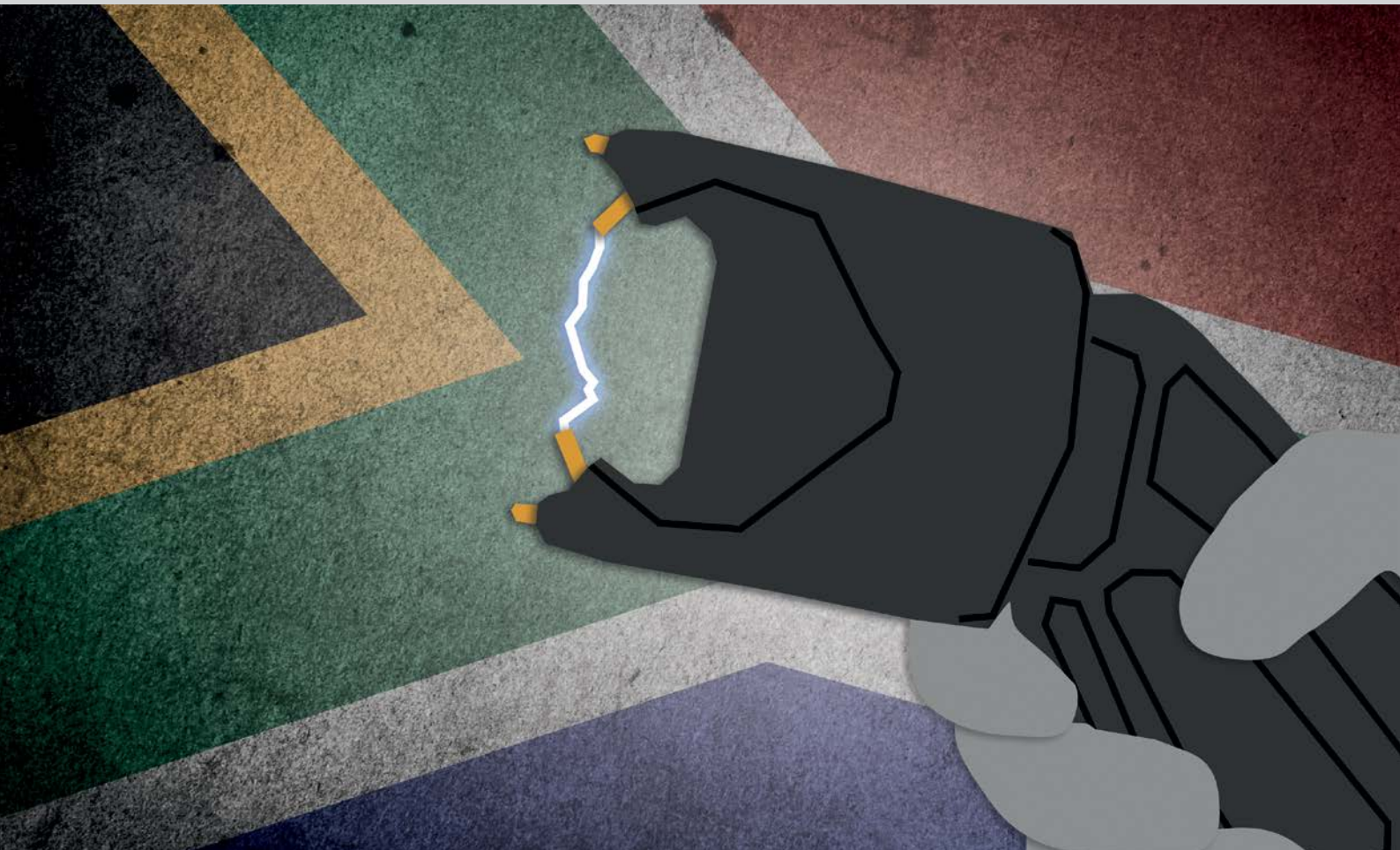


The trade in tools of torture

A South African case study

Gugu Dube and Noël Stott



This report discusses the South African trade in law enforcement equipment that may be used for torture and ill treatment. Currently, there are no controls on this trade into, or from, South Africa. Various policy and legislative changes should be made to better regulate it. These include prohibiting the import and export of security equipment that has no practical purpose other than for torture. South Africa should also control the trade in any equipment that can have a legitimate law enforcement role but can be (mis)used for torture or ill treatment.

