

The Use of Less Lethal and Restraint Equipment (Electro-Shock Devices, Teargas, Batons, Leg-Cuffs and Belly-Chains) by Correctional Officials

Submission on the Correctional Matters Amendment Bill [B41-2010]

Jointly Submitted to the Portfolio Committee on Correctional Services

C/O Cindy Balie (cbalie@parliament.gov.za)

by the

Omega Research Foundation (Robin Ballantyne: omega.abi@googlemail.com) and the Institute for Security Studies', Arms Management Programme (Noel Stott: nstott@issafrica.org; Gugu Dube: gdube@issafrica.org)

3 December 2010

The Use of Less Lethal and Restraint Equipment (Electro-Shock Devices, Teargas, Batons, Leg-Cuffs and Belly-Chains) by Correctional Officials

Executive Summary

The Omega Research Foundation (Omega) and the Arms Management Programme of the Institute for Security Studies (ISS) commend the Department of Correctional Services (DCS) for their efforts to improve the administration of corrections, in particular the current process to clarify certain provisions relating to parole; to provide for a new medical parole system and to 'provide for the management and detention of remand detainees'.

We are, however, concerned that the Bill does not deal with a key aspect of remand detainees' detention experience: the use of force by correctional officials, in particular the use of less lethal and restraint equipment (e.g. electro-shock devices, teargas, batons, leg-cuffs and belly-chains).

We submit that reviewing the use of this equipment is crucial if the proposed Bill is to meet its stated purpose to 'provide for the management and detention of remand detainees'. Our submission thus provides recommendations on how the Correctional Matters Amendment Bill (and hence the principal statute, the Correctional Services Act 111 of 1998) could be modified to better address these concerns.

We recommend that the Correctional Matters Amendment Bill should be altered so that it amends the CSA in the following ways.

General recommendations:

- All less lethal and restraint equipment authorised for use may only be used by correctional officials trained in the specific techniques for their use. Such training must be carried out by qualified trainers and correctional officials must receive refresher training at least once every six months. This training will include regular conceptual and operational training on international human rights standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment.
- The Act should also specify the less lethal and restraint equipment that can and cannot be used, and detail specific provisions for their use that are in line with human rights standards and international best practice. Leaving these crucial principles to the accompanying regulation allows for these to be watered down by subsequent Ministers.

Electro-shock devices:

- Prohibit the use of stun belts and all other forms of body worn electro-shock devices (e.g. functionally similar devices that go on other parts of the body): and prohibit the use of stun shields by correctional officials and in correctional centres.
- Prohibit the use of all other electro-shock devices (stun guns, stun batons and projectile shock devices) Alternatively if these items are not prohibited, provide for amendments to the CSA which:
 - Clarify exactly which “electronically activated devices” are permissible.
 - State that these devices can only be used in “very exceptional circumstances”, specifically when the individual poses an “immediate threat of death or serious injury and no lesser options are available”.
 - Set out strict guidelines for their use. These guidelines should: i) ensure officials are instructed to avoid repeated, multiple, or prolonged shocks and apply only one shock of five seconds or less, ii) prohibit the use of such devices in the case of individuals who are in restraints unless they pose an immediate threat of death or serious injury that cannot be contained by less extreme measures iii) prohibit their use in conjunction with restraint procedures that restrict breathing.
 - Prohibit the routine issuing of these devices to correctional staff and only issue them to trained officials.
- State that stun guns/batons may only be used by correctional officials trained in the specific techniques for their use. Such training must be carried out by qualified trainers and Correctional Officials must receive refresher training at least once every six months. This training will include regular conceptual and operational training on international human rights stand-

ards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment.

Mechanical restraints:

- Prohibit the use of belly chains and leg irons.
- Consider replacing leg cuffs with more humane alternatives.

Batons:

- The Correctional Matters Amendment Bill should amend the CSA so that it incorporates the phrasing in the 2004 Regulations that “batons may only be used by correctional officials trained in the specific techniques for the use of batons. Such training must be carried out by qualified trainers and correctional officials must receive refresher training at least once every six months”. This will protect this provision from any future weakening in commitment.
- The Correctional Matters Amendment Bill should further amend the CSA to state that this training will include “regular conceptual and operational training on international human rights standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment”.

