

The use of less-lethal weapons in South African prisons and crowd management

David Bruce



The use of less-lethal weapons in South African prisons and crowd management

David Bruce

Contents

- Executive summary**iv
 - Key pointsiv
 - Summary of recommendations v
- Acronyms and abbreviations**..... viii
- Chapter 1
 - Introduction**..... 1
 - Preferred terminology (‘less-lethal weapons’) 2
 - Less-lethal weapons focused on in this monograph 3
- Chapter 2
 - The use of less-lethal weapons in South African prisons** 5
 - Overview of the prison system in South Africa 5
 - Key regulatory provisions 5
 - Available evidence on the use and alleged misuse of LLWs..... 5
 - Aspects of the legal and regulatory framework 18
 - Accountability on the use of force..... 22
- Chapter 3
 - Weapons used in crowd management** 27
 - The policing of protest by SAPS Public Order Police units 27
 - Legal and regulatory framework regarding crowd management 27
 - Less-lethal weapons used by POP in crowd management 28
 - Data on use and misuse of weapons 29
 - Regulation of the use of LLWs by POP 35
 - Accountability and reporting 37
- Chapter 4
 - Conclusions and recommendations**..... 39
 - General observations 39
 - Regulatory framework 39
 - Accountability..... 42
 - Significance of OPCAT for the use of LLWs 43
 - Recommendations 44
 - Acknowledgement**..... 48
 - Notes** 49

Executive summary

What are the weapons used in the policing of protests and in prisons in South Africa? Focusing on less-lethal weapons (LLWs) this monograph provides an in-depth look at the weapons provided to prison warders and public order police.

The monograph first looks at the use of these weapons in South African public and private prisons. Thereafter, it examines the use of these weapons by South African Police Service (SAPS) Public Order Police (POP) units in the policing of crowds ('crowd management'). In both contexts it discusses the types of weapons authorised by the legal and regulatory framework and provided to prison and POP officials as well as available evidence regarding the use and abuse of this equipment, the regulatory framework governing the use of equipment, and provisions regarding accountability. The concluding section notes key points of comparison and provides recommendations.

The monograph is based on documentary sources (including the annual reports of the Judicial Inspectorate for Correctional Services [JICS] and the Independent Police Investigative Directorate [IPID]), press reports and interviews with DCS officials, JICS officials and others. The primary focus is on the period 2013–2018. Relevant information prior to this time period is also referred to.

Key points

- In prisons and crowd management LLWs are used extensively.
- The monograph identifies seven types of LLWs that are used. In prisons the main LLW is the tonfa baton, with electrified shields also in use.
- In crowd management major reliance is placed on rubber bullets, as well as teargas and stun grenades. Batons and water cannons are also used. Long-range acoustic devices have also been purchased by the SAPS.
- There is evidence of LLWs being abused in both environments.
- The DCS has a more extensive regulatory framework regarding LLWs than the SAPS. Inter alia, it pays greater attention to the risks associated with LLWs.
- In the case of POP, the regulatory framework gives extremely limited recognition to the risks associated with LLWs. Provisions regarding the use of firearms are also not coherent.

- The use of firearms by police appears to account for more crowd management-related deaths than do LLWs.
- In neither regulatory framework is there meaningful recognition of the indiscriminate nature of some LLWs or the issue of indiscriminate use.
- There is little evidence that the accountability mechanism results in individuals being held responsible for abuses. However, some SAPS members have been prosecuted for deaths from police use of force during crowd management.

Summary of recommendations

General

- Recommendation 1: There is a general need for the use of LLWs by law enforcement officials to be regulated in a more coherent manner. In their regulatory framework, the DCS and POP should more clearly recognise and emphasise that:
 - LLWs are ‘less lethal’, not ‘non-lethal’, and may result in fatalities or have adverse health consequences.
 - There is a distinction between discriminate and indiscriminate weapons.
 - Weapons that are capable of being used more discriminately should only be targeted at people whose conduct justifies this (‘differentiation’).
 - Certain categories of people (babies, young children, elderly people) are more vulnerable to fatal consequences from LLWs.
- Recommendation 2: All policies and regulation of the use of force and treatment of persons in custody should be compatible with national, regional, and international human rights norms and standards.
- Recommendation 3: For purposes of strengthening the regulatory framework governing the use of less-lethal and lethal weapons, considerations should be given to The report of the Marikana Panel of Experts, The Model Bill for Use of Force by Police and other Law Enforcement Agencies in South Africa and the Guidance on Less Lethal Weapons in Law Enforcement issued by the UN High Commissioner for Human Rights.¹
- Recommendation 4: No weapon should be issued to the SAPS or DCS unless it has been independently tested and reviewed to ensure compliance with international human rights law and standards, and there is formal authorisation for its use.
- Recommendation 5: All training, including in the use of LLWs, must be human rights-based.
- Recommendation 6: Use-of-force provisions should be amended so as to set a minimum firing distance for kinetic impact projectiles, other than in circumstances

where lethal force may lawfully be used. Minimum firing distances should apply even when the lower body or legs are targeted.

- Recommendation 7: When reporting on the use of force, JICS and IPID should provide information about the weapons or other equipment that is used.

Department of Correctional Services

- Recommendation 8: Electric shock shields, as well as any other electric shock weapons or restraints such as body-worn electric shock belts and electric shock stun batons and stun guns, are prone to abuse, and their use should be prohibited.
- Recommendation 9: All incidents of alleged torture, assault, other forms of ill-treatment and death in prisons should be reported and carefully monitored.
- Recommendation 10: The DCS B-orders should refer to CSA provisions that require mandatory reporting of the use of force to JICS.²
- Recommendation 11: Legislation governing JICS should be amended to make its disciplinary recommendations legally binding on the DCS.
- Recommendation 12: Chemical restraints should only be used in a medical context when expressly ordered by a doctor, and must be subject to strict oversight and reporting.
- Recommendation 13: The EST must be brought into line with international use-of-force standards.

Crowd management

- Recommendation 14: Legislation and regulations regarding the use of force in crowd management should be amended to clarify the regulatory framework governing the use of lethal force. The R5, and other weapons capable of automatic fire, should expressly be prohibited for use in crowd management.
- Recommendation 15: The SAPS should ensure that kinetic ammunition authorised for use is compatible with human rights laws and standards, including minimising potential lethal consequences and injury. In order to support compliance with principles of differentiation rubber double ball rounds should be replaced by single projectile ammunition that is more accurate
- Recommendation 16: However regulations should prohibits the SAPS from using acoustic devices as offensive 'less-lethal' weapons due to their indiscriminate nature and potentially harmful effects.
- Recommendation 17: The SAPS should ensure that assistance and medical aid are rendered to anyone who is injured as a result of the use of force by police.

National Preventive Mechanism

- Recommendation 18: NPM should include reporting on equipment used in places of detention as per its mandate.
- Recommendation 19: NPM should make recommendations to the relevant authorities to prevent equipment that promote the possibility of torture and ill-treatment from being used.

Acronyms and abbreviations

CAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSA	Correctional Services Act 111 of 1998
CSR	Democratic Republic of Congo
DCS	Department of Correctional Services
EST	Emergency Support Team
ICCPR	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Convention on Civil and Political Rights
ICCVs	Independent Correctional Centre Visitors
IPID	Independent Police Investigative Directorate
JICS	Judicial Inspectorate for Correctional Services
LLWs	less-lethal weapons
NI 4 of 2014	National Instruction 4 of 2014
NLID	non-lethal incapacitating device
NPM	National Preventive Mechanism
OHSC	Compliance Inspectorate of the Office of Health Standards Compliance
OPCAT	Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE-ODIHR	Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights
POP	Public Order Police

RG	Regulation of Gatherings Act 205 of 1993
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
TUT	Tshwane University of Technology
SPT	United Nations Subcommittee on the Prevention of Torture
UN	United Nations
UNHRC	United Nations Human Rights Commission

Chapter 1

Introduction

The South African Bill of Rights, which forms Chapter 2 of the South African Constitution, provides for the right 'to be free from all forms of violence from either public or private sources'.³ This translates into an obligation, on the part of the state, to minimise the use of violence by those who use force on its behalf.

There is likewise an international focus on minimising the use of force, and preventing the unnecessary use of force, by state institutions. One method for doing so is the development and deployment of alternative forms of equipment intended to enable state officials to reduce their use of lethal firearms. The United Nations (UN) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, first adopted in 1990, provides in Article 2 that

[g]overnments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.⁴

The UN Basic Principles go on, in Article 3, to state that

[t]he development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.⁵

Since the adoption of the UN Basic Principles there has been an international expansion in the development of such 'non-lethal incapacitating weapons'.

However, other than broad ideas about minimum force, there is little agreement globally on how the use of these weapons should be controlled.⁶ Indeed, former special rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns noted that this industry is ‘largely self-regulated’, in spite of the fact that many of the weapons manufactured ‘are indeed lethal and can lead to serious injuries’.⁷

This monograph therefore serves as a case study of the current status of ‘non-lethal incapacitating weapons’ (here referred to as less-lethal weapons [LLWs]) in two sectors within the criminal justice system in South Africa. First, it looks at the use of these weapons in the prison context.⁸ Then the focus shifts to the use of these weapons by South African Police Service (SAPS) Public Order Police (POP) units in the policing of crowds (‘crowd management’).⁹ Officials of both the Department of Correctional Services (DCS) and POP make significant use of LLWs.

A locally manufactured electric shock shield
is used in South African prisons

The monograph discusses the types of weapons authorised by the legal and regulatory framework¹⁰ and provided to prison warders/officials and POP members. It assesses available evidence regarding the use and abuse of this equipment, the regulatory framework governing the use of equipment, and provisions regarding accountability. The concluding section highlights some key points of comparison and makes recommendations. The monograph is based on documentary sources (including the annual reports of the Judicial Inspectorate for Correctional Services [JICS] and the Independent Police Investigative Directorate [IPID]), press reports and interviews with DCS officials, JICS officials and others. Its primary focus is on the period 2013–2018. Relevant information prior to this period is also referred to.

Preferred terminology (‘less-lethal weapons’)

This monograph uses the term ‘less-lethal weapons’ (LLWs) to refer to various types of equipment that are used in prisons by prison officials and by SAPS POP units in the management of crowds.

While the UN Basic Principles refer to ‘non-lethal incapacitating weapons’, numerous other terms are used internationally to describe equipment of this kind. These include ‘crowd control weapons’, ‘riot-control weapons’, and ‘non-lethal’, ‘less lethal’ or ‘less than lethal’ weapons. However, some of these terms are either misleading or unsuitable for the purposes of this monograph.

In South Africa these weapons are used not only for the policing of public gatherings but also in the management of prisons. In the regulatory framework

regarding the use of force by prison officials in South Africa uses the term ‘non-lethal incapacitating devices’¹¹ (NLIDs) is used. This reflects the term ‘non-lethal incapacitating weapons’ used in the UN Basic Principles with the word ‘weapons’ replaced by the word ‘devices’. In the Correctional Services Act 111 of 1998 (CSA), NLIDs are distinguished from firearms¹² and mechanical restraints such as handcuffs and leg irons.¹³

It is misleading to refer to these weapons as ‘non-lethal’.¹⁴ While they are less likely to have lethal consequences than firearms, they may be lethal in some circumstances, and also have the potential to cause serious injury. They are therefore less lethal than firearms, rather than non-lethal.

Article 2 of the UN Basic Principles distinguishes between ‘non-lethal incapacitating weapons’ and ‘self-defensive equipment’ such as shields and helmets. These categories are not mutually exclusive however. For example, a locally manufactured electric shock shield is used in South African prisons. This shield has been used as an instrument of torture to shock prisoners repeatedly over a prolonged period of time (see the discussion of a case study below). Shields, which can be understood to be protective equipment, may therefore be used as weapons. This applies especially when they are electrified.

Less-lethal weapons focused on in this monograph

This monograph focuses on the main weapons used in prisons and in crowd management in South Africa. As reflected in Table 1, batons are the primary weapons used in prisons. In prisons, the other commonly used weapon that has attracted attention is the electric shock shield (also referred to as a stun shield), with pepper spray used infrequently and tear gas and kinetic impact projectiles (commonly referred to as rubber bullets or rubber rounds) very rarely. Along with batons, POP units frequently use kinetic impact projectiles, tear gas, and stun grenades. Though firearms are not classified as LLWs, the use of firearms is also examined in the section dealing with crowd management, as it remains a source of concern.¹⁵ Long-range acoustic devices and water cannons are also briefly discussed.

Table 1: Weapons used in prisons by prison officials and by police in crowd management in South Africa

	Prisons	Crowd management
Batons (tonfa) ¹⁶	Most frequently used weapon	Frequency of use unclear
Electric shock shields (stun shields) ¹⁷	Used, notably by Emergency Support Team (EST)	Shield that is used is not electrified
Firearms	Not used in prisons	Some use

	Prisons	Crowd management
Long-range acoustic devices	Not used	Large number procured by the SAPS, which claims that it is used as a communication device and not an LLW
Stun grenades (and other pyrotechnical devices)¹⁸	Authorised for EST but no clear evidence of use; instances of use of stun grenades by the SAPS in prisons	Stun grenades used frequently, as well as smoke grenades
Kinetic impact projectiles (rubber bullets)¹⁹	Use appears to be rare in prisons	Very frequently used; allegedly used by POP in rare instances in prisons
Chemical irritants (tear gas and pepper spray)²⁰	Pepper spray is sometimes used – probably more frequently than other types of chemical irritant	Tear gas used frequently
Water cannons	Not used	Some use

While ‘antipsychotic drugs’ would not generally be regarded as weapons, this monograph also takes note of concerns about the alleged misuse of such drugs to control prisoners, notably at the G4S private prison in Mangaung.²¹

This monograph will not discuss restraints (such as handcuffs, leg irons and body-worn electric shock devices) in detail, although they are used in prisons and by POP. While restraints are frequently used to facilitate torture and other forms of ill-treatment (e.g. through the use of stress positions), they are not considered to fall under the LLW category for the purposes of this current monograph. The DCS regulatory framework also authorises the use of a ‘hand-held electronic immobilising stun device’,²² but it appears that such equipment is not currently issued to DCS officials and is therefore not discussed. The use of shields by POP is also not discussed in detail, in part because these may be seen as ‘protective equipment’ rather than LLWs.

Chapter 2

The use of less-lethal weapons in South African prisons

Overview of the prison system in South Africa

There are 243 prisons in South Africa, of which 235 were operational and eight temporarily closed as of March 2018.²³ On 31 March 2018 the total number of persons held in correctional centres was 164 129, with 117 869 sentenced offenders and 46 260 on remand.²⁴ There are also two private prisons²⁵ among the 243 prisons in South Africa. These are the G4S prison in Mangaung in the Free State, and the Kutama Sinthumule prison, which is run by the Geo Group in Makhado in Limpopo province.

Key regulatory provisions

The use of LLWs is regulated by a combination of:

- The Correctional Services Act 111 of 1998 (as amended) (CSA)
- The Correctional Service Regulations of 2012 (CSR)
- The Correctional Service B-Orders (B-orders)

The B-orders are the most comprehensive and provide detailed regulations in respect of individual types of LLWs. The B-orders not only carry forward relevant provisions of the CSA and CSR but also have their own original provisions. All of the above are explicitly subject to the Constitution. Nonetheless, as noted in the recommendations, B-orders need revision to ensure they are based on and compliant with human rights principles.

Available evidence on the use and alleged misuse of LLWs

Information on the use and abuse of force and LLWs

The DCS barely makes any reference to the use of force and LLWs in its annual reports. Almost all reporting on these issues is provided in the annual reports of JICS. JICS is an 'independent office under the control of the Inspecting Judge'²⁶ (it is often referred to as the office of the Inspecting Judge). JICS serves as an oversight agency, as provided for by Chapter IX of the CSA.

Information on the use of LLWs that is gathered by JICS includes data on the use of force and mechanical restraints (received in terms of mandatory reporting provisions), data on complaints, and data on inspections and investigations carried out at prisons.

Data received by JICS in terms of mandatory reporting provisions

The CSA provides for mandatory reporting to JICS on both natural and unnatural deaths,²⁷ the use of mechanical restraints²⁸ and any other use of force.²⁹ In the three years from April 2014 to March 2017 JICS received reports on six deaths as a result of what it classifies as ‘official on inmate homicide’. Four of these were in 2016–17, with three of the latter occurring in a single episode at St Albans prison In the Eastern Cape in December 2016. A death at the hands of officials in October 2018, allegedly as a result of the misuse of force, is also reported.³⁰

There was a consistent increase in reported use of force by correctional officials between April 2013 and March 2018

Between April 2013 and March 2016, JICS received reports of 1 271 incidents of use of force by DCS officials. In 69% of these cases the justification given for using force was ‘defence of another person’³¹ (Table 2) There was a consistent and steady increase in reported use of force by correctional officials over the five years between April 2013 and March 2018, from 191 cases in 2013–14 to 994 in 2017–18 (Table 3). However in 2018-2019 there was a 77% drop in the number of use of force reports received by JICS. The decline in the number of use of force reports is primarily the result of the fact that the DCS electronic reporting system is not operating and cannot be taken to reflect trends in the use of force by DCS officials.³²

Table 2: Justification given for use of force as reported to JICS by the DCS, April 2013 – March 2016

	2013–2014	2014–2015	2015–2016	Total (three years)	%
Self-defence	49	101	117	267	21%
Defence of another person	125	326	429	880	69%
Preventing an inmate from escaping	8	7	22	37	3%
Protection of property	9	27	51	87	7%
Total	191	461	619	1 271	100%

**Table 3: Incidents of use of force reported to JICS by the DCS,
April 2013 – March 2018**

	2013– 2014	2014– 2015	2015– 2016	2016– 2017	2017– 2018	2018– 2019
Total	191	461	619	724	994	232

Data on complaints relating to alleged misuse of force by officials

Independent Correctional Centre Visitors (ICCVs), provided for in Chapter X of the CSA, are the principal bodies responsible for dealing with complaints.³³ ICCVs may refer complaints to JICS ‘in cases of urgency’. In other instances, unresolved complaints may be referred to a body called a Visitors’ Committee, which is composed of various ICCVs in an area.³⁴ A Visitors’ Committee may then also refer unresolved complaints to JICS.³⁵

JICS’s annual reports do not give a clear picture of the number of complaints of alleged assault and torture by officials. This is partly because of the inconsistent manner in which these (and other types of complaints) are reported each year. The highest figures recorded in recent years appear to be those for 2015–16, which include 811 allegations of ‘official on inmate’ assault and 15 of torture.³⁶ In 2017–18, data on complaints refers to 231 complaints of ‘official on inmate’ assault and three of torture³⁷ while in 2018–19 JICS reported 155 complaints received by the JICS complaints unit.³⁸ As with the decline in the number of use reports, the reduction in the number of complaints received by JICS (in this and other categories) is likely to be a consequence of the fact that the electronic complaints system has not been working.³⁹ Fear of reprisals by officials may also play a role in discouraging inmates from lodging complaints, or result in them withdrawing complaints that they have lodged.⁴⁰

Most information on the use of force provided in JICS reports does not refer to the weapons that were used. Oversight of prisons in South Africa would be strengthened by ensuring that the type of weapon or device used is recorded as a routine part of use-of-force reporting. Improved documentation and reporting would enable better analysis by the DCS and civil society groups.