Key findings

- ▶ South Africa is party to international and continental conventions and guidelines, and supports the ongoing United Nations (UN) process around prohibiting the trade in tools of torture. Its Constitution enshrines the right not to be tortured in any way and not to be treated or punished in a cruel, inhuman or degrading way.
- ▶ Legislation governing the South African Police Service (SAPS) and the Department of Correctional Services (DCS) allows the use of law enforcement equipment that is either inherently abusive or could easily be misused for torture or other ill treatment. This facilitates the trade in equipment with no practical purpose other than torture or ill treatment, and which could enable torture.
- ▶ South Africa is both a manufacturer of and trader in equipment that has been identified by the UN and the European Union (EU) as having no practical purpose other than for torture or ill treatment. South African companies also import, re-sell and re-export equipment of concern. As there are no meaningful controls governing this trade, it is difficult to ensure that the government abides by its international, continental and domestic obligations.
- ▶ There are no common international standards regulating the trade in many types of law enforcement equipment. Several countries now regulate or prohibit the import and export of law enforcement equipment that can facilitate torture and ill treatment.

Recommendations

- ▶ South Africa should prohibit the use, production, promotion, import, export, brokering or other transfer of inherently abusive weapons, equipment or substances.
- ▶ It should regulate the import, export and brokering of legitimate law enforcement equipment that may be misused for ill treatment.
- ▶ It should destroy all stocks of inherently abusive equipment held by the SAPS and Correctional Services.
- ▶ It should provide detailed information to the UN Committee Against Torture and the African Commission on Human and Peoples' Rights on the measures it intends to take to control the production, trade, export, import and use of law enforcement equipment.
- ▶ It should update the Correctional Services Act and the Criminal Procedure Act to ensure that they are in line with the Robben Island Guidelines.
- ▶ The South African Human Rights Commission should investigate the equipment used in all places of detention and recommend that inherently abusive equipment be removed and ensure other kinds of equipment are not misused.
- ▶ South Africa should sign the Alliance for Torture-Free Trade political declaration.
- ▶ South Africa should submit its views to the UN Secretary-General and support the process to examine the feasibility and parameters of international standards to regulate the trade in equipment used to commit torture or for capital punishment.

Introduction

In South Africa, the trade in certain categories of firearms and military equipment is controlled. In contrast, the trade in law enforcement equipment that can facilitate torture and ill treatment remains unregulated. This report gives examples of the types of law enforcement equipment authorised for use by South African authorities, as well as an overview of the trade in such equipment.¹ Company websites, promotional material accessed at trade shows, exhibitions and expositions were used as sources of information. The report sets out the policy changes South Africa must make in order to meet its international, continental and domestic obligations.

What types of law enforcement equipment are of concern?

Many kinds of law enforcement equipment, widely traded by a large number of companies, can have a legitimate law enforcement purpose when used strictly in conformity with human rights and law enforcement norms and standards.² Some of this law enforcement equipment can, however, be misused to commit torture or other forms of ill treatment. This includes handcuffs, projectile electric shock weapons, batons, tear gas and pepper spray.

Some equipment and weapons are inherently abusive and have no legitimate law enforcement purpose

A number of companies also manufacture and trade law enforcement equipment and weapons that are inherently abusive and have no legitimate law enforcement purpose. Examples include direct contact electric shock weapons, *sjamboks* and other whips, body-worn electric shock devices and weighted restraints.

While many different types of law enforcement equipment are traded in and from South Africa, this report examines a few critical examples. The equipment discussed includes both that which is inherently abusive and should be banned (body-worn electric shock devices, for example), and that which may have a legitimate law enforcement role when used in a human rights-compliant manner but which should be strictly controlled (projectile electric shock weapons and some restraints, for example).³

South Africa's obligations to prevent torture

Internationally

South Africa ratified the 1987 United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on 10 December 1998. UNCAT obliges its states parties to take all necessary measures to prevent acts of torture.⁴ Additionally, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment

SOUTH AFRICA
RATIFIED THE OPCAT IN
March 2019

or Punishment (OPCAT) was adopted by UN member states in 2002, entered into force on 22 June 2006 and was ratified by South Africa in March 2019.⁵

OPCAT aims to strengthen efforts taken by UNCAT states parties. It looks to do this through public scrutiny of all places of detention and enhanced monitoring, transparency and accountability of police, security and intelligence officials.⁶ As part of this, the OPCAT process established a committee of international experts to examine conditions of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.⁷

OPCAT aims to strengthen efforts taken by UNCAT states parties

Both UNCAT and OPCAT oblige states parties to prevent cruel, inhuman or degrading treatment or punishment by taking, among others, legislative, administrative and judicial measures.⁸ Prohibiting or regulating the trade in law enforcement equipment is a crucial means by which South Africa can address this obligation.

Continentially

By virtue of its membership of the African Union (AU), South Africa is party to the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines).

