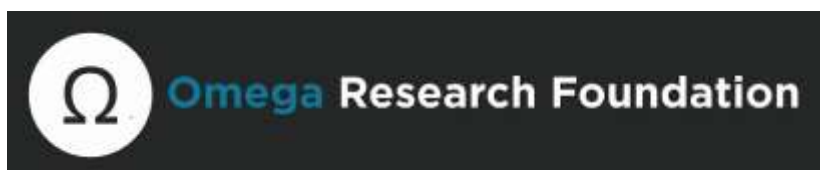


TOOLS OF TORTURE AND REPRESSION IN SOUTH AMERICA:

Use, manufacture and trade



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The company information detailed in this report is for illustrative purposes only and is drawn from information already in the public domain. The authors do not intend to imply that any companies named in this report have committed any wrongdoing, nor behaved in an improper manner.

This report has been produced by the Omega Research Foundation (Omega) as part of a European Commission funded project into policing technologies and human rights, under the European Instrument for Democracy and Human Rights (EIDHR). Aspects of research for this report have been funded in part by the Joseph Rowntree Charitable Trust and the EIDHR. EIDHR donor contribution does not indicate endorsement by the EU or any EU Member State of the paper's findings or recommendations, which are solely those of the Omega Research Foundation.

Published by the Omega Research Foundation, June 2016

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Table of Contents

EXECUTIVE SUMMARY	4
SECTION I: USE OF FORCE RULES AND REGULATIONS.....	7
OVERVIEW.....	7
GOOD PRACTICE AND PROTECTION GAPS.....	9
SECTION II: ABUSE OF LAW ENFORCEMENT EQUIPMENT IN SOUTH AMERICA.....	14
II.I POLICING PUBLIC ASSEMBLIES.....	14
Kinetic impact devices.....	15
Chemical irritants.....	18
Live ammunition	20
Water cannon	22
Stun grenades	23
II.II TORTURE AND ILL-TREATMENT IN DETENTION.....	24
Restraints	25
Kinetic impact projectiles.....	28
Chemical irritants.....	29
Electric shock weapons	30
SECTION III: PRODUCTION AND TRADE OF SOUTH AMERICAN LAW ENFORCEMENT EQUIPMENT	33
III.I OVERVIEW.....	33
State-owned companies	33
Licensed production.....	35
Private companies.....	36
III.II SOUTH AMERICAN MANUFACTURERS' EXPORTS AND PROMOTIONAL ACTIVITIES.....	37
Attendance at trade fairs and other promotional activity.....	37
Exports	38
SECTION IV: LAW ENFORCEMENT EQUIPMENT IMPORTED INTO SOUTH AMERICA.....	43
SECTION V: TRADE CONTROLS.....	49
V.I SOUTH AMERICAN TRADE CONTROLS ON LAW ENFORCEMENT EQUIPMENT.....	49
V.II CONTROLLING LICENSED PRODUCTION	53
V.III REGIONAL CONTROLS	56
SECTION VI: CORPORATE OBLIGATIONS	59
CONCLUSION.....	61
RECOMMENDATIONS	62

EXECUTIVE SUMMARY

In recent decades the prison population in many South American countries has grown dramatically, in part due to the 'War on Drugs'. The region has also seen widespread social protests due to a range of factors, including political upheaval, corruption, inequality and insufficient investment in public services. International human rights law protects the right to freedom of peaceful assembly and it places an absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment. However, states often fail to meet their obligations with respect to these rights.

Many South American states have transitioned from military dictatorships to democracies relatively recently and some security forces continue to operate within largely authoritarian structures as tools of repression.¹ Common features of these public security regimes include excessive use of force against protesters, abuse of preventive detention, torture and ill-treatment in places of detention, a lack of transparency within law enforcement authorities² and prison overcrowding.³

UN, regional and national human rights monitors and mechanisms, and non-governmental organizations have documented torture and other ill-treatment against protesters and detainees. This report examines the equipment used to perpetrate human rights violations, the companies involved in its manufacture and trade, and the national and regional export control regimes.

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) require states to adopt and implement rules and regulations on the use of force and firearms by law enforcement officials.⁴ Nonetheless, there are no regulations in place to control the actions of some agencies in South America that employ force. Furthermore, the trend towards militarisation of law enforcement has been compounded by the passage of laws that provide ambiguous guidance on the use of firearms against protesters and the exemption of police and military from criminal responsibility for deaths or injuries caused.

It is notable that most reported human rights violations against prisoners and protesters in South America are carried out with equipment that could have a legitimate law enforcement function if used appropriately, such as ordinary handcuffs, as opposed to equipment which is inherently cruel, inhuman or degrading, such as thumb cuffs. The report makes recommendations on the use of law enforcement equipment which states are encouraged to implement in order to prevent further abuses.

South American countries imported the majority of their law enforcement equipment in recent decades; however, production in several countries has been increasing and exports are on the rise. Several state-owned companies manufacture a range of equipment, sometimes under licensed production agreements. Some privately-owned manufacturers have also grown significantly, particularly Brazil-based companies, and there is evidence of transfers both in the region and beyond.

¹ David Pion-berlin, 'Neither Military Nor Police: Facing Heterodox Security Challengers and Filling the Security Gap in Democratic Latin America', *Democracy and Security*, 2010, vi
<<http://dx.doi.org/10.1080/17419161003715710>> [accessed 31 May 2016].

² For the purposes of this report, law enforcement authorities refers to all public institutions authorized to use force to implement the law. This encompasses policing institutions, prison staff and military forces tasked with maintaining internal order.

³ ACAT, *A World of Torture*, 2013.

⁴ United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN BPUFF), Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 1.

The transfer of equipment manufactured by South American companies to states with poor human rights records demonstrates the urgency of putting in place effective export control regimes. However, transparency regarding exports is lacking and a culture of secrecy compounds this issue. It is also important to consider companies' obligations in this respect. Putting robust due diligence mechanisms in place can help companies to mitigate the risk of breaching human rights standards and lessen their exposure to potential civil and/or criminal liability for complicity in human rights violations.

The report's key findings include:

- There are widespread instances of torture and other ill-treatment against peaceful protesters and people held in places of detention. Most of the equipment used to perpetrate these human rights violations is common police equipment. Information and recommendations on kinetic impact weapons (hand-held batons and launched projectiles), chemical irritants (tear gas), live ammunition, stun grenades, mechanical restraints and electric shock weapons.
- State-owned manufacturers of law enforcement equipment have increased their range and volume of manufacturing. Private companies have increased production and are selling their products in domestic and foreign markets. In addition, much police equipment is purchased from companies from outside the region, often imported through local agents.
- South American manufacturers have exported equipment which has then been used in mass repression, including in Turkey, Bahrain and Venezuela. This report examines transfers of tear gas manufactured in Brazil to Egypt while it was under an EU embargo, and to Burkina Faso, subsequently diverted to Cote d'Ivoire, in violation of a UN embargo.
- There is a lack of transparency on the types of law enforcement equipment that are subject to import and export trade controls. State officials were generally not responsive when asked for clear information on controls by Omega. To improve export control regimes, clear lists of equipment whose export is subject to licensing should be included in national legislation, controls should be implemented effectively and robust human rights safeguards should be put in place in order to avoid irresponsible transfers. A major concern is the lack of transparency in reporting exports. Licensed production agreements are becoming more common and States should take measures to prevent them from being used to evade export controls.

The Omega Research Foundation (Omega) calls on all South American states to ensure that the use of force, including normative guidance and accountability for abuses carried out, is in line with international human rights standards. The production, trade and use of goods which have no practical use other than for the purposes of torture and other ill-treatment should be prohibited. Strict national controls should be exercised over the manufacture, trade, transfer and promotion of law enforcement equipment which, though not intrinsically cruel, could be used for torture or other ill-treatment. States should take steps to improve the transparency of their export, brokering and transit licensing and reporting systems, as well as putting strict human rights safeguards in place to prevent law enforcement equipment from being transferred when it is likely to be used for the purposes of torture or repression.

METHODOLOGY

The aim of this report is to identify trends and areas of concern, rather than providing a comprehensive analysis. Countries researched include: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela.

Analysis of domestic law is largely limited to trade control laws and legislative norms and regulations governing the use of force in places of detention and the policing of public protests. Other domestic sources, particularly case-law, are not included. International humanitarian law (IHL) is not discussed, as the focus is on international human rights law. This report examines equipment for law enforcement purposes rather than for private use, although there is some overlap in this regard. The instances of misuse included have been selected to provide examples involving a wide range of law enforcement equipment from as many of the countries in the region as possible.

The dataset of information about companies involved in the law enforcement equipment trade on which this report draws has been maintained and updated by Omega, which has researched the global police and security equipment market since 1990. Omega carries out market surveying on a continuous basis and gathers current as well as historical market, product and trade data from a wide range of open and commercial sources. These include information from company websites and brochures; industry sector publications; government publications; company and financial information from national company registries; government- and commercially-produced trade statistics; media organisations; and credible reports and publications by NGOs and international governmental organizations (IGOs). Unless otherwise stated, data about the size, scope and evolution of the South American manufacture of law enforcement equipment is taken from Omega's datasets.

Any information, including photographs, provided in relation to specific companies is for illustrative purposes. It is not intended to infer wrong-doing on the part of these companies and no such inference should be drawn.

SECTION I: USE OF FORCE RULES AND REGULATIONS

OVERVIEW

Under international human rights law, states must protect and preserve individuals' rights.⁵ From this stems the duty of law enforcement officials to protect against certain acts, including violent crime. At times, this requires the use of force; for example, to enable the safe detention of a violent individual posing an imminent threat of death or serious injury if other means remain ineffective or without any promise of achieving the intended result. Yet the authority to use force also brings a responsibility to use it appropriately.

Global international human rights instruments which place restrictions on the use of force include the legally-binding Convention Against Torture (UN CAT) and the International Covenant on Civil and Political Rights (ICCPR), and soft law instruments including the BPUFF, the UN Code of Conduct for Law Enforcement Officials (CCLEO) and the UN Standard Minimum Rules for the Treatment of Prisoners (the 'Nelson Mandela Rules'). In the Americas, regional instruments restricting the use of force include the American Declaration of the Rights and Duties of Man, American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture and the Principles and Best Practises on the Protection of Persons Deprived of Liberty in the Americas.

Although restrictions on the use of force have been widely discussed elsewhere,⁶ it is worth briefly recalling some of the key principles involved in order to be better able to identify good practice and protection gaps in South America. Under international human rights law (IHRL), the right to be free from torture and other cruel, inhuman and degrading treatment or punishment is considered an absolute right, meaning it cannot be limited in any way, for any reason. The right to life is non-derogable, meaning that although it can be limited in limited circumstances, it cannot be temporarily restricted or suspended in response to a serious public emergency.

The Nelson Mandela Rules⁷ reaffirm the absolute prohibition on torture and state that '*Discipline and order shall be maintained with no more restriction than is necessary*'.⁸ The BPUFF states that where the use of force is unavoidable, law enforcement officials must exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.⁹ The CCLEO stipulates that force may only be used by law enforcement officials when strictly necessary and to the extent required for the performance of their duty.¹⁰ Therefore, use of force rules should emphasise a human rights approach to law enforcement, emphasising the importance of using non-violent means before resorting to force. When force is used as a response to violence, law enforcement officials must distinguish between those individuals who are engaged in violence and those who are not (be they peaceful demonstrators or uninvolved bystanders) and carefully target only those engaged in violence to the minimum extent necessary in order to achieve a lawful objective. States are required to take measures to prevent the unlawful use of force by law enforcement officials. As held by the Inter-

⁵ See, for example, Inter-American Court of Human Rights, *Case of Vélez Restrepo and family v Colombia*, Judgment (Preliminary objection, merits, reparations and costs), 3 September 2012, para. 186.