JICS has recognised the need to train ICCVs to enable them to monitor the use of mechanical restraints. The JICS 2016–2017 annual report states that ICCVs need to be re-trained so they can inspect the use of mechanical restraints.⁴¹ Consideration should be given to broadening this training to include other LLWs and equipment. JICS staff may also need to undergo training to improve their documentation skills.

JICS inspections and investigations

As implied by its name, the key function of JICS is to inspect prisons.⁴² However, the provisions of the CSA regarding JICS also indicate that it has an investigative

role.⁴³ While inspections primarily focus on overall prison conditions,⁴⁴ they often include an investigative element focusing on reports and complaints that have been received, including those regarding the use of force. Investigations may conclude that this was ‘necessary force’, or that force was, or may have been, unjustified.

Where JICS refers to the ‘use of force’, this indicates that its investigation has concluded that the force used was justified. The use of the word ‘assault’ indicates that it has concluded the force used was, or may have been, unjustified in terms of the regulations governing the use of force. In 2014–15, for instance, JICS concluded that the force used was, or may have been, unjustified in 11 out of 195 use-of-force cases.⁴⁵

The 2017–18 annual report gives examples of incidents where JICS made findings of this kind. In one case it found ‘an apparent trend of assault/use of force’ extending to 60 different incidents at Rooigrond prison in North West. At Barkley East in the Eastern Cape, JICS found evidence of a ‘mass assault’ by officials on inmates during a search.⁴⁶ In 2018-19 JICS came to the conclusion that inmates at Hoopstad prison in the Free State, and Ekuseni Youth Development Centre in KwaZulu-Natal, had been the victims of mass assaults.⁴⁷ During the 2012–2015 period a major focus of JICS investigations was allegations of the misuse of force, including torture, by the EST (see below).

Context of the use of force in South African prisons

Prisons in South Africa are frequently overcrowded. In addition, the presence of gangs contributes to the frequency of violence.⁴⁸ According to a DCS report, 7 388 inmates sustained injuries as a result of assaults during 2017–18.⁴⁹ This is 4.5% of the reported 160 583 average number of inmates in South African prisons that year.⁵⁰

The use of force by prison officials frequently takes place in the context of conflict between inmates, often about issues such as drugs, food or money.⁵¹ Assaults by officials that fall outside legal parameters may also follow from situations where inmates attack officials, or other behaviour that is seen to amount to insubordination or to threaten the authority of prison officials.⁵²

Circumstances in which allegations of excessive force were made after prison officials had allegedly been assaulted or attacked by prisoners include incidents at St Albans prison between late February and early March 2014⁵³ and in December 2016.⁵⁴

Official violence often follows a pattern, in that the force used is initially legitimate, but officials get carried away and go beyond the limits of what is reasonably necessary to overcome the attack or secure compliance by the inmate.⁵⁵ Apart from relatively spontaneous assaults, DCS officials also sometimes carry out organised assaults on prison inmates. These often follow an incident of violence

by prisoners against warders. They can be carried out under the guise of addressing security issues by recovering weapons and other illegally held objects (cell phones, drugs, money).

Official violence is also sometimes a response to forms of collective action such as protests, strikes or riots that may include attacks on warders by prisoners. The presence of people with mental illnesses who are not receiving adequate care may also contribute to violence in prisons. According to JICS, '[t]he fact that officials are not trained to identify and handle mentally ill people has resulted in violent acts by inmates against officials and inappropriate retaliation by officials'.⁵⁶

Such incidents reinforce the need for effective training for officials and oversight of and accountability for their actions. It is incumbent upon high-level officials to present a strong 'zero-tolerance' message. In addition, as noted in the Nelson Mandela Rules, all prisoners should receive adequate and appropriate healthcare (rules 24–35).⁵⁷

Use of the tonfa baton

The JICS 2016–17 annual report refers to various incidents in which tonfa batons were used with excessive force on prisoners. These include incidents at Brandvlei prison in the Western Cape in which the inmate died as a result of the assault,⁵⁸ at Westville Medium A,⁵⁹ and two incidents at Helderstroom, also in the Western Cape. With respect to one of these incidents, JICS states that the manner in which tonfas were used 'has the potential to severely injure or even kill'.⁶⁰

The use of force by prison officials frequently takes place
in the context of conflict between inmates

In the other incident the inmate alleged that he had been taken to an office and then 'assaulted in the office, thrown against the wall, slapped, hurled onto the floor, beaten with a tonfa and kicked while on the ground'. Relying partly on medical records JICS found that the inmate 'was indeed assaulted, as per his version'.⁶¹

A 2016 article by staff of the Wits Justice Project refers to allegations by inmates at Zonderwater prison near Pretoria of 'being beaten with the tonfa during routine searches'. Allegedly,

[i]n many of these incidents the tonfa was held at the wrong end, leaving the handle to make first contact, causing severe injuries like burst ear drums, swollen eyes and deep wounds on the soft skin of the feet and hands.⁶²

The article also refers to the case of 'former St Albans inmate Bradley McCallum who in 2010 took DCS to court after having been raped with a tonfa, by a

warder, while he was behind bars'.⁶³ The Wits Justice Project also reported another instance that allegedly took place in 2016, involving an inmate at Johannesburg prison whose arm was fractured in several places by prison warders using tonfas.⁶⁴

In so far as there are allegations pertaining to the use and misuse of force by DCS officials, the weapon used is most likely to be the tonfa. One interviewee said that most assault is 'unsophisticated', involving the crude use of these batons, and, for instance, booted feet. However, there are also cases where officials have adopted techniques aimed at inflicting pain while reducing the potential for visible injury, such as by focusing their tonfa blows on the feet of the inmate.⁶⁵

In a 2015 report, correctional officials stated that their training on use of the tonfa did not equip them to use minimum force but rather to 'assault'.⁶⁶ Unauthorised equipment in the form of lengths of hosepipe is sometimes also used in these assaults.⁶⁷

Emergency Support Team

Emergency Support Teams (ESTs) are DCS reaction units. They are usually clearly identifiable, as ordinary officials wear khaki while the EST uniform is black. DCS B-orders provide that EST functions inside prisons include, inter alia, 'riots and unrest related situations' as well as 'crisis searching and escape'.⁶⁸ Correctional officials themselves have expressed concern about what appears to be an orientation by the EST towards excessive force.⁶⁹ Concern about the EST primarily involves two types of situations. One is where the EST is brought in to help in dealing with prison unrest of one kind or another. In addition, extensive use is made of the EST in large-scale non-routine or surprise searches at prisons. These searches are often followed by allegations of excessive force.⁷⁰

Allegations of the EST's involvement of in the abuse of inmates go back at least as far as a 2005 episode at St Albans Correctional Centre. Following the killing of a warder by inmates, it was alleged that EST officials, along with other DCS officials, were involved in the brutal mass assault and torture of prisoners, including through the use of electric shock shields.⁷¹ The legal case *Bradley McCallum v SA* involved an incident of torture at St Albans in July 2005.⁷²

In 2010 the UN Human Rights Commission (UNHRC) found that South Africa had violated its obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Convention on Civil and Political Rights (ICCPR).

The UNHRC found that the treatment the complainant was subjected to, which was not refuted by South Africa, constituted a violation of Article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment. It also found that South Africa had violated the ICCPR by, inter alia,

‘failing to investigate McCallum’s claims of ill-treatment’ and ‘holding McCallum incommunicado for one month after the 17 July incident’.⁷³

Various allegations against the EST from the 2012–2016 period are discussed in JICS annual reports.⁷⁴ The JICS 2013–14 report indicates that it had received 30 claims alleging assault by the EST.⁷⁵ The JICS 2014–15 report indicates that EST actions had given rise to complaints at 20 different prisons.⁷⁶ These reports are discussed further below in relation to the use of electric shock shields.

Incidents involving the EST in which allegations have been made of excessive force also include a protest at Kgosi Mampuru II Central in Gauteng in July 2017. JICS states that ‘EST officials were deployed to use force to stabilise the situation’ and that there ‘was no indication that inmates were assaulted after the incident’.⁷⁷ These conclusions are, however, brought into question by one journalist’s report, which notes ‘the inmates hadn’t displayed any violence’, while documenting severe head wounds allegedly sustained by some of the inmates at the hands of officials.⁷⁸

In addition to the allegations of assault and torture (discussed in more detail below), there is a tendency for EST units to carry out operations in the absence of the head of the prison. This is despite a requirement that local management be present to oversee EST operations. The B-orders specify that, ‘[s]hould the assistance of EST be called in ... the relevant Area Manager and Head of the Prison must be personally present throughout ... the particular action’.⁷⁹

Cases involving allegations against the EST are often characterised by a large number of complainants

This issue was examined during inspections by JICS in 2014–15. JICS identified 11 cases where the head of the prison had not been present during EST operations.⁸⁰ The same report recommended a review of the operation of the EST.⁸¹ It is crucial that accountability is ensured and oversight of EST operations is robust.

Cases involving allegations against the EST are often characterised by a large number of complainants. In addition to the 2005 St Albans case, in which there were 231 complainants, an interviewee also referred to a case involving 150 complainants and other cases involving 30–40 complainants. ‘Generally where there are a large number of victims it is EST,’ the interviewee said.⁸² This gives rise to the concern that the EST may have carried out acts constituting collective punishment, a practice that is prohibited by the Nelson Mandela Rules (Rule 43(1.e)).

JICS interviewees indicated that EST mass assaults carried out in the context of searches used to be frequent. However, there had not been any major allegations against the EST over the year prior to May 2019, though there one alleged assault of an inmate by EST members in early 2019.⁸³

Nonetheless, another interviewee questioned the idea that there had been a fundamental shift in the EST. ‘They may be better trained and organised and engage in less stupid and gratuitous violence, but their role in the system remains unchanged and the overall system remains dysfunctional,’ he said.⁸⁴

This points to a need to re-orientate the EST to bring it in line with international use-of-force standards, particularly with regard to the principles of necessity and proportionality. Furthermore, the principle of precaution requires operations to be planned so as to minimise the need to resort to force.⁸⁵

According to JICS interviewees, conflict between inmates and officials tends to take place at prisons that are poorly managed, which continues to be a problem. Thus, part of the response to alleged EST use of excessive force should be to improve management practices in prisons.

Electric shock shields and the use of torture

Evidence has repeatedly emerged of electric shock shields being used as instruments of torture in South African prisons. There is a long history of allegations of the abuse of these shields. The 2006 Jali Commission report referred to the use of stun shields by warders at C-Max prison in Pretoria as part of an ‘initiation ritual’ for new inmates.⁸⁶ A number of cases involving allegations of misuse of these shields, including allegations of torture, are discussed in a 2016 ISS policy brief produced by the Omega Research Foundation.⁸⁷ The shields are manufactured in South Africa.⁸⁸

The bulk of allegations of the misuse of electric shock shields, mostly linked to the EST, derive from the 2012–2016 period. In a March 2013 incident at the G4S-run Mangaung Correctional Centre, prisoners alleged that EST warders repeatedly used electric shock shields to deliver shocks to Tebogo Bereng’s head while he was handcuffed. He was further assaulted in an isolation cell and later pronounced dead.⁸⁹ During a search at Lospersfontein prison in North West in December 2013, in another incident, one inmate alleged that he was ‘tortured (shocked) with an electric anti-riot shield until he pointed out some 10 inmates who also had cell phones in their possession’.⁹⁰ He was not taken to hospital afterwards.⁹¹

About an incident at Leeuwkop in Gauteng on 15 August 2014, JICS states there is ‘[p]rima facie evidence that inmates were assaulted ... after the cell was forcefully opened by EST officials’.⁹² However, the JICS summary does not reflect the full extent of the allegations against the EST in this case. These include allegations of the repeated use of electric shock shields as torture instruments.

According to an attorney representing the inmates in a civil claim against the DCS, the case involves 31 inmates of a prison cell. Allegedly one of them blocked the locking device of the cell door as an act of protest. As a result, officials could not unlock the cell. Prison officials called the EST to break the door down. Five of the inmates were identified as ‘perpetrators’ and electrocuted over roughly two hours before being thrown into isolation cells. The DCS contends that EST actions were a response to violence from the inmates, yet no inmates were charged with violence.⁹³

As mentioned previously, JICS reports on allegations of torture usually do not identify the equipment allegedly used. Improved documentation practices in this regard, including routinely naming the weapon used, would enhance oversight.

The JICS account of a search and seizure operation by ‘a National EST’ at the St Albans prison complex between 28 February 2014 and 2 March 2014 indicates that 58 inmates complained that they had been assaulted during the operation. JICS found that ‘[t]here is prima facie evidence that inmates were assaulted and tortured during the EST operation’.⁹⁴ It would appear that these cases include alleged torture using stun shields, as other accounts report that inmates were electrocuted.⁹⁵

Allegations that stun shields were used as torture instruments sometimes include allegations that officials wet inmates with water while applying the shocks. One interviewee described a scenario ‘where officials will surround a person in a shower. With the water running they will force him back into the shower using their shields when the person tries to leave.’⁹⁶ Water was allegedly part of the torture in the Leeuwkop case referred to above.⁹⁷ Though there are different views on why water is used, the primary reason appears to be that it is less likely to leave burn marks and thus for the electric shock torture to be detected.⁹⁸

There is a long history of allegations of the abuse of
electric shock shields in South African prisons

Electric shock shields are not only provided to members of the EST but also are part of the arsenal at maximum security prisons.⁹⁹ Related to this, allegations of torture against DCS officials are linked not only to the EST but also to other DCS personnel. The JICS 2009–10 annual report refers to an incident at Pietermaritzburg prison in which an inmate was fatally assaulted by officials with various weapons, including an electric shield.¹⁰⁰

Another homicide by DCS officials in that year, at Kokstad prison in August 2009, is also linked to electric shock shields, with the inmate having been ‘brutally assaulted by officials with batons, electric shields, and booted feet’.¹⁰¹

The 2014–2015 JICS annual report also documents a case at the private Mangaung prison wherein an inmate ‘alleges that he was assaulted and shocked by officials’, although the report does not document the nature of the weapon used.¹⁰² The reports do not indicate that the officials involved in these cases were linked to the EST. The practice of using electric shock shields in a manner that may amount to torture demonstrates that they are prone to abuse, and should be prohibited.

Kinetic impact projectiles

There is limited evidence of the use of kinetic impact projectiles in South African prisons. However, the use of such projectiles by officials is implicated in the death of at least one prisoner at St Albans Maximum Prison in December 2016. This followed an incident in which two warders were attacked. The list of casualties from these events included five DCS officials, 21 inmates who were hospitalised and three inmates who died.

The JICS report states that ‘[a]utopsy reports on the deceased inmates confirmed their deaths were as a result of severe physical trauma. One inmate was found with a piece of plastic (ostensibly from a kinetic impact projectile) lodged in his face.’¹⁰³ This kind of injury is likely to indicate that he was shot in the face at close range, which would likely amount to excessive force.

In some instances SAPS POP units have been brought in to assist with prison riots. One situation was during a riot at Groenpunt in the Free State in 2013 after a small team of EST members had been repelled by prisoners. A POP unit allegedly used kinetic impact projectiles against the prisoners.¹⁰⁴

In some instances SAPS POP units have been
brought in to assist with prison riots

Stun grenades,¹⁰⁵ and possibly kinetic impact projectiles and smoke grenades, were also used during a 2018 incident at Pollsmoor prison in Cape Town.¹⁰⁶ The operation at Pollsmoor prison, which involved 162 officials – including the EST, ordinary DCS officials and POP – was followed by inmate allegations of mass assault.¹⁰⁷ Alleged use of kinetic impact projectiles has also been reported in incidents at G4S private prison in Mangaung (see below).¹⁰⁸

Allegations in respect of the incidents at both the G4S private prison in Mangaung, particularly that in 2009, and the December 2016 incident at St Albans, raise the issue of kinetic impact projectiles’ being used at very close range. This use is permitted under the CSA, which states that such ammunition ‘may as a general rule only be fired at a distance of more than 30 metres from a person’. If fired at less than 30 m, this must be ‘at the lower body of the person’.¹⁰⁹ Human rights and medical concerns related to these provisions are discussed

below. It is likely that the fatal use of kinetic impact projectiles at St Albans in December 2016, in which one of the deceased was shot in the face, involved a violation of this provision.

The use of such weapons should be consistent with regional and human rights standards, specifically the UN Basic Standards on the Use of Force and Firearms. They should only be used in strictly limited situations of violent disorder posing a risk of harm to persons, and only when less extreme means are insufficient to contain and stop the violence.

Chemical irritants

The DCS regulatory framework does not clearly differentiate between different types of chemical agents. The term ‘tear gas’ appears to serve as a collective term for both CS gas and pepper spray.¹¹⁰ In so far as the CSR differentiate between different types of ‘tear gas’, this is done, in a confusing way, through distinguishing different types of containers.¹¹¹ In the B-orders one distinction is between ‘spray-cans’ (or just ‘cans’)¹¹² and cartridges and grenades.¹¹³ The approach appears to be that spray cans will be more readily available while cartridges and grenades are used in more restricted circumstances. However, elsewhere the distinction that is emphasised is between grenades and other containers.

In line with Regulation 19(2)(f), the B-orders also provide that ‘[t]eargas grenades must, due to the density and quantity of the teargas, be used only in the open air’. In cells and small courtyards, cartridges or spray-cans may be used.¹¹⁴ The intention may be that the term ‘spray-cans’ is understood to be a reference to pepper spray¹¹⁵ while tear gas ‘canisters’ and cartridges refer to CS.¹¹⁶

Pepper spray is sometimes used by DCS officials,¹¹⁷ with its use being referred to in allegations pertaining to an incident in May 2017 at Johannesburg prison.¹¹⁸ One interviewee said that in riot situations, pepper spray is sometimes used alongside batons and electric shock shields. He referred to circumstances where ‘inmates will barricade themselves in a cell’ and ‘officials will spray the whole cell to get them out’.¹¹⁹ Another interviewee mentioned seeing tear gas being used in the yard of one of the larger prisons.¹²⁰

Nevertheless, while there is regulatory authorisation for the use of chemical irritants it would appear that they are not preferred as a weapon and are not widely used. This may be because in confined spaces involving confrontations at close quarters they could backfire, exposing officials to the risk of contamination.¹²¹ The CSR and B-orders do emphasise the need for officials to be provided with gas masks when using tear gas,¹²² but in many circumstances it is likely that these are not readily accessible.

