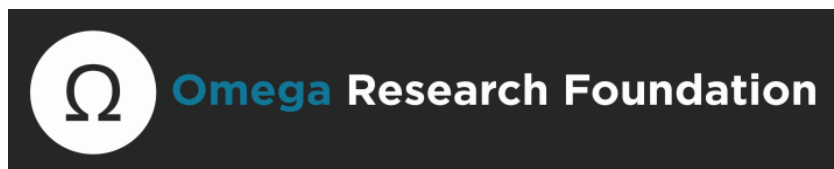


Submission to the United Nations Committee
Against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment in
Advance of the 54th Session (April – May 2015)
Concerning equipment which could be used for torture or other
cruel inhuman or degrading treatment or punishment in
New Zealand

by the Omega Research Foundation
March 2015



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**Submission in Advance of the UN CAT 54th Session, 20th April – 15th May 2015
Concerning equipment which could be used for torture or other cruel, inhuman or degrading
treatment or punishment in New Zealand**

*From The Omega Research Foundation
March 2015*

The following is a submission from the Omega Research Foundation in advance of the UN CAT 54th Session (20th April – 15th May 2015) concerning equipment which could be used for torture or other cruel, inhuman or degrading treatment or punishment in New Zealand.

Founded in 1990, the Omega Research Foundation (henceforth Omega) is a UK-based NGO. We conduct research on the development, manufacture, trade and use of military security and policing equipment including less lethal weapons and restraints. We promote effective mechanisms to prevent the proliferation and use of such weapons through information sharing, awareness raising workshops and advocacy activities targeting, amongst others, the strengthening of export control regimes and use of force policies. Over the last 25 years, we have developed unique expertise and resources to aid our research which has been used by, and provided to, a number of organisations including Amnesty International, Oxfam, the UN Special Rapporteur on Torture, the UN Subcommittee for the Prevention of Torture, the European Committee for the Prevention of Torture and a number of National Preventive Mechanisms (NPMs).

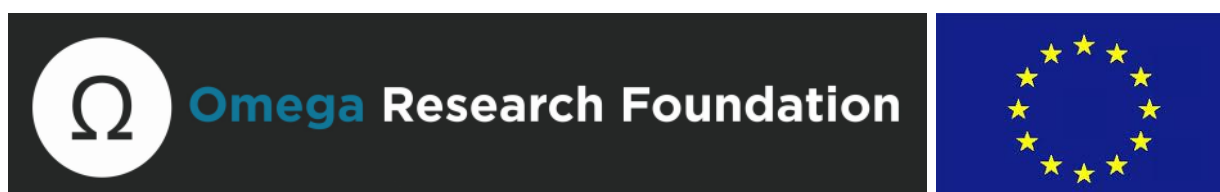
For further information about our work, please visit our website at www.omegaresearchfoundation.org or contact us on info@omegaresearchfoundation.org.

Acknowledgements

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Disclaimer

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the Omega Research Foundation and can in no way be taken to reflect the views of the European Union.



Introduction

This briefing, submitted to the United Nations' Committee against Torture (henceforth UN CAT) prior to its 54th Session to be held in Geneva from 20th April to 15th May 2015, outlines a number of items of concern in relation 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 (henceforth 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) as well as the requirement 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 briefing 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. It is drafted 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 deemed to have the potential to have a legitimate law enforcement function 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 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.*

Equipment “of concern” in New Zealand

Omega is concerned about the use of Taser weapons in New Zealand.

In the past the UN CAT has also expressed their concern stating that, “*the Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in some*

¹ See for example, 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

cases it may even cause death. In addition, the Committee is concerned at reports whereby during the trial period Tasers were predominantly used on Maoris and youths.²

Whilst Omega would like to commend the transparency of the relevant authorities in New Zealand who have not only passed requested information to the UN CAT in relation to Taser deployments and training³ but have made annual and biannual Taser use reports publicly available online,⁴ Omega would like to raise specific concerns about alleged deployments where Taser use could be deemed “excessive” or “of concern”.

- In March 2015, a 53-year old man died in Napier whilst being arrested. Police are reported to have used a “number of tactical options” including Tasers, pepper spray and dogs whilst attempting to remove him from his car.⁵ Omega is concerned not only about the reportedly combined use of Tasers and pepper spray, but also of the potential that pepper spray may have been used in a confined space. Omega would like the UN CAT to urge the relevant New Zealand authorities to conduct a full and thorough investigation into the alleged incident and make publicly available all results and actions resulting from this.
- A number of news reports indicate the simultaneous use of Taser and pepper spray against an individual.⁶
- Official New Zealand police reports indicate multiple deployments of Taser shocks against the same individual during the same incident. For example, between January 1st and June 30th 2014, Tasers were discharged 66 times. In 46 cases they were discharged once, in 16 cases they were discharged twice, in three cases they were discharged three times and in one incident a Taser was discharged five times.⁷ Further in March 2015, it was reported that a subject was Tasered three times for a total of 11 seconds.⁸
- Official New Zealand police reports indicate the use of Taser on elderly and young individuals. Between 2012 and the first half of 2014, Tasers were discharged against individuals as young as

² United Nations (2009) *Report of the Committee against Torture, Forty-First Session (3-21 November 2008), Forty-Second Session (27 April – 15 May 2009)*, <http://www.unhcr.org/refworld/pdfid/4ae5b5f12.pdf> accessed 13/03/2015