⁶ See Omega Research Foundation and Amnesty International, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment*, 2015; Amnesty International, *Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 2015 (Amnesty International, Use of Force Report).

⁷ The Nelson Mandela Rules, adopted by the UNGA on 17 December 2015, UN Doc. A/Res/70/175, Rule 82.

⁸ *Ibid.* Rules 1 and 36.

⁹ UN BPUFF, note 4, Principle 5.

¹⁰ UN Code of Conduct for Law Enforcement Officials, Adopted by General Assembly resolution 34/169 of 17 December 1979, Article 3.

American Court of Human Rights (IACtHR), this includes education and training ‘on principles and provisions of human rights protection and regarding the limits to which the use of weapons by law enforcement officials is subject, even in a state of emergency’.¹¹ In addition, law enforcement officials and their superiors must be held accountable for the unlawful use of force, including under criminal law.¹²

To summarise, IHRL stipulates that any use of force must be legal, necessary, proportionate and accountable.¹³ Improved training of law enforcement officers on using force in line with international human rights standards, as well as robust accountability mechanisms, should be introduced to help end impunity for abuses carried out. This could increase the general public’s trust in law enforcement institutions.

Protection of Persons Deprived of Liberty

While the BPUFF provide general guidelines on the use of force, as well as on the policing of ‘unlawful assemblies’ and persons in custody or detention, instruments focusing solely on one specific environment have also been developed. The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas was adopted by the Inter-American Commission on Human Rights (IACHR) in 2008 and the criteria for the use of force and weapons in places of detention are based on human rights principles. This is an example of human rights protections established in a regional instrument going beyond the universal equivalent, i.e. the Nelson Mandela Rules.

Principle XXIII states:

[...]

2. Criteria for the use of force and weapons

The personnel of places of deprivation of liberty shall not use force and other coercive means, save exceptionally and proportionally, in serious, urgent and necessary cases as a last resort after having previously exhausted all other options, and for the time and to the extent strictly necessary in order to ensure security, internal order, the protection of the fundamental rights of persons deprived of liberty, the personnel, or the visitors.

The personnel shall be forbidden to use firearms or other lethal weapons inside places of deprivation of liberty, except when strictly unavoidable in order to protect the lives of persons.

In all circumstances, the use of force and of firearms, or any other means used to counteract violence or emergencies, shall be subject to the supervision of the competent authority.

The BPUFF require states to adopt and implement rules and regulations on the use of force and firearms by law enforcement officials.¹⁴ Although the existence of such rules is no guarantee against abusive conduct by law enforcement officials, they are important for a number of reasons:

¹¹ Inter-American Court of Human Rights, *Caracazo v Venezuela* (Series C No. 95), 2002, para. 127.

¹² UN BPUFF, note 4, Principles 7 & 24.

¹³ See Annual Report of Christof Heyns, Special Rapporteur on extrajudicial executions, 2014, UN Doc. A/HRC/26/36; Amnesty International, Use of Force Report, note 6.

¹⁴ UN BPUFF, note 4, Principle 1.

- Use of force rules offer law enforcement officials guidance regarding the appropriate course of action in given situations, thereby providing them with the information needed to avoid participating in human rights violations.
- Such regulations must include provisions to aid accountability for abuses carried out by law enforcement officials.
- They are also an important factor which states and companies should consider when deciding whether or not to export law enforcement equipment to a particular end user. Clearly, where adequate use of force guidelines are absent, abuses constituting human rights violations are more likely to occur.

GOOD PRACTICE AND PROTECTION GAPS

While a detailed analysis of the use of force rules and regulations in place in each South American country is beyond the scope of this report,¹⁵ it is worthwhile highlighting specific examples of good practice in both the process to create such instruments and their actual content. On the other hand, it is also important to identify protection gaps where changes may be required if states are to uphold their human rights obligations. Of course, some instruments regulating the use of force contain both good practice and weaknesses.

Illustrative country examples

1) **Argentina: Principles for the Rational Use of Force in the Province of Buenos Aires Penitentiary Service**

In 2015, the Buenos Aires Ministry of Justice adopted a set of principles governing the use of force in places of detention. This was the result of an 18-month consultation process which was both inclusive and participative. The fact that multiple stakeholders, including civil society organisations and the police, were actively involved in the dialogue to develop these principles should be considered good practice. While it remains to be seen how effectively they will be implemented, some of the principles are commendable, whereas others need to be modified if they are to meet human rights standards:

Principle 2.2 states: *'Force can only be used when other means have been ineffective and never on a restrained subject. Force can never be used to punish those deprived of their liberty.'* The Principles provide clear guidance on the level of force which is permitted in different scenarios, taking particular account of where the incident occurs (i.e. in an open, semi-open or confined space). Principle 2.7 provides that violation of the protocol can result in administrative and/or criminal sanctions, and Principle 11 sets out clear instructions on registering each use of force incident. If implemented correctly, these measures should contribute to clearer parameters within which prison personnel will be expected to act and improved oversight and accountability.

However, Omega has concerns about some of the provisions:

Rubber pellet ammunition: Principle 3.2.3.2 provides that only batons and shotguns with blank cartridges or rubber pellets are permitted. However, the Principles also stipulate that only 'non-lethal' ammunition may be used inside prisons,¹⁶ suggesting that rubber pellet ammunition is considered 'non-lethal'. Given the numerous severe injuries that have been

¹⁵ If such a study were to be carried out, it could also examine how the various criminal justice systems define and sanction the crime of torture.

¹⁶ Principios para el uso racional de la fuerza en el Servicio Penitenciario Bonaerense, Principle 7.4.2.

caused by rubber pellets and their inherently indiscriminate nature, Omega believes that they should not be referred to as 'non-lethal' and their use should not be permitted in places of detention. Only direct fire single impact munitions with sufficient accuracy to avoid impacting vulnerable body areas should be authorised.

Skip-firing: Principle 7.4.5 permits the use of firearms when the life or integrity of someone is placed in 'certain danger'. Live ammunition is not included in the list of equipment expressly permitted, but 'riot control ammunition' can be employed and is to be fired at the ground rather than directly at the person. In spite of instructing prison personnel to employ skip-firing, Principle 7.4.6 warns of the danger of this practice, also known as indirect firing, stating that the deviation in the trajectory of the ammunition once it impacts upon a surface increases the risk for all those involved in the disturbance, noting that 'riot control ammunition' can be lethal depending on where a person is struck. The inherent risks of skip-firing makes the rounds' trajectory unpredictable, increasing the risk that vulnerable areas of the body could be hit.¹⁷ Omega believes that skip-firing should be prohibited. Agencies should devote more time to training to ensure officers are able to accurately hit the lower regions of the body with appropriate less lethal munitions.

Open-ended list of weapons: Principal 3.2.3.2 provides that weapons not included in the list of weapons which can be used in places of detention can be authorised by judicial order or under the express authorization of the Director General of Security in extremely serious situations. Omega believes that this provision is too broad and recommends that use of force guidelines contain an exclusive list of specified and tested law enforcement equipment which can be used, including human rights based guidelines for their appropriate use.

2) Peru: Law enforcement personnel exempt from criminal responsibility

In January 2014, Law 30151, which modified the Peruvian Penal Code, came into force. Article 20 of the Penal Code now states that '*members of the Armed Forces and the Peruvian National Police who cause injury or death in the performance of their duties and through the use of their weapons or other means of defence*' will be exempt from criminal responsibility. The Inter-American Commission on Human Rights,¹⁸ the Regional Office of the OHCHR¹⁹ and the Peruvian Ombudsperson's Office²⁰ have all publicly expressed their concern regarding the human rights implications of this reform.

The exemption from criminal responsibility for any injury or death caused by security personnel, which has been referred to as a 'license to kill' in the media,²¹ appears to directly

¹⁷ Home Office Scientific Development Branch, *Less Lethal Technologies Review of Commercially Available and Near-Market Products for the Association of Chief Police Officers*, Publication No. 49/08, 2008, p10.

¹⁸ Inter-American Commission on Human Rights, 'IACHR Troubled by entry into Force of Law 30151 In Peru,' 23 January 2014, <http://www.oas.org/en/iachr/media_center/PReleases/2014/004.asp> [accessed 31 May 2016].

¹⁹ Regional Office of the UN High Commissioner of Human Rights, 'ONU: Alto Comisionado de DDHH manifiesta preocupación sobre ley que regula uso de armas por parte de fuerzas del orden en Perú,' 16 January 2014, <<http://derechoshumanos.pe/2014/01/onu-alto-comisionado-de-ddhh-manifiesta-preocupacion-sobre-ley-que-regula-uso-de-armas-por-parte-de-fuerzas-del-orden-en-peru/>> [accessed 31 May 2016].

²⁰ Peruvian Ombudsperson's Office, 'PRONUNCIAMIENTO DE LA DEFENSORÍA DEL PUEBLO EN RELACIÓN CON LA LEY N° 30151,' 14 January 2014, <<http://derechoshumanos.pe/2014/01/defensoria-del-pueblo-senala-que-ley-30151-debilita-la-proteccion-del-derecho-a-la-vida-y-a-la-integridad-personal-de-la-ciudadania/>> [accessed 31 May 2016].

²¹ Jacqueline Fowks, 'Primeros absueltos en Perú por la ley que da 'licencia para matar' a la policía,' *El País*, 21 February 2014,

contravene Basic Principle 7 of the BPUFF which states: *'Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.'*

3) Venezuela: Military authorised to use firearms for crowd control purposes

In 2015, days before the one-year anniversary of the beginning of the three-month long 2014 protests, the Venezuelan Ministry of Defence passed a resolution establishing a set of norms permitting members of the armed forces to carry out functions for the *'control of public order, social peace and civil coexistence in public meetings and protests'*.²²

In keeping with international human rights standards, Resolution 008610 stipulates that armed forces must protect the right to life over all other rights and interests and affirms that the use of force for the purposes of the resolution must be governed by the principles of, *inter alia*, legality, necessity, proportionality and the progressive, differentiated use of force.²³

However, critics have claimed that Resolution 008610 is overly vague in relation to the use of firearms by members of the armed forces,²⁴ while others allege that permitting the military to use firearms to control public demonstrations violates Article 68 of the Venezuelan Constitution.²⁵ Article 15(9) of the Resolution states: *'[Members of the Armed Forces] will not carry or use firearms in controlling public meetings and peaceful demonstrations, unless, due to the necessity and proportionality of the means used to counter [the public meeting or peaceful demonstration], their carriage and use is necessary.'* Article 22 provides further guidance on the use of firearms, permitting members of the armed forces to employ potentially lethal force when a situation of lethal danger has been created. Omega is concerned that these provisions regarding the use of firearms by members of the armed forces do not conform with Principle 9 of the BPUFF, particularly with regard to the requirements that the threat to life be imminent and that firearms can only be used when strictly unavoidable in order to protect life.