Rubber ammunition:

- Clarify that the use of “weapons equipped for firing rubber-type ammunition” are governed by the same principles governing the use of conventional firearms - and that they must only be used in situations that meet the criteria for the use of deadly force.
- Clarify that the use of firearms, including rubber ammunition, is only justified for use in self-defence, in the defence of others and / or to neutralise a threat to safety and security when the “immediate threat” is of “death or serious injury”. Clarify that they can only be used to prevent escapes of inmates who pose an “immediate threat” of “death or serious injury” and only when “strictly necessary”.
- Specifying exactly the type of “rubber-type ammunition” permitted for use, prohibiting the use of rubber ammunition with multiple projectiles (i.e. two or more).
- State that “the line of fire must never be directed above the waist of the person, unless they pose an imminent threat of death or serious injury”.
- State that rubber ammunition may only be used by correctional officials trained in the specific techniques for their use. Such training must be done by qualified trainers and correctional officials must receive refresher training at least once every six months. This training will include regular conceptual and operational training on international human rights standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment.

Tear gas:

- Specify the type of “tear gas” and the delivery mechanisms authorised for use in correctional centres, and ensure these are of the minimum strength that is effective.
- Specify that only hand-held aerosol sprays are permitted to be used in enclosed spaces, and only when their use is in accordance with international principles.
- State that teargas may only be used by correctional officials trained in the specific techniques for their use. Such training must be done by qualified trainers and correctional officials must receive refresher training at least once every six months. This training should include regular conceptual and operational training on international human rights standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment.

Introductory Remarks:

The Omega Research Foundation (Omega) and the Arms Management Programme of the Institute for Security Studies (ISS)ⁱ commend the Department of Correctional Services (DCS) for their efforts to improve the administration of corrections, in particular the current process to clarify certain provisions relating to parole; to provide for a new medical parole system and to ‘provide for the management and detention of remand detainees’.

Omega and ISS thank the Portfolio Committee on Correctional Services for requesting public comment on the Correctional Matters Amendment Bill [B41-2010]. Whilst we welcome the proposed amendments, we are concerned that the Bill does not currently deal with a key aspect of remand detainees’ detention experience: the use of force by correctional officials, in particular the use of less lethal and restraint equipment (e.g. electro-shock devices, teargas, batons, leg-cuffs and belly-chains). Reviewing the use of this equipment is crucial if the proposed Bill is to meet its stated purpose to ‘provide for the management and detention of remand detainees’. Our submission provides recommendations on how the Correctional Matters Amendment Bill (and hence the principal statute, the Correctional Services Act 111 of 1998) could be modified to better address these concerns.

Whilst less lethal and restraint equipment can fulfil a legitimate role in the management and detention of inmates, including remand detainees, some types of less lethal and restraint equipment are wholly inappropriate for use in detention settings. For example, the current South African legislation is virtually unique in permitting equipment condemned internationally as having no practical use other than torture and ill-treatment (specifically stun belts, belly chains and leg irons). Other less lethal and restraint equipment can be accidentally misused, or deliberately abused, in ways which violate the human rights of inmates. This is of particular concern given that the Judicial Inspectorate received over 4,000 complaints of inhumane treatment and over 2,000 complaints of assaults by officials in 2008-9.ⁱⁱ Although it is not clear how many complaints were made by remand detainees, they constitute a large proportion (30%) of the total inmate populationⁱⁱⁱ and evidence from a range of countries shows them to be “particularly vulnerable to torture and ill-treatment”.^{iv}

In this submission we examine the equipment permitted for use in South African Correctional Centres and on remand detainees. We focus first on electro-shock devices (stun belts, stun shields and stun guns/batons), then restraints, batons, rubber ammunition and finally tear gas. Each section has recommendations for action which are collated at the end of the submission. The amendments

we suggest to the Correctional Matters Amendment Bill will help to ensure that the Correctional Service Act (CSA) fulfils its purpose to provide for the custody of inmates “under conditions of human dignity” and is consistent with Chapter 2 of the South African Constitution, which gives everyone the right “not to be tortured in any way... (and) not to be treated or punished in a cruel, inhuman or degrading way”. It will also ensure that South African legislation is consistent with “universally accepted standards and norms”, including African^v and international^{vi} texts, a commitment made in the 2005 White Paper on corrections in South Africa.^{vii}

Omega and the ISS would be grateful if the Portfolio Committee on Correctional Services would duly consider these comments in light of our common duty to uphold the democratic values and fundamental human rights contained in South Africa’s constitution and which characterises our diverse society. South Africa’s Bill of Rights is the cornerstone of our legislation including that which governs correctional services and the ‘concomitant criminal procedure which gives rise to any correctional order’.