Adopted by the African Commission on Human and Peoples' Rights (ACHPR) in 2002, the guidelines contain a series of provisions on the prohibition and prevention of torture and other ill treatment.⁹ These guidelines are the first instrument adopted by the commission focused solely on preventing torture and other forms of ill treatment. From a global perspective, the guidelines are the strongest human rights standard in this area.

Guideline 14 provides that '[s]tates should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment'.¹⁰ South Africa has so far failed to meet this obligation. This should be remedied through the full implementation of the guidelines, and in particular Guideline 14, by

amending relevant legislation and regulations, and by South Africa updating its trade policies and practices.

Nationally

The South African Bill of Rights enshrines the rights of all people living in the country to be free from all forms of violence, not to be tortured in any way and not to be treated or punished in a cruel, inhuman or degrading way.¹¹ In 2013 Parliament passed the Prevention and Combating of Torture of Persons Act (Act 13 of 2013) to give effect to the Republic's obligations in terms of UNCAT.¹² This Act provides for

any public official who commits torture, attempts to commit torture, or incites, instigates, commands or procures any person to commit torture, or any person who participates in torture, conspires with a public official to aid or procure the commission of or to commit torture to be guilty of an offence.¹³

It is worth noting here that, according to Lawyers for Human Rights (LHR), 'there hasn't been a conviction for torture since the commencement of the Torture Act'.¹⁴ This is despite widespread allegations of torture and other forms of ill treatment.

With regard to how the Prevention and Combating of Torture of Persons Act should operate in law enforcement and correctional settings, for instance, the Policy on the Prevention of Torture and Treatment of Persons in Custody of the South African Police Service sets out a system of checks and balances to protect persons in police custody from acts of torture, cruel, inhuman or degrading treatment.¹⁵

Additionally, the Correctional Services Act (Act 111 of 1998 as amended) requires that when an inmate is mechanically restrained (for example, with handcuffs and leg irons), this must be reported immediately to the Inspecting Judge.¹⁶

South Africa's National Preventive Mechanism

As a state party to OPCAT, South Africa is required to establish an independent National Preventive Mechanism (NPM) with a mandate to regularly examine the treatment of persons in places of detention and to protect them against torture and other cruel, inhuman or degrading treatment or punishment.¹⁷

The South African NPM was officially launched on 19 July 2019. The government designated the South African Human Rights Commission (SAHRC) to perform a coordinating role in the NPM, together with other oversight bodies such as the Judicial Inspectorate for Correctional Services (JICS) and the Independent Police Investigative Directorate.¹⁸

The SAHRC, as the national institution established to promote respect for, observance of and protection of human rights in South Africa, has identified the 'Prevention of torture and human rights in law enforcement' as one of its key strategic focus areas. In light of this, it is vital that the SAHRC becomes more involved in South Africa's efforts to meet its obligations to prevent torture, including by developing guidelines and monitoring the trade in law enforcement equipment in line with Guideline 14 of the Robben Island Guidelines.¹⁹

Permitted law enforcement equipment under relevant South African policies and laws

While torture and other forms of ill treatment are prohibited under South Africa's Anti-Torture Act and the South African Police Service's (SAPS) Policy on the Prevention of Torture, no control provisions are made regarding the trade in law enforcement equipment that can facilitate torture and ill treatment.²⁰ The latter policy, which refers to approved restraining measures including 'handcuffs and/or leg irons', does not list specific equipment that can be used when dealing with unrest or crowd management, nor does it list equipment that should never be used.²¹

This oversight would imply that there are no restrictions on the use of equipment in these instances. These documents also do not specify from where the permitted equipment can be procured.

Regulation 21 of the Correctional Service Regulations, as published in Government Notice 914 of 2004, permits the use of handcuffs, leg irons and leg-cuffs, belly chains, plastic cable ties, and 'electronically activated high-security transport stun belts', when outside a cell. Some of this equipment, including body-worn electric shock equipment, has been designated as inherently abusive or degrading, and the trade and use of such equipment should be prohibited.

'Non-lethal incapacitating devices' that may be used by a correctional official are also listed and include chemical agents, electronically activated devices and rubber missiles. Other devices that may be used are baton-type equipment and pyrotechnical equipment.²²

Under Section 4.2 of the Department of Correctional Services' B-orders, Sub-order 2 allows for 'hand held electronic immobilising stun devices'.²³ In general, the Correctional Services Act provides only broad categories of authorised equipment, such as 'mechanical restraints' (Section 3.1) and 'non-lethal incapacitating devices' (Section 3.3). This lack of specificity hampers efforts to ensure effective implementation of the regulation, as well as the need to avoid the use of inappropriate and abusive equipment.