In its response to an Urgent Appeal sent by four UN Special Rapporteurs,²⁶ the Venezuelan Government stated that the armed forces would only be called upon to aid in maintaining internal order in exceptional circumstances, either to intervene in violent protests or for preventive purposes when, due to the size of peaceful protests, police capacity is

<http://internacional.elpais.com/internacional/2014/02/21/actualidad/1392953601_330935.html> [accessed 31 May 2016].

²² Resolución No. 008610, Normas sobre la actuación de la Fuerza Armada Nacional Bolivariana en funciones de control del orden público, la paz social y la convivencia ciudadana en reuniones públicas y manifestaciones, published in the Official Gazette of the Bolivarian Republic of Venezuela, <<http://cdn.eluniversal.com/logoseud/2015/01/29/Gaceta%20oficial%2040.589.pdf>> [accessed 31 May 2016].

²³ Ibid. Articles 5.1 and 5.5.

²⁴ 'Venezuela allows possible deadly force at protests,' *BBC*, 31 January 2015, <<http://www.bbc.co.uk/news/world-latin-america-31070279>> [accessed 31 May 2016].

²⁵ 'ONU critica a Venezuela por resolución 8610,' *Últimas Noticias*, <<http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/onu-critica-a-venezuela-por-resolucion-8610.aspx>> [accessed 31 May 2016].

²⁶ Office of the High Commissioner for Human Rights, *Communications report of special procedures*, 2015, UN Doc. A/HRC/30/27, Ven 1/2015.

overwhelmed.²⁷ The response went on to state that, while it may be possible to interpret the Resolution as permitting the use of firearms against peaceful protesters, any such interpretation would be erroneous.²⁸

Given the possibility of differing interpretations of Resolution 008610, clear operational guidelines, training and accountability mechanisms are of paramount importance. The resolution stipulated that the Ministry of Popular Power for Defence would give instructions by April 2015 for the creation of a manual to be followed by members of the armed forces policing public gatherings. There is no evidence of any such manual online and the Ministry of Popular Power for Defence has not responded to a request for the manual sent by Omega.

4) Paraguay: The National Anti-Drug Ministry and the principle of legality

The National Anti-Drug Ministry (SENAD) was created to coordinate '*actions between government agencies and non-governmental organizations working on programs to combat drug trafficking and drug addiction*'.²⁹ According to the Paraguayan National Preventive Mechanism (NPM), there is no legal basis for SENAD to use force or to engage in activities other than those aimed at tackling drug trafficking and drug addiction.³⁰

Nonetheless, SENAD engages in a wide range of activities which inherently involve the use of force, including carrying out arrests, searching residences and individuals, placing people in custody in their own branches, participating in counter-insurgency operations and patrolling 'red zones'.³¹ The NPM reports that SENAD has been responsible for arbitrary detention of adults and minors, ill-treatment, the illegal interrogation of suspects, disproportionate use of force and acting with 'unusual violence'.³²

The use of force in the name of the state must be founded upon a clear legal framework which complies with international human rights standards, including effective accountability mechanisms so as not to arbitrarily affect those who wish to exercise many other rights and freedoms.³³ If the Paraguayan State considers that SENAD must use force in order to carry out its mandate, an appropriate legal framework should be put in place granting constitutionality and normative legitimacy to SENAD's activities.

²⁷ Response of the Permanent Mission of the Bolivarian Republic of Venezuela before the Office of the United Nations and International Organisms in Geneva, https://spdb.ohchr.org/hrdb/29th/Venezuela_22.04.15_%281.2015%29.pdf [accessed 31 May 2016], p. 5.

²⁸ Ibid. pp. 14-15.

²⁹ Ley N° 108/1991, Que Crea la Secretaría Nacional Antidroga (SENAD).

³⁰ Mecanismo Nacional de Prevención, *SENAD: Poder de policía y afectación de derechos individuales*, Informe Especial No. 2/2014, pp. 37-43.

³¹ Ibid. p. 4.

³² Ibid. pp. 22-27.

³³ Annual Report of Christof Heyns, note 13, paras. 26-27.



Detainee being guarded by officials from the Paraguayan National Anti-Drug Ministry.³⁴

³⁴ Secretaría Nacional Antidrogas, 'Capturan en Paraguay a criminal buscado por fuerzas de seguridad del Brasil', 23 December 2014 <<http://www.senad.gov.py/noticia/12337-capturan-en-paraguay-a-criminal-buscado-por-fuerzas-de-seguridad-del-brasil.html>> [accessed 31 May 2016].

SECTION II: ABUSE OF LAW ENFORCEMENT EQUIPMENT IN SOUTH AMERICA³⁵

When adopted in 1990, the BPUFF called for 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'*.³⁶ However, this process has often been industry-led and many of the technologies developed have not been sufficiently tested and are either ineffective or unfit for law enforcement purposes.

While many of the wide array of tools now provided to law enforcement officials may have a legitimate law-enforcement purpose when used correctly, others are inherently cruel and should be outlawed (e.g. thumb cuffs or weighted leg irons). The majority of equipment being used for law enforcement in South America could be of practical use if used correctly; however, much of it is often abused to carry out acts of torture and repression. This section will briefly examine some of the equipment most commonly used in human rights violations, both in public assemblies and in places of detention. Recommendations will be made regarding the use of each type of equipment, but there are also general recommendations on the public use of force at the end of this report.

II.1 POLICING PUBLIC ASSEMBLIES

The right to freedom of assembly is well-enshrined in international human rights law and is closely linked to other fundamental rights, such as the right to freedom of expression. The American Convention on Human Rights states, *'The right of peaceful assembly, without arms, is recognized.'*³⁷ Any restrictions on this right must be in *'conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedom of others'*.³⁸

Public assemblies including protests³⁹ are used as a means of demanding respect for human rights and expressing dissent and indignation throughout South America. Protesters have repeatedly been subjected to arbitrary and excessive force across the region.

In 2013, discontent with public transport price increases, high World Cup spending and insufficient investment in public services sparked massive protests which were reportedly met with excessive force by the Brazilian police.⁴⁰ The Peruvian State has responded to protests by mining-affected communities by deploying the army and passing a law exempting the National Police and the Armed Forces from criminal liability for deaths or injuries caused in the course of their duties (see page 10).

³⁵ For more detailed information on the types of equipment discussed in this section, please refer to the Omega Research Foundation Visual Glossary <https://omegaresearchfoundation.org/visual_glossary?search_api_language=en> [accessed 31 May 2016].

³⁶ UN BPUFF, note 4, Principle 2.

³⁷ American Convention on Human Rights ('Pact of San José'), Art. 15.

³⁸ Ibid.

³⁹ Public assemblies foster engaged citizenry and are vital to democratic, economic, social and personal development. Even when protesters forfeit their right to peaceful assembly by using violence, they retain other rights including the right to bodily integrity, which includes the rights to security, to be free from cruel, inhuman or degrading treatment or punishment, and to life; dignity; privacy; and an effective remedy for all human rights violations. For more, see UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Joint Report submitted to the Human Rights Council on the management of public assemblies (UN Special Rapporteurs, Joint Report), 04 February 2016, UN Doc. A/HRC/31/66.

⁴⁰ Amnesty International, *'They Use a Strategy of Fear': Protecting the Right to Protest in Brazil*, 2014.

In Venezuela, violence during mass pro- and anti-government protests between February and July 2014 led to at least 43 deaths and injuries to over 870 people, including protesters, security officials and passers-by.⁴¹

The Inter-American Commission on Human Rights (IACHR) has stated that while state agents ‘*may impose reasonable restraints on demonstrators*’, such restraints ‘*should protect, rather than discourage, the right to assembly*’.⁴² Furthermore, the IACHR has cited other international standards to support its view that for public use of force to be legitimate, it must be necessary and proportional to the needs of the situation and to the objective sought.⁴³ Finally, the IACtHR has held that ‘*the pretext of maintenance of public security cannot be invoked to violate the right to life*’, requiring that the use of physical means by the armed forces or security bodies to deal with situations of disturbance of public order be necessary, rational and proportional, and respecting the rights to life and to humane treatment.⁴⁴

The following equipment types are some of the means most often used by law enforcement officials in situations of public assemblies and have been mentioned in human rights and media reports of alleged human rights violations against protesters.

Kinetic impact devices

Striking weapons

Hand-held kinetic impact striking weapons: Very widely used, devices such as batons, truncheons, sticks and clubs are used to strike an individual to cause or threaten physical pain in order to deter them from an action or cause them to comply. They can be made of wood, plastic, metal or other material and can be short or long (20cm – 2m), telescopic, collapsible or side-handled. While this equipment can legitimately be used for law enforcement purposes, it is widely abused to inflict unnecessary or excessive force in a manner that can easily cause unwarranted injury. For example, when over-arm strikes impact the head or other sensitive areas, there is a risk of brain injury or death. There are reports of striking weapons being used with excessive force against protesters in Argentina,⁴⁵ Brazil and Paraguay.⁴⁶

Illustrative country example of excessive use of force with batons against protesters

Brazil: Human rights organisations report that batons have been used excessively against peaceful protesters. In one such case, demonstrator Vinicius Duarte sustained a broken jaw, broken nose and lost four teeth after he was repeatedly beaten with batons by two military police officers after taking shelter from tear gas in a Sao Paulo hotel in January 2014.⁴⁷

A photograph posted by a military police officer on a social networking site in October 2013 caused public outrage. The photograph showing the officer in uniform holding a broken baton

⁴¹ Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights*, p. 401.

⁴² Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas* (2006), para. 63.

⁴³ *Ibid.* para. 66.

⁴⁴ Inter-American Court of Human Rights, *Caracazo v Venezuela* (Series C No. 95), 2002, para. 127.

⁴⁵ Human Rights Watch, *World Report 2015*, pp. 65-66.

⁴⁶ US Department of State, *Paraguay 2014 Human Rights Report*, p. 19.

⁴⁷ Amnesty International, ‘*They use a strategy of fear*’: *Protecting the right to protest in Brazil*, 2014, p. 10.

and was accompanied by the caption ‘Sorry teacher’, in reference to that day’s teachers’ strike in Rio de Janeiro.



Military Police officer provokes widespread criticism by posting picture online showing broken baton (Photo: Tiago Tiroteio’s Facebook account)⁴⁸

Recommendations:

- Strictly control the use of hand-held kinetic impact striking weapons and regulate the development and transfer of such weapons.
- Provide rigorous human rights and scenario-based training for law enforcement officials on the correct use of hand-held kinetic impact striking weapons to mitigate the risk of excessive or unnecessary use of force causing unwarranted injury.

Kinetic impact projectiles

Similar to conventional rounds of ammunition, these propel a range of different projectiles to the target. Projectiles can be made of wood, rubber, plastic or other materials (e.g. fabric bags weighted with lead shot). Single and multiple projectiles can be fired including, for example, balls, segments, blocks or cylinders of wood, plastic or rubber (often referred to as ‘rubber bullets’). On impact they are designed to cause blunt trauma (i.e. non-penetrating trauma); however they often cause serious injuries including lacerations, broken bones, concussion, head injuries or internal organ damage. The risk of serious injury or death is significantly increased when kinetic impact projectiles are fired at close range or aimed at sensitive parts of the body, e.g. the head, chest and abdomen.

A wide variety of weapons are used to fire kinetic impact projectiles. Conventional small arms such as assault rifles or shotguns can be used for this purpose; others are specially designed to fire only specific ammunition. There are also generic ‘less lethal’⁴⁹ launchers which can fire a wide variety of ammunition of the same calibre. Common calibres include: 37/38mm, 40mm, 56mm, 12 gauge.