Stun grenades (and other pyrotechnical equipment)

The use of ‘pyrotechnical equipment’ is authorised by the CSR, while the B-orders specify that these are only to be used by the EST.¹²³ However, none of the reports

examined or people interviewed for this research confirmed use of these weapons by DCS officials. The only exception to this was the confirmed use of stun grenades by the SAPS at Pollsmoor in August 2018.¹²⁴

Stun grenades, also called disorientation devices, are specialist, explosive devices that emit a very loud noise and/or bright flash upon detonation. Their effects are indiscriminate, affecting all those in the immediate vicinity, and their use can result in serious injury or even death. The use of stun grenades in places of detention should be restricted to very limited circumstances (e.g. a barricaded hostage-taking situation). The human rights and medical risks associated with the use of stun grenades will be discussed further below.

Private prisons

The most serious and extensive allegations of abuses in the private prison context relate to the G4S prison in Mangaung.¹²⁵ Private prisons are subject to the same regulatory framework that applies to prisons under the management of the DCS. Interviewees indicated that the G4S prison is used by the DCS for some of the more 'difficult' prisoners that it finds hard to manage.

The G4S prison has an internal EST unit that has been implicated extensively in alleged abuses at the prison. Allegations regarding abuses extend back to the death of an inmate, Isaac Nelani, in May 2005. Accounts provided by inmates include allegations that Nelani was seriously assaulted and tortured, including by means of electric shocks, with his death presented by officials as having been a suicide.¹²⁶ There are other allegations that the deaths of inmates as a result of electric shocks have been reported by officials as suicides.¹²⁷

An extensive investigation by the Wits Justice Project 'uncovered a practice, since the inception of the prison in 2000, of alleged routine assaults, electroshocking, alleged forced injections with anti-psychotic drugs and lengthy isolation of inmates' at the prison'.¹²⁸ The basis for the allegations included interviews with a large number of inmates and warders, government reports, and audio and video footage.¹²⁹

Allegations pertaining to incidents in 2013 and 2009 at the G4S prison also include alleged use of kinetic impact projectiles and tear gas. In the September 2013 incident an inmate lost sight in his left eye, allegedly as a result of being shot in the head with a rubber bullet. The inmate's medical files 'indicate that he sustained serious injuries to his left eye, left ear, nasal bridge and left shoulder'.¹³⁰

In the 2009 incident a medical report indicating that a kinetic impact projectile 'left "a 12cm-long tunnel" in his abdomen',¹³¹ suggesting that he was shot at very close range.

At least one of the allegations pertaining to the G4S prison in Mangaung is that a person was shocked while tied to a bed and sprayed with water – rather than a shield, a 'hand-held' (direct contact) electric shock device was used.¹³² The

DCS regulatory framework does allow for 'hand held electronic immobilising stun devices',¹³³ though these are not part of the equipment provided to officials by the DCS.¹³⁴

Although they are not routinely provided to officials, direct contact electric shock weapons be prohibited, as they are prone to abuse and do not meet a legitimate law enforcement objective that cannot be effectively accomplished with safer alternatives.

Allegations regarding the misuse of antipsychotic drugs

There is evidence that antipsychotic drugs have been used in the G4S Mangaung prison in a manner that is not authorised by regulatory provisions. Allegations are that the drugs are used as a generalised tool for managing inmates, varying from one who 'complained of hearing voices in his head and a general feeling of depression' and another who 'complained of depression and suicidal thoughts' to others who are considered aggressive or, in some cases, merely 'difficult'.¹³⁵

Mangaung had more prisoners 'diagnosed with mental illness' than other prisons inspected in 2015–2016

Prison staff, including members of the EST, are reported to be responsible for physically subduing inmates prior to their being injected. One account alleges that a nurse 'claimed it was unlawful to inject someone without a prescription', but EST members nonetheless insisted that she inject the inmate.¹³⁶

In a statement released in response to these allegations, G4S stated inter alia that

G4S denies any assaults or use of torture, either by means of electroshocking or medical substances, on inmates. It also has a zero-tolerance policy against the use of undue or excessive force ... G4S and its personnel are not involved in the decision to apply, nor do we apply medication. We have not witnessed the illegal application of medication and do not condone it.¹³⁷

According to figures provided in the JICS 2015–16 annual report, based on figures collected during JICS prison inspections, Mangaung had more prisoners 'diagnosed with mental illness' than any other prison inspected in that year.¹³⁸

Mangaung is reported to have had 185 such prisoners at that time. The next highest number was at Johannesburg Medium B, which had 91 such prisoners.¹³⁹

According to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the 'forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized', and 'the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment'.¹⁴⁰

Drugs such as these should never be used for torture or ill treatment, and the use of chemical restraints (such as sedatives, antipsychotics, etc.) should only be employed when expressly ordered by a doctor.

Aspects of the legal and regulatory framework

Types of weapons authorised for use

The CSA is permissive with regard to the authorisation of weapons, as it includes vaguely defined, broad categories of equipment, and allows for the CSR to define what types of equipment should be authorised under these categories. For example, the CSA permits the use of ‘mechanical restraints’ (Section 31) and ‘non-lethal incapacitating devices’ (Section 33). In addition, Section 35 of the CSA provides that ‘the use of weapons other than non-lethal incapacitating devices or firearms may be authorised by the National Commissioner as prescribed by regulation’.

The CSA therefore sets no limits on the types of weapons that may be authorised for use in prisons.

As recommend in this monograph, South Africa should maintain a defined list of authorised weapons and restraints that can only be used by appropriately trained personnel. In addition, no weapon should be authorised unless it has been independently tested and reviewed to ensure compliance with international human rights law and standards.

All of the weapons that are used in prisons, as listed in Table 1 and discussed in this monograph, are expressly authorised for use under the CSR.

The CSA sets no limits on the types of weapons
that may be authorised for use in prisons

Electric shock shields, as well as other electric shock weapons or restraints such as electric shock batons and stun belts, should be regarded as tools of torture. Nonetheless, as the CSA fails to set limits on the types of weapons that may be authorised, body-worn electric shock devices, electric shock shields and hand-held electronic immobilising stun device,¹⁴¹ may currently be used by prison officials in South Africa. Previous reports have documented the use of some of these weapons by South African authorities.¹⁴² The types of LLWs that are authorised by the CSR therefore can be seen to place South Africa in conflict with the UN’s 2015 Nelson Mandela Rules on the treatment of prisoners and the African Union’s Robben Island Guidelines on the prevention of torture, adopted in 2002.

The Nelson Mandela Rules determine that ‘instruments of restraint which are inherently degrading or painful’ shall be prohibited.¹⁴³ The Robben Island Guidelines

call for 'equipment or substances designed to inflict torture or ill-treatment' to be prohibited.¹⁴⁴ South Africa should therefore prohibit the authorisation and use of tools of torture. South Africa should fully adhere to the Nelson Mandela Rules, as well as the Robben Island Guidelines.

Legislative authorisation for the use of force and weapons

Section 32 of the CSA provides parameters for the use of force. It specifies that only 'a minimum degree of force' may be used, and that it 'must be proportionate to the objective'.¹⁴⁵ Force may only be used 'when it is necessary for' self-defence, the defence of any other person, preventing an inmate from escaping, or the protection of property.¹⁴⁶

Section 33 deals with the use of non-lethal incapacitating devices. Like Section 32, Section 33(3) also provides parameters as to when NLIDs may be used. These partly duplicate the parameters provided in Section 32 but confuse the issue rather than enhancing clarity.

In terms of Section 33(3)(a) NLIDs may only be used if an inmate has a weapon or 'other dangerous instrument', but in terms of Section 33(3)(b) NLIDs may be used 'if the security of the correctional centre or safety of inmates or others is threatened by one or more inmates'. The latter provision would appear to render Section 33(3)(a) redundant, as it does not provide that the presence of weapons is a pre-condition for the use of NLIDs. As indicated above, there are specific provisions relating to the use of tear gas, although tear gas use by DCS officials appears to be rare.

Further broad authorisation for the use of force is provided in Section 102 of the CSA, which states that correctional officials may 'use force against any person who assists an escapee or who disrupts or threatens to disrupt the operation of a correctional centre or the enforcement of the conditions of community corrections' (Section 102(1)). As with other provisions, this section also emphasises the need for minimum force.¹⁴⁷

Nonetheless, vague provisions may undermine effective regulation of the use of force. The power of law enforcement officials to use force must be established in law, describing the circumstances in which, and the purposes for which, the use of force may be considered. This must be subject to the strict application of the principles of necessity and proportionality.

Authorisation for equipment to be issued to officials or 'used'

Various provisions deal with authorisation for equipment to be issued to officials and/or used.¹⁴⁸ In general, force is only to be used with prior authorisation. Nonetheless, the CSA allows for exceptions to this,¹⁴⁹ and exceptions are also provided in some provisions regarding specific types of equipment.¹⁵⁰

Training requirements

There are also various provisions requiring that categories of equipment, or specific types of equipment, only be used by officials who are appropriately trained in their use.¹⁵¹ Provisions in respect of some types of equipment are very specific. For example, the CSR provide that those trained in the use of batons should receive refresher training 'at least once every six months'¹⁵² while B-orders include a similar provision in relation to the use of tear gas.¹⁵³

The most restrictive provisions in respect of training may be in relation to pyrotechnical equipment (which includes stun grenades), as 'refresher training' must be provided by a qualified person 'on a quarterly basis'.¹⁵⁴ If, as appears to be the case, these are not used then this may have little relevance.

There are no minimum training provisions for kinetic impact projectiles. Except for a general CSA provision in respect of training in the use of NLIDs,¹⁵⁵ there are also no provisions regarding training in the use of stun shields.¹⁵⁶

This monograph recommends that all training must be human rights-based. As noted above, LLWs can be lethal, and officers should be trained to think of them as such. Due to the fact that they are authorised for use, kinetic impact projectiles must be included in training. Officials should be tested for their competence in the use of any LLW. Any officials failing such competence tests should have their authorisation for using LLWs removed.

Restrictions on how equipment is used

A general provision of the B-orders in respect of all 'electronically activated' NLIDs is that these 'may only be activated for use for the purposes prescribed in Section 33 of the Act and only for such a period as absolutely necessary to incapacitate the prisoner after which it must be deactivated'.¹⁵⁷ This is in effect the only DCS directive on the use of electric shock weapons.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has expressed 'strong reservations' about the use of direct contact electric shock equipment, noting that 'properly trained law enforcement officials will have many other control techniques available to them when they are in touching distance of a person who has to be brought under control'.¹⁵⁸ This monograph calls for all such electric shock weapons to be prohibited.

Aspects of the regulatory framework relating to chemical irritants and the distinction between grenades, cartridges and 'canisters'/spray-cans are discussed above. The distinction is also reflected in the CSA provision that '[t]ear-gas grenades and cartridges fired by firearms or launch-tubes may not be fired or launched directly at a person or into a crowd'.¹⁵⁹

Provisions of the B-orders also require tear gas to be 'used judiciously' and 'with due consideration of the number of prisoners involved, the danger it may have to bystanders, as well as the wind direction'.¹⁶⁰ Caution is also advocated in respect

of the use of tear gas in juvenile prisons and in female sections/prisons, especially with regard to pregnant women.¹⁶¹

Such provisions, though requiring caution, conflict with international human rights standards, such as the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990, R. 65), which state that no weapons should be used in juvenile places of detention.

As reflected above, provisions regulating the use of kinetic impact projectiles include Section 34(6) of the CSA, which provides inter alia that, if 'fired at less than 30 metres from a person' it 'must be directed at the lower body of the person'¹⁶² and that such ammunition 'may not be fired within a building'.¹⁶³

Kinetic impact projectiles are designed
to cause blunt trauma rather than penetration

There is a slight variation on these provisions in the B-orders, which state that, if fired at less than 30 m, 'the fire must be aimed at the legs of the person' and rubber ammunition 'must not be used within the confines of prison cells or other enclosed areas'.¹⁶⁴

Kinetic impact projectiles are designed to cause blunt trauma rather than penetration, but when they are fired at close range the risk of penetrative injuries increases. While the degree of harm caused by a kinetic impact projectile depends on factors such as the material it is made of and the type of launcher used, one clinical study found that '[a]t a range of less than 20 m there is almost certainly going to be penetration'.¹⁶⁵ When the extremities are impacted from close range there is a risk of tendon injuries, nerve injuries and fractures,¹⁶⁶ as well as serious vascular injuries¹⁶⁷ that can result in amputation or death.

This monograph recommends that use-of-force provisions be amended so as specify that, other than in circumstances where the use of lethal force is justified by law, there should be a minimum firing distance for kinetic impact projectiles – even when the lower body or legs are targeted. The monograph also recommends that multiple projectile ammunition such as rubber double ball rounds be replaced by single projectile ammunition, as multiple projectiles enhance problems of inaccuracy and indiscriminate use of these weapons.

Provision of medical assistance

There are numerous provisions in the B-orders requiring that medical attention be provided, or be readily available, when LLWs are used. These include that, if teargas is used, 'officials must take note of prisoners who collapse suddenly as a result of a possible underlying or diagnosed respiratory disease. Immediate arrangements must be made to provide these prisoners with the necessary first

aid/medical treatment.¹⁶⁸ Where kinetic impact ammunition is to be used, DCS personnel are required to ensure that medical staff are available to deal with possible injuries.¹⁶⁹

There is a general provision requiring a medical examination 'if force was used'¹⁷⁰ and one in respect of electric shock shields.¹⁷¹ No mention is made of the potential need for medical attention in the equipment-specific provisions relating to batons or stun grenades or other pyrotechnical equipment.¹⁷²

Reporting on use

Section 33(4) of the CSA provides that 'whenever [NLIDs] are used, their use must be reported in writing and as prescribed by regulation'. There are also numerous provisions in the B-orders, both general and equipment specific, in respect of reporting. However, these are in some cases inconsistent with Section 33(4) and with each other.

Thus the B-orders provide, on the one hand, that only '[t]he use of force resulting in injury' must be 'fully documented and reported',¹⁷³ while elsewhere they state that a 'dated and signed written report' must be prepared when 'any type of force is used'.¹⁷⁴ There are also provisions requiring that the use of teargas,¹⁷⁵ stun shields¹⁷⁶ and kinetic impact projectiles,¹⁷⁷ firearms¹⁷⁸ and pyrotechnical equipment be reported.¹⁷⁹ However, unlike other equipment-specific provisions, provisions regarding batons, which are the weapons used most frequently, make no mention of the need for reporting.¹⁸⁰

Generally, provisions require reporting to the head of the prison. The area manager is to be notified if pyrotechnical equipment is used.¹⁸¹ As indicated, according to the CSA all use of force must be reported to the inspecting judge.¹⁸² No reference, however, is made to the latter reporting obligations in the B-orders.

All incidents of torture, assault and death in police custody should be reported and carefully monitored as a matter of public accountability. The use of any device must be subject to thorough and rigorous reporting, supervision and control mechanisms with a view of continually evaluating the device in terms of its effectiveness and effects, including unwarranted ones.

Accountability on the use of force

Compliance by DCS officials with provisions regarding reporting and recording

In interviews, JICS officials indicated that non-compliance with mandatory reporting provisions is a 'huge problem', partly related to the failure of the DCS to renew the contract for maintaining and updating an electronic reporting system. JICS now relies on the ICCVs for reporting. 'If DCS don't report, ICCVs will.'¹⁸³

One noteworthy provision is a requirement of the B-orders that specifies that '[a]ny action by the EST must be recorded by a video camera'.¹⁸⁴ The JICS

2013–14 annual report highlights a number of large-scale searches carried out by the EST, including at Durban Medium B, Lospersfontein, and St Albans, where this provision was disregarded,¹⁸⁵ with the inspecting judge at that time, Judge VEM Tshabalala, expressing his concern about this failure.¹⁸⁶

It is not clear if there has been an improvement in EST compliance with this requirement since then. One interview suggested that non-compliance continued to be a general pattern.¹⁸⁷

Reporting and recording obligations are important safeguards for the prevention of torture and other forms of ill-treatment, and a key tool in ensuring accountability for alleged abuses. Failure to comply with such requirements should be dealt with as a matter of urgency, with appropriate dissuasive measures being taken to ensure future compliance.

JICS and the ICCVS

As illustrated by this monograph, JICS plays a major role in highlighting allegations of the misuse of force by DCS officials. The overall objective of JICS is to ‘report on the treatment of inmates’ and ‘on conditions in correctional centres’,¹⁸⁸ and its functions are carried out through a combination of inspections and investigations.

The Legal Services Directorate is responsible for dealing with investigations and complaints. ICCVs are also part of the investigative system, as they are mandated to carry out a preliminary interview with victims, speak to the head of the prison and check some of the files.¹⁸⁹

Judges may receive allegations of assault by officials on inmates and may take steps to investigate them

The issue of JICS independence from the DCS was the subject of litigation instituted by Sonke Gender Justice and Lawyers for Human Rights, two civil society organisations.¹⁹⁰ In September 2019 this culminated in a judgment of the Western Cape High Court finding that provisions of the CSA pertaining to JICS were constitutionally invalid ‘to the extent that they fail to provide an adequate level of independence to’ JICS.¹⁹¹ While the fact that JICS is headed by a judge gives it some ability to assert its independence, it has in other respects been subordinate to the DCS.

Some South African judges also carry out inspection visits to prisons. These visits are not carried out under the auspices of JICS, though JICS reports may provide information about these visits, the issues addressed, and some of the conclusions reached.¹⁹² Judges may receive allegations of assault by officials on inmates and may take steps to investigate them.¹⁹³

The Nelson Mandela Rules note the importance of independence, with Rule 57 stating that '[a]llegations of torture or other cruel, inhuman or degrading treatment or punishment shall be dealt with immediately and shall result in a prompt and impartial investigation conducted by an independent national authority'. An independent, impartial, external oversight body should be mandated to investigate at least the most serious incidents in which force was used.

Consequences of accountability measures

In some cases, JICS investigations have served to confirm on a prima facie basis the veracity of allegations. Notable in this regard is its role in highlighting the pattern of misuse of force, and torture, by members of the EST during the 2012–2015 period.¹⁹⁴ These investigations are not, however, criminal investigations but aim to determine 'whether DCS have followed the rules'.¹⁹⁵ JICS may make recommendations for disciplinary action to the DCS. The powers of the inspecting judge preclude JICS 'from binding [the DCS] to accept our findings and to take remedial action'.¹⁹⁶

In so far as its investigations may highlight evidence of a crime, JICS depends on the SAPS and NPA to pursue the matter with reference being made to investigation by the SAPS in respect of some cases including cases of deaths allegedly resulting from assaults by inmates or officials.¹⁹⁷ The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires state authorities to carry out 'a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed' (per Article 12). The same obligation is owed for suspected acts of cruel, inhuman or degrading treatment or punishment (per Article 16).