Stun belts:

The CSA makes provision for the use of “electronically activated high-security transport stun belts” for “restraining a prisoner when outside a cell”.^{viii} These belts — often known as “stun belts” 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. It is not known exactly what product is currently in use by the Correctional Services, but most models — including those manufactured in South Africa — deliver a shock of up to 50, 000 volts and can be used to deliver repeated shocks. One South African model can deliver up to “900 activations” or “2 hours continuous” shock.^{ix} The length of shock delivered with each press of the remote control varies between models. The electrical current not only causes severe pain, with one survivor describing it as “very intense shocking pain... so intense I thought that I was actually dying”, but can cause short and long term physical side effects.^x These include; muscular weakness, urination and defecation, and heartbeat irregularities and seizures.^{xi} The mere possibility that the device could be activated also causes the wearer a great deal of mental suffering.

The use of this type of device has been internationally condemned as unacceptable. The UN Committee Against Torture recommended that stun belts should be “abolish(ed)... as methods of restraining those in custody”;^{xii} 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, whether

inside or outside places of deprivation of liberty”;^{xiii} 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”;^{xiv} and a report by Amnesty International and Omega found that their use “cannot be justified under international law prohibiting torture or other ill-treatment and UN Standards on the use of force by law enforcement officials”.^{xv}

South Africa is virtually alone in its use of this type of device; at the time of writing, Omega and the ISS are aware of only one other country (the United States) where they are in widespread use. As remand detainees are particularly likely to be transported externally (for example, to and from court to attend hearings), there is a concern that they may thus face an increased risk of wearing these belts compared to the rest of the inmate population. These concerns are exacerbated by the recent increase in high profile escapes by remand detainees^{xvi} coupled with the fact that the Department of Correctional Services recently purchased an additional 900 belts, more than doubling their stock.^{xvii} The frustration recently expressed by the Judicial Inspectorate about the Department’s “general disregard... of their statutory responsibility” to report the use of such devices (along with other mechanical restraints) makes South Africa’s potential use of these devices on inmates, including remand detainees, all the more troubling.^{xviii}

Stun belt use breaches African and international standards in several ways:

- *By the mental suffering inflicted.* As the UN Human Rights Committee notes, the terms torture and cruel, inhuman or degrading treatment or punishment: “relate not only to acts that cause physical pain but also to acts that cause mental suffering”.^{xix} Even if the electro-shock component of the device is never triggered, simply wearing a device that can deliver an electric shock at any moment causes profound mental suffering. An American inmate who had the belt applied noted that “this mental restraint was far worse than being beaten. The mental pain and suffering last far longer”.^{xx} Indeed, one American manufacturer advertised stun belts as creating a “very psychological” effect, noting that “there’s a tremendous amount of anxiety. The fear will elevate blood pressure as much as the shock will”.^{xxi}
- *By its humiliating and degrading effects.* One manufacturer stated that one of the “great advantages” of the device is its ability to “humiliate the wearer”^{xxii} - not least through the urination and defecation that often accompany activation of the device. The Council of Europe’s Committee on the Prevention of Torture also considers the device “inherently degrading”^{xxiii} and Amnesty International has noted that “subjection to a police or prison official who has the power to administer pain at will is also clearly degrading”.^{xxiv} Use of the stun belt thus contravenes the Kampala Declaration on Prison Conditions in Africa, which states that “the detrimental effects of imprisonment should be minimised so that prisoners do not lose their self respect”.^{xxv}