⁴⁸ Cristiane Cardoso, ‘PM Exibe Cassetete Quebrado, Diz ‘Foi Mal, Fessor’ E Causa Repúdio Na Web’, *Globo*, 4 October 2013, <<http://g1.globo.com/rio-de-janeiro/noticia/2013/10/pm-exibe-cassetete-quebrado-diz-foi-mal-fessor-e-causa-repudio-na-web.html>> [accessed 31 May 2016].

⁴⁹ This report uses the term ‘less lethal’ rather than ‘non-lethal’ as all weapons are potentially lethal with the degree of risk varying for different types of weapons and how they are used. For more on the use of terminology to describe law enforcement equipment, see Abi Dymond-Bass and Neil Corney ‘The review of weapons under international humanitarian law and human rights law’, in Stuart Casey-Maslen, *Weapons under International Human Rights Law*, 2014.

Projectiles of varying sizes can be fired using the same calibre ammunition, e.g. a 40mm cartridge could contain one large projectile or dozens of small projectiles.

While compiling this report, Omega came across numerous reports of the abusive use of kinetic impact projectiles against people exercising their right to peaceful assembly throughout the region. Furthermore, a number of local human rights defenders and civil society organisations consulted identified this as one of their key concerns regarding the abusive use of law enforcement equipment in their respective countries.

Illustrative country examples of excessive use of force with kinetic impact projectiles

Venezuela: In 2014, there were several reports of inappropriate use of kinetic impact projectiles by Venezuelan law enforcement officials. As well as using rubber bullets in enclosed spaces, law enforcement officials fired rubber bullets which hit youths in the eyes in protests in Táchira and Carabobo States, one of whom later died from his injuries.⁵⁰ In addition, it is reported that post-electoral protests in 2013 were met with excessive force including several instances of protesters being shot in the back with rubber bullets. On one occasion a fleeing protester fell and was shot in the legs at point-blank range for *'running away and protesting against the government'*.⁵¹

Argentina: The use of rubber ammunition to disperse protests, in violation of the Minimum Criteria for the Conduct of Police Bodies and Security Forces in Public Demonstrations,⁵² has been highlighted as an issue of particular concern. On 22 October 2014, the national Gendarmerie shot rubber ammunition at a group of workers protesting against their dismissals by an auto parts factory. Over 50 people were injured by the rubber ammunition, five of them seriously, and it was alleged that the Gendarmerie continued shooting at workers as they fled.⁵³ Subsequently, a San Isidro Federal Court judge ordered that the Gendarmerie be replaced in further operations connected with this labour dispute by another law enforcement agency *'with the capacity for dialogue and restraint in order to avoid future escalations of violence'*.⁵⁴

Brazil: Law enforcement officials in Brazil have reportedly used rubber bullets to repress peaceful protests. The IACHR expressed concern over the excessive use of force in June 2013, particularly with regard to the targeting of journalists covering protests in São Paulo. Journalists Fábio Braga, Giuliana Vallone and Sérgio Silva were reportedly hit in the face with

⁵⁰ Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights*, pp. 401-402.

⁵¹ COFAVIC, *Informe situación de Derechos Humanos en Venezuela en el contexto post electoral de abril de 2013*, pp. 25-26.

⁵² Argentinian Ministry of Security, 'Criterios Mínimos sobre la Actuación de los Cuerpos Policiales Fuerzas de Seguridad en Manifestaciones Públicas', published in: *Los Nuevos Paradigmas del Ministerio de Seguridad y el Consenso Federal*,

<http://www.minseg.gob.ar/sites/default/files/Publicaciones/Los%20Nuevos%20Paradigmas%20del%20Ministerio%20de%20Seguridad%20y%20el%20Consenso%20Federal.pdf> [accessed 31 May 2016].

⁵³ CELS, *Derechos humanos en Argentina: Informe 2015*, pp. 299, 303

⁵⁴ Sandra Arroyo Salgado, 'Hay cortes que se convalidan y que son acompañados por las fuerzas de seguridad y otros no,' *La Nación*, 5 November 2014, <http://www.lanacion.com.ar/1741436-una-jueza-ordeno-retirar-a-la-gendarmeria-de-los-operativos-antipiquete-en-panamericana> [accessed 31 May 2016].

rubber bullets fired by military police officers.⁵⁵ Silva lost sight in one eye as a result of his injuries.⁵⁶

Launched projectiles are inherently inaccurate and multiple projectiles are indiscriminate with a high risk of uninvolved bystanders being hit. In particular, multiple launchers which rapidly or simultaneously discharge multiple projectiles should be prohibited due to their indiscriminate nature.

Kinetic impact projectiles should only be used to target those directly involved in violence posing a risk of death or serious injury to persons, where the projectiles are used to contain and stop the violence. Back injuries sustained by protesters as a result of being hit by kinetic impact projectiles must lead to a presumption of abuse. Similarly, deliberate targeting at point-blank range significantly increases the risk of serious injury or death and should be prohibited.

Recommendations

- Ammunition containing multiple projectiles is inaccurate, indiscriminate and arbitrary and should be prohibited.
- Impact projectiles which are so inaccurate or impact with such excessive energy that they cannot be used safely should be prohibited.
- Multiple launchers should be prohibited due to their indiscriminate nature.
- Kinetic impact projectiles should only be used when less extreme methods are insufficient to achieve a legitimate law enforcement objective and their use is proportional to the objective sought. They should never be fired at the head, upper body or groin areas, nor should they be intentionally rebounded off the ground before striking the target. Where possible, clear warnings should be given before firing them. Once the perceived threat has subsided (e.g. if those carrying out acts of violence in a protest have begun to disperse), impact projectiles should not be used.

Chemical irritants

Chemical irritants are designed to deter or disable an individual, by producing temporary irritation of the eyes and upper respiratory tract. The most commonly used chemicals include CN or CS (commonly called tear gas) and OC/Pepper and PAVA (commonly called pepper spray).

Chemical irritants are delivered through hand-held aerosol sprays, hand-thrown grenades, weapon-launched projectiles/grenades, as well as via water cannon. There are reports of chemical irritants being used arbitrarily and/or excessively against protesters in the following countries: Argentina,⁵⁷ Bolivia, Brazil,⁵⁸ Chile,⁵⁹ Colombia, Paraguay,⁶⁰ Peru⁶¹ and Venezuela.

⁵⁵ IACHR, 'IACHR Expresses Concern over Arrests and Attacks on Demonstrators and Journalists during Protests in Brazil,' 20 June 2013, <http://www.oas.org/en/iachr/media_center/PReleases/2013/044.asp> [accessed 31 May 2016].

⁵⁶ Amnesty International, *'They use a strategy of fear': Protecting the right to protest in Brazil*, 2014, p. 8.

⁵⁷ CELS, *Derechos humanos en Argentina: Informe 2015*, p. 306.

⁵⁸ Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights*, p. 83.

⁵⁹ Human Rights Watch, *World Report 2015*, p. 151.

⁶⁰ US Department of State, *Paraguay 2014 Human Rights Report*, p. 19.

⁶¹ US Department of State, *Peru 2014 Human Rights Report*, p. 12.

Illustrative country examples of excessive use of force with chemical irritants

Bolivia: The Bolivian Human Rights Ombudsperson's Office has denounced the abusive use of tear gas by the Bolivian National Police.⁶² On 25 September 2011, during the 'Indigenous March' – a peaceful assembly organised in August and September 2011 calling for respect for constitutionally-recognised rights – national police officers initiated an operation against the protesters when they were attending to their personal needs (washing clothes, preparing food, etc.), rather than protesting for their rights. During this operation, chemical irritants were used indiscriminately against men, women and children who posed no threat to others. On 30 July 2015, a student taking part in a strike was seriously wounded when struck on the head by a chemical irritant grenade. A police officer was subsequently charged and placed in preventive detention.⁶³

Venezuela: There are credible reports of the excessive and indiscriminate use of tear gas to disperse and sometimes punish peaceful protesters in Venezuela.⁶⁴ For example, on 21 April 2014, Diego Daniel Arcana García was reportedly hit in the face with a tear gas projectile after being deliberately targeted by a national police officer after taking photographs of a peaceful demonstration.⁶⁵ Furthermore, it is reported that the Bolivarian National Guard fired tear gas at private residences after occupants sheltered student protesters 'to protect them from the aggressions [of the public security forces]'.⁶⁶

Colombia: Human rights organisations reported the excessive use of force used by the Colombian Mobile Riot Control Squadron – *Escuadrón Móvil Antidisturbios* (ESMAD) – against agricultural communities during a large strike in August 2013.⁶⁷ This included indiscriminately firing projectiles containing chemical irritants at homes, including when there were young children present and, on at least one occasion, when the residents were asleep. On 9 June 2015, Cristian Andrés Pulido suffered serious head injuries when he was hit by a chemical irritant projectile while taking photographs of a student protest in Tolima University.⁶⁸

⁶² Office of the Human Rights Ombudsperson of the Plurinational State of Bolivia, *Informe de la Defensoría del Pueblo del Estado Plurinacional de Bolivia al Comité contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, en el Marco de su 50° Periodo de Sesiones*, 22 April 2013, <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fIFN%2fBOL%2f12855&Lang=en> [accessed 31 May 2016], p. 17.

⁶³ 'Fiscal no descarta ampliar investigación en caso de Jhon,' *Los Tiempos*, 15 August 2015, <<http://www.lostiempos.com/diario/actualidad/local/20150815/fiscal-no-descarta-ampliar-investigaci%C3%B3n-en-caso-de-312105-691158.html>> [accessed 19 October 2015].

⁶⁴ Amnesty International, *Venezuela: Human Rights at Risk amid Protests*, 2014, p. 6.

⁶⁵ COFAVIC, *Sentencias de silencio: Informe situación de Derechos Humanos en Venezuela en contexto de protestas estudiantiles de febrero- mayo 2014*, p. 165.

⁶⁶ *Ibid.* p. 19.

⁶⁷ Human Rights Monitoring Mission, *Segundo Informe de la Misión de Verificación de Derechos Humanos en los Departamentos de Cundinamarca y Boyacá*, 19 September 2013, <<http://www.derechos.org/nizkor/colombia/doc/paro80.html>> [accessed 31 May 2016].

⁶⁸ Simón Palacio, 'Fuerza, Cristian,' *Semanario Voz*, 19 June 2015, <<http://www.semanariovoz.com/2015/06/19/fuerza-cristian/>> [accessed 31 May 2016].



Cristian Andrés Pulido's camera after being hit by a chemical irritant projectile while he documented ESMAD's actions during a student protest (Photo: Semanario VOZ. Used with permission)

Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has warned that tear gas is indiscriminate in nature, failing to differentiate '*between demonstrators and non-demonstrators, healthy people and people with health conditions*'.⁶⁹ The effect of tear gas varies from person to person. It can be life threatening for certain vulnerable groups, e.g. elderly people, children, pregnant women or people with respiratory problems. Launched projectiles containing chemical irritants can, if they hit a person directly, cause penetration wounds, concussion, other head injuries as well as, in some instances, death.

Recommendations

- Grenades and wide area use of chemical irritants should only be employed when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly targeting violent persons only. Furthermore, chemical irritants should only be used for the amount of time strictly necessary to reduce the level of violence.
- Prohibit the direct firing of any projectile or grenade against a person.
- Have medical personnel on hand to provide assistance to those affected by chemical irritants.