The fact that the victims of these abuses
are prison inmates is likely to militate
against their cases being given any priority

Nonetheless, DCS officials alleged to have assaulted or killed inmates are unlikely to be held accountable by the criminal justice system. This would depend on such cases being pursued, and prioritised, by police and prosecutors. However, the fact that the victims of these abuses are prison inmates, including many sentenced prisoners, is likely to militate against their cases being given any priority. Where such abuses take place against the backdrop of attacks or assaults by inmates on warders, this likelihood is enhanced. Should the matter go to court, victims who are prison inmates are often also at a disadvantage when it comes to judicial assessments of the credibility of their testimony.¹⁹⁸

JICS may monitor progress that is being made with disciplinary and criminal matters.¹⁹⁹ However, it is not clear if this is done. JICS reports do not provide

information on the eventual outcome of any cases. The DCS appears to have a more consistent record with regard to taking disciplinary action than the SAPS.²⁰⁰ However, it is unclear whether this translates into accountability for abuses of force and LLWs, as the information on disciplinary action is not disaggregated with respect to the type of offence.²⁰¹ Even if there is a vigorous disciplinary system, it may not give priority to these kinds of matters but instead focus on other issues of general discipline (absenteeism, insubordination, etc.).

Whether or not investigations by JICS translate into accountability by the DCS officials involved is also unclear. However, their role in highlighting and publicising abuses is nevertheless significant. For instance, it may be that the apparent decline in cases involving mass assault and torture by the EST is partly a consequence of the work done by JICS in exposing these abuses.

In the work of exposing abuses against inmates by the EST and other DCS officials, organisations and agencies in civil society, notably the Wits Justice Project, Lawyers for Human Rights, Just Detention International, African Criminal Justice Reform and Sonke Gender Justice, have also played an important role.

This monograph recommends better enforcement of mandatory reporting of all use-of-force incidents. Improved documentation and reporting would enable increased oversight, including by civil society groups.

In the absence of clearer information about the disciplinary system it would appear that the possibility of formal accountability might largely depend on and be limited to the potential for successful civil claims.²⁰² Some of the most high-profile cases have not been successful,²⁰³ but in other cases lawyers representing inmates have had positive results.²⁰⁴

The implication is that accountability takes the form of financial compensation, to the victims, out of public revenues. While state officials are required to be held personally liable if their actions are illegal and fall outside the scope of their duties, there is no evidence that this is ever enforced, which is a violation of victims' rights under the Convention Against Torture (Articles 5–9).

Failure to apply appropriate judicial and administrative sanctions against those responsible amounts to a violation of the right of victims to full and effective reparation.²⁰⁵

Chapter 3

Weapons used in crowd management

The policing of protest by SAPS Public Order Police units

The policing of protests (henceforward ‘crowd management’) tends to be equated with POP units. However, other SAPS units, municipal police, and private security may be involved in responding to protest incidents.

POP units themselves are not only involved in crowd management but are also used to address ‘serious and violent crime’ and in other policing roles.²⁰⁶ Some equipment that they carry may be intended for use in performing these other functions. However, in this monograph the focus will be on equipment used by POP in crowd management. According to the latest SAPS annual report, the POP component now comprises 44 units.²⁰⁷

This monograph does not address other SAPS units, municipal police, or private security acting alongside the SAPS. While such actors may also misuse force, the study’s focus on POP units in this section allows for a more detailed examination.

Legal and regulatory framework regarding crowd management

Section 17 of the South African Bill of Rights provides the right, ‘peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions’. Apart from Section 17, the legal and regulatory instruments that are relevant to crowd management by POP are the Regulation of Gatherings Act 205 of 1993 (RGA) and National Instruction 4 of 2014 (NI 4 of 2014).

The RGA not only predates the 1996 Constitution but, as its date reflects, was passed by the apartheid Parliament. However, it emanates from the same law-making period as the ‘interim’ Constitution, agreed to during the multi-party talks. This, *inter alia*, provided statutory authorisation for the transition to democracy and the Constitution draft process.²⁰⁸

In 2018 one of the provisions of the RGA was declared to be unconstitutional.²⁰⁹ At least one other provision, which authorises the use of lethal force to protect property, may be assumed to be in conflict with the Constitution.²¹⁰ However,

in general terms the RGA provides a framework that is orientated towards facilitating the exercise of the right to peaceful protest. (Aspects of the RGA and NI 4 of 2014 that relate to the use of weapons in crowd management are discussed further below.)

This monograph recommends that South Africa adopt a consistent framework that adheres to international and regional human rights standards, for instance, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the African Commission on Human and Peoples Rights (ACHPR) Guidelines on the Policing of Assemblies by Law Enforcement Officials in Africa.

Less-lethal weapons used by POP in crowd management

The current SAPS national instruction governing POP provides a list of equipment issued to POP members for use in crowd management. Items on the list include the tonfa baton, pepper spray, stun grenades, shotgun and approved rounds, and 9 mm sidearm (official issue) firearm and rounds of ammunition. CS tear gas grenades and 40 mm launchers are also listed, though they are only to be provided to ‘designated members’.²¹¹

Earlier, this monograph analysed the use of electric shock shields by the DCS. POP members are also provided with shields, although these are not electric shock shields. Nonetheless, POP procedures envisage that they may sometimes be used for a coercive purpose (for instance in pushing back a crowd of people)²¹² and they therefore do not qualify merely as ‘protective equipment’.

South Africa should adopt a consistent framework that adheres to international and regional human rights standards

Although they are not discussed further in this monograph, it is important to note that shields and other protective equipment and restraints like ordinary handcuffs, which are also included in the list, must be used in accordance with international use-of-force standards. As an example of standards from a different region, which could be built upon by South Africa, the Organization for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights (OSCE-ODIHR) *Human rights handbook on policing assemblies* warns that the edge of a shield must not be used as a striking weapon, as this can cause serious injury or even death.²¹³

Two other types of LLWs that do not form part of the equipment issued to ordinary POP members but that are discussed here, are:

- Water cannons
- Long-range acoustic devices

Data on use and misuse of weapons

Firearms and deaths as a result of the use of force by police during protest

In April 2011 the lethal potential of LLWs was highlighted for South Africans by disturbing video footage broadcast on national television. This showed a 33-year-old man, Andries Tatane, being assaulted with batons and shot at close range with kinetic impact projectiles by a group of POP members who had surrounded him during a protest in Ficksburg in the Free State.²¹⁴ Although Tatane's death caused some controversy at the time, it was overshadowed by events that took place 16 months later. On 16 August 2012 members of the SAPS shot dead 34 men, most of them striking mineworkers, at the Marikana platinum mine in North West province.

The SAPS national instruction discussed above only refers to 9 mm firearms. But other firearms are also used by POP units. The R5 automatic rifle is used by POP despite its not being included in the list of equipment in the SAPS national instruction. The R5 accounted for virtually all of the 34 deaths at Marikana,²¹⁵ though the vast majority of R5 rounds fired there – 445 in all – were not fired by POP units but by other SAPS units.²¹⁶

A commission of inquiry into the deaths was subsequently established. On the basis of the loss of life and injury caused by the R5 at Marikana, supported by the evidence of various international experts, the commission concluded that the use of the R5 and other automatic rifles in crowd management should be prohibited.²¹⁷

International human rights experts have also recommended that the use of automatic firearms for crowd management be prohibited.²¹⁸ Furthermore, the OSCE-ODIHR *Human rights handbook on policing assemblies* states that any firearm loaded with conventional ammunition should not generally be used in the context of assemblies, with lethal force only used 'when strictly unavoidable in order to protect life'.²¹⁹

This monograph recommends not only that automatic firearms be prohibited but also that semi-automatic weapons be appropriately regulated.

Despite the clear findings of the Marikana Commission, the use of R5s during crowd management continues to be a source of controversy. The official position would appear to be that R5s are no longer used for crowd management²²⁰ and that, if firearms are to be used, this should be the 9 mm sidearm.

However, there has been at least one recent incident when someone was fatally wounded, allegedly as a result of R5 gunfire, by a member of a POP unit: in August 2018 a student at the Tshwane University of Technology (TUT) was killed, allegedly in such a manner.²²¹

There remains no clear formal statement from the SAPS, or from the South African government, prohibiting the use of R5s for crowd management. In addition, POP units continue to carry R5s in their vehicles. The formal motivation for this is that they may need them for other policing functions not related to crowd management.

It is essential that authorities take immediate action to ensure that R5s are never used for crowd management. Even though they are not meant to be used in such circumstances, the fact that weapons capable of automatic fire are routinely provided to POP (as well as other police) units is worthy of further interrogation. When used in automatic mode it is impossible to ensure that bullets are exclusively targeted at a single person. Partly owing to the heightened risk that they may pose to bystanders they are in general inappropriate and unsuitable for law enforcement use.

IPID data indicates that police firearms are responsible for virtually all deaths ‘as a result of police action’ during crowd management incidents. In the April 2014 to March 2019 period 92% (44 out of 48) of these deaths are reported to have been people who were shot with a police ‘service firearm’ (Table 4).

Table 4: IPID data on weapon used or cause of death as a result of police action in crowd incidents, 2014–2018

	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	Total (5 years)
Shot with service firearm	8	10	5	7	14	44
Other	0	2 (Assaulted)	0	1 (Suffocation)	1 (Suffocation)	4
Number of crowd incidents in which deaths occurred as a result of police action ²²²	8	12	5	8	15	48

Source: IPID annual reports

Press reportage can be used to corroborate some IPID data. For instance, IPID information that one death in 2017–2018 was the result of ‘suffocation’ is consistent with reports that a two-week-old boy, Jayden Khoza, died as a result

of tear gas fired by SAPS members during a SAPS operation in Durban in May 2017.²²³

However, not all IPID data on deaths can be taken at face value. For example, a press report referring to a death from ‘blunt force trauma’ during a protest in Hout Bay in July 2017 is inconsistent with IPID data that suggests that, apart from the death attributed to ‘suffocation’, all other deaths in the 2017–18 year were attributed to service firearms.²²⁴

Similarly, the death of a 61-year-old man, Thembekile Fana, during a protest in the Eastern Cape in March 2018 appears to have been linked to police use of rubber bullets at close range.²²⁵ This death is also not accounted for by IPID data.

IPID figures indicating that all deaths in 2016–17 were as a result of the use of ‘service firearms’ also do not account for the death of an 11-year-old boy, who died after being hit in the head by kinetic impact projectiles during a protest in Bela-Bela in Limpopo province in February 2017.²²⁶

IPID should differentiate between conventional
metal-jacketed ammunition and rubber bullets
in its reporting on deaths

This discrepancy might be due to IPID counting rubber bullet deaths as having been caused by firearms, as they are launched from shotguns. IPID should clearly differentiate between conventional metal-jacketed ammunition and rubber bullets in its reporting on deaths.

Such inconsistencies highlight the importance of improving IPID's systems for reporting on deaths during crowd management incidents.

Whatever inaccuracies there may be in IPID figures, press reports support the contention that conventional ammunition has been a major cause of death during protests. Apart from the Soshanguve R5 incident, other incidents in which press reports confirm that conventional ammunition was responsible for fatalities during protests include deaths in Cato Manor, Durban in July 2017,²²⁷ near Standerton in Mpumalanga in May 2017,²²⁸ and in Jouberton in North West in May 2018.²²⁹

In some cases the use of conventional ammunition may have been by other SAPS units, as may happen if POP units have not yet arrived or if different armed actors are present.²³⁰ For example, two men were killed by gunfire during a protest in Caledon in the Western Cape in April 2019, though it has not been established if this originated from the police, municipal security or private security, all of whom were present during the protest.²³¹

The state owes a positive duty to prevent actions by non-state actors (including private actors) that violate the rights of those who take part in assemblies and

public gatherings.²³² Municipal police may also be implicated in the use of lethal force during protests.²³³

Main less-lethal weapons used in crowd management

Firearms are a significant cause of death at the hands of law enforcement during protests. But deaths during protests are also linked to the use of LLWs. Kinetic impact projectiles, tear gas, stun grenades, and, to a lesser degree, batons are the main weapons used by SAPS members during protests.²³⁴

As indicated earlier in this monograph, Tatane was killed by LLWs on 13 April 2011. His death took place during a period of particularly heavy-handed policing of protests in which a number of others were killed or injured as a result of kinetic impact projectiles fired at close range.²³⁵

The use of LLWs, including kinetic impact projectiles and tear gas, is also believed to have been the cause of certain deaths during protests in recent years. In addition to the death of two-week-old Jayden in Durban in May 2017 there was an incident in July 2019 in which a four-month-old baby, Alunamda Mncedane, died in Philippi, Cape Town allegedly also after inhaling tear gas fired by police.²³⁶

The use of LLWs by security forces other than POP members has also been linked to deaths. Reports suggest that a man may have been killed by kinetic impact projectiles in a June 2017 action by the eThekweni Municipality's security services.²³⁷

Though firearms may be the main cause of death, rubber bullets, tear gas, stun grenades, and, to a lesser degree, batons are the main weapons used by SAPS members during protests.²³⁸ This is illustrated by POP data on weapons used in response to a protest at an informal settlement near Randfontein in Gauteng in September 2013. In this incident police used close to 1 100 rubber bullets, five tear gas grenades, and 10 stun grenades.²³⁹

The policing of student protests at Wits University in late 2016 presents another case of the misuse of 'less lethal' weaponry on the part of the SAPS. This was during a period of heightened confrontation at university campuses linked to the #FeesMustFall movement. The cases documented at Wits took place between 21 September and 20 October 2016. Although the majority of students engaged in peaceful protest, some used violence and numerous people were injured, including SAPS members.²⁴⁰

Notwithstanding the circumstances, it is apparent that there were many instances of reckless, indiscriminate, unjustified and even gratuitous misuse of LLWs by SAPS officials, including kinetic impact projectiles and stun grenades.

A detailed study, based on analysis of injuries sustained by students during this period, highlights a number of incidents of indiscriminate use of rubber bullets. In some cases it would appear that police used deliberate and severe excessive

force, ostensibly to punish or intimidate individuals aligned with the protest and others.²⁴¹

Another incident highlighted is one in which a stun grenade was thrown in the air and exploded between the faces of two fleeing women. The blast caused serious burn injuries to both and a tear to the eardrum of one of the women, as a result of which she suffered 'longer-term' hearing loss. Police procedure reportedly requires that stun grenades be rolled towards the side of a crowd rather than thrown in the midst of crowd members, though it is not apparent whether this is provided for in formal regulations.²⁴²

Stun grenades can disorient targets, potentially leading to panic, with risk of serious injury in crowd situations. They may also release shrapnel and fragments with sufficient energy to cause death or serious injury. The concussive blast of the detonation can cause burns, start fires, and cause a range of injuries.

Stun grenades can disorient targets, potentially leading to panic, with risk of serious injury in crowd situations

The effects of stun grenades are indiscriminate in nature, and they are not suitable for use in public gatherings or as a method of crowd dispersal.

In addition to the Wits case, in September 2017 a POP member shot a 14-year-old boy in the mouth with a rubber bullet at extremely close range during protests in Hout Bay.²⁴³

These cases demonstrate the importance of regulating the use of equipment and training law enforcement officials in the use of such equipment. It is recommended that South Africa bring such regulations in line with international and regional good practice.

Long-range acoustic devices

As part of re-equipping POP, the SAPS bought 40 long-range acoustic devices and distributed them to POP units in 2014–2018.²⁴⁴ In the SAPS's annual reports since 2014–15 these have been presented as communication tools. The 2014–15 annual report describes them as 'loudspeaker technology that allows the operator to broadcast warnings and instructions over a much greater distance than any other form of live communication tools'.²⁴⁵ Subsequent reports provide similar descriptions.²⁴⁶

Despite such claims, it is evident that the long-range acoustic devices were not bought solely for communication purposes. In 2014 the SAPS referred to these as 'non-lethal interventions' that operate by 'disruption of balance through frequency'.²⁴⁷ Similarly, in a presentation to the Parliamentary Portfolio Committee

in 2016, a SAPS officer made it clear that the SAPS envisaged using the long-range acoustic devices as a weapon.²⁴⁸

Although there is not yet any evidence of their being used in this way, it is possible that they will be deployed as weapons in future. There is no regulation that prohibits the SAPS from using them as offensive 'less-lethal' weapons despite their indiscriminate nature and potentially harmful effects.

While an acoustic device may have a range of legitimate uses as a communication tool, the principal concern is with its use in alert function, which emits a high-decibel, narrow-frequency, focused set of sound waves, especially when this is set at high volume and used close to people for prolonged periods.

There is no regulation that prohibits the SAPS
from using long-range acoustic devices as
offensive 'less-lethal' weapons

This monograph therefore recommends that the use of all types of acoustic devices in alert function be suspended until an independent body of medical, scientific, legal, and other experts has subjected their effects and potential uses to rigorous assessment, and can therefore demonstrate a legitimate and safe use of the device for law enforcement, subject to specific operational rules consistent with human rights standards.

Water cannon

In 2014 the SAPS reported that it had 10 water cannons²⁴⁹ with four more purchased in 2018-19.²⁵⁰ It is known to use, and has reported the procurement of, coloured dye for these water cannons.²⁵¹ Possibly the main scrutiny of the use of water cannons was at Marikana, where problems with the built-in cameras, intended inter alia as an accountability measure, were highlighted. On one water cannon the camera lens was so dirty that the footage taken was of little use.²⁵² Footage taken by the camera on the other water cannon only covered one shooting event, despite its having been used at both events.

They were also used during the 2016 #FeesMustFall protests,²⁵³ as well as during protests against violence against women in September 2019.²⁵⁴ Though their use at the latter protest provoked some criticism they have otherwise not attracted much media attention.

Although they can be targeted at an individual, water cannons are indiscriminate weapons, potentially affecting many bystanders. As such, any use of coloured dye or tear gas becomes inherently indiscriminate. If rigorous testing demonstrates their suitability for law enforcement purposes, water cannon should only be used proportionately, lawfully, and to the minimal extent possible, in cases where it is

strictly necessary to contain or disperse individuals or a group participating in a public assembly. They should only be used when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly targeting violent persons.