- *By impairing the subject's mental capacity.* The fear that the device engenders impacts on the ability of the wearer to make sound decisions and judgements. A court in the US has ruled that the device affects the mental capacity of the person wearing it to such an extent, it is equivalent to "the forced administration of antipsychotic medication"^{xxvi} and academic studies have found that it exerts a profound effect on the mind of the wearer.^{xxvii} Thus, in certain situations, use of the device risks breaching the Robben Island guidelines^{xxviii} and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which state that "no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement".
- *By using, or threatening, excessive force:* The UN Basic Principles on the Use of Force and Firearms state that "non-lethal incapacitating weapons (should be developed) with a view to increasingly restraining the application of means capable of causing death or injury to persons" – that is, that non-lethal weapons should decrease, not increase, the amount of force used to achieve the lawful objective (in this case, restraint). They further state that the force used should be minimal. However, the stun belt, by acting both as a restraint and an electro-shock device, potentially increases the amount of force used. The Supreme Court of Indiana, ruling on the use of stun belts in courtrooms, found that other forms of restraint would serve the same purposes "without inflicting the mental anguish that results from simply wearing the stun belt and the physical pain that results if the belt is activated."^{xxix}

Stun belts: impractical as well as immoral. Stun belts are currently only authorised for restraining prisoners outside their cells, including during transit. Evidence suggests that their use in this context is not effective.

- Evidence from America, the only other country known to use stun belts, reveals a high likelihood of accidental discharge, with 43% of activations of stun belts being accidental. The likelihood of accidental discharge is increased during transport as the vehicle may lurch or stop suddenly.
- Muscular incapacitation not only negatively impacts the subject, but can also cause additional difficulties for the escorts charged with transporting the subject. If subjects are unable to respond to commands to move, officials will have to move them, delaying the transport and possibly compromising their safety. This becomes all the more difficult if defecation and urination have occurred.
- The mental effects of the device inhibit the wearer's ability to think rationally. This risks making their behaviour more, not less, unpredictable.
- The transport of detainees can be a flashpoint for potential abuse to occur. Amnesty International has reported that experience in the US illustrates that it is exactly this situation where activation of the stun belt by unscrupulous officers is most likely.

Shock shields and hand held stun devices:

The CSA makes provision for the use of (unspecified) “non-lethal incapacitating devices”. The 2004 Regulation accompanying the Act states that “the only non-lethal incapacitating devices that may be used by a correctional official are the following... electronically activated devices”. However, the specific types of “electronically activated devices” are not defined and it is not clear which devices are authorised for use. This omission needs to be clarified as a matter of urgency. Although we have not obtained the most recent version of the B Orders, it appears that officials are authorised to use 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. However, it is not clear if projectile electro-shock devices (Taser-type, which can deliver a shock at a distance) are included.

Shock shields and stun guns/batons 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 impossible to assess the extent to which shock shields and stun guns / batons are being used inappropriately, if indeed they are being used at all. However the Jali Commission extensively documented cases of systematic, routine abuse involving shock shields—including cases where inmates were stripped naked and shocked with devices,^{xxx} and there is evidence to suggest that misuse of the devices continues today. 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.^{xxxi}

Shock shields and stun guns/batons also pose a risk of unintended misuse. The 2004 Regulation gives no guidance on how many times it is permissible to shock inmates, nor how long the shocks should last. Without such guidance officials may inadvertently subject remand detainees, or other inmates, to multiple or prolonged shocks, increasing the risk of death or serious injury.

In addition, it is not clear what law enforcement advantages shock shields and stun guns / batons bring. Shock shields and stun guns/batons are not routinely issued to, or considered suitable for use by, the SAPS, and so it is not clear why they are considered tactically advantageous for correctional officials. Such devices function by producing intense pain in the target but do not incapacitate in the way that projectile electro-shock devices or tear gas sprays do. Thus, using such devices against individuals may not only have the unintended consequence of provoking them further but, in a riot

control situation, risks further escalating the situation. These devices also pose additional risks for Correctional Officials, because they must get extremely close to the subject to be able to use them. In so doing the tactical advantage gained by distance is lost, potentially putting officials in danger.

Given these drawbacks — and the ongoing human rights abuses that are committed using shields — we question whether even the limited use of these devices is appropriate, especially in the light of effective alternatives. For example, non-electrified “capture shields” enable containment of inmates and protection of officials without the possibility of excessive electric shocks.