Live ammunition

Although the focus of this report is 'less lethal' law enforcement equipment, it is necessary to mention the use of live ammunition by law enforcement in public gatherings. This is particularly relevant in light of the trend to assign the military to policing duties in several countries in the region. Military personnel and military police have used high-powered firearms with live ammunition against protesters on multiple occasions in South America.

Human rights organisations have reported on the use of metal pellets (also called 'buckshot' or 'birdshot', which are often marketed as less- or non-lethal ammunition) and/or other types of lethal ammunition against people participating in public protests in several countries in the region, including Argentina, Colombia,⁷⁰ Peru and Venezuela. Metal pellets are designed to spread over a wide area

⁶⁹ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report submitted to the Human Rights Council, 21 May 2012, UN Doc. A/HRC/20/27, para. 35.

⁷⁰ Office of the High Commissioner of Human Rights in Colombia, 'Oficina de la ONU para los Derechos Humanos espera que se llegue a acuerdos que garanticen los derechos humanos de la población del Catatumbo,' 10/07/2013,

when fired from a shotgun, while other forms of live ammunition are designed to target an individual with lethal force.

Illustrative country examples of excessive use of force with live ammunition

Argentina: Officers from the Buenos Aires Metropolitan Police Division of Complex Interventions were charged with aggravated attempted murder in 2014, after two press workers and an individual were injured by metal pellets fired using shotguns following an operation to remove a group of artists who were occupying a public cultural building the previous year.⁷¹ Judges compared the case to the excessive use of force against those occupying Indoamericano Park in 2010, when law enforcement officers tampered with ammunition by swapping the rubber pellets they had been issued with metal pellets.⁷²

Peru: According to Human Rights Watch, between July 2011 and September 2014, 34 civilians were killed during protests. This figure includes four people who were reportedly killed by police officers using live ammunition in three separate incidents in 2014.⁷³ A decision to discontinue the investigation into the July 2012 killing of four people in the Cajamarca region was heavily criticised by civil society.⁷⁴ The prosecutor, who reportedly failed to consider chain of command responsibility, nevertheless concluded that army-issued Galil combat weapons had probably been used, that one of the killings had been perpetrated by a soldier firing from a helicopter and that the killings were intentional homicides, but he was unable to identify the perpetrators.⁷⁵

Venezuela: Various reports point to the indiscriminate use of shotgun pellets by Venezuelan law enforcement officials against individuals participating in public protests.⁷⁶ In one instance, a protester suffering a severe asthma attack triggered by a chemical irritant was shot in the leg from point-blank range with lead pellets by members of the Bolivarian National Guard.⁷⁷ During the protests on 15 and 16 April 2013 in the State of Lara, Ehisler Moises Vázquez Caridad was reportedly shot in the face with metal pellets at point-blank range by a

<<http://www.hchr.org.co/publico/comunicados/2013/comunicados2013.php3?cod=39&cat=91>> [accessed 31 May 2016].

⁷¹ CELS, *Derechos humanos en Argentina: Informe 2015*, pp. 309-310; '#PolicíasAsesinos Tres Efectivos de La Metropolitana a Punto Del Juicio Oral | Policía Metropolitana', *Minuto Uno*, 3 September 2015

<<http://www.minutouno.com/notas/1288596-policiasasesinos-tres-efectivos-la-metropolitana-punto-del-juicio-oral>> [accessed 31 May 2016].

⁷² 'Tres metropolitanos al borde del juicio,' *Página 12*, 11 October 2014,

<<http://www.pagina12.com.ar/diario/sociedad/3-257310-2014-10-11.html>> [accessed 31 May 2016].

⁷³ Human Rights Watch, *World Report 2015*, p. 430.

⁷⁴ Juan Arribasplata and Nilda Rojas, 'Familiares de víctimas de protestas contra Conga rechazan decisión de fiscal que archivó el caso', *NoticiasSer.pe*, 22 January 2014,

<<http://www.noticiasser.pe/22/01/2014/cajamarca/familiares-de-victimas-de-protestas-contra-conga-rechazan-decision-de-fiscal-qu>> [accessed 31 May 2016].

⁷⁵ Coordinadora Nacional de Derechos Humanos, 'Fiscal archiva caso a pesar de aceptar que hubo homicidio,' 23 January 2014, <<http://derechoshumanos.pe/2014/01/fiscal-archiva-caso-a-pesar-de-aceptar-que-hubo-homicidio/>> [accessed 31 May 2016].

⁷⁶ See, for example, Human Rights Watch, *Punished for Protesting: Rights Violations in Venezuela's Streets, Detention Centers, and Justice System*, May 2014, p. 8.

⁷⁷ COFAVIC, *Informe situación de Derechos Humanos en Venezuela en el contexto post electoral de abril de 2013*, 17 June 2013, p. 13.

National Guard official armed with a shotgun. He was reportedly trying to flee at the time he was shot.⁷⁸

International standards require force to be used exclusively against persons engaged in violence. By their nature metal pellets are indiscriminate and therefore serve no legitimate law enforcement purpose. In a situation where people are acting violently in a public gathering, law enforcement officers should use less harmful means to bring the situation under control.⁷⁹ An additional advantage of prohibiting rubber pellet ammunition (see above), is that other types of ammunition are more difficult to tamper with. The use of firearms should only be permitted for the purpose of protecting against an imminent threat to life or of serious injury. Any law enforcement officials found to have used firearms in an abusive manner should be held to account and their conduct treated as criminal offences.

Recommendations

- Law enforcement agencies should be adequately equipped with a range of weapons and ammunition that would allow for a differentiated use of force and firearms.
- The use of firearms by law enforcement officials should be controlled in accordance with the BPUFF (i.e. to defend against a threat to life or of serious injury), regardless of the type of ammunition being used.
- Prohibit the use of any firearms or ammunition that cause unnecessary injury or present an unnecessary risk. This includes ammunition which is inherently indiscriminate, including shotgun pellets.

Water cannon

Water cannon are high-pressure systems designed to fire jets of water at people. They can be backpack style, or more typically mounted on vehicles. The pressure of the water jet can be varied from low pressure (designed to soak, deter or demoralise), to high pressure - which can cause blunt trauma or knock a person to the ground. The water jet can have additives including marker dye (for later identification of persons) or a range of chemical irritants for additional effects.

Illustrative country examples of excessive use of force with water cannon

Chile: It has been reported that the Chilean *Carabineros* sometimes respond to violence in public demonstrations with indiscriminate or disproportionate force.⁸⁰ The Chilean National Human Rights Institute (INDH) reported *Carabineros* used force indiscriminately and disproportionately in 70% of the demonstrations it observed in 2013, with water cannons used in 77% of these gatherings.⁸¹ On 21 May 2015, Rodrigo Avilés sustained serious head injuries after being thrown several metres by a high-pressure jet of water fired by *Carabineros* from a distance of 4.5 metres.⁸²

⁷⁸ Ibid. p. 26.

⁷⁹ For more on this topic, see Amnesty International, Use of Force Report, note 6, pp. 138-139.

⁸⁰ Human Rights Watch, *World Report 2014*, p. 224.

⁸¹ National Human Rights Institute of Chile, *Informe Anual 2013: Programa de Derechos Humanos y Función Policial*, May 2014, pp. 25-28.

⁸² Francisco Marín, 'Chile: Incentivos perversos para la violencia policiaca,' *Proceso*, 12 June 2015, <<http://www.proceso.com.mx/?p=407435>> [accessed 31 May 2016].

Venezuela: The indiscriminate use of high pressure water cannons against peaceful protesters has been reported in Venezuela.⁸³ Amnesty International reports this has been done without prior warning and without giving protesters the chance to leave the area.⁸⁴

This equipment is inherently indiscriminate and can affect bystanders. In addition, the use of a mixture of water and chemicals makes it impossible to deliver accurate targeted doses of the irritant. Jets of water also have high kinetic energy and can knock people to the ground. Injuries such as fractures, bruising and concussion have been reported, particularly when individuals are struck from close range.

Recommendations

- If rigorous testing demonstrates its 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.
- Operational rules should give exact instructions on the use of water cannon, including the minimum safe firing distance and prohibit the targeting of those in elevated positions where the risk of subsequent falls is high.

Stun grenades

Stun grenades (also known as flashbang grenades, flash-bangs or distraction devices) are hand-thrown or weapon-launched explosive devices which emit an extremely loud noise and/or a bright flash of light designed to disorientate and shock.⁸⁵ They can also contain chemical irritants or rubber balls / projectiles. As well as being used widely by military forces, stun grenades are also increasingly used by law enforcement for riot control purposes. There are reports of arbitrary use of stun grenades in Brazil⁸⁶ and Colombia.

Illustrative country example of excessive use of force with stun grenades

Colombia: Stun grenades have reportedly been used against protesters and those documenting the actions of law enforcement officers during public gatherings. In July 2013, journalist Fred Nuñez was injured after ESMAD officers allegedly threw a stun grenade at him from close range.⁸⁷ Stun grenades were one of the means of force used arbitrarily during the agricultural strikes of August 2013. On one occasion, a stun grenade was thrown into a residence in which there were seven minors at the time.⁸⁸ The UN High Commissioner for Human Rights included the case of 14-year-old Natalia Bernal, who lost an eye to shrapnel

⁸³ COFAVIC, 'COFAVIC presentó balance de DDHH en Venezuela año 2014,' 28 October 2014, <<http://www.cofavic.org/28102014-cofavic-presento-balance-de-ddhh-en-venezuela-ano-2014/#.Vio2tivl-Bs>> [accessed 31 May 2016].

⁸⁴ Amnesty International, *Venezuela: Human Rights at Risk amid Protests*, 2014, p. 5.

⁸⁵ Omega Research Foundation, *Crowd Control Technologies: An appraisal of technologies for political control*. Published by the European Parliament, June 2000, PE Number: PE 168. 394/Fin.St., p. 25.

⁸⁶ Amnesty International, '*They use a strategy of fear*': *Protecting the right to protest in Brazil*, 2014, p. 8.

⁸⁷ Colectivo de Abogados, 'Herido gravemente periodista alternativo Fred Nuñez de Colectivo Brecha, durante enfrentamientos del ESMAD contra Campesinos en Catatumbo,' 29 July 2013, <<http://www.colectivodeabogados.org/?Herido-gravemente-periodista>> [accessed 31 May 2016].

⁸⁸ Human Rights Monitoring Mission, note 67.

from a stun grenade in a protest in May 2014, when reporting cases of inappropriate use of force by law enforcement officials in 2014.⁸⁹

Stun grenades were originally designed as a tactical munition for use by specialist officers during room clearance or hostage situations. Their effects are indiscriminate in nature, and they are explosive munitions not suitable for use in the context of a public gathering. The intense stimulation of the auditory and visual senses, often in conjunction with respiratory difficulties provoked by their use alongside chemical irritants, disorientate the target, often leading to panic, with risk of serious injury in crowd situations. When they explode stun grenades can release shrapnel and fragments with sufficient energy to cause death or serious injury. The concussive blast of the detonation can cause burns, start fires particularly when used in enclosed spaces, cause hearing damage, eye injuries and psychiatric trauma.⁹⁰

Recommendations

- The use of stun grenades should be prohibited as a method of crowd dispersal.
- If there is a delay before stun grenades are prohibited for crowd dispersal purposes, the direct firing or throwing of stun grenades against a person should be prohibited immediately and authorities must ensure medical personnel are on hand to provide assistance to those affected by stun grenades.