Tonfa batons

The use of batons was referred to above in respect of the Tatane incident. POP training gives some level of emphasis to procedures for their use.²⁵⁵ However, the evidence indicates that the SAPS prefers policing at a 'distance' and tends to rely on kinetic impact projectiles, tear gas and stun grenades, as well as water cannons.

After these are used, tonfa may be used when dispersing a crowd and making arrests. Related to this tendency to rely on other weapons, subsequent to the Tatane incident the use of the tonfa has not attracted much attention in South Africa.

Regulation of the use of LLWs by POP

Neither the 1993 RGA nor the NI 4 of 2014 provides much in the way of detail on how LLWs are to be used. The regulatory framework governing the DCS is far more detailed in this respect.

Section 9 of the RGA, which is largely orientated towards limiting the potential that police may have to use force, briefly addresses the use of weapons.²⁵⁶ It makes one implicit reference to the use of force by means of LLWs ('excluding the use of weapons likely to cause serious bodily injury or death').²⁵⁷ Another provision, Section 9(2)(d) authorising the use of force by 'firearms or other weapons', is discussed immediately below. Otherwise questions regarding the use of weapons are not addressed in the RGA.

Section 9(2)(d) of RGA allows for the use of lethal force (firearms), not only to protect people against death or serious injury but also to protect 'immovable property or movable property considered to be valuable'.²⁵⁸ In this respect the RGA is in clear conflict both with numerous international and regional instruments that emphasise that lethal force should only be used to protect life²⁵⁹ and with the parameters set by the Constitutional Court with respect to the use of lethal force by police.²⁶⁰

The wording used to limit the use of lethal force differs between different international and regional standards and South African jurisprudence. Some, for instance, indicate that lethal force is justified where there is a threat of 'death or serious injury'.²⁶¹ Others only authorise this in respect of threats to life.²⁶² However, there is general agreement that lethal force may not be used in defence of property.

NI 4 of 2014 states that '[t]he use of force and dispersal of crowds must comply with the requirements of section 9(1) and (2) of the Act'.²⁶³ It may therefore be seen

to carry forward the offending RGA provision. However, in respect of the use of lethal force, NI 4 is far from coherent and also contradicts some aspects of the lethal force provisions of the RGA. As indicated above, it allows for members to be equipped with '9 mm sidearm (official issue) firearm and rounds of ammunition',²⁶⁴ but also provides that the use of 'firearms and sharp ammunition are prohibited' for use in crowd management.²⁶⁵

While Section 9(2)(d) exclusively provides authorisation for the use of firearms, including to protect life, under command of a member 'of or above the rank of warrant officer', NI 4 also authorises SAPS members to use force, on their own initiative, in private defence.²⁶⁶ This implies that members may use lethal force if there is a threat of death or serious injury, not only to themselves but also to another person.

The SAPS regulatory framework around the use of LLWs lacks detail

Notwithstanding these major limitations, the legal and regulatory framework with respect to crowd management by POP emphasises the concepts of negotiated management of crowds and minimum force. In addition to the numerous negotiated management and minimum force-orientated provisions of the RGA, some of which are referred to above, there are also numerous provisions of this kind in NI 4 of 2014.²⁶⁷

Though there have been irregularities there is certainly some compliance with these provisions. Apart from concerns about inappropriate use of force, however, other concerns have also been raised, including that not only police but also municipalities sometimes obstruct people's right to peaceful protest.²⁶⁸

Despite the strength of some aspects of the POP crowd management regulations, the SAPS regulatory framework around the use of LLWs lacks detail, thereby contributing to the risk of excessive force being used. The main LLW-specific provisions are:

- Tear gas grenades and launchers are supposed to be issued only to 'designated members'.²⁶⁹ Yet there is no indication as to what a designated member is. It is unlikely that this provision has much significance. Only those who have been appropriately trained should be issued such weapons.
- NI 4 prohibits the use of both pepper spray and tear gas in 'confined spaces' and stadiums on the basis that this may lead to a stampede.²⁷⁰ In this respect, NI 4 is more restrictive than the DCS regulatory framework.
- Kinetic impact projectiles in the form of 'approved rubber rounds' may 'only be used as offensive measures to disperse a crowd in extreme circumstances, if less forceful methods have proven ineffective'.²⁷¹

Apart from a general provision stating that force ‘may only be applied in a coordinated manner and on command’,²⁷² there are also various provisions stating that specific weapons may only be used ‘on command’. These include pepper spray and tear gas,²⁷³ ‘approved 40 mm rounds’ (primarily a reference to tear gas but also other weapons such as smoke grenades that are fired from a launcher),²⁷⁴ and water cannons (as well as ‘crowd management trained equestrian units’).²⁷⁵

However, there have been various incidents where POP members have been documented using these weapons apparently with little or no restriction or justification,²⁷⁶ and it is unclear how much compliance there is with these provisions. It is crucial that regulations around the use of such weapons are enhanced but also that these are properly enforced.

Article 3 of the UN Basic Principles raises the concern that LLWs will endanger ‘uninvolved persons’.²⁷⁷ Similarly, the African Commission on Human and Peoples’ Rights’ guidelines on the policing of assemblies require that specific attention be paid to the risk of force being used indiscriminately when LLWs are used.²⁷⁸

Yet there is no recognition of these issues in the South African regulatory framework with respect to crowd management. Similarly, NI 4 makes only cursory mention of the need for POP units to be able to provide first aid. It is not clear from NI 4 whether members are expected to assist members of the public who have been injured during protests.²⁷⁹

Accountability and reporting

Regulatory provisions regarding video recording of POP operations are inconsistent as to whether POP video operators should focus on the actions of the crowd (‘monitor the event’)²⁸⁰ or on those of POP members (‘the duties performed’).²⁸¹

As police, these video operators are likely to be influenced by internal culture, which has often been shown to be shaped by a resistance to accountability. This internal culture is likely to have an impact upon whether or not they film POP operations, as well as on how they film them. The usefulness of these recordings as an accountability tool is therefore uncertain.

IPID is an independent investigative body and is responsible, inter alia, for investigating deaths as a result of police action and allegations of excessive force.²⁸² However, incidents in which people are killed during ‘crowd management’ events accounted for less than 3% (74 out of 2 806) of deaths as a result of police action during the April 2012 to March 2019 (seven-year) period.²⁸³ Even smaller is the proportion of complaints of assault (0.6 % or 147 out of 26 590) that are said to originate from crowd management incidents.²⁸⁴

IPID also suffers resource constraints relative to the overall investigative burden that it carries. In practice, limited focused attention is paid to the investigation of cases concerning POP. While police find it difficult to investigate alleged

infractions committed by crowd members during protests,²⁸⁵ the actions of public order police are also inherently difficult to investigate. This is partly related to the difficulty in proving which individual police officers were responsible for a specific violation.

One consistent issue is in identifying POP personnel alleged to have used excessive force. In March 2013 seven POP members were acquitted after being prosecuted for the killing of Tatane.²⁸⁶ The magistrate held that, though Tatane had put up some resistance against the police, ‘the violence used to stop Tatane was disproportionate to his actions’. Yet notwithstanding the fact that the killing was recorded on video, none of the evidence was judged sufficient to link any of the accused police to Tatane’s death.²⁸⁷

Nevertheless, it should be noted that in at least four cases, members of the SAPS have been prosecuted for deaths in crowd management incidents. Two SAPS members are currently being prosecuted for killing a student, allegedly using an R5 rifle, at TUT campus in August 2018.²⁸⁸ SAPS members have also been convicted of murder for deaths during protests in 2014 and 2017.²⁸⁹

Chapter 4

Conclusions and recommendations

General observations

Both the DCS and POP mainly interact with people who are relatively marginal in South Africa's democratic polity. It is perhaps for this reason that the manner in which LLWs are used has not attracted significant public attention or concern.

In prisons, force is mainly used for private defence, particularly defending inmates against violence at the hands of other inmates. Related to this, the tonfa appears to be the weapon that is most widely used. These are also used in large-scale searches, sometimes apparently partly punitive in motivation. In addition to alleged excessive force involving tonfas, the abuse of electric shock shields is another concern, with these serving as weapons and sometimes as instruments of torture.

Force is used by South African law enforcement at protests, as well as in prisons. In so far as force is used by police during crowd management operations, the evidence indicates that POP tends to rely on kinetic impact projectiles, as well as tear gas and stun grenades. However, a significant number of deaths in protests are also linked to the use of conventional ammunition. R5 rifles have been used by POP units, and resulted in fatalities, as late as August 2018.

It is of great concern that the role played by LLWs in contributing to fatalities is not adequately reflected in IPID data, and this monograph recommends improvements to reporting procedures and practices.

Regulatory framework

Mortality, torture and health risks

The DCS has a regulatory framework relating to the different types of LLWs, although it is highly permissive in terms of the types of weapons that are authorised, and includes authorisation for electric shock weapons, which can be used as instruments of torture. In addition, there are no regulatory restrictions on what types of weapons POP may use.

In comparison with the POP regulatory framework, the DCS regulatory framework pays greater attention to some of the risks involved with LLWs. This is reflected in provisions that:

- Acknowledge the potential for misuse of electronically activated devices by providing that they should only be used ‘for such a period as absolutely necessary to incapacitate the prisoner after which it must be deactivated’.²⁹⁰
- Seek to limit the most drastic adverse consequences of the use of chemical agents, inter alia by providing that ‘grenades’ may only be used outdoors. The risk to those who may be vulnerable by virtue of a ‘possible underlying or diagnosed respiratory disease’ (where ‘immediate arrangements must be made to provide these prisoners with the necessary first aid/medical treatment’)²⁹¹ is also acknowledged.
- Seek to reduce the risk that kinetic impact projectiles will be used in a lethal manner.²⁹²

Despite the fact that the risks are better acknowledged in the DCS regulatory framework, including the CSA, these frameworks nonetheless use the term ‘non-lethal incapacitating devices’ to refer to LLWs that are potentially lethal.

The DCS B-orders also make no mention of the risks posed by stun grenades, including the risk of burns and other blast injuries, include blinding. Risk of damage to hearing is also likely to be heightened when these are used in confined spaces.

Because it cannot be anticipated exactly who will be affected when teargas is used, better guidelines are required regarding its use

The POP regulatory framework provides extremely limited recognition of the risks associated with LLWs. One distinction is that, despite identifying risks in this regard, the DCS regulatory framework allows for the use of chemical agents indoors while use by POP in ‘confined spaces’ is prohibited.²⁹³ Nevertheless, considering repeated cases in which children have died, apparently as a result of exposure to tear gas, this can no longer be regarded as adequate. Due to the fact that it cannot be anticipated exactly who will be affected when teargas is used, better guidelines are required in respect of its use.

Indiscriminate force

Neither the DCS nor the POP regulatory framework recognises the distinction between ‘indiscriminate’ and ‘more discriminate’ equipment, or the potential for LLWs to be used indiscriminately.

Kinetic impact projectiles, for instance, may be targeted at an individual, although factors such as distance (range) influence accuracy. On the other hand, stun grenades, tear gas and long-range acoustic devices are inherently indiscriminate, in that anyone near the target will be affected by them. The spray from water cannons also cannot easily be directed at individuals.

The only reference to the issue in the regulatory framework of the two organisations may be in the DCS B-order that alludes to the danger to ‘bystanders’ from tear gas.²⁹⁴ However, the provision does not clarify who qualifies as a ‘bystander’ and whether or not DCS officials may use tear gas in circumstances where inmates, other than those whose conduct provides the motivation for its use, will be affected.

Apart from weapons that are inherently indiscriminate there is also a tendency for kinetic impact projectiles to be used indiscriminately. This is a major feature of the policing of protest by POP.

The use of devices with an indiscriminate effect, such as chemical irritants, water cannon, must be designed so as to reduce to a minimum the risk of causing harm and injury to persons other than those who may legitimately be targeted. Devices that have indiscriminate effects and a high potential of harm should only be used in situations of more generalised violence for the purpose of dispersing a crowd, and only when all alternative means have failed to contain the violence.

Regulation of the use of lethal force in crowd management

Section 9(2)(d) of the RGA is likely to be unconstitutional in so far as it authorises the use of lethal force by police in defence of property. NI 4 of 2014 is also far from satisfactory in the manner in which it deals with questions of lethal force. It both aligns itself with Section 9(2)(d) of the RGA and contradicts it, as well as being internally contradictory in other respects.

This monograph therefore recommends that regulatory frameworks be standardised across the different branches of law enforcement and amended to reflect international and regional standards.

Other aspects of the regulatory framework

Despite being more extensive, the DCS provisions regarding reporting are inconsistent as to whether force must be reported in all cases – or only if it results in injury. While expressly requiring that the use of other weapons be reported, they say nothing about reporting the use of batons. These are the weapons that are used most frequently. They also give very limited guidance in respect of the use of electric shock shields, another weapon that has been used frequently.

Provisions in respect of training are most extensive in respect of stun grenades (and other pyrotechnics) though there appears to be little, if any, use of these by DCS

officials. In light of this, this monograph recommends improvements to both training and reporting standards.

Accountability

Neither the DCS nor the SAPS is involved in public reporting on the use of force. Instead this accounting function is performed, with significant limitations, by external agencies. While JICS is focused on the prison environment, and gives high priority to allegations of excessive force, there is little focus on POP crowd management by IPID, which deals with certain categories of cases against the entire SAPS as well as municipal police services.

As a result of the ICCV system, there is also a mechanism that allows complaints to be lodged about the use of force in prisons. Though it has taken steps to make itself more accessible, IPID is by comparison less available as a mechanism for lodging complaints. The use of force by POP makes only an extremely small contribution to IPID's overall caseload. Consequently, IPID makes a minimal contribution to accountability and transparency in this regard. The issues with IPID are accentuated by its apparently inaccurate system for classifying fatalities.

Media outlets have frequently been the primary source
of information about excessive force by POP

Even though its work takes place behind the walls of prisons, the fact that the DCS has a dedicated oversight agency results in the use of force in prisons being subject to greater official scrutiny than that by POP. However, neither IPID nor JICS gives consistent detail on the types of equipment used, though JICS reports are more informative in this regard. This monograph therefore recommends changes to reporting practices to ensure that equipment used is always accurately recorded.

Owing to the fact that POP actions mostly take place in public spaces, there is greater scope for media coverage. Media outlets have frequently been the primary source of information about excessive force by POP. In both the prisons and public order context, civil society organisations and academic institutions also make a significant contribution in exposing the misuse of force.

The evidence regarding whether individuals are held accountable for misusing force in the DCS or during protests is modest. Unlike those of IPID, JICS investigations are not criminal investigations. The effectiveness of JICS investigations therefore depends on whether its recommendations are taken into account by the DCS. In this respect, the inspecting judge has observed that 'the Department has not materially disputed any of our findings'.²⁹⁵ However, this cannot be taken as confirmation that recommendations are put into effect.

Both IPID and JICS operate under significant resource constraints. Certain statements by JICS suggest that it believes its position of financial vulnerability is a consequence of its being subordinate to the DCS.²⁹⁶ Yet for IPID (previously the Independent Complaints Directorate) greater independence has not translated into improved budgetary allocations. Nevertheless, even if it does not contribute to significant improvements in available resources, greater independence for JICS may improve its ability to assert its authority on matters such as compliance with recommendations.

In respect of POP and the EST there are provisions requiring video recording of operations. However, these provisions are sometimes vague and prone to being disregarded. Unless they are clarified and enforced they cannot serve a meaningful accountability purpose.

Significance of OPCAT for the use of LLWs

The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international agreement aimed at preventing torture and cruel, inhuman or degrading treatment or punishment. OPCAT, which was adopted in 2002 and entered into force in 2006, is a human rights treaty that assists in the implementation of and builds on the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and helps states meet their obligations under CAT. The key aim of OPCAT is to prevent the mistreatment of people in detention.²⁹⁷

State parties to OPCAT agree to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention and closed environments. Internationally, 90 states parties have ratified OPCAT and of these, 71 have designated NPMs.²⁹⁸

The NPM is required to consult regularly with the Sub-committee on the Prevention of Torture; make recommendations to applicable authorities to strengthen the prevention of torture; and ... comment on proposed legislation or policies regarding places of detention.²⁹⁹

In addition to the NPM, states parties also agree to international inspections of places of detention by the UN Subcommittee on the Prevention of Torture (SPT). The SPT engages with states on a confidential basis and cannot publish reports and recommendations without agreement with the state party. Furthermore, people who provide information to the SPT may not be subject to sanctions or reprisals for having done so.

South Africa signed OPCAT in 2006 and ratified the protocol on 20 June 2019.³⁰⁰ The South African Human Rights Commission (SAHRC) will be the co-ordinating body for the NPM in South Africa, in accordance with Article 17 of OPCAT, which allows for the establishment of institutions to serve as the NPM. While OPCAT is not prescriptive regarding the structure of the NPM, South Africa has a number of

existing oversight bodies, including the following institutions, that will all be able to contribute to the work of the NPM:

- JICS
- IPID
- Military Ombud
- Health Ombud
- Compliance Inspectorate of the Office of Health Standards Compliance (OHSC)
- Department of Social Development's secure care and child and youth care centres' monitoring mechanism
- Mental health review boards³⁰¹

The NPM is a vital mechanism to regularly examine the treatment of persons deprived of their liberty in places of detention, including monitoring equipment used in places of detention to ensure only appropriate equipment is in use, and that policies, procedures and practices minimise the risk of torture or other ill-treatment.

The regulation of equipment is crucial in order to complement the goals of the OPCAT. This entails monitoring use of force and restraints in all places of detention, including police stations and prisons, to ensure only appropriate equipment is in use, and that policies, procedures and practices minimise the risk of torture or other ill-treatment.

Recommendations

General

- Recommendation 1: There is a general need for the use of LLWs by law enforcement officials to be regulated in a more coherent manner. In their regulatory framework, the DCS and POP should more clearly recognise and emphasise:
 - The potential for LLWs (including those classified as NLIDs in the DCS) to have fatal and other adverse health consequences, particularly if misused. These types of equipment should be classified as 'less lethal' rather than 'non-lethal'.
 - The enhanced vulnerability of certain categories of vulnerable people (babies, young children, elderly people) to the risk of suffering fatal consequences from these weapons – precautions should be taken to reduce the risk to members of these groups.
 - The distinction between discriminate and indiscriminate weapons and the limitations on the ability of officials to prevent uninvolved 'bystanders', including people from the above vulnerable categories, from being exposed to the effects of indiscriminate weapons such as stun grenades (disorientation devices) and teargas.