It is vital that the SAHRC becomes more involved in South Africa's efforts to meet its obligations to prevent torture

It is clear, therefore, that a range of equipment is available for use by both the SAPS and by Correctional Services officials – some of which is inherently abusive and could facilitate torture. Such equipment is either manufactured within South Africa or traded into South Africa. Consequently, it is vital that the trade in such equipment is addressed. To do so, it is essential that South Africa fulfils its regional responsibilities under the Robben Island Guidelines to prevent the trade in inherently abusive equipment. It should thus develop domestic policy and legal frameworks to control the trade in law enforcement equipment.

Allegations of the misuse of law enforcement equipment in South Africa

In recent years a number of allegations have been made and legal cases launched against SAPS officers and prison officials in relation to claims of ill treatment and the use and misuse of equipment.²⁴ These include instances of the alleged use of electric shock devices for torture and other ill treatment.²⁵ While 'no significant cases [of torture] have led to convictions',²⁶ the following two examples show how such equipment is allegedly used and misused.

In October 2013 the Wits Justice Project exposed allegations that staff routinely assaulted, tortured and electric-shocked inmates at the G4S-run Mangaung Prison in Bloemfontein.²⁷ Prisoners, warders and other sources claimed that the Emergency Support Team²⁸ would kick and punch inmates and shock them with electric shock shields after dousing them with water.²⁹

After almost six years, the results of the investigation by the Department of Correctional Services were released in March 2020.³⁰ In addition to the allegations detailed above, the report cites examples of inmates sustaining injuries ‘as a result of being assaulted by officials’, as well as ‘several incidents of prison healthcare staff forcibly injecting inmates with anti-psychotic medication’.³¹ The company that runs the prison, G4S, strongly denies these allegations.³² This court case is still pending.

There have been no convictions for torture since the Prevention and Combating of Torture of Persons Act came into effect

The second example concerns five current and former inmates who are suing the Minister of Justice and the Department of Correctional Services for alleged assault and torture by prison officials while detained at the Leeuwkop Maximum Correctional Centre in 2014. Recent court papers allege that the prisoners were choked, suffocated and made to stand in stress positions.

They were also beaten with batons and received electric shocks.

According to the LHR, which is representing the plaintiffs, and as mentioned above, there have been no convictions for torture since the Prevention and Combating of Torture of Persons Act came into effect. As noted by Clare Ballard, an attorney and head of the Penal Reform Programme at the LHR, ‘it would be precedent-setting if we were to be successful’.³³

Analysts note that JICS annual reports do not give a clear picture of the number of complaints of alleged assault, inhumane treatment and torture by officials because of the inconsistent manner in which such incidents are categorised and registered.³⁴ Nonetheless, these annual reports document the following:

- 811 reported allegations of ‘official on inmate’ assault, 15 of torture and 364 complaints of inhumane treatment in the period 2015/16
- 185 reported allegations of ‘official on inmate’ assault, three of torture and 11 complaints of inhumane treatment in the period 2016/2017
- 231 reported allegations of ‘official on inmate’ assault, three of torture and 10 complaints of ‘inhumane treatment’ in the period 2017/2018
- 155 reported allegations of ‘official on inmate’ assault, three of torture and seven complaints of ‘inhumane treatment’ in the period 2018/2019.³⁵

Unfortunately, the annual reports seldom specify the equipment allegedly used. This impedes not only efforts to bring the alleged perpetrators to justice

2018/2019

THE JICS DOCUMENTED
165 ALLEGED CASES OF ASSAULT,
INHUMANE TREATMENT AND
TORTURE BY CORRECTIONAL
SERVICES OFFICIALS

but also any attempt to control the use, import and trade of such equipment.

The trade in South Africa

Research undertaken for this report shows that a range of South African companies currently manufacture or procure equipment that has been designated as inherently abusive as well as other law enforcement equipment, trade this equipment within South Africa or export this equipment. Other South African companies act as agents for international companies based in third countries, importing and variously offering a range of law enforcement equipment, including in some cases, equipment that has been shown to be inherently abusive and re-exporting it to other countries.

Prominent South African companies include, but are not limited to: Africor, Blades and Triggers, Duke Defence, EPS Stun-Tech (Eagle Projects and Solutions), GioTechnologies, Hi-Tech Products, Imperial Armour, Industrial Cartridge SA, John Elliott Security, Liquid Bullet, Rippel Effect and Sharp Edge.