Whilst the international consensus on the use of shock shields and stun guns/batons is not as strong as the consensus on the use of shock belts, 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, EDWs) 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”.^{xxxii} It also recommends that the “criteria for deploying EDW should be both defined by law and spelt out in specific regulations”.^{xxxiii}

Recommendations: The Correctional Matters Amendment Bill should provide for amendments to the CSA which:

- **prohibit the use of stun belts and all other forms of body worn electro-shock devices (e.g. functionally similar devices that go on other parts of the body): and prohibit the use of stun shields by correctional officials and in correctional centres.**
- **prohibit the use of all other electro-shock devices (stun guns, stun batons and projectile shock devices) Alternatively if these items are not prohibited, provide for amendments to the CSA which:**
 - **Clarify exactly which “electronically activated devices” are permissible.**
 - **State that these devices can only be used in “very exceptional circumstances”, specifically when the individual poses an “immediate threat of death or serious injury and no lesser options are available”.**
 - **Set out strict guidelines for their use. These guidelines should: i) ensure officials are instructed to avoid repeated, multiple, or prolonged shocks and apply only one shock of five seconds or less, ii) prohibit the use of such devices in the case of individuals who are in restraints unless they pose an immediate threat of death or serious injury that cannot be contained by less extreme measures iii) prohibit their use in conjunction with restraint procedures that restrict breathing.**

- **Prohibit the routine issuing of these devices to correctional staff and only issue them to trained officials.**
- **State that stun guns/batons may only be used by correctional officials trained in the specific techniques for their use. Such training must be carried out by qualified trainers and Correctional Officials must receive refresher training at least once every six months. This training will include regular conceptual and operational training on international human rights standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment.**

Mechanical restraints:

The CSA makes provision for the use of “mechanical restraints”, which are defined in the 2004 Regulation as including “leg irons and cuffs” and “belly chains”, as well as several other types of restraints. The international consensus—both in Africa and internationally—is firmly against the use of chains and irons in any circumstances. The Standard Minimum Rules for the Treatment of Prisoners state that “chains and irons shall not be used as restraints” and the Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment prohibit “restrictions... which are not strictly required for the purpose of detention”. 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”.^{xxxiv}

In line with this consensus, revisions to the CSA have progressively limited the situations in which mechanical restraints can be applied, whilst increasing the reporting requirements on their use. It is thus somewhat surprising that the list of permissible “mechanical restraints” still includes ‘belly chains’ and ‘leg irons’. The extent to which belly chains are used is not known. However they are still legally allowed to be used “on inmates when outside their cells” and it appears that leg irons are authorised for use both inside and outside the cell, as Section 31 (7) states that “mechanical restraints in addition to handcuffs or leg irons may only be used on inmates when outside their cells.” This needs to be revised as a matter of urgency.

There is an on-going debate on the difference between leg-irons and leg-cuffs, and the permissibility of using the latter. Leg cuffs are usually understood as metal cuffs that are placed on the ankle and connected by a flexible chain link. Whilst such devices are preferable to the use of leg irons (which tend to either be heavier, have thicker cuffs or to have a fixed bar), their use is still of questionable legality. Indeed, the restraints considered degrading by the Namibian Supreme Court, although termed leg irons, appear virtually indistinguishable from leg cuffs, as they comprise “two metal rings

with a fastener that is usually welded closed or sealed in such a way that he cannot remove the ring. A metal chain connects the two rings. This chain is approximately 30 cm long. A ring is placed on each leg, just above the ankle". Some states are now beginning to use more humane restraints, made from strong fabrics rather than metal.

Recommendations:

The Correctional Matters Amendment Bill should provide for amendments to the CSA which:

- **Prohibit the use of belly chains and leg irons.**
- **Consider replacing leg cuffs with more humane alternatives.**

Batons:

The 2004 Regulations authorise the use of batons by specially trained officers, and it is our understanding that the B Orders further specify the use of tonfas or side-handled batons. Batons are one of the most widely used pieces of equipment and, unlike electro-shock devices, are widely accepted to have a legitimate law enforcement function. However, they are prone to abuse. The 2009/2010 Judicial Inspectorate report cites multiple cases of officials beating detainees, sometimes resulting in death, with their batons, including two cases where the victims were remand detainees.

In one case, an unsentenced prisoner was repeatedly hit on the head and died from "intracranial haemorrhage" and "cerebral contusions". In another case, an un-sentenced prisoner died from excessive use of force by officials. Although batons were not specifically mentioned in the report, the cause of death was recorded as "blunt force soft tissue injury", which would be consistent with baton use.