- The need for officials who are using kinetic impact weapons, or other weapons that can be used more discriminately, to clearly differentiate between people when using them. They should only target people whose individual conduct provides justification for this.
- Recommendation 2: All policies and regulation of the use of force and treatment of persons in custody should be compatible with national, regional, and international human rights norms and standards, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials, the Nelson Mandela Rules and the Robben Island Guidelines.
- Recommendation 3: For purposes of strengthening the regulatory framework governing the use of less-lethal and lethal weapons, considerations should be given to:
 - The report of the Marikana Panel of Experts
 - The Model Bill for Use of Force by Police and other Law Enforcement Agencies in South Africa, prepared by the Institute for International and Comparative Law in Africa in collaboration with the African Policing Civilian Oversight Forum
 - The Human Rights Guidance on Less Lethal Weapons in Law Enforcement issued by the UN High Commissioner for Human Rights.³⁰²
- Recommendation 4: There should be clear provisions regarding weapons that may be used by the SAPS and DCS. These should provide that no weapon be issued to the personnel of these agencies unless it has been independently tested and reviewed to ensure compliance with international human rights law and standards, and there is formal authorisation for its use. The use of any weapon must be subject to supervision, control and rigorous reporting.
- Recommendation 5: All training, including in the use of LLWs, must be human rights-based. LLWs can be lethal and officers should be trained to think of LLWs as such. Law enforcement officials should be tested for their competence in the use of all LLWs. Any officials failing such competence tests should have their authorisation for using LLWs withdrawn.
- Recommendation 6: Use-of-force provisions should be amended so as to set a minimum firing distance for kinetic impact projectiles, other than in circumstances where lethal force may lawfully be used. Minimum firing distances should apply even when the lower body or legs are targeted. The use of such weapons should be consistent with regional and human rights standards, specifically the UN Basic Standards on the Use of Force and Firearms.

- Recommendation 7: When reporting on the use of force, JICS and IPID should provide information about the weapons or other equipment that is used. IPID should differentiate between conventional metal-jacketed ammunition and rubber bullets, or other kinetic impact projectiles, in its reporting on the use of firearms.

Department of Correctional Services

- Recommendation 8: Electric shock shields, as well as any other electric shock weapons or restraints such as body-worn electric shock belts and electric shock stun batons and stun guns, are prone to abuse, and their use should be prohibited.
- Recommendation 9: All incidents of alleged torture, assault, other forms of ill-treatment and death in prisons should be reported and carefully monitored as a matter of public accountability and transparency.
- Recommendation 10: The DCS B-orders should incorporate clear reference to CSA provisions that require mandatory reporting of the use of force to JICS.³⁰³ B-orders must be human rights-based and -compliant.
- Recommendation 11: Legislation governing JICS should be amended to make its disciplinary recommendations legally binding on the DCS, similar to Section 30 of the IPID Act in terms of which the SAPS is required to put into effect disciplinary recommendations made by IPID.
- Recommendation 12: Chemical restraints (such as sedatives, antipsychotics, etc.) should only be used in a medical context when expressly ordered by a doctor, and must be subject to strict oversight and reporting.
- Recommendation 13: Management practices in prisons must reflect the need to bring the EST into line with international use-of-force standards, particularly with regard to the principles of necessity and proportionality.

Crowd management

- Recommendation 14: Legislation and regulations regarding the use of force in crowd management should be amended to clarify the regulatory framework governing the use of lethal force. The use of lethal force in crowd management situations, unless for purposes of private defence against threats to life or threats of serious injury, should be recognised as unlawful. Provisions should be internally coherent and consistent with South African and international legal norms. The R5, and other weapons capable of automatic fire, should expressly be prohibited for use in crowd management.
- Recommendation 15: The SAPS should ensure that kinetic ammunition authorised for use is compatible with human rights laws and standards, including minimising potential lethal consequences and injury. It must be of a sufficient accuracy to allow for consistent and safe impact on the legitimate target. In addition, it is essential that the ammunition used comply with principles of

differentiation. For this reason rubber double ball rounds should be replaced by single projectile ammunition, as multiple projectile ammunition cannot be used safely as it is inherently inaccurate and cannot be targeted to project force in accordance with human rights standards.

- Recommendation 16: Acoustic device may have legitimate uses as a communication tool. However regulations should prohibits the SAPS from using them as offensive 'less-lethal' weapons due to their indiscriminate nature and potentially harmful effects.
- Recommendation 17: The SAPS should ensure that assistance and medical aid are rendered to anyone who is injured as a result of the use of force by police. This obligation should be reflected in the SAPS regulatory framework.

National Preventive Mechanism

- Recommendation 18: The NPM should identify and report on conditions, treatment, and the equipment used in places of detention as per its mandate.
- Recommendation 19: The NPM should make recommendations to the relevant authorities to prevent conditions, treatment and equipment that promote the possibility of torture and ill-treatment. This includes relevant and regular capacity building for officials.

Acknowledgement

Thanks to the Judicial Inspectorate for Correctional Services, Ruth Hopkins, Clare Ballard and Egon Oswald for information provided that has been of considerable assistance in compiling this monograph. Thanks also to members of staff of the ISS including Allan Ngari and Gugu Dube, and Neil Corney and Dr Rebecca Shaw of Omega, who provided detailed comments on earlier drafts of the monograph.

Notes

- 1 United Nations (UN) High Commissioner for Human Rights, United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement, Geneva: High Commissioner for Human Rights, https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf
- 2 CSA, Section 32(6).
- 3 The Constitution of the Republic of South Africa, 1996, Section 12(1)(c).
- 4 United Nations (UN), Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>
- 5 Ibid.
- 6 Physicians for Human Rights (PHR) and International Network for Civil Liberties Organisations (INCLO), *Lethal in disguise: the health consequences of crowd-control weapons*, 2016, <https://phr.org/wp-content/uploads/2018/09/lethal-in-disguise.pdf>
- 7 C Heyns, *A/HRC/26/36: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns, New York: Human Rights Council, 2014.
- 8 The official preference in South Africa is to refer to prisons as 'correctional centres'. In this monograph the term prisons is used.
- 9 Crowd management is understood to refer to the policing of protests and other large gatherings. Crowd management is typically carried out in South Africa by Public Order Police (POP) units. However, other South African Police Service (SAPS) units, and other agencies such as the municipal police, traffic police and private security companies, are frequently also involved.
- 10 The term 'regulatory framework' refers to the combined framework of rules provided by various different instruments, including legislation, regulations and internal directives such as standing orders or national instructions in the two contexts that are focused on.
- 11 Correctional Services Act 1998 (Act 11 of 1998), (CSA), Section 32(4) and 33.
- 12 Ibid., Section 34.
- 13 Ibid., Section 31. There is also a provision in Section 35 of the CSA for officials to use 'other weapons'. In the Correctional Services Regulations (CSR), batons and stun grenades fall under the category of 'other weapons'.
- 14 PHR and INCLO, *Lethal in disguise: the health consequences of crowd-control weapons*, 2016, <https://phr.org/wp-content/uploads/2018/09/lethal-in-disguise.pdf>
- 15 Department of Correctional Services (DCS) B-orders provide that, '[e]xcept for the official on duty at the prison access control gate, no other person may carry fire-arms in the prison'. See DCS, B-orders, Sub-order 2, Chapter 16, Section 5.2.1(c)).
- 16 The DCS regulatory framework refers to 'baton-type' equipment' (and baton-type weapons). It appears that the tonfas and other batons are authorised for use (DCS B-orders, Sub-order 2, Chapter 16, Section 6.3.1). The SAPS regulatory framework refers only to the tonfa (SAPS, National Instruction (NI) 4 of 2014, Section 12(5)(c)).
- 17 DCS, B-orders, Sub-order 2, Chapter 16, Section 4.4.
- 18 The DCS regulatory framework refers to 'pyrotechnical equipment'. According to the B-orders these fall into four categories: grenade types; gun grenade types; bullet types; and flares and signal types (Sub-order 2, Chapter 16, Section 6.4(c)), but are otherwise not defined.

- 19 The CSR and DCS B-orders refer to 'rubber missiles'. The term 'rubber-type ammunition' is used in Section 34(5) and (6) of the CSA. SAPS, NI 4 of 2014 refers to 'a shotgun and approved rounds' and later to 'approved rubber rounds' (SAPS, NI 4 of 2014, Section 12(5)(h) and Section 14(6)).
- 20 The CSA, CSR and DCS B-orders only use the terms 'chemical agents' and 'teargas'. However, regulatory provisions distinguish between grenades, cartridges and spray-cans (or canisters). References to the latter appear to be to pepper spray. The main SAPS national instruction pertaining to crowd management refers to both tear gas and pepper spray (SAPS, NI 4 of 2014, Section 12(5)(d) and (f)). On the distinctions between tear gas and pepper spray see Aftermath, *Teargas vs pepper spray*, <https://www.aftermath.com/content/tear-gas-vs-pepper-spray/>.
- 21 R Hopkins, Mangaung prison is a private hell, *Mail & Guardian*, 25 October 2013, <https://mg.co.za/article/2013-10-25-00-mangaung-prison-is-a-private-hell>
- 22 Ibid., Sub-order 2, Chapter 16, Section 4.2.
- 23 DCS, *Annual report 2017–18*, 27, <http://www.dcs.gov.za/wp-content/uploads/2018/10/DCS-AR-2017-18-WEB.pdf>.
- 24 Ibid., 28.
- 25 The latter are referred to by the DCS as Public–Private Partnership (PPP) Correctional Centres.
- 26 CSA, Section 90(1).
- 27 Ibid., Section 15(2).
- 28 Ibid., Section 31(3)(d).
- 29 Ibid., Section 32(6).
- 30 JICS, *Annual report 2018–19*, 50.
- 31 Author's calculations based on data in JICS annual reports.
- 32 JICS, *Annual report 2018–19*, 54.
- 33 Section 90(2) of the CSA provides that the inspecting judge 'may only receive and deal with the complaints submitted by the National Council, the Minister, the National Commissioner, a Visitors' Committee and, in cases of urgency, an Independent Correctional Centre Visitor and may of his or her own volition deal with any complaint'. See CSA, Section 93.
- 34 Ibid., Section 93(5) and 94.
- 35 Ibid., Section 93(5) and 94. The 2015–16 JICS annual report provides a detailed outline of mechanisms for dealing with complaints (JICS, *Annual report 2015–16*, 77–82). See also L Muntingh, A guide to the rights of inmates as described in the Correctional Services Act and Regulations, *African Criminal Justice Reform*, 2018, 23–24 and 57–59.
- 36 JICS, *Annual report 2015–16*, 82. See, however, JICS, *Annual report 2014–15*, 74–78 in which more elaborate data on complaints is provided.
- 37 JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 45–46.
- 38 JICS, *Annual report 2018–19*, 43.
- 39 Ibid., 44.
- 40 JICS, *Annual report 2018–19*, 45.
- 41 JICS, *Annual report 2016–17*, <http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-AR-2016-2017.pdf>, 51.
- 42 Section 90(2) of the CSA provides that '[t]he object of the Judicial Inspectorate for Correctional Services is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres'.
- 43 CSA, Sections 89(4)(a) and 90(5).
- 44 See, for instance, JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 28 and 36.
- 45 JICS, *Annual report 2014–15*, 79.
- 46 JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 37–38.
- 47 JICS, *Annual report 2018–19*, 37–38.

- 48 Just Detention International, *In their boots: staff perspectives on violence behind bars in Johannesburg*, October 2015, <https://justdetention.org/wp-content/uploads/2015/10/In-Their-Boots-Staff-Perspectives-on-Violence-Behind-Bars.pdf>; JICS, *Annual report 2015–2016*, 59–60.
- 49 DCS, *Annual report 2017–18*, <http://www.dcs.gov.za/wp-content/uploads/2018/10/DCS-AR-2017-18-WEB.pdf>, 55.
- 50 Ibid., 9.
- 51 JICS interview, 20 May 2019.
- 52 Ibid.
- 53 JICS, *Annual report 2014–15*, 63–64.
- 54 JICS, *Annual report 2016–17*, <http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-AR-2016-2017.pdf>, 43. Other stories about the St Albans episode include D Spies, 'Worst of the worst' inmates behind attack on St Albans prison guards, *News24*, 27 December 2016, <https://www.news24.com/SouthAfrica/News/worst-of-the-worst-inmates-behind-attack-on-st-albans-prison-guards-20161227>; N Manona, Prison attack was 'all about gang promotion', *City Press*, 27 December 2016, <https://citypress.news24.com/News/prison-attack-was-all-about-gang-promotion-20161227-2>; G Wilson, Three killed, several injured in St Albans prison fight, *Times Live*, 26 December 2016, <https://www.timeslive.co.za/news/south-africa/2016-12-26-three-killed-several-injured-in-st-albans-prison-fight/>
- 55 See, for example, JICS, *Annual report 2016–17*, <http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-AR-2016-2017.pdf>, 44–46.
- 56 JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 33. See also Just Detention International, *In their boots: staff perspectives on violence behind bars in Johannesburg*, October 2015, 112 and 117, <https://justdetention.org/wp-content/uploads/2015/10/In-Their-Boots-Staff-Perspectives-on-Violence-Behind-Bars.pdf>
- 57 United Nations (UN), United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Resolution adopted by the General Assembly on 17 December 2015, <https://undocs.org/A/RES/70/175>.
- 58 JICS, *Annual report 2016–17*, <http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-AR-2016-2017.pdf>, 10.
- 59 Ibid., 61.
- 60 Ibid., 45.
- 61 Ibid., 60–61.
- 62 R Hopkins and M Arends, Special report: Non-lethal weapons or torture tools?, *journalism.co.za*, 6 July 2016, <http://journalism.co.za/special-report-non-lethal-weapons-torture-tools/>
- 63 Ibid.
- 64 R Hopkins, Tortured behind bars, *City Press*, 6 August 2017, <https://www.news24.com/SouthAfrica/News/tortured-behind-bars-20170806-2>.
- 65 Egon Oswald, interview, 28 May 2019.
- 66 Just Detention International, *In their boots: staff perspectives on violence behind bars in Johannesburg*, October 2015, 99, <https://justdetention.org/wp-content/uploads/2015/10/In-Their-Boots-Staff-Perspectives-on-Violence-Behind-Bars.pdf>.
- 67 JICS interview; Just Detention International, *In their boots: staff perspectives on violence behind bars in Johannesburg*, October 2015, 99–100, <https://justdetention.org/wp-content/uploads/2015/10/In-Their-Boots-Staff-Perspectives-on-Violence-Behind-Bars.pdf>
- 68 JICS interview, 20 May 2019; Ruth Hopkins, interview, 16 May 2019; See also DCS, Progress report to the Select Committee on security breach at Pretoria Close Maximum Security Centre, 11 August 2005, <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/2005/050811maximum.htm>.
- 69 Just Detention International, *In their boots: staff perspectives on violence behind bars in Johannesburg*, October 2015, 101, <https://justdetention.org/wp-content/uploads/2015/10/In-Their-Boots-Staff-Perspectives-on-Violence-Behind-Bars.pdf>
- 70 JICS interview, 20 May 2019.
- 71 Sapa, Prisoners reveal brutal torture, beatings to a court, *Mail & Guardian*, 24 May 2014, <https://mg.co.za/article/2014-05-24-prison-inmates-reveal-inhuman-treatment-to-a-court>; C Raphaely, St Albans prison torture: a conspiracy of silence, *Daily Maverick*, 3 March 2015, <https://www.dailymaverick.co.za/>

- article/2015-03-03-st-albans-prison-torture-a-conspiracy-of-silence/; C Raphaely, St Albans prison: torture and violence behind the gates, back in court soon, *Daily Maverick*, 29 November 2015, <https://www.dailymaverick.co.za/article/2015-11-29-st-albans-prison-torture-and-violence-behind-the-gates-back-in-court-soon/>; R Sain, Prisoners lose bid to appeal St Albans torture case, *IOL*, 190 May 2016, <https://www.iol.co.za/news/prisoners-lose-bid-to-appeal-st-albans-torture-case-2020050>; Institute for Security Studies (ISS) and Omega Research Foundation, Compliance through pain: electric shock equipment in South African prisons, Policy Brief 86, 2016, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief86-1.pdf>
- 72 *Bradley McCallum v South Africa*, Communication No. 1818/2008, UN Doc. CCPR/C/100/D/1818/2008 (2010), <http://hrlibrary.umn.edu/undocs/1818-2008.html>.
 - 73 UN, International Covenant on Civil and Political Rights, Communication No. 1818/2008 CCPR/C/100/D/1818/2008, 2 November 2010, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=162.
 - 74 JICS, *Annual report 2013–14*, 47–49, 53–54, 55, 74; JICS, *Annual report 2014–15*, 53, 63–66; JICS, *Annual report 2015–16*, 58.
 - 75 JICS, *Annual report 2013–14*, 55.
 - 76 JICS, *Annual report 2014–15*, 53.
 - 77 JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 42.
 - 78 R Hopkins and N Kumalo, Inside SA's prisons: lifers, riots and parole, Wits Justice Project, 18 July 2017, <https://www.witsjusticeproject.co.za/investigative-journalism/lifers-riots-and-parole>.
 - 79 DCS, B-orders, Sub-order 2, Chapter 18, Section 7.8.
 - 80 JICS, *Annual report 2014–15*, 53.
 - 81 *Ibid.*, 62.
 - 82 Egon Oswald, interview, 28 May 2019.
 - 83 JICS, *Annual report 2018–19*, 52.
 - 84 *Ibid.*
 - 85 UN Office on Drugs and Crime (UNODC) and Office of the High Commissioner on Human Rights (OHCHR), *Resource book on the use of force and firearms in law enforcement*, New York: UN, 2017, 19.
 - 86 Parliamentary Monitoring Group (PMG), Commission of Inquiry into alleged incidents of corruption, maladministration, violence or intimidation into the Department of Correctional Services appointed by order of the President of the Republic of South Africa in terms of Proclamation No. 135 of 2001, as amended, Final report – Volume 1, Undated [2005], 37, <https://pmg.org.za/committee-meeting/7441/>.
 - 87 ISS and Omega Research Foundation, Compliance through pain: electric shock equipment in South African prisons, Policy Brief 86, 2016, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief86-1.pdf>
 - 88 *Ibid.*, 3. See also ISS and Omega Research Foundation, Manufacturing torture? South Africa's trade in electric shock equipment, Policy Brief 84, 2016, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief84.pdf>.
 - 89 ISS and Omega Research Foundation, Compliance through pain: electric shock equipment in South African prisons, Policy Brief 86, 2016, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief86-1.pdf>
 - 90 JICS, *Annual report 2013–14*, 48.
 - 91 *Ibid.*, 48. See also the reference to an incident at Polokwane prison in which an inmate who was allegedly tortured 'only received medical treatment a month after the incident' (JICS, *Annual report 2014–15*, 80). A death after an assault by officials at Kokstad prison in 2009 is also linked to the 'failure to provide timeous medical attention' (JICS, *Annual report 2009–10*, 69–70).
 - 92 JICS, *Annual report 2014–15*, 68.
 - 93 Clare Ballard, interview, 31 May 2019. See also C Raphaely, Leeuwkop Max C prison: inmates claim abuse and torture, turn to courts for relief, *Daily Maverick*, 22 August 2014, <https://www.dailymaverick.co.za/article/2014-08-22-leeuwkop-max-c-prison-inmates-claim-abuse-and-torture-turn-to-courts-for-relief/>.
 - 94 JICS, *Annual report 2013–14*, 48–49.