Several of these South African companies market their products at South African trade shows for security and safety technologies, including Securex South Africa and the African Aerospace and Defence Expo. Some companies have also promoted their products at international arms and security fairs, including the Defence Services Asia Exhibition and Conference (in Malaysia); Indo Defence (in Indonesia); Defence & Security Equipment International (in the United Kingdom [UK]); Securex West Africa (in Nigeria); Shield Africa (in Côte d'Ivoire); and the International Trade Fair for Safety and Security or Intersec (in the United Arab Emirates).

The range of equipment advertised by some of these South African companies in their online marketing material includes direct contact electric shock weapons (including shock batons, shock shields and stun guns), body-worn electric shock devices (particularly stun belts), thumb cuffs, *sjamboks*, projectile electric shock weapons, less-lethal grenade launchers and less-lethal ammunition. Pepper spray products, as well as hand and leg cuffs, are also widely advertised. Companies often market to both civilian (including private security) and law enforcement consumers.

Industrial Cartridge SA, for instance, sells less-lethal 12-gauge shotshells used for crowd and riot control.³⁶ Blades and Triggers offers projectile electric shock weapons, pepper spray and batons.³⁷ Africor promotes riot and crowd control equipment, including shields, batons, helmets, electric shock weapons and tear gas products.³⁸ It also facilitates 'the supply of Stoeger pump-action shotguns with rubber bullets and other ammunition, including tear-gas cannisters'.³⁹

Rippel Effect sells a range of less-lethal single-shot and multi-shot grenade launchers and less-lethal ammunition.⁴⁰ Sharp Edge sells pepper spray products, impact weapons, direct contact electric shock weapons, restraints and the 'Mission Less Lethal TPR Semi-Auto Self-Defence Pistol Kit'. Online orders are delivered by courier within South Africa, across Southern Africa and internationally.⁴¹

A range of South African companies currently manufacture or procure equipment that has been designated as inherently abusive

Duke Defence is, according to its website, a leading innovator in the manufacture and distribution of non-lethal defence systems. Its mission is 'to provide ordinary individuals and security forces worldwide with an effective means of neutralising conflict situations'.⁴² Products include the Duke Pepper Grenade, 'proudly developed and patented in South Africa'.⁴³

Several of the companies in question have an international focus, with some also having branches and agents, or having entered into joint venture agreements with local entities, in other parts of Africa.

Liquid Bullet, for instance, is both an exporter and reseller of pepper spray and direct contact electric shock equipment (such as stun guns).⁴⁴ The company claims to have distributors throughout South Africa, as well as some available 'outside our borders', and is building international links in Nigeria.⁴⁵

Imperial Armour manufactures an extensive range of products that it exports to over 75 countries worldwide. It has agents in, for example, Chile, Côte d'Ivoire, Lebanon, Saudi Arabia, Singapore, Thailand and the United Arab

Emirates.⁴⁶ Although it no longer manufactures electric shock products, current merchandise includes various types of batons, pepper sprays and handcuffs.

That South African firms such as these are variously importing and exporting law enforcement equipment, as well as forging international connections, raise additional challenges for South African lawmakers under Guideline 14 of the Robben Island Guidelines.

The lack of effective controls on this trade means there is no export data or information on the destinations or final end-users of any such equipment. Consequently, the scale of South Africa's exports of law enforcement equipment of concern remains essentially unknown – as does their human rights impact.

While much of this equipment exported from (or imported to) South Africa may have a legitimate law enforcement function, other South African firms manufacture and/or promote inherently abusive equipment that has no practical purpose other than for torture and other forms of cruel, inhuman or degrading treatment or punishment.

The scale of South Africa's exports of law enforcement equipment of concern remains essentially unknown

Some of the companies listed above sell a range of equipment, of which some products may have a legitimate law enforcement role but others do not. John Elliott Security, for instance, markets a variety of products, including a body-worn electric shock device, the 'prisoner anti-scape stun belt', and shock batons.⁴⁷ Blades and Triggers likewise markets thumb cuffs, which, when used in a law enforcement or correctional setting, are inherently abusive.

GioTechnologies similarly offers a range of direct contact electric shock weapons, including stun batons (the 'JSJ809 Stock 40 cm Baton Rechargeable', for instance) and electrified shields, as well as batons and other equipment. Its website states that a 'Stun Gun/ Electroshock weapon [is] an excellent solution for those looking for non-lethal self-defence; whether for law enforcement, security industry, correctional services or private individuals'.⁴⁸

GioTechnologies bills itself as South Africa's largest manufacturer of 'quality security equipment' and notes that it has international clients based in Sweden, the UK, Togo, Gabon, the Democratic Republic of Congo and other locations across Southern Africa. It claims to have close to 30 agents in South Africa and abroad, manufacturing and supplying 'security ware to all commercial and industrial sectors with a security requirement that particularly include the mining, security and government environments'.⁴⁹