Deliberate misuse of batons is not the only issue; unintentional misuse is also of concern. Whilst the design of the tonfa has defensive advantages, an industry source suggests that when used offensively as a striking weapon, it can generate between four and nine times the striking power of conventional straight batons.^{xxxv} This may make it more difficult for correctional officials to ensure that their use of force is proportionate to the situation encountered. In addition, as a UK policing conference outlined, "the ways of using the new side-handled baton in particular are so complex that officers need regular refresher training to use it properly".^{xxxvi}

In line with good practice, the Regulations accompanying the Act do provide for regular training. However, this requirement should be detailed in the legislation itself, to prevent any possible weakening in the future.

Recommendations:

- **The Correctional Matters Amendment Bill should amend the CSA so that it incorporates the phrasing in the 2004 Regulations that “batons may only be used by correctional officials trained in the specific techniques for the use of batons. Such training must be carried out by qualified trainers and correctional officials must receive refresher training at least once every six months”. This will protect this provision from any future weakening in commitment.**
- **The Correctional Matters Amendment Bill should further amend the CSA to state that this training will include “regular conceptual and operational training on international human rights standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment”.**

Rubber ammunition:

The CSA makes provision for correctional officers to use “rubber type ammunition” during “emergency situations” only. We particularly welcome the inclusion of rubber ammunition in the section on *firearms*, as this recognises the lethal effects that this ammunition can have. By including rubber ammunition (and less lethal firearms) in this section, we presume that their use is governed by the principles governing the use of conventional firearms - and that they must only be used in situations that meet the criteria for the use of deadly force. However, it would be beneficial for the legislation to be amended to resolve any potential ambiguity in this area.

Similarly, whilst the criteria for the use of firearms (understood as both lethal and kinetic impact) contains many elements of the UN Basic Principles on the Use of Force and Firearms, there is need for further clarification. The Act currently states that “firearms may only be used as a last resort and then only (a) in self-defence; (b) in defence of any other person; (c) to prevent an inmate from escaping; or (d) when the security of the correctional centre or the safety of inmates or others is threatened by one or more inmates”. In order to bring this further in line with international principles, the Act should be revised to clarify that the use of firearms, including rubber ammunition, is only justified for use in self-defence, in the defence of others and / or to neutralise a threat to safety and security when the “immediate threat” is of “death or serious injury”, not lesser consequences. Similarly, whilst the Basic Principles authorise the use of firearms if “strictly necessary” to prevent inmates escaping, this is only restricted to those inmates that pose an “imminent threat of death or serious injury” to others and thus does not apply to all detainees. The current wording of the Act seems to be broader in its potential application.

We further recommend that the Act state exactly what type of “rubber-type ammunition” is permitted for use. This is not currently specified either in the Act or the Regulations, possibly allowing for more problematic types to be used. For example, whilst it is presumed that the Act permits the use of kinetic impact projectiles made entirely of rubber, the term “rubber bullet” is often used to refer to (lethal) metal bullets with a thin rubber coating. In addition, without knowing the type of “rubber-type ammunition” used, it is impossible to know whether the requirement that this ammunition may “only be fired at a distance of more than 30 metres from a person” is effective in reducing the risk of death or injury, as many types of rubber ammunition are not accurate at this distance.

We recommend that the Act specify that only single rubber projectiles can be used. The model currently in use by the SAPS fires two rubber projectiles simultaneously. This increases the probability that third parties may be injured, and that vulnerable areas of the body may be hit.

Medical studies of 12-gauge rubber ammunition (the general type in use by the SAPS and so potentially also in use with Correctional Services) have shown that the area between the ribs is particularly vulnerable to “intra-thoracic penetration” – and even if penetration does not occur, other “significant injuries”, including “contusions to the heart and lung” can occur^{xxxvii}. Multiple studies have also shown the increased risk of death or serious injury of impacts to the head or upper body region. We commend the existing clause stating that “if such ammunition is fired at less than 30 metres from a person, the line of fire must be directed at the lower body of the person” but recommend further adding that “the line of fire must never be directed above the waist of the person, unless they pose an imminent threat of death or serious injury”.