II.II TORTURE AND ILL-TREATMENT IN DETENTION

Being condemned to a prison sentence or subjected to pre-trial detention in Latin America has been described by the Director of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) as a de facto random death sentence.⁹¹ Although there are many factors which contribute to this, one of the main ones is the illegitimate use of force by prison staff.

Amerigo Incalcaterra, regional representative for South America of the United Nations Office of the High Commissioner for Human Rights, has said there are cases of mistreatment and torture in places of detention in every country in Latin America and the Caribbean.⁹² Some of the common features which result in human rights violations include the use of torture in criminal investigations, widespread impunity and corruption, the use of force to discipline those deprived of their liberty and excessive use of preventive detention.⁹³

For the purposes of this report, places of detention include all public or private institutions where a person can be detained, imprisoned, institutionalised or placed in custody, and from which that person cannot leave at will, by order or under the de facto control of a judicial, administrative or any

⁸⁹ United Nations High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, UN Doc. A/ HRC/28/3/Add.3, para. 73.

⁹⁰ Physicians for Human Rights and INCLO, *Lethal in Disguise: The health consequences of crowd-control weapons*, 2016, pp. 66-68.

⁹¹ Elías Carranza, 'Situación penitenciaria en América Latina y el Caribe ¿Qué hacer?', published in *Anuario de Derechos Humanos 2012*, Universidad de Chile, <<http://www.anuariodh.uchile.cl/index.php/ADH/article/view/20551>> [accessed 31 May 2016], p. 46.

⁹² Marianela Jarroud, 'No Hope in Sight for Latin America's Prison Crisis,' *IPS*, 2 February 2015, <<http://www.ipsnews.net/2015/02/no-hope-in-sight-for-latin-americas-prison-crisis/>> [accessed 31 May 2016].

⁹³ ACAT, *A World of Torture*, 2013, p. 25.

other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses.⁹⁴

Inter-American Convention to Prevent and Punish Torture

With the exception of Guyana, all of the countries included in this report have signed and ratified the legally-binding Inter-American Convention to Prevent and Punish Torture. However, Guyana is a State Party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Although beyond the scope of this report, an overview of the implementation of the Inter-American Convention to Prevent and Punish Torture, UN CAT and the Optional Protocol to UN CAT would be useful. The Inter-American Convention to Prevent and Punish Torture defines torture as follows:

Article 2

For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.

Noting the vulnerability of persons placed in detention, the IACtHR has stated that ‘Any use of force that is not strictly necessary to ensure proper behaviour on the part of the detainee constitutes an assault on the dignity of the person, in violation of Article 5 of the American Convention’.⁹⁵ In spite of this, those deprived of their liberty continue to suffer torture and ill-treatment in places of detention throughout the region, often through the unnecessary, arbitrary or disproportionate application of force. Certain types of law enforcement equipment are regularly used in carrying out these acts.

Restraints⁹⁶

Restraints are applied to the body to restrict the movement of an individual. While some restraints are inherently cruel and should be prohibited (e.g. thumb cuffs, weighted leg irons), others serve a legitimate law-enforcement purpose if used correctly (e.g. ordinary handcuffs). While an investigation into the use of various restraints in places of detention in Latin America would be of value, this report will only consider ordinary handcuffs.

⁹⁴ Inter-American Commission on Human Rights, *Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners*, 8 October 2013, UN Doc. UNODC/CCPCJ/EG.6/2014/INF/2, p.3.

⁹⁵ Inter-American Court of Human Rights, *Case of Loayza-Tamayo*. Judgment of 17 September 1997. Series C No. 33, para. 57.

⁹⁶ For more information on different types of restraints and the human rights implications of their use, please see: Omega Research Foundation, *China’s Trade in Tools of Torture and Repression*, 2014.



Handcuffs displayed Milipol 2015, Paris, France. ©Robin Ballantyne, Omega Research Foundation

Common handcuffs consist of two adjustable wrist cuffs joined together by a short chain that allows a limited degree of movement. Other types include hinged and rigid handcuffs (i.e. those that are joined by a rigid bar, rather than a chain). Handcuffs can be double-locking, designed to prevent overtightening, and single locking, which can be progressively tightened through a ratchet (by both the law enforcement officer and the detainee). Although all handcuffs can be abused for torture and other ill-treatment, rigid and single locking handcuffs pose a greater risk of injury and abuse than others. There are reports of handcuffs being abused in places of detention in Argentina, Brazil,⁹⁷ Paraguay, Uruguay and Venezuela. However, the abuse of restraints often goes unreported.

Illustrative country examples of torture and ill-treatment with restraints

Argentina: According to official statistics of the cases of torture or ill-treatment registered in 2014 by the Ombudsman for prisoners' rights under federal jurisdiction, 62% of victims were handcuffed or otherwise restricted.⁹⁸ CELS reports that when minors are detained by police, they are often left handcuffed in the bathroom for hours as they cannot be legally detained in a police station.⁹⁹ High-profile cases of torture perpetrated against those deprived of their liberty include the case in January 2012, of Patricio Barros Cisneros was beaten to death by a group of eight to 10 penitentiary service officials while handcuffed.¹⁰⁰

Paraguay: After a follow-up visit carried out in 2010, the UN SPT described one instance where a detainee was handcuffed and forced to kneel while police officers stepped on the handcuffs and beat him.¹⁰¹ An investigation was opened for the alleged torture and ill-treatment of three detainees in the Buen Pastor Prison in the first half of 2014. Two female

⁹⁷ UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil*, 5 July 2012, UN Doc. CAT/OP/BRA/1, para. 127.

⁹⁸ Procuración Penitenciaria de la Nación, *La Situación de los Derechos Humanos en las Cárceles Federales de la Argentina: Informe Anual 2014*, p. 66.

⁹⁹ CELS, *Derechos Humanos en Argentina: Informe 2013*, p. 153.

¹⁰⁰ *Ibid.* p. 293.

¹⁰¹ UN SPT, *Report on the follow-up visit to the Republic of Paraguay from 13 to 15 September 2010*, 30 May 2011, UN Doc. CAT/OP/PRY/2, para. 51.

penitentiary services officials and one male private security guard were allegedly responsible for stripping one detainee and leaving her handcuffed in her underwear all night; another detainee reportedly had her hand and foot shackled to the bars of her cell; and a third detainee was handcuffed to the bars of her cell for days.¹⁰² These actions were taken to punish the detainees for breaches of discipline.¹⁰³

Uruguay: There are reports of excessive use of force being used to punish those deprived of their liberty in Uruguay,¹⁰⁴ including against adolescents in centres run under the Juvenile Criminal Responsibility System – *Sistema de Responsabilidad Penal Adolescente* (SIRPA).¹⁰⁵ The UN Committee Against Torture expressed concern about allegations of ill-treatment of minors, including the shackling of hands and feet behind the back in a stress position known as ‘paquetito’ or ‘package’.¹⁰⁶

Venezuela: Reports detail a pattern of abuse against protesters detained in February 2014. This included handcuffing detainees together, sometimes in human chains of dozens of people, for extended periods while exposed to extreme heat. While handcuffed, detainees were subjected to electric shocks and beatings and the handcuffs were not removed to allow people to go to the bathroom.¹⁰⁷ In a letter addressed to human rights NGO the Venezuelan Prison Observatory – *Observatorio Venezolano de Prisiones* (OVP), detainees in the YARE III prison denounced the torture they had been subjected to on 15 January 2014. This allegedly included penitentiary services officials placing their boots on prisoners’ backs and pulling their arms up while the prisoners lied face down with their hands handcuffed behind their backs.¹⁰⁸

Recommendations¹⁰⁹

- Once detainees are placed in restraints, no other means of force should be used against them unless they pose an immediate threat of death or serious injury that cannot be contained by less extreme measures.
- When restraints are worn, officers should check the subject regularly for any indications that they may be experiencing injury or negative effects and any necessary remedial action should immediately be taken.
- Where it is necessary for officers to use metal handcuffs, preference should be given to chain link models where feasible, as the evidence suggests these are less injurious than rigid bar handcuffs.
- Metal restraints should be applied for the shortest possible time, and replaced with fabric or soft restraints at the earliest possible time.

¹⁰² US Department of State, *Paraguay 2014 Human Rights Report*, p. 6.

¹⁰³ ‘Presas niegan tortura y dicen que solo fueron castigadas,’ *Última Hora*, 13 June 2014, <<http://m.ultimahora.com/presas-niegan-tortura-y-dicen-que-solo-fueron-castigadas-n802994.html>> [accessed 31 May 2016].

¹⁰⁴ US Department of State, *Uruguay 2014 Human Rights Report*, p. 2.

¹⁰⁵ National Institution of Human Rights and Ombudsman of Uruguay, *Report by the National Institution of Human Rights and Ombudsman of Uruguay*, 52nd Session of the Committee Against Torture, 11 April 2014, para. 146.

¹⁰⁶ UN Committee Against Torture, *Concluding observations on the third periodic report of Uruguay*, 10 June 2014, UN Doc. CAT/C/URY/CO/3, para.13.

¹⁰⁷ See Human Rights Watch, *Punished for Protesting: Rights Violations in Venezuela’s Streets, Detention Centers, and Justice System*, May 2014.

¹⁰⁸ Observatorio Venezolano de Prisiones, *Informe Anual 2013*, p. 35.

¹⁰⁹ For additional guidance on the use of restraints, see the Nelson Mandela Rules, Rules 47-49.

- The use of leg restraints should be avoided in all but the most extreme situations and they should never be applied for prolonged periods.

Kinetic impact projectiles

In addition to being used abusively against people exercising their right to peaceful assembly (see pages 16-17), there are also reports of kinetic impact projectiles being abused in places of detention in many countries in the region, including Argentina, Brazil, Paraguay¹¹⁰ and Uruguay.¹¹¹

Illustrative country examples of torture and ill-treatment with kinetic impact projectiles

Brazil: Closed circuit footage of a 2013 incident at the Joinville Regional Prison in Santa Catarina State received widespread media attention.¹¹² The footage shows officials, reportedly from the Department of Prison Administration, forcing a group of male detainees stripped down to their underwear to line up in tightly-packed rows, crouch down with their hands on their heads and face the wall. Behind the prisoners, a group of approximately 12 armed officials use kinetic impact projectiles and tear gas on the detainees, as well as spraying what appears to be a chemical irritant directly into their eyes. This behaviour is a clear violation of the UN CAT and the Inter-American Convention to Prevent and Punish Torture.



Screen shot of closed circuit video footage¹¹³

¹¹⁰ Mecanismo Nacional de Prevención de Paraguay, *Informe de visita Nº 34/2014: Centro Educativo de Itaguá*; IACHR, 'IACHR Deplores Violent Deaths at Educational Facility for Adolescents in Paraguay,' 6 May 2014, <http://www.oas.org/en/iachr/media_center/PReleases/2014/050.asp> [accessed 31 May 2016].

¹¹¹ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Follow up to the recommendations made by the Special Rapporteur to previous country visits*, 28 February 2013, UN doc. A/ HRC/22/53/Add.3, para. 24.

¹¹² Roelton Maciel, 'Vídeo: tortura é registrada por câmeras de segurança no presídio de Joinville,' *Anotícia*, 02/02/2013, <<http://anoticia.clicrbs.com.br/sc/seguranca/noticia/2013/02/video-tortura-e-registrada-por-cameras-de-seguranca-no-presidio-de-joinville-4032160.html>> [accessed 31 May 2016].