While many companies, including GioTechnologies and John Elliott Security, offer a range of products, EPS Stun-Tech (Eagle Projects and Solutions) specialises in 'non-lethal stun technology'. It bills itself as a 'South African design, manufacturer and supplier'.⁵⁰ Products include the EPS 'Capture and Riot' electrified riot shield, which delivers a 120 kV high voltage shock; the 'Anti-Scape Stun Belt' with a control range of 100+ m that can be 'used to restrain and control the behaviour of prisoners/aggressors while escorting in order to prevent escape and ensure safety, efficiency without dangerous attacks to personnel or to innocent bystanders'; the EPS Stuntech Baton Range with batons in various sizes (40 cm Tactical, 55 cm Combat, 70 cm Riot), with an output peak voltage of 1.5 kV; and the EPS Stuntech Stun Guns, which are handheld.⁵¹

According to a respondent interviewed for this research, EPS has supplied the DCS with electrified riot shields.

The Institute for Security Studies (ISS) can also demonstrate that EPS is exporting, or seeking to export, these weapons. For instance, EPS has marketed its products at international arms and security events, including Intersec Dubai. In addition, EPS products, including the EPS Stun-Tech 'Anti-Scape Stun Belt' and the EPS-R1 prisoner restraint system, are advertised by a company based in the United States (US), Quantum Ball Hi-Tech Products. According to Quantum Ball Hi-Tech Products' website, this electric shock prisoner stun belt has 'been used on tens of thousands of prisoners nationwide [in the US] by local and federal law enforcement agencies, including the Federal Bureau of Prisons and the US Marshals Service'.⁵²

There is clearly both a domestic and an international market for South African-manufactured law enforcement

products. Some of these products require South Africa to develop stringent controls on their manufacture, trade and use. Others, including the body-worn electric shock devices—which are manufactured in South Africa, permitted for use in South African correctional facilities and available for export—have no legitimate law enforcement purpose. The manufacture, trade and use of such equipment ought to be prohibited by the South African government.

South Africa’s response to the manufacture of and trade in law enforcement products

In response to its combined second and third periodic report to the UN Committee against Torture (CAT),⁵³ in May 2019 South Africa was asked to provide information on measures taken to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, including, for instance, body-worn electric shock devices and direct contact electric shock weapons.⁵⁴

Both electric shields and handheld direct contact electric shock weapons are inherently abusive

This request followed a submission to the CAT made by the Omega Research Foundation, Legal Resources Centre and ISS, in preparation for the List of Issues for South Africa prior to the 67th Session of the CAT from 12 November to 7 December 2018.⁵⁵ The submission outlined issues of concern relating to the South African manufacture, trade and use of certain types of military, security and policing equipment that could be deemed to contravene articles 2 and 16 of UNCAT. The SAHRC endorsed the submission, as it ‘provides substantial commentary on concerns regarding the manufacture, trade and use of equipment used for torture in South Africa’. It argued that the South African government should be reporting on the ‘prohibition and monitoring on the use of certain equipment’.⁵⁶

In its reply, South Africa stated that

with regards to the use of equipment designed to inflict torture or other cruel, inhumane and degrading treatment, certain devices such as

electric shock devices, tonfas, batons, pepper spray and rubber bullets are classified as non-lethal weapons and therefore are assumed to be a safer alternative to firearms. The use of non-lethal weapons in prisons is governed by the Correctional Services Act (No. 111 of 1998 (CSA)).⁵⁷

The response went on to state that non-lethal incapacitating devices may only be issued to a correctional official on the authority of the head of prison.⁵⁸ Whenever such devices are used, their use must be reported in writing.⁵⁹

In its response, South Africa also noted that the only devices currently authorised for use in prisons are shields and handheld electronic immobilising stun devices.⁶⁰ However, both electric shields and hand-held direct contact electric shock weapons are inherently abusive, and this report recommends that South Africa prohibit their use by law enforcement and correctional officials.

Notably, South Africa did not address concerns about the trade in such equipment, and the troubling gap around trade in South Africa’s domestic legal framework persists.

It is vital that South Africa develop appropriate trade regulations to prohibit the trade in inherently abusive equipment, while also controlling the import and export of other kinds of law enforcement equipment.

Trade controls in other countries

South Africa can draw on a number of national and regional policies and laws prohibiting or controlling the trade in such equipment in order to amend its current policies and legislation or develop its own legal framework and regulations.