Recommendations: The Correctional Matters Amendment Bill should provide for amendments to the CSA which:

- **Clarify that the use of “weapons equipped for firing rubber-type ammunition” are governed by the same principles governing the use of conventional firearms - and that they must only be used in situations that meet the criteria for the use of deadly force.**
- **Clarify that the use of firearms, including rubber ammunition, is only justified for use in self-defence, in the defence of others and / or to neutralise a threat to safety and security when the “immediate threat” is of “death or serious injury”. Clarify that they can only be used to prevent escapes of inmates who pose an “immediate threat” of “death or serious injury” and only when “strictly necessary”.**
- **Specifying exactly the type of “rubber-type ammunition” permitted for use, prohibiting the use of rubber ammunition with multiple projectiles (that is, two or more).**

- **State that “the line of fire must never be directed above the waist of the person, unless they pose an imminent threat of death or serious injury”.**
- **State that rubber ammunition may only be used by correctional officials trained in the specific techniques for their use. Such training must be done by qualified trainers and correctional officials must receive refresher training at least once every six months. This training will include regular conceptual and operational training on international human rights standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment.**

Teargas:

The CSA states that “teargas grenades and cartridges fired by firearms or launch-tubes may not be fired or launched directly at a person or into a crowd... Whenever a correctional official decides to use teargas he or she must be convinced that its use in the specific situation meets the requirements of minimum and proportionate force”.

These provisions are necessary and welcomed. However, the legislation should specify the type of “tear gas” authorised for use in correctional centres and clarify that, due to the risk of injury, this should be of the minimum strength and potency that is effective. The legislation should differentiate between hand-held aerosol sprays used by correctional officers, larger “grenades and canisters” mentioned in the Act and the “teargas cartridges” cited in the Regulation, clearly defining what equipment these terms refer to, and the types authorised for use. The legislation should also state that only hand-held aerosol sprays are permitted for use in confined spaces, and that use of other tear gas delivery mechanisms in confined spaces is always unacceptable due to the high risk of death. As Amnesty International emphasised in an incident involving the use of tear gas in Zimbabwe, “firing tear gas into a confined space is contrary to international human rights standards on the use of force by law enforcement officials due to the danger posed to those exposed”.^{xxxviii}

Recommendations: The Correctional Matters Amendment Bill should provide for amendments to the CSA which:

- **Specify the type of “tear gas” and the delivery mechanisms authorised for use in correctional centres, and ensure these are of the minimum strength that is effective.**
- **Specify that only hand-held aerosol sprays are permitted to be used in enclosed spaces, and only when their use is in accordance with international principles.**
- **State that teargas may only be used by correctional officials trained in the specific techniques for their use. Such training must be done by qualified trainers and correctional officials must receive refresher training at least once every six months. This training should include regular conceptual and operational training on international human rights**

standards, including the absolute prohibition against torture and other cruel, inhuman or degrading treatment.

Notes:

ⁱ The Omega Research Foundation (Omega) and the Arms Management Programme (AMP) of the Institute for Security Studies (ISS) welcome the opportunity to comment on the Correctional Matters Amendment Bill. The Omega Research Foundation is a UK based research organisation founded in 1990 to research the human rights implications of military, security and policing equipment, including less lethal weapons and restraints. The ISS is a pan-African applied policy research institute headquartered in South Africa working in the area of African human security. Omega wishes to thank the European Instrument for Democracy and Human Rights, the Sigrid Rausing Trust and the Joseph Rowntree Charitable Trust for the financial support that made this briefing possible. AMP's participation was made possible with the support of the Royal Norwegian Government. In both cases, the opinions expressed do not necessarily reflect those of the respective organisations' oversight structures or donors.

ⁱⁱ Statistics from March 2008 to March 2009. Hlengiwe Mnguni 'Concern over Prison Violence' *News 24* 26 May 2010 <http://www.news24.com/SouthAfrica/News/Concern-over-prison-violence-20100526> [Accessed 23/11/2010].

ⁱⁱⁱ Judicial Inspectorate for Correctional Services (2010) Annual Report for the period 1 April 2009 to 31 March 2010 p13.

^{iv} OSCE (1999) 'Pre-trial detention in the OSCE area' *Organization for Security and Co-operation in Europe Review Conference*, September 1999, ODIHR Background Paper 1999/2.