¹¹³ Video available at Ibid.

Argentina: According to official statistics, kinetic impact projectiles were used in 13% (67 cases) of the cases of torture or ill-treatment registered in places of detention under federal jurisdiction in 2014.¹¹⁴ The SPT identifies firing rubber bullets directly at prisoners from close range in response to disturbances as a recurrent and systematic problem.¹¹⁵

Regular prison staff should not be equipped with firearms. Instead, a special emergency taskforce should be set up, which should not be stationed within the prison. It would be authorised to act only in situations of extreme violence which cannot be safely contained by less extreme means. Emergency taskforces should receive rigorous training on the use of an exclusive list of equipment set out in their rules of operation and any use of firearms should be in accordance with the protect life principle.

Recommendations

- The use of kinetic impact projectiles should be strictly limited to situations of violent disorder posing a risk of harm to persons, where the projectiles are used in order to contain and stop the violence and only when less extreme means are insufficient to achieve this objective.
- Although Omega recommends that ammunition firing multiple projectiles be prohibited for all law enforcement purposes, its use in confined spaces is particularly dangerous and should be avoided at all cost.

Chemical irritants

Cases of abuse of chemical irritants against those deprived of their liberty have been reported in Argentina, Bolivia, Brazil, Colombia,¹¹⁶ Ecuador¹¹⁷ and Venezuela.¹¹⁸ Chemical irritants delivered by means of aerosol spray and weapon-fired projectiles have been used in cases of torture and other forms of ill-treatment.

Illustrative country examples of torture and ill-treatment with chemical irritants

Bolivia: The National Ombudsperson's Office received 3,784 complaints of torture or ill-treatment between 2007 and 2012.¹¹⁹ The spraying of tear gas is one of the most common methods used to extract confessions and other information related to criminal investigations.¹²⁰

Argentina: The Federal Ombudsman reports that tear gas and pepper spray were used in 17% (91 cases) of registered cases of torture or ill-treatment in 2014. Pepper spray has been sprayed directly into the eyes of detainees during prison inspections¹²¹ and into vehicles used

¹¹⁴ Procuración Penitenciaria de la Nación, *La Situación de los Derechos Humanos en las Cárceles Federales de la Argentina: Informe Anual 2014*, p. 66.

¹¹⁵ UN SPT, *Report of the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Argentina*, 27 November 2013, UN Doc. CAT/OP/ARG/1, para. 81.

¹¹⁶ Coalición Colombiana Contra la Tortura, *Situación de la Tortura en Colombia*, 2014, p. 11.

¹¹⁷ ACAT, *A World of Torture*, 2013, p. 50.

¹¹⁸ Observatorio Venezolano de Prisiones, *Informe Anual 2013*, p. 35.

¹¹⁹ Office of the Human Rights Ombudsperson of the Plurinational State of Bolivia, note 62, p. 3.

¹²⁰ ACAT, *A World of Torture*, 2013, p. 39.

¹²¹ Procuración Penitenciaria de la Nación, *La Situación de los Derechos Humanos en las Cárceles Federales de la Argentina: Informe Anual 2014*, p. 64.

to move prisoners.¹²² There are also reports of pepper spray being applied to the genitals of detained minors.¹²³

Brazil: As noted previously, the UN Special Rapporteur on torture has called attention to the frequent use of tear gas by prison staff in Brazil. Following a 2012 country visit, the UN SPT reiterated its 'serious reservations' about the use of chemical irritants in confined spaces. The SPT had received reports of pepper spray being sprayed into vehicles used to transport high numbers of detainees and tear gas being used by prison staff in confined spaces, including cells.¹²⁴

Chemical irritants can cause death through asphyxiation or toxic poisoning, especially in confined spaces and their use should only be considered in times of extreme violence when less harmful means cannot contain the threat. They should be only be used where there is a route to fresh air to escape their effects. Tear gas grenades, explosive grenades and weapon fired tear gas should not be used in confined spaces. Chemical irritants should never be used as a punitive or disciplinary measure or against those already restrained.

Recommendations

- Grenades, launched cartridges and any wide area use of chemical irritants should be prohibited in confined spaces. Targeted use of chemical irritants should only be resorted to when strictly necessary and for the amount of time strictly necessary to reduce the level of violence, and only then using the absolute minimum amount necessary. Such incidents and all others involving use of force against those deprived of their liberty must be reported to the prison director immediately and must also be included in mandatory public reports.
- Prison staff must only be permitted to use chemical irritant devices if they have received specific training and only then in exceptional circumstances.

Electric shock weapons¹²⁵

The high voltage electrical shock from stun guns, stun batons and stun shields is applied directly by hand to an individual, designed to cause compliance through pain. The effect of the shock varies depending on the device's voltage and amperage, the length of time the shock is applied, the physical condition and underlying health of the victim and environmental conditions. Omega considers that direct contact electric shock equipment has no legitimate law enforcement function which cannot be effectively accomplished by safer alternatives and should be prohibited.

Projectile electric shock devices are usually pistol-shaped weapons firing darts attached to the weapon by thin wires. On impact, the darts deliver an electric shock causing neuromuscular incapacitation and extreme pain. Most models can also display a spark across the electrodes and can be used as direct contact stun weapons, administering a painful localised electric shock. Although projectile and direct contact electric shock stun guns, stun batons and stun shields are generally marketed as non-lethal, deaths have been associated with their use.

¹²² Comisión Provincial por la Memoria, *Informe Anual 2015: El sistema de la crueldad IX*, p. 140.

¹²³ CELS, *Derechos Humanos en Argentina: Informe 2013*, p. 148.

¹²⁴ UN SPT, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Brazil*, 5 July 2012, UN Doc. CAT/OP/BRA/1, paras. 127-128.

¹²⁵ For a more detailed discussion on electric shock stun weapons and their impact on human rights, please refer to: Omega Research Foundation and Amnesty International, *China's Trade in Tools of Torture and Repression*, 2014, pp. 10-11 and Omega Research Foundation and Amnesty International, *The Human Rights Impact of Less Lethal Weapons and Other Law Enforcement Equipment*, 2015, pp. 20-24.

Electric shocks are sometimes administered by rigging the mains electrical supply. Such behaviour is extremely dangerous due to the lack of control over the strength of the electric shock being applied and those responsible should be held criminally accountable.

Although the type of device used is not always mentioned in reports, the application of electric shocks to individuals deprived of their liberty has been reported in Argentina,¹²⁶ Bolivia, Brazil,¹²⁷ Colombia, Ecuador, Peru,¹²⁸ Uruguay¹²⁹ and Venezuela.

Illustrative country examples of torture and ill-treatment with electroshock weapons

Ecuador: Police allegedly responded to largely peaceful protests on 17 and 18 September 2014 with excessive force and arbitrary detentions. According to Human Rights Watch, several of those detained were subjected to electric shocks during arrest and while in custody.¹³⁰

Colombia: National Police Resolution No. 02686, which was passed in July 2012 to regulate the use of less lethal weapons, provides a list of equipment which can be used by police.¹³¹ This list includes projectile electric shock devices, stun batons, 'electric control equipment' and 'electroshock equipment'. It has been alleged that ESMAD has used electric shock equipment to torture those detained during peaceful protests.¹³² In one reported case in Buenaventura, a minor was arbitrarily detained by police and tortured until the weapon's battery died.¹³³ It has also been alleged that projectile electric shock devices have been used arbitrarily in prisons.¹³⁴

Venezuela: Some of those detained during widespread protests that began in February 2014 were reportedly subjected to electric shocks.¹³⁵ However, this practise has reportedly been in use in Venezuela for many years. The Support Network for Justice and Peace – *Red de Apoyo para la Justicia y la Paz* – reports that 11% of the victims of torture and ill-treatment it assisted between 2003 and 2011 had been subjected to electric shocks.¹³⁶ On 19 March 2014, a group of at least 23 people were detained during a joint National Guard and army

¹²⁶ Comisión Provincial por la Memoria, *Informe Anual 2015: El sistema de la crueldad IX*, p. 132.

¹²⁷ Human Rights Watch, *World Report 2014*, p. 218.

¹²⁸ IACHR, *Special Report on the Human Rights Situation at the Challapalca Prison, Department of Tacna, Republic of Peru, 2002*, <<https://www.cidh.oas.org/countryrep/Challapalca.eng/report.htm>> [accessed 31 May 2016], para. 80.

¹²⁹ UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'Follow-up to the recommendations made by the Special Rapporteur to previous country visits,' 28 February 2013, UN Doc. A/ HRC/22/53/Add.3, para. 23.

¹³⁰ Human Rights Watch, *Ecuador: Police Rampage at Protests*, 20 October 2014, <<https://www.hrw.org/news/2014/10/20/ecuador-police-rampage-protests>> [accessed 31 May 2016].

¹³¹ Policía Nacional, Resolución No. 02686, 31 July 2012.

¹³² US Department of State, *Colombia 2013 Human Rights Report*, pp. 8-9.

¹³³ Comisión Intereclesial de Justicia y Paz, 'Torturas policiales, amenazas de muerte y plan de masacre contra integrantes del Espacio Humanitario Puente Nayero, barrio La Playita, Buenaventura, y acompañantes de derechos humanos,' 7 June 2014, <<http://justiciaypazcolombia.com/Torturas-policiales-amenazas-de>> [accessed 31 May 2016].

¹³⁴ World Organisation Against Torture, 'Colombia: Concluyó la misión de la OMCT, a nueve meses del examen de Colombia ante el Comité contra la Tortura,' 3 September 2015, <<http://www.omct.org/es/statements/colombia/2014/09/d22808/>> [accessed 31 May 2016].

¹³⁵ Human Rights Watch, *World Report 2015*, p. 606.

¹³⁶ Red de Apoyo para la Justicia y la Paz, *Informe sobre la práctica de la tortura en Venezuela*, September 2012, p. 32.

operation. Electric shock was allegedly used against handcuffed detainees. Gloria Tobón was reportedly doused in water before having electric shocks applied to her arms, breasts and genitals.¹³⁷

Bolivia: It is alleged that electric shock stun guns are one of the main means used by law enforcement officials to inflict torture.¹³⁸ Following his detention in August 2014, Michael Ylimori Daza alleged he was tortured by law enforcement officers in an attempt to force him to confess to murder. The Institute of Forensic Investigations stated his injuries were consistent with his claims that an electric shock weapon had been used on him.¹³⁹

Direct contact electric shock weapons are inherently prone to abuse as they permit the holder to cause extreme pain to the victim at the touch of a button without leaving substantial marks. These weapons are designed to enforce compliance through pain rather than incapacitation and they have no legitimate law enforcement function which cannot be achieved through less harmful means.

Although projectile electric shock devices can be used for legitimate law enforcement purposes in exceptional circumstances, their use should be strictly controlled and they should never be used as a general force tool. They should never be used on those in vulnerable situations, particularly those in mechanical restraints. The use of these weapons should be subject to the same reporting and accountability requirements as the use of firearms. The effects of the use of all types of projectile electric shock devices, regardless of voltage, must be independently evaluated.

