by the SAPS during the protests violated the principles of necessity and proportionality as elaborated in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Ona Dubula – HangKlip Protest – September 2017

During a social protest over commercial fishing rights in Hangklip, Cape Town in September 2017, Ona Dubula, a 14 year old boy, was shot with kinetic impact projectiles at close range (approx. 2 m) by a member of the SAPS while he hid behind an upturned table. The incident was recorded on video available here: <https://www.timeslive.co.za/news/south-africa/2017-09-13-a-history-of-violence-police-action-in-hout-bay/>. Ona Dubula sustained severe injuries including cracked ribs and had to undergo surgery to have a rubber bullet lodged under his tongue removed.

The Independent Police Investigative Directorate (IPID) lodged a charge of attempted murder against the SAPS member who shot Ona. The case is yet to be concluded.

Data on death, torture and assault of persons in police custody

The IPID investigates matters specified in Section 28 of the Independent Police Investigative Directorate Act 1 of 2011, such as deaths in police custody or complaints of torture.

Table 1: Cases of death, torture and assault of persons reported to, and completed by the IPID in the period 2016-2017

	Reported Cases	Completed Cases
S 28 (1)(a) – Deaths in police custody	302	140
S 28 (1)(b) – Deaths as a result of police action	394	115
S 28 (1)(f) – Any complaint of torture against a police officer in the execution of his/her duties	173	63
S 28 (1)(f) - Any complaint of assault against a police officer in the execution of his/her duties	3827	2040

Source: Independent Police Investigative Directorate, Annual report 2016/2017²⁵

²⁵ Independent Police Investigative Directorate, Annual report 2016/2017, 15 September 2017, <http://www.ipid.gov.za/sites/default/files/documents/IPID%20Annual%20Report%202016-2017.pdf>

Recommendations

1) Manufacture, use and trade of equipment:

- a) Request detailed information about the measures taken by South Africa to : *“take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment”*.
- b) Seek detailed information on the laws, policies and procedures governing use of force and weapons by law enforcement officials, including any laws, orders or other legislation or administrative documents relating to use of less-lethal weapons.

2) Private operators of places of detention:

Require an explanation from South Africa as to:

- a) Measures in place to monitor prison staff and official’s behaviour inside privately operated prisons within the Republic; and
- b) Procedures in place for complainants to lodge official allegations of torture or other cruel, inhumane or degrading treatment or punishment within private prisons, the investigation of such allegations, and sanctions currently being applied against those found guilty.

3) Use of force by police during public protests

- a) Request information on measures taken by South Africa to investigate all allegations of excessive use of force or other misuse of force or weapons and equipment that may amount to torture and other cruel, inhuman or degrading treatment or punishment.