- 95 South African Human Rights Commission, SAHRC concerned about alleged torture at St Albans Correctional Centre, Undated [2014], <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/273-sahrc-concerned-about-alleged-torture-at-st-albans-correctional-centre>; *News24*, Prison assault complaint lodged, 20 March 2014, <https://www.news24.com/SouthAfrica/News/Prison-assault-complaint-lodged-20140320>; Just Detention International South Africa, New allegations of torture at St Albans prison in Port Elizabeth, 19 March 2014, <https://southafrica.justdetention.org/new-allegations-of-torture-at-st-albans-prison-in-port-elizabeth/>; D de Swart, Bay prison faces torture law test, *The Herald*, 3 April 2014, <https://www.heraldive.co.za/news/2014-04-03-bay-prison-faces-torture-law-test/>; C Raphaely, St Albans prison: enter the era of SA's torture prosecutions, *Daily Maverick*, 2 April 2014, <https://www.dailymaverick.co.za/article/2014-04-02-st-albans-prison-enter-the-era-of-sas-torture-prosecutions/>
- 96 Egon Oswald, interview, 28 May 2019.
- 97 See also the case at Polokwane prison (JICS, *Annual report 2014–15*, 80).
- 98 ISS and Omega Research Foundation, Compliance through pain: electric shock equipment in South African prisons, Policy Brief 86, 2016, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief86-1.pdf>; Clare Ballard, interview, 31 May 2019
- 99 JICS interview, 20 May 2019.
- 100 JICS, *Annual report 2009–10*, 57.
- 101 *Ibid.*, 69–70. See also JICS, *Annual report 2014–15*, 73.
- 102 JICS, *2014–2015 annual report*, 83.
- 103 JICS, *Annual report 2016–17*, <http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-AR-2016-2017.pdf>, 42–43.
- 104 JICS interview, 20 May 2019. Involvement of Welkom POP and other SAPS members in the incident is confirmed in South African Human Rights Commission, *SAHRC report on Groenpunt riots*, 2013, 12, <https://www.sahrc.org.za/home/21/files/Groenpunt%20Report.pdf>
- 105 L Isaacs, Pollsmoor on lockdown following clashes between inmates, police, *eNCA*, 23 August 2018, <https://ewn.co.za/2018/08/23/pollsmoor-on-lockdown-following-clashes-between-inmates-police>
- 106 JICS interview, 20 May 2019.
- 107 K Palm, JICS launches probe in Pollsmoor violent clashes, *eNCA*, 24 August 2018, <https://ewn.co.za/2018/08/24/jics-launches-probe-in-pollsmoor-violent-clashes>.
- 108 C Raphaely, Beaten and shot ... life in our prisons, *The Star*, 3 July 2012, www.iol.co.za/the-star/beaten-and-shot-life-in-ourprisons-1.1332990#VbidlvnQMhA.
- 109 CSA, Section 34(6)(a) and (b).
- 110 Section 33 of the CSA refers to tear gas (Subsections (5), (6) and (7)) but not to other 'chemical agents'. The CSR makes no reference to tear gas but uses the more general term 'chemical agents' (Regulation 19(1) and (2)). Under the heading 'chemical agents', the DCS B-orders only have one sub-section headed 'teargas' (Section 3.1).
- 111 For instance, Regulation 19(2)(c) differentiates between 'cartridges' and 'grenades' ('The Head of the Correctional Centre or the Head of Community Corrections must decide when chemical agents in the form of either cartridges or grenades must be used'), while Regulation 19(2)(d) distinguishes between 'chemical agents' and 'spray-cans' ('The Head of the Correctional Centre or the Head of Community Corrections must decide to which correctional officials chemical agents or spray-cans may be issued in the performance of their custodial duties') and Regulation 19(2)(f) differentiates between 'grenades' on the one hand, and 'cartridges' and 'canisters' on the other. ('Chemical agent grenades may only be used in the open air, in buildings chemical agent cartridges and chemical agent canisters must be used.')
- 112 See, for instance, DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1(c), (e), (g), (i), (j) and (o).
- 113 See, for instance, *Ibid.*, Sub-order 2, Chapter 16, Section 3.1(b) and (p).
- 114 DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1.3.
- 115 For instance, the B-orders provide that '[p]ersonnel, who are authorised to carry teargas in spray-cans on their person, must carry the spray-cans in the prescribed container attached to the uniform belt'. (DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1(c)).
- 116 On whether or not tear gas and pepper spray are different, see *Aftermath*, Teargas vs pepper spray, <https://www.aftermath.com/content/tear-gas-vs-pepper-spray/>.

- 117 JICS interview, 20 May 2019; Egon Oswald, interview, 28 May 2019; JICS, *Annual report 2016–17*, <http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-AR-2016-2017.pdf>, 42–43. See also the alleged use at G4S prison in C Raphaely, Beaten and shot ... life in our prisons, *The Star*, 3 July 2012, www.iol.co.za/the-star/beaten-and-shot-life-in-ourprisons-1.1332990#.VbidlvnQMhA.
- 118 R Hopkins, Tortured behind bars, *City Press*, 6 August 2017, <https://www.news24.com/SouthAfrica/News/tortured-behind-bars-20170806-2>.
- 119 JICS interview, 20 May.
- 120 Clare Balllard, interview, 31 May 2019.
- 121 Egon Oswald, interview, 28 May 2019.
- 122 CSR, Section 19(2)(b).
- 123 DCS, B-orders, Sub-order 2, Chapter 16, Section 6.4(a).
- 124 L Isaacs, Pollsmoor on lockdown following clashes between inmates, police, *eNCA*, 23 August 2018, <https://ewn.co.za/2018/08/23/pollsmoor-on-lockdown-following-clashes-between-inmates-police>.
- 125 These allegations are also discussed in ISS and Omega Research Foundation, Compliance through pain: electric shock equipment in South African prisons, Policy Brief 86, 2016, 7, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief86-1.pdf>
- 126 R Hopkins, G4S accused of 'torturing inmates to death' in South Africa, *The Telegraph*, 6 September 2015, www.telegraph.co.uk/news/worldnews/africaandindianocean/southafrica/11847153/G4S-accused-of-torturing-inmates-to-death-in-South-Africa.html.
- 127 R Hopkins, Mangaung prison inmate 'tortured to death', *Mail & Guardian*, 3 September 2015, <https://mg.co.za/article/2015-09-03-prison-inmate-tortured-to-death>
- 128 R Hopkins, Mangaung prison: drugs, shock and torture by 'ninjas', *Mail & Guardian*, 25 October 2013, <https://mg.co.za/article/2013-10-25-00-mangaung-prison-drugs-shock-and-torture-by-ninjas>; R Hopkins, Mangaung prison is a private hell, *Mail & Guardian*, 25 October 2013, <https://mg.co.za/article/2013-10-25-00-mangaung-prison-is-a-private-hell>. See also C Raphaely, Beaten and shot ... life in our prisons, *The Star*, 3 July 2012, www.iol.co.za/the-star/beaten-and-shot-life-in-ourprisons-1.1332990#.VbidlvnQMhA. The JICS 2014–15 annual report refers to a case at Mangaung prison in which '[an] inmate alleges that he was assaulted and shocked by officials' (JICS, *Annual report 2014–15*, 83 (case 42)).
- 129 R Hopkins, Mangaung prison inmate 'tortured to death', *Mail & Guardian*, 3 September 2015, <https://mg.co.za/article/2015-09-03-prison-inmate-tortured-to-death>
- 130 R Hopkins, Tortured Mangaung prisoners seek justice, *Mail & Guardian*, 27 November 2015, <https://mg.co.za/article/2015-11-26-tortured-mangaung-prisoners-seek-justice>
- 131 C Raphaely, Beaten and shot ... life in our prisons, *The Star*, 3 July 2012, www.iol.co.za/the-star/beaten-and-shot-life-in-ourprisons-1.1332990#.VbidlvnQMhA.
- 132 Egon Oswald, interview, 28 May 2019.
- 133 DCS, B-orders, Sub-order 2, Chapter 16, Section 4.2.
- 134 ISS and Omega Research Foundation, Compliance through pain: electric shock equipment in South African prisons, Policy Brief 86, 2016, 3, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief86-1.pdf>
- 135 R Hopkins, Mangaung prison is a private hell, *Mail & Guardian*, 25 October 2013, <https://mg.co.za/article/2013-10-25-00-mangaung-prison-is-a-private-hell>. See also JICS, *Annual report 2013–14*, 47.
- 136 Ibid.
- 137 See the sub-article 'Prison operator claims everything is done by the book' in R Hopkins, Mangaung prison is a private hell, *Mail & Guardian*, 25 October 2013, <https://mg.co.za/article/2013-10-25-00-mangaung-prison-is-a-private-hell>
- 138 JICS carried out 81 prison inspections in 2015–16 (JICS, *Annual report 2015–16*, 16).
- 139 JICS, *Annual report 2015–16*, 109–110.
- 140 UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: note / by the Secretary-General, 28 July 2008, A/63/175, paragraph 63, <https://undocs.org/A/63/175>.
- 141 Ibid., Sub-order 2, Chapter 16, Section 4.2.

- 142 See, for instance, ISS and Omega Research Foundation, Compliance through pain: electric shock equipment in South African prisons, Policy Brief 86, 2016, <https://issafrica.s3.amazonaws.com/site/uploads/PolicyBrief86-1.pdf>
- 143 Rule 47 of the UN Standard Minimum Rules for the Treatment of Prisoners as revised in 2015 (the Nelson Mandela Rules) provides, inter alia, that 'instruments of restraint which are inherently degrading or painful shall be prohibited'. (See UN, Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), <https://undocs.org/A/RES/70/175>)
- 144 'States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends.' (African Commission on Human and Peoples' Rights, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), Guideline 14, <https://www.achpr.org/legalinstruments/detail?id=41>).
- 145 CSA, Section 32(1)(b).
- 146 Ibid., Section 32(1)(c).
- 147 Ibid., Section 102(2)(a) says that force should be the 'minimum degree of force proportionate to the said objectives'.
- 148 See CSR 19(2)(c) re chemical agents and CSR 19(2)(d) and DCS, B-orders, Sub-order 2, Chapter 16, Section 6.4(b) regarding pyrotechnical equipment.
- 149 CSA, Section 32(2) and (3)).
- 150 DCS, B-orders, Sub-order 2, Chapter 16, Section 6.4(b).
- 151 CSA, Section 33(2) regarding NLIDs and Section 34(2) in relation to firearms and rubber-type ammunition.
- 152 CSR, Section 21(3)(a) and (b).
- 153 DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1(q) – see also (f).
- 154 CSR, Section 21(5)(e).
- 155 CSA, Section 33(2).
- 156 B-orders do state that trained officials must use stun belts (DCS, B-orders, Sub-order 2, Chapter 16, Section 4.3.8).
- 157 DCS, B-orders, Sub-order 2, Chapter 16, Section 4.1(a).
- 158 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT, "Electrical Discharge Weapons", Extract from the 20th General Report of the CPT, published in 2010, para. 78, <https://rm.coe.int/16806cce1c>.
- 159 CSA, Section 33(5); see also DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1.3.
- 160 DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1.3.
- 161 Ibid., Sub-order 2, Chapter 16, Section 3.1(h)
- 162 CSA, 34(6)(b).
- 163 Ibid., 34(6)(c).
- 164 DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1(h).
- 165 SA Dhar et al., Pattern of rubber bullet injuries in the lower limbs: a report from Kashmir, *Chinese Journal of Traumatology* 19, 2016, 129–133, 130.
- 166 Ibid., p. 132.
- 167 M Wani et al., Pattern, presentation and management of vascular injuries due to pellets and rubber bullets in a conflict zone, *J Emerg Trauma Shock*, 6, 2013, 155–8.
- 168 DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1.3 (see also Section 3.1(i) and 3.1.5); CSR, Section 19(2)(g).
- 169 DCS B-orders, Sub-order 2, Chapter 16, Section 4.5.4 (see also 4.5.5.).
- 170 Ibid., Sub-order 2, Chapter 17, Section 2.4.
- 171 Ibid., Sub-order 2, Chapter 16, Section 4.4.3.
- 172 Ibid., Sub-order 2, Chapter 16, Section 6.
- 173 Ibid., Sub-order 2, Chapter 17, Section 1.2.
- 174 Ibid., Sub-order 2, Chapter 17, Section 2.5.

- 175 Ibid., Sub-order 2, Chapter 16, Section 3.
- 176 Ibid., Sub-order 2, Chapter 16, Section 4.4.2.
- 177 Ibid., Sub-order 2, Chapter 16, Section 4.5.3.
- 178 Ibid., Sub-order 2, Chapter 16, Section 5.
- 179 Ibid., Sub-order 2, Chapter 16, Section 6.4.
- 180 Ibid., DCS B-orders, Sub-order 2, Chapter 16, Section 6.3.
- 181 Ibid., DCS B-orders, Sub-order 2, Chapter 16, Section 6.4.
- 182 CSA, Section 32(6).
- 183 JICS interview, 20 May 2019. See also: JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 11 and 52–63; o JICS, *Annual report 2018–19*, 15, 47, and 50.
- 184 DCS B-orders, Sub-order 2, Chapter 18, Section 7.13.
- 185 JICS, *Annual report 2013–14*, 47–49; JICS, *Annual report 2014–15*, 63.
- 186 JICS, *Annual report 2013–14*, 11.
- 187 Egon Oswald, interview, 28 May 2019.
- 188 CSA, Section 90(2).
- 189 JICS interview, 20 May 2019.
- 190 *Cape Times*, Court date at last to seek greater oversight of prisons, protect prisoner rights, 3 June 2019, <https://www.iol.co.za/capetimes/news/court-date-at-last-to-seek-greater-oversight-of-prisons-protect-prisoner-rights-24933998>; V Cruywagen, Correctional Services lashes out at prison oversight application by rights groups, *Cape Argus*, 7 June 2019, <https://www.iol.co.za/capeargus/news/correctional-services-lashes-out-at-prison-oversight-application-by-rights-groups-25441491>.
- 191 *Sonke Gender Justice NPC v President of the Republic of South Africa and Others* (24227/16) [2019] ZAWCHC 117 (5 September 2019), paragraph 79(2), <http://www1.saflii.org/za/cases/ZAWCHC/2019/117.html>.
- 192 JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 43–45.
- 193 Ibid., 43.
- 194 This monograph focuses on JICS annual reports for the five-year period from April 2012 to March 2018 and does not deal in detail with the period prior to this.
- 195 JICS interview, 20 May 2019.
- 196 JICS, *Annual report 2013–14*, 35, footnote 48.
- 197 JICS, *Annual report 2018–19*, 26 – 39.
- 198 JICS interview, 20 May 2019; Egon Oswald, interview, 28 May 2019; JICS, *Annual report 2018–19*, 39.
- 199 JICS, *Annual report 2013–14*, 35, footnote 48; JICS interview, 20 May 2019.
- 200 African Criminal Justice Reform (ACJR), Failing to discipline in SAPS: fostering a culture of impunity, Factsheet 18, November 2018, 3–4, <https://acjr.org.za/resource-centre/fact-sheet-9-failing-to-discipline-v-3.pdf>.
- 201 One of the offences under the DCS disciplinary code is ‘Assault, attempt or threatens to assault, another employee or person while on duty’. During the 2017–18 year disciplinary action was taken against 97 officials in terms of this provision. This represented 2.3% of the 4 132 cases in which disciplinary action was taken in that year (DCS, *Annual report 2017–18*, <http://www.dcs.gov.za/wp-content/uploads/2018/10/DCS-AR-2017-18-WEB.pdf>, 55).
- 202 Egon Oswald, interview, 28 May 2019.
- 203 C Raphaely, St Albans prison: Torture and violence behind the gates, back in court soon, *Daily Maverick*, 29 November 2015, <https://www.dailymaverick.co.za/article/2015-11-29-st-albans-prison-torture-and-violence-behind-the-gates-back-in-court-soon/>; R Sain, Prisoners lose bid to appeal St Albans torture case, *IOL*, 190 May 2016, <https://www.iol.co.za/news/prisoners-lose-bid-to-appeal-st-albans-torture-case-2020050>.
- 204 Egon Oswald, interview, 28 May 2019.
- 205 UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International

- Humanitarian Law, Resolution adopted by the General Assembly, 21 March 2006, A/RES/60/147, articles 18 and 22 (f), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>.
- 206 SAPS, NI 4 of 2014, Section 1(6) and 4(1)). See also P Alexander, C Runciman and B Maruping, South African Police Service data on crowd incidents: a preliminary analysis, Social Change Research Unit, University of Johannesburg, 2015, 16–18.
- 207 SAPS, *Annual report 2018–19*, https://www.saps.gov.za/about/stratframework/annual_report/2018_2019/saps_annualreport2018_2019.pdf, 151.
- 208 The Interim Constitution is Act 200 of 1993. The RGA is Act 205 of 1993.
- 209 RGA, Section 12(1)(a) (*Mlungwana and Others v The State and Another* [2018] ZACC 45, <http://www.saflii.org/za/cases/ZACC/2018/45.html>)
- 210 RGA, Section 9(2)(d).
- 211 NI 4 of 2014, Section 12(5).
- 212 ‘Push back’ is referred to in the definition of ‘offensive measures’ provided by Section 2(p) of NI 4 of 2014.
- 213 Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE-ODIHR), *Human rights handbook on policing assemblies*, Warsaw: OSCE-ODIHR, 2016, 76.
- 214 CNN, Andries Tatane dies following police beating, YouTube, 22 April 2011, <https://www.youtube.com/watch?v=oL-FuBGioHw>. At the time when the incident happened the POP units were called Crime Combatting Units (M Marks and D Bruce, Groundhog Day? Public order policing twenty years into democracy, *South African Journal of Criminal Justice*, 27:3, 2014).
- 215 D Bruce, The sound of gunfire – The police shootings at Marikana Scene 2, 16 August 2012, Pretoria: ISS, 2018, 16 (Table 2).
- 216 One POP member used an R5 at Scene 1 (Marikana Commission of Inquiry, Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin mine in Marikana, in the North West province, 2015, 249) and two POP members used R5s at Scene 2 (D Bruce, The sound of gunfire – the police shootings at Marikana Scene 2, 16 August 2012, Pretoria: ISS, 2018, 29 (Table 6)).
- 217 Marikana Commission of Inquiry, Report on matters of public, national and international concern arising out of the tragic incidents at the Lonmin mine in Marikana, in the North West province, 2015, 549
- 218 C Heyns and M Kiai, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66, New York: Human Rights Council, 2016, Para 67(e).
- 219 OSCE-ODIHR, *Human rights handbook on policing assemblies*, Warsaw: OSCE-ODIHR, 2016, 31–32.
- 220 Head of Governance at the ISS Gareth Newham says the use of R5 rifles is against police practice. ‘Typically, if the public order unit is deployed, they don’t carry R5 rifles with them. They carry sidearms for self-defence, but they would largely use rubber bullets and teargas if they believe they need it.’ *Eyewitness News*, ‘R5 rifle is not meant for any kind of crowd control’, 26 August 2018, <https://ewn.co.za/2018/08/26/listen-r5-rifle-is-not-meant-for-any-kind-of-crowd-control>
- 221 T Khosa, TUT student activist Katlego buried, *Daily Sun*, 3 September 2018, <https://www.dailysun.co.za/News/National/tut-student-activist-katlego-buried-20180903>; B Nkosi, TUT student allegedly killed by a bullet from cop’s deadly R5 rifle, *IOL*, 25 October 2018, <https://www.iol.co.za/the-star/news/tut-student-allegedly-killed-by-a-bullet-from-cops-deadly-r5-rifle-17632588>.
- 222 Figures do not necessarily reflect the total number of deaths as more than one person may be killed in an incident.
- 223 J Wicks and N Nair, Baby dies after police tear gas hit, *Times Live*, 30 May 2017, <https://www.timeslive.co.za/news/south-africa/2017-05-30-baby-dies-after-police-tear-gas-hit/>.
- 224 T Petersen, Hout Bay protester died of blunt force trauma – IPID, *News24*, 11 July 2017, <https://www.news24.com/SouthAfrica/News/hout-bay-protester-died-of-blunt-force-trauma-ipid-20170711>
- 225 T Ntongana, Sixty-one-year-old man shot dead in protest, *GroundUp*, 20 March 2018, <https://www.groundup.org.za/article/sixty-one-year-old-man-shot-dead-protest/>; Z Mvumvu, No joy for community

after killing, *Daily Dispatch*, 22 March 2018, <https://www.dispatchlive.co.za/news/2018-03-22-no-joy-for-community-after-killing/>.