Under Regulation (EU) 2019/125 of the European Parliament and the Council concerning the trade in certain goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (known as the EU Anti-Torture Regulation), EU member states cannot import, export, promote or provide technical assistance or training in the use of inherently abusive law enforcement equipment, such as body-worn electric shock devices.⁶¹ The CAT has also recommended abolishing the use of ‘electro-shock stun belts’ to restrain those in custody, noting that their use violates Article 16 of the convention.⁶²

Additionally, the UN's updated Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)⁶³ state that the 'use of chains, irons or other instruments of restraint which are inherently degrading or painful shall [also] be prohibited'.⁶⁴

While the EU Anti-Torture Regulation prohibits the trade in some equipment, it controls (through licencing) the export, transit and provision of certain services relating to other forms of equipment. As detailed in Annex III of the regulation, this includes pepper sprays and some kinds of restraints. It makes clear that export permits may not be granted where these devices 'might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment [or] by a law enforcement authority'.⁶⁵

South Africa has an active industry and market for law enforcement products that are of concern

Thus, while body-worn electric shock devices are prohibited, portable electric discharge weapons that target only one individual at a time, including 'electric shock dart guns', for example are regulated.⁶⁶ This dual approach, whereby the import and export of some equipment is prohibited while other equipment is controlled, should be adopted by South Africa as per its anti-torture obligations and the Robben Island Guidelines, with particular reference to Guideline 14.

A further example is the US, which controls the trade in 'law enforcement restraint devices' under Section 6 of the Export Administration Act of 1979 (as amended). This includes body-worn electric shock 'stun cuffs; shock belts; [and] shock sleeves',⁶⁷ as well as leg irons, shackles, handcuffs, straitjackets and 'discharge type arms and devices to administer electric shock, for example, stun guns, shock batons, shock shields'.⁶⁸

Conclusion

There are limited controls on the use of policing and security equipment of the type that could be used for torture by law enforcement and correctional officials in South Africa. However, there are no controls on – or an entity to oversee – the trade in policing and

security equipment of the type that could be used for torture and other forms of cruel, inhuman or degrading treatment in South Africa. This is especially important when such equipment is used by inadequately trained personnel or without due regard to their specifications and the general principles of the use of force, or to international human rights law.⁶⁹ There is also no legislation or regulations to govern this trade.

This, despite the fact that, for many years, the UN General Assembly has called on member 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.⁷⁰

That South Africa neither prohibits nor has any rigorous oversight mechanisms to control the manufacture and trade in law enforcement equipment is contrary to its stated aims to prohibit torture and other forms of ill treatment. In this regard, the country does not meet its international anti-torture obligations.

South Africa has established a number of entities to implement its conventional arms control policies and to address its concern over dual-use technology and materials that could be used in weapons of mass destruction.

The National Conventional Arms Control Act (Act 41 of 2002), for example, provides for the establishment of the National Conventional Arms Control Committee (NCACC). This committee ensures that companies comply with government policies by issuing guidelines and criteria to be used when assessing permit applications for the manufacturing, import and export of arms.

The criteria include whether such production or trade is in South Africa's national interest, whether it is line with South Africa's international obligations and commitments, and whether it is with countries involved in the systematic violation or suppression of humanitarian rights and fundamental freedoms.

These entities allow the country to meet its international obligations and national policies.

A mechanism similar to the NCACC, to enforce restrictions on the manufacture, trade and use of law enforcement equipment, would therefore be appropriate, given South Africa's Constitution, its international and continental obligations, its domestic policy and legislative framework, and the other oversight and arms control mechanisms in place.

It is clear from the ISS' research that South Africa has an active industry in and market for a range of law enforcement products that are of particular concern. Some of these are manufactured and used domestically, others are imported into South Africa, and still others are exported or re-sold.

South Africa should destroy all inherently abusive equipment stocks held by the SAPS and Correctional Services

South Africa must prohibit the manufacture, trade and use of law enforcement equipment and other so-called security equipment that has no practical purpose other than torture and cruel, inhuman or degrading treatment or punishment. The trade in other types of law enforcement equipment that may have legitimate law enforcement functions but are prone to misuse, should be rigorously controlled to prevent human rights violations. The manufacture of such devices, their import into and export from South Africa should be either prohibited or controlled in the same way that other sensitive material is proscribed or regulated.

Recommendations

South Africa must take steps to realise its prohibitions on torture and other forms of ill treatment, as well as to meet its international and continental obligations to prevent detainees or incarcerated individuals from being treated or punished in a cruel, inhuman or degrading way.

- There is a clear need for changes to South Africa's policies, laws and regulations in order to better govern the use, manufacture, import and export of law enforcement equipment – equipment that has a legitimate law enforcement role, equipment that may be misused for torture and other forms of ill treatment, and equipment that is inherently abusive.