³ United Nations (2014) *Consideration of Reports Submitted by States Parties under Article 19 of the Convention pursuant to the Optional Reporting Procedure: Sixth Periodic Reports of States Parties due in 2013, New Zealand*, CAT/C/NZL/6, 4 March 2014, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsj9hO42mxYBe8ab%2fXYDECvLSJL7o3yMdy8qJWs1DTT2LauKKtbMz2cTWainSZf73uT%2bcy5vcNYXjh%2bBlxkzAr1ZBA6MWB9Hi2WpTzN1cEu4n> accessed 13/03/2015

⁴ These reports are available on the New Zealand Police website here: <http://www.police.govt.nz/about-us/publication/tactical-options-research-reports> accessed 13/03/2015

⁵ See for example: Hawke’s Bay Today (2015) *Man Dies While Being Arrested in Napier – Taser, Pepper-Spray, and Dogs*, New Zealand Herald, March 13, 2015, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11416608 and Radio New Zealand (2015) *Dog, Pepper Spray, Tasers Used Before Death*, March 13, 2015, <http://www.radionz.co.nz/news/regional/268563/dog-pepper-spray-tasers-used-before-death> both accessed 13/03/2015

⁶ See for example: Manning, B (2014) *Police Taser Use Against Man Ruled Excessive*, The New Zealand Herald, October 9, 2014, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11339795 and Mussen, D (2014) *Unlawfully Tasered Man Gets Payout*, The Dominion Post via <http://www.stuff.co.nz/national/10693106/Unlawfully-Tasered-man-gets-payout> both accessed 13/03/2015

⁷ New Zealand Police (2014) *NZ Police Biannual Tactical Options Research Report #6: 1 January to 30 June 2014*, <http://www.police.govt.nz/sites/default/files/publications/biannual-tactical-options-research-report-6.pdf> all accessed 13/03/2015

⁸ 3 News (2015) *Police Mix-Up Leads to 11-Second Taser*, March 2, 2015, <http://www.3news.co.nz/nznews/police-mix-up-leads-to-11-second-tasering-2015030207> accessed 16/03/2015

14 and as old as 69. In addition, during this timeframe, Tasers were “showed” to, but not discharged, against children in the 10-13 year old age range.⁹

- Taser is disproportionately used against the Maori population. The New Zealand police’s Annual Taser Reports from 2012 and 2013, and the Biannual Tactical Options Research Report for the first half of 2014 indicate that 49% (2012) / 53% (2013) / 51% (2014) of Taser “shows” and 60% (2012) / 52% (2013) / 51% (2014) of Taser “discharges” were against a member of the Maori population¹⁰ despite the fact that the Maori population makes up less than 15% of the total population¹¹ of New Zealand.¹²

To this end, **Omega recommends** that:

- Agencies that possess and/or use Tasers should limit their use to situations where they can be effectively used to avoid the resort to lethal force or firearms. Omega believes that the use of electric shock weapons against individuals who do not pose an imminent threat of death or serious injury to themselves or others is a disproportionate use of force which can constitute ill-treatment.
- Government and law enforcement agencies review all guidelines, training, and accountability systems currently in place to ensure all weapons are deployed legally and their use does not result in excessive use of force. All trainings should include elements on proportionality, medical implications, and the protection of human rights and fundamental freedoms. Officers should be required to repeat training courses to avoid “skills-fade”.
- There should be strict guidelines to avoid repeated, multiple or prolonged shocks and the use of Tasers or other electric shock weapons on children, the elderly, and other “at risk” populations should be avoided in all circumstances unless officers are faced with an immediate threat to life which cannot be contained by less extreme options.
- Flammable irritant sprays should never be used in conjunction with electric shock weapons or in situations where there is a fire risk, unless officers are faced with an immediate threat to life which cannot be contained by less extreme measures.
- Irritants should never be used in confined spaces, or in a place where there is no opportunity for the target to easily escape the effects of the irritant. Where chemical irritants are used, appropriate decontamination measures should be provided as soon as practically possible.
- All incidents “of concern” and disproportionate use against minority groups be publicly addressed, investigated and, where appropriate, prosecuted.

⁹ New Zealand Police (2012) *New Zealand Police Annual TASER Report #1*, <http://www.police.govt.nz/sites/default/files/publications/taser-report-annual-2012.pdf>, New Zealand Police (2013) *New Zealand Police Annual TASER Report #2*, <http://www.police.govt.nz/sites/default/files/publications/taser-report-annual-2013.pdf>, and New Zealand Police (2014) *NZ Police Biannual Tactical Options Research Report #6: 1 January to 30 June 2014*, <http://www.police.govt.nz/sites/default/files/publications/biannual-tactical-options-research-report-6.pdf> all accessed 13/03/2015

¹⁰ *ibid*

¹¹ Population statistic taken from the 2013 New Zealand Census of Population and Dwellings available online <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-national-highlights/cultural-diversity.aspx> accessed 13/03/2015

¹² This is perhaps linked to the more general issue of Maori over-representation in the criminal justice system which also needs to be addressed. See for example, Workman, K (2011) *Maori Over-representation in the Criminal Justice System – Does Structural Discrimination Have Anything to Do with It? A Discussion Paper*, Rethinking Crime and Punishment, November 8, 2011, http://www.rethinking.org.nz/assets/Newsletter_PDF/Issue_105/01_Structural_Discrimination_in_the_CJS.pdf accessed: 18/03/2015