- 226 K Muvhenzhe, Rubber bullets killed my child, *Daily Sun*, 10 February 2017, <https://www.dailysun.co.za/News/National/rubber-bullets-killed-my-child-20170209>
- 227 See, for instance, M Nxumalo, Cop awaits sentence after killing teenager, *Daily News*, 17 July 2017, <https://www.iol.co.za/dailynews/cop-awaits-sentence-after-killing-teenager-10327141>
- 228 K Motau, Boy (16) shot dead in Mpumalanga protest, *Eyewitness News*, 19 May 2017, <https://ewn.co.za/2017/05/19/boy-16-shot-dead-in-mpumalanga-protest>
- 229 K Child, Real bullet, not rubber one, killed protest victim, *Times Live*, 11 May 2018, <https://www.timeslive.co.za/news/south-africa/2018-05-11-real-bullet-not-rubber-one-killed-protest-victim/>
- 230 A Khoza, Police used live ammunition on protesting pupils, admits Gauteng community safety MEC, *Times Live*, 6 June 2018, <https://www.news24.com/SouthAfrica/News/police-used-live-ammunition-on-protesting-pupils-admits-gauteng-community-safety-mec-20180606>
- 231 K Brand, Police comb for clues following death of 2 Caledon protestors, *Eyewitness News*, 1 June 2019, <https://ewn.co.za/2019/06/01/police-comb-for-clues-following-deaths-of-2-caledon-protesters>.
- 232 C Heyns and M Kiai, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies. A/HRC/31/66, New York: Human Rights Council, 2016, Para 14.
- 233 Tshegofatso Mathe, Did police use live ammunition to disperse Olifantsfontein protestors, *Eyewitness News*, 23 July 2018, <https://ewn.co.za/2018/07/23/did-police-use-live-ammunition-to-disperse-olifantsfontein-protesters>
- 234 Socio-Economic Rights Institute (SERI), A double harm: police misuse of force and barriers to necessary health care services, Johannesburg: SERI, 2017.
- 235 D Bruce, The road to Marikana: abuses of force during public order policing operations, South African Civil Society Information Service, 12 October 2012, <http://www.sacsis.org.za/site/article/1455>
- 236 V Ludidi, Inquest into death of baby after teargas fired in Marikana, *GroundUp*, 26 June 2019, <https://www.groundup.org.za/article/inquest-death-baby-after-teargas-fired-marikana/>
- 237 J Wicks, Man dies in Durban 'war zone' land invasion clash, *Times Live*, 14 June 2017, <https://www.timeslive.co.za/news/south-africa/2017-06-14-man-dies-in-durban-war-zone-land-invasion-clash/>.
- 238 SERI, A double harm: police misuse of force and barriers to necessary health care services, Johannesburg: SERI, 2017.
- 239 D Bruce, Public order transparency: using freedom of information laws to analyse the policing of protest, *South African Crime Quarterly*, 58, 2016.
- 240 K Mabuza, Wits injury toll mounts, includes students, police, journalists and a lecturer, *Times Live*, 4 October 2016, <https://www.timeslive.co.za/news/south-africa/2016-10-04-wits-injury-toll-mounts-includes-students-police-journalists-and-a-lecturer/>
- 241 SERI, A double harm: police misuse of force and barriers to necessary health care services, Johannesburg: SERI, 2017, 23–27, 37–46 [Note 205].
- 242 Ibid., 14–17.
- 243 K de Greef, Cape Town teen shot in the mouth during protests returns home, *News24*, 19 September 2017, <https://www.news24.com/SouthAfrica/News/cape-town-teen-shot-in-the-mouth-during-protests-returns-home-20170919>. Another incident of alleged unjustified use of LLWs is documented in A Notywala, My brutal ordeal with SAPS Public Order Policing Unit, *Daily Maverick*, 4 February 2019, <https://www.dailymaverick.co.za/opinionista/2019-02-04-my-brutal-ordeal-with-saps-public-order-policing-unit/>.
- 244 SAPS reports indicate that the procurement of these devices took place in the 2013–14 year (SAPS, *Annual report 2013–14*, https://www.saps.gov.za/about/stratframework/annual_report/2013_2014/ar2014_02_partb.pdf, 141). The number delivered to POP units totals 40 (11 in 2014–15, 16 in 2015–16, 12 in 2016–17 and three in 2017–18).
- 245 SAPS, *Annual report 2014–15*, https://www.saps.gov.za/about/stratframework/annual_report/2014_2015/SAPS_AR_2014-15_for_viewing.pdf, 181.
- 246 See for instance SAPS, *Annual report 2017–18*, https://www.saps.gov.za/about/stratframework/annual_report/2017_2018/saps_annual_report_2017_2018.pdf, 128, footnote 51.

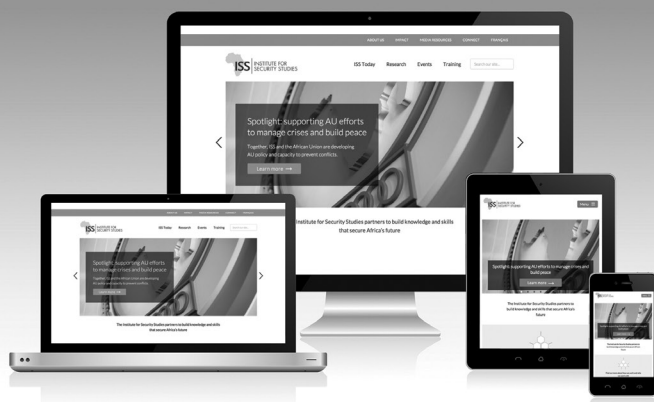
- 247 SAPS, Enhancing of the Public Order Policing capacity within the SAPS: briefing to the Portfolio Committee on Police, 3 September 2014, 32, <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/140903saps.pdf>.
- 248 L Isaacs, CSIR confirms legality of using LRAD units, *Eyewitness News*, 1 September 2016, <https://ewn.co.za/2016/09/01/CSIR-confirms-legality-of-using-LRAD>
- 249 SAPS, Enhancing of the Public Order Policing capacity within the SAPS: briefing to the Portfolio Committee on Police, 3 September 2014, 8, <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/140903saps.pdf>,
- 250 SAPS, *Annual report 2018–19*, https://www.saps.gov.za/about/stratframework/annual_report/2018_2019/saps_annualreport2018_2019.pdf, 151.
- 251 SAPS, *Annual report 2017–18*, https://www.saps.gov.za/about/stratframework/annual_report/2017_2018/saps_annual_report_2017_2018.pdf, 128.
- 252 Marikana Commission of Inquiry, Heads of argument of evidence leaders, 27 October 2014, 611, www.marikanacomm.org.za/docs/201411-HoA-EvidenceLeaders.pdf.
- 253 SERI, A double harm: police misuse of force and barriers to necessary health care services, Johannesburg: SERI, 2017, 20; G Nicolaides and Z Ngcobo, Cops use water cannons, stun grenades at Union Buildings, *Eyewitness News*, 23 October 2015, <https://ewn.co.za/2015/10/23/FeesMustFall-Cops-use-water-cannons-stun-grenades-at-Union-Buildings>.
- 254 Mary-Anne Gontsana, Tariro Washinyira, Ashraf Hendricks and Lucas Nowicki, #AmlNextProtest: police use water cannons against protesters, *GroundUp*, 4 September 2019, <https://www.groundup.org.za/article/gbv-protests/>
- 255 SAPS, Crowd management for platoon members, Pretoria: SAPS, 2006, Chapter 3, 1–38.
- 256 See for instance, RGA, Section 9(2)(a).
- 257 Ibid., Section 9(2)(b).
- 258 Ibid., Section 9(2)(d).
- 259 UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>; UN, Code of Conduct for Law Enforcement Officials Adopted by General Assembly Resolution 34/169 of 17 December 1979, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>
- 260 Ex Parte Minister of Safety and Security and Others: In *Re S v Walters and Another* (CCT28/01) [2002] ZACC 6; 2002 (4) SA 613; 2002 (7) BCLR 663 (21 May 2002), paragraph 52.
- 261 See, for example, UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990, Article 9, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>; African Commission on Human and Peoples' Rights, Guidelines on Policing Assemblies in Africa, Article 21.2.3, http://www.achpr.org/files/instruments/policing-assemblies-in-africa/achpr_guidelines_on_policing_assemblies_eng_fre_por_ara.pdf; Ex Parte Minister of Safety and Security and Others: In *Re S v Walters and Another* (CCT28/01) [2002] ZACC 6; 2002 (4) SA 613; 2002 (7) BCLR 663 (21 May 2002).
- 262 UN, Code of Conduct for Law Enforcement Officials Adopted by General Assembly Resolution 34/169 of 17 December 1979, Commentary (c) to Article 3, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>, [
- 263 RGA, Section 13(2). Note that there are two sections that are numbered 13(2). The reference here is to the second one.
- 264 NI 4 of 2014, Section 12(5).
- 265 Ibid., Section 14(5)(b).
- 266 Ibid., Section 14(4).
- 267 See, for instance, NI 4 of 2014, Sections 13 and 14(3)(a).
- 268 J Omar, A legal analysis in context: the Regulation of Gatherings Act – a hindrance to the right to protest?, *South African Crime Quarterly*, 62, 2017, 21–31; C Sali, A constitutional challenge to section 12 (1) of the RGA, in APCOF, Dialogue on Public Order Policing in South Africa, Cape Town, 11–12 July 2017, 15 (16).

- 269 NI 4 of 2014, Section 12(5)(f) and (i).
- 270 Ibid., Section 14(5)(a) and (c).
- 271 Ibid., Section 14(6).
- 272 Ibid., Section 14(4).
- 273 Ibid., Section 14(5)(a) and (c).
- 274 Ibid., Section 14(7).
- 275 Ibid., Section 14(8).
- 276 SERI, A double harm: police misuse of force and barriers to necessary health care services, Johannesburg: SERI, 2017, 14–17; *News 24*, Westbury residents scarred by police brutality, YouTube, 11 October 2018, https://www.youtube.com/watch?time_continue=147&v=4OwZe5QIW3I; *News 24*, Westbury: several injured as police clash with protesting residents, YouTube, 1 October 2018, https://www.youtube.com/watch?time_continue=2&v=syZYZfqHEc4.
- 277 UN, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990, Article 3, <https://www.ohchr.org/en/professionalinterest/pages/useofforceandfirearms.aspx>
- 278 African Commission on Human and Peoples' Rights, Guidelines on Policing Assemblies in Africa, Section 21.2.7, http://www.achpr.org/files/instruments/policing-assemblies-in-africa/achpr_guidelines_on_policing_assemblies_eng_fre_por_ara.pdf
- 279 Section 12(2)(e) provides that as part of briefing the Overall Commander or a designated officer must 'ensure that members trained in first aid (medical ordinances) are also tasked should the need arise'.
- 280 NI 4 of 2014, paragraph 40.
- 281 Ibid., Section 12(2)(c).
- 282 Independent Police Investigative Directorate Act 1 of 2011, Sections 28(1)(b), (c) and (f).
- 283 Author's calculations based on data in IPID annual reports.
- 284 Author's calculations based on figures in IPID annual reports.
- 285 SAPS, *Annual report 2017–18*, https://www.saps.gov.za/about/stratframework/annual_report/2017_2018/saps_annual_report_2017_2018.pdf, 46, https://www.saps.gov.za/about/stratframework/annual_report/2018_2019/saps_annualreport2018_2019.pdf, 128.
- 286 Sapa, Cops acquitted of Andries Tatane's murder, *Mail & Guardian*, 28 March 2013, <https://mg.co.za/article/2013-03-28-cops-acquitted-of-andries-tatanes-murder>.
- 287 K van Schie, Riddle of crumbled Tatane case, *The Star*, 2 April 2013, <http://www.iol.co.za/the-star/riddle-of-crumbled-tatane-case-1.1494349#.UVq5YheKo7o>
- 288 B Nkosi, TUT student allegedly killed by a bullet from cop's deadly R5 rifle, *IOL*, 25 October 2018, <https://www.iol.co.za/the-star/news/tut-student-allegedly-killed-by-a-bullet-from-cops-deadly-r5-rifle-17632588>
- 289 *News24*, Cop guilty of murdering protesters, 21 January 2016, <https://www.news24.com/SouthAfrica/News/cop-guilty-of-murdering-protesters-20160121>; M Nxumalo, Cop awaits sentence after killing teenager, *Daily News*, 17 July 2017, <https://www.iol.co.za/dailynews/cop-awaits-sentence-after-killing-teenager-10327141>.
- 290 DCS, B-orders, Sub-order 2, Chapter 16, Section 4.1(a).
- 291 Ibid., Sub-order 2, Chapter 16, Section 3.1.3 – see also Section 3.1(i) and 3.1.5.
- 292 CSA, Section 34(6).
- 293 NI 4 of 2014, Section 14(5)(a) and (c).
- 294 DCS, B-orders, Sub-order 2, Chapter 16, Section 3.1.3.
- 295 JICS, *Annual report 2013–14*, 35, footnote 48.
- 296 JICS, *Annual report 2016–17*, <http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-AR-2016-2017.pdf>; JICS, *Annual report 2017–18*, http://jics.dcs.gov.za/jics/wp-content/uploads/2019/04/JICS-Annual-Report-1718_Final-le.pdf, 11.
- 297 B Buckland and A Olivier-Muralt, OPCAT in federal states: towards a better understanding of NPM models and challenges, *Australian Journal of Human Rights*, 25:1, 2019.

- 298** South African Human Rights Commission, South Africa: Human Rights Commission welcomes ratification of UN torture agreement, 5 March 2019, <https://www.sahrc.org.za/index.php/sahrc-media/news/item/1820-south-africa-human-rights-commission-welcomes-ratification-of-un-torture-agreement>
- 299** Ibid.
- 300** United Nations (UN) Treaty Collection, Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&clang=en
- 301** Department of Justice, Keynote address by the Deputy Minister of Justice and Constitutional Development, the Hon JH Jeffery, MP, at the launch of South Africa's National Torture Preventive Mechanism of the Optional Protocol to the Convention against Torture (OPCAT), Cape Town, 19 July 2019, http://www.justice.gov.za/m_speeches/2019/20190719-NPM-OPCAT-Launch_dm.html
- 302** United Nations (UN) High Commissioner for Human Rights, United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement, Geneva: High Commissioner for Human Rights, https://www.ohchr.org/Documents/HRBodies/CCPR/LLW_Guidance.pdf
- 303** CSA, Section 32(6).

Visit our website for the latest analysis, insight and news

The Institute for Security Studies partners to build knowledge and
skills that secure Africa's future



Step 1 Go to www.issafrica.org

Step 2 Go to bottom right of the ISS home page
and provide your subscription details

About the author

David Bruce is an independent researcher on policing, crime and criminal justice. Over 2016–18 he was a member of the panel of experts appointed by the Minister of Police on the basis of the recommendations of the Marikana Commission of Inquiry. He has a Master's degree from the University of the Witwatersrand and is a visiting research fellow at the Wits School of Governance.

About the Project on Tackling the Tools of Torture and Supporting Reparation

This report is produced as part of the Project on Tackling the Tools of Torture and Supporting Reparation. The project addresses the role of the tools of torture in human rights abuses by focusing on three inter-related issues: use, trade and reparation. It aims to prevent torture and ill-treatment, increase accountability for prior incidents and contribute to reparation for survivors. The project will conduct new research, and disseminate new knowledge at regional and international levels, to feed into processes aimed at creating or improving existing controls on the trade and use of tools of torture.

The project is funded by the European Union's European Instrument for Democracy and Human Rights. The implementing partners are: Institute for Security Studies (South Africa), Justiça Global (Brazil), Legal Resources Centre (South Africa) and Omega Research Foundation (UK).

About the ISS

The Institute for Security Studies (ISS) partners to build knowledge and skills that secure Africa's future. The ISS is an African non-profit with offices in South Africa, Kenya, Ethiopia and Senegal. Using its networks and influence, the ISS provides timely and credible policy research, practical training and technical assistance to governments and civil society.

Acknowledgements



This monograph has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of the author and can under no circumstances be regarded as reflecting the position of the European Union. The ISS is grateful for support from the members of the ISS Partnership Forum: the Hanns Seidel Foundation, the European Union and the governments of Canada, Denmark, Finland, Ireland, the Netherlands, Norway, Sweden and the USA.