To meet its obligations under Guideline 14 of the Robben Island Guidelines, South Africa should amend its domestic legislation to prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill treatment. According to legal experts consulted while researching this issue, the range of legislation to be updated or amended requires further investigation. Various existing laws and regulations have to be interrogated for possible amendment and updating.⁷¹ Such updates and amendments should include extra-territorial application to ensure South African citizens cannot evade stronger controls by simply trading from a third country.

- South Africa should prohibit the production, promotion, import, export, brokering or other transfer of inherently abusive weapons and equipment, including body-worn electric shock devices, other direct contact electric shock weapons (stun batons, stun shields, stun guns, etc.), *sjamboks*, thumb cuffs, weighted restraints etc. This should be done by amending the applicable legislation. Such updates and amendments should include extra-territorial application.
- South Africa should destroy all inherently abusive equipment stocks held by the SAPS and Correctional Services, including body-worn electric shock devices, other direct contact electric shock weapons (stun batons, stun shields, stun guns, etc.), *sjamboks*, thumb cuffs, and weighted restraints. Their use by policing and Correctional Services authorities should be strictly prohibited by immediately amending the South African Police Service Act, the Correctional Services Act and, if appropriate, the Criminal Procedure Act, as well as their regulations and schedules.
- South Africa should control the import, export, brokering and other transfer of equipment that has a legitimate law enforcement role but may be misused for torture and other forms of ill treatment. The use of such weapons by law enforcement officials should be consistent with regional and international human rights standards, specifically the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF). This trade control should be done

by amending applicable legislation and, where possible, any updates and amendments should include extra-territorial provisions. The amendments should also make provision for the establishment of an oversight mechanism similar to the NCACC and the South African Council for the Non-Proliferation of Weapons of Mass Destruction. This new entity's mandate would include regulating the development, manufacture, trade and transfer of law enforcement equipment or substances in South Africa.

- South Africa should provide the CAT and the ACHPR with detailed information about its actions 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'.⁷² This should include a specific timetable for action.
- South Africa should amend the legislation and regulations (such as the Correctional Services Act and the Criminal Procedure Act), as well as other relevant policies, laws and regulations, to ensure that they are in line with its existing obligations as a member of the UN and the AU. This should address its responsibility under Guideline 14 of the Robben Island Guidelines in particular.
- South Africa's NPM should investigate and report on the specific equipment used in places of detention, including recording the make, model and origin. The NPM should make recommendations to the relevant authorities to prevent inherently abusive equipment being used and prevent the misuse of other kinds of law enforcement equipment. It should also undertake a study of the status of the trade in such equipment.⁷³ The SAHRC, as the designated independent NPM under OPCAT, should develop guidelines and monitor the trade in law enforcement equipment, as enshrined in Guideline 14 of the Robben Island Guidelines.
- South Africa abolished capital punishment in June 1995. This clear position, as well as the Prevention and Combating of Torture of Persons Act, should facilitate its signing the political declaration issued by the international Alliance for Torture-Free Trade in 2017.⁷⁴ This declaration sets out to, among other things, work towards more effective controls and restrictions on the trade in goods used for the death penalty and torture. In signing the declaration South Africa could act as a regional leader, develop clear export prohibitions and controls, and contribute to a platform for customs authorities to monitor trade flows and identify new products on the market used to commit torture or other cruel, inhuman or degrading treatment or punishment. South Africa could also offer other African countries assistance in developing laws banning the trade and sharing best practices for enforcement systems, thus contributing to the global effort to prevent the trade in such equipment.
- South Africa should support and actively participate in the UN process to 'examine the feasibility and possible scope of a legally binding instrument to establish common international standards for the import, export and transfer of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment'. In June 2019 South Africa voted in favour of draft resolution A/73/L.94,⁷⁵ which began the process of the UN Secretary-General's seeking the views of member states on possible international standards, as well as the establishment of a group of experts to examine the relevant options.⁷⁶ It is vital that South Africa actively participate in the processes established and contribute to the ongoing UN consultations. From this basis of support, South Africa could act as a regional leader and advocate for other African countries and the ACHPR (and in particular its Committee for the Prevention of Torture in Africa) to also support and actively participate in the UN process.⁷⁷

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Notes

- 1 The report acknowledges that some products discussed are legal for civilian purchase and use within South Africa. It does not comment on this, focusing instead on equipment as it is used by law enforcement and correctional authorities.
- 2 Such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.
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- 9 South Africa ratified the African Charter on Human and Peoples' Rights on 9 July 1996. Under Article 62 of the African Charter, states parties are required every two years to submit a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the charter.
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