Recommendations

- Prohibit the manufacture, trade and use of direct contact electric shock weapons for law enforcement purposes, including stun guns, stun batons and stun shields, and any type of body-worn electric shock device, such as stun belts.
- As a less lethal alternative to firearms, the deployment of projectile electric shock devices should be subject to a similar standard to that which applies to the use of firearms. Their lawful use should be limited to situations where officers are faced with an imminent threat of death or serious (i.e. potentially life-threatening) injury to themselves or others which cannot be contained by less extreme options.
- Use of projectile electric shock devices in 'drive stun' mode poses a substantial risk of torture or other cruel, inhuman and degrading treatment or punishment, and therefore should be expressly forbidden. Only those weapons that record every mode of use should be permitted.

¹³⁷ Amnesty International, *Venezuela: Informe para el Comité Contra la Tortura de las Naciones Unidas*, October 2014, p. 17.

¹³⁸ ACAT, *A World of Torture*, 2013, p. 40.

¹³⁹ Sergio Mendoza, 'IDIF certifica que Ylimori recibió golpes y descargas eléctricas,' *Página Siete*, 27 August 2014, <<http://www.paginasiete.bo/sociedad/2014/8/27/idif-certifica-ylimori-recibio-golpes-descargas-electricas-30546.html>> [accessed 31 May 2016].

SECTION III: PRODUCTION AND TRADE OF SOUTH AMERICAN LAW ENFORCEMENT EQUIPMENT

III.I OVERVIEW

South American manufacture of law enforcement equipment is carried out by both state- and privately-owned companies. Compared with other regions, the arms manufacturing industry in South America is quite small; however, there is a trend in several states, particularly Argentina and Brazil,¹⁴⁰ of increasing investment in the national production of law enforcement equipment. This has led to various state-owned companies increasing their range and volume of manufacturing of equipment such as small arms, ammunition and chemical irritants. In addition, a number of non-state companies have grown exponentially, developing large manufacturing capabilities and selling their products in domestic and foreign markets.

State-owned companies

The following table provides information on the production of law enforcement equipment mentioned in the previous section only. Company ownership provides states with an additional control over the manufacture and trade of law enforcement equipment, but also comes with human rights obligations.

The production of goods with no use other than for the purposes of torture or other forms of ill-treatment, or the transfer of law enforcement equipment to actors with a proven record of repression and torture using such equipment, would likely amount to a violation of international law. However, as has been pointed out by Omega and the Peace Research Institute Oslo (PRIO) in a previous report,¹⁴¹ there is a risk of undue political influence being brought to bear when states both issue export licences and own the factories producing law enforcement equipment. Rather than recommending state ownership of arms factories, Omega emphasises the added responsibility of states when they hold an ownership stake in such factories.

Company Name	Country	Law Enforcement Equipment Produced / Supplied ¹⁴²
General Directorate of Military Manufacturers – <i>La Dirección General de Fabricaciones Militares</i> (DGFM)	Argentina	Small arms and small arms ammunition. DGFM’s 12 gauge shotgun cartridges designed for riot control contain 24 rubber pellets. DGFM also produces 12 gauge shotgun cartridges containing nine spherical lead pellets. Both types of ammunition are used by Argentinian security forces. ¹⁴³
Bolivian Munitions Factory – <i>Fabrica Boliviana de Munición</i> (FBM)	Bolivia	As well as manufacturing small arms ammunition, FBM also imports small arms from Brazilian Company Taurus and Czech company Sellier & Bellot. FBM also imports riot control equipment from Brazilian company Condor Non-Lethal

¹⁴⁰ Guy Anderson and Matthew Smith, ‘South America’s defence industrial rebirth: Strategies, drivers, capabilities and implications for the global markets’, *HIS Jane’s Intelligence Briefing*, 2 August 2012.

¹⁴¹ Omega Research Foundation and Peace Research Institute Oslo (PRIO), *Aiming for Control: The need to include ammunition in the Arms Trade Treaty*, 2013, p. 28.

¹⁴² Please note that equipment designed exclusively for military or civilian use is not included in this column and the companies listed may also manufacture other types of law enforcement equipment.

¹⁴³ Dirección General de Fabricaciones Militares, <<http://www.fab-militares.gov.ar/municiones-de-bajo-calibre/>> [accessed 31 May 2016].

		Technologies, including chemical irritants and protective clothing. ¹⁴⁴
War Material Industry of Brazil – Indústria de Material Bélico do Brasil (IMBEL)	Brazil	Small arms.
FAMAE Ordnance [Army Factories and Artilleries] – FAMAE Ordnance [Fabricas y Maestranzas del Ejercito] (FAMAE)	Chile	Small arms, including an agreement with Israel Weapons Industry (IWI) to co-produce the Ace N 22 5.56 x 45mm assault rifle. ¹⁴⁵ Small arms ammunition. Chemical irritants including CS grenades and CS spray.
Military Industry of Colombia – Industria Militar de Colombia (INDUMIL)	Colombia	Small arms ammunition, including buckshot ammunition. Small arms, including the licensed production of a range of IWI Galil and Ace assault rifles. ¹⁴⁶ Individual grenade launchers capable of firing all 40mm low velocity rounds. ¹⁴⁷ 40mm multiple grenade launchers for riot control purposes. ¹⁴⁸
Santa Barbara Munitions – Empresa de Municiones Santa Barbara E.P.	Ecuador	Small arms ammunition. Bullet-proof vests and other protective equipment. Small arms. Riot control ammunition and chemical irritants. ¹⁴⁹ Working on development of chemical irritant aerosols and grenades. ¹⁵⁰
War Material Directorate – Dirección de Material Bélico (DIMABEL)	Paraguay	Small arms ammunition. Bullet-proof vests. ¹⁵¹
Army Weapons and Munitions Factory – Fábrica de Armas y Municiones del Ejército S.A.C. (FAME S.A.C.) ¹⁵²	Peru	Small arms ammunition. Agreements with Brazilian company Forjas Taurus S.A. and Israeli IWI for the production of small arms. Agreement with Spanish company Falken S.A. for the

¹⁴⁴ Fabrica Boliviana de Munición, 'FBM Productos Y Servicios' <<http://fbm.bo/productos-y-servicios/>> [accessed 5 August 2015].

¹⁴⁵ FAMAE, *Memoria FAMAE 2014*, <http://www.famae.cl/pdf/memorias/Memoria_Famae_2014.pdf> [accessed 31 May 2016], p. 18.

¹⁴⁶ Indumil, 'Nuevo Fusil Galil ACE - INDUMIL - Industria Militar' <<https://www.indumil.gov.co/noticia/noticia/83-nuevo-fusil-galil-ace>> [accessed 31 May 2016].

¹⁴⁷ Indumil, Catalogue <<https://www.indumil.gov.co/docs/editor/catalogoindumil2010.pdf>> [accessed 31 May 2016], p. 14.

¹⁴⁸ Ibid. p. 16.

¹⁴⁹ Santa Barbara E.P., 'Santa Barbara ofrece a sus distinguidos clientes el siguiente portafolio de productos', <<http://www.santabarbara.gob.ec/img/seguridadydefensa.pdf>> [accessed 25 January 2016].

¹⁵⁰ Ministerio de Defensa Nacional, *Agenda de Investigación, Desarrollo Tecnológico e innovación para el Sector Defensa 2014-2017*, <http://www.defensa.gob.ec/wp-content/uploads/downloads/2014/11/agenda_de_investigaci%C3%B3n_desarrollo_tecnol%C3%B3gico_e_innovaci%C3%B3n_para_el_sector_defensa_2014-2017.pdf> [accessed 31 May 2016], p. 44.

¹⁵¹ 'Planean convertir fábrica de municiones en industria nacional,' *HOY*, 3 January 2014, <<http://www.hoy.com.py/nacionales/quieren-que-fabrica-de-municiones-de-la-dimabel-sea-industria-nacional>> [accessed 01 June 2016].

¹⁵² FAME S.A.C is a state-controlled company with private shareholdings of up to 49%. See Ley No. 29411, Ley que modifica los artículos 2 y 6 y la primera disposición complementaria de la Ley No. 29314, Ley de la Fábrica de Armas y Municiones del Ejército FAME S.A.C., 2009.

		manufacture and sale of pyrotechnic and riot control equipment and technology transfer. ¹⁵³
Venezuelan Military Industries – <i>Compañía Anónima Venezolana de Industrias Militares</i> (CAVIM)	Venezuela	Small and light arms. Small arms ammunition. Unmanned aerial vehicles. Alliance with Arsenal Industries 2000 C.A. for the production, distribution and sale of protective clothing, handcuffs, extendable batons and other equipment. ¹⁵⁴ Agreement with Spanish company Falken S.A. for the licensed production of chemical irritants, including CS grenades. ¹⁵⁵



Display of FAMA E equipment, including CS grenades and aerosol sprays. Memoria FAMA E 2013, p. 25

Licensed production

Licensed production overseas¹⁵⁶ is the process where a company in one country allows a second company in another country to manufacture its products under licence. The form these agreements take varies greatly, covering both tangible and intangible transfers. In some agreements, raw materials and/or parts are exported to the buyer country where they are used to assemble the product, while in others the product design and the expertise required to manufacture it are licensed out to the buyer who then manufactures the product from scratch. Several South American state-owned companies manufacture law enforcement equipment under licensed production agreements.

Illustrative examples of licensed production agreements

Peru: Spanish company Falken S.A. signed a contract with Peruvian state-controlled company FAME in 2010 for the production of law enforcement equipment and technology transfer. Falken's contract with FAME ran from 2010-2015 and reportedly included a non-exhaustive

¹⁵³ FAME S.A.C, *Memoria 2010*, p. 23.

¹⁵⁴ 'CAVIM Y ARSENAL INDUSTRIES 2000 C.A Suscriben Alianza Para La Fabricación de Chalecos Antibalas - Venezuela Defensa', *venezueladefensa.com*, 21 June 2013 <<http://www.venezueladefensa.com/2013/06/cavim-y-arsenal-industries-2000-ca.html>> [accessed 1 June 2016].

¹⁵⁵ CAVIM, 'FALKEN S.A.' <<http://www.cavim.com.ve/index.php/alianzas/falken>> [accessed 1 June 2016].

¹⁵⁶ Licensed production agreements are also often referred to as licensing manufacturing agreements, co-production agreements and technology transfer agreements, although there are technical differences between each of these.

list of equipment, including tear gas grenades, 37/38mm tear gas ammunition, chemical irritant aerosol sprays, batons and handcuffs.¹⁵⁷ In a letter to IDL Reporteros dated 2 March 2015, FAME reportedly informed the media outlet that the contract with Falken S.A. had not been renewed and FAME was evaluating companies with a view to collaborating for the production and/or assembly of 'non-lethal' equipment.¹⁵⁸

Venezuela: Falken S.A. also has a form of licensed production agreement with the Venezuelan state-owned company CAVIM for, inter alia, the production, assembly, import, export and trade of riot control and chemical products.¹⁵⁹ This agreement is ongoing according to CAVIM's website, and has reportedly been in place since 2005.¹⁶⁰

Private companies

While many of the South American companies trading in law enforcement equipment are agents and distributors, there are a growing number of privately-owned manufacturers. Collecting data on these companies is difficult and it can be hard to distinguish which products companies manufacture and which they purchase elsewhere. Many companies have very little publicly-available information and some company websites are password-protected.

Omega has identified private companies producing law enforcement equipment in Argentina and Brazil, South America's largest producer of law enforcement equipment. This report does not seek to name every company involved in the trade of law enforcement equipment, instead, the following provide examples of companies producing a variety of law enforcement equipment in South America.

Argentinian manufacturers of metal handcuffs include Sabado Ursi S.A. and Fundas