^v African texts include the Robben Island guidelines which note that States shall "ensure that all persons under any form of detention... are treated in a humane manner and with respect for the inherent dignity of the human person" and "prohibit and prevent the use... of equipment designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends" and the Arusha Declaration on Good Prison Practice, which emphasises the responsibility of Correctional Services to "respect and protect the rights and dignity of prisoners as well as ensure compliance with national and international standards".

^{vi} Relevant texts include The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Standard Minimum Rules for the Treatment of Prisoners, The Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment, UN Rules for the Treatment of Women Prisoners and Non-Custodial measures for Women Offenders.

^{vii} Department of Correctional Services (2005) *White paper on corrections in South Africa*.

^{viii} Whilst the CSA doesn't mention stun belts specifically, the 2004 Regulations that accompany the CSA state that the "mechanical restraints" the Act refers to include "electronically activated high-security transport stun belts" which may "only be used for the purpose of restraining a prisoner when outside a cell" - Section 18, 2004 Regulations.

^{ix} 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].

^x 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.

^{xi} *ibid* p386.

^{xii} Cited in Amnesty International (1999) *United States of America: Cruelty in Control? The stun belt and other electro-shock treatment* AI Index: AMR 51/54/99 p40.

^{xiii} 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].

^{xiv} 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.

^{xv} Amnesty International and the Omega Research Foundation (2010) *From words to deeds: making the EU ban on the trade in 'tools of torture' a reality* EUR01/004/2010.

^{xvi} For example, the high profile escape of nine detainees awaiting trial from Durban Westville Correctional Centre on 21 February 2010.

^{xvii} Flanagan, L 'Prisoners in for a shock' *IOL* 9 February 2009 (originally published on page 2 of The Star on February 09, 2009) www.iol.co.za/index.php?art_id=vn20090209071538922C290344 [Accessed 24/06/2010 – webpage no longer available].

-
- ^{xviii} Judicial Inspectorate of Correctional Services (2010) op cite.
- ^{xix} Amnesty International (1999) op cite p5.
- ^{xx} Yoon, P. K (2003) op cite p404.
- ^{xxi} *ibid* p387.
- ^{xxii} *ibid* p387.
- ^{xxiii} Council of Europe European Committee for the Prevention of Torture (2010) *29th general report of the European Committee for the Prevention of Torture* p37.
- ^{xxiv} Amnesty International (1999) op cite.
- ^{xxv} The Kampala Declaration on Prison Conditions in Africa and Plan of Action (1996), clause 5.
- ^{xxvi} Yoon, P. K (2003) op cite p387.
- ^{xxvii} *ibid* p386.
- ^{xxviii} Guidelines and measures for the Prohibition and Prevention of torture, Cruel, Inhuman or Degrading treatment or Punishment in Africa (the Robben Island Guidelines).
- ^{xxix} *ibid* p389.
- ^{xxx} Jali Commission (2006) *Commission of inquiry into alleged incidents of corruption, maladministration, violence or intimidation into the Department of Correctional Services appointed by the order of the President of the Republic of South Africa in terms of promclamation no 135 of 2001, as amended*. Chapter 25.
- ^{xxxi} Judicial Inspectorate (2010) op cite p67.
- ^{xxxii} Council of Europe European Committee for the Prevention of Torture (2010) p36.
- ^{xxxiii} Council of Europe European Committee for the Prevention of Torture (2010) p35.
- ^{xxxiv} *Namunjepo and Others v Commanding Officer, Windhoek Prison and Another* (SA 3/98) [1999] NASC 3; 2000 (6) BCLR 671 (NmS) (9 July 1999).
- ^{xxxv} See: http://www.deenside.co.uk/deenside_catalogue.php?c=Batons&p=2732 [Accessed 26/05/2010].
- ^{xxxvi} Police Complaints Authority (2002) *Safer Restraint: Report of the Conference held in April 2002 at Church House, Westminster* p12.
- ^{xxxvii} Rezende-Neto, J; Silva, F; Porto, L; Teixeira, L; Rizoli, H (2009) 'Penetrating injury to the chest by an attenuated energy projectile: a case report and literature review of thoracic injuries caused by "less-lethal" munitions' *World Journal of Emergency Surgery* 2009, 4:26.
- ^{xxxviii} Zimbabwe: shattered lives - the case of Porta Farm AFR 46/004/2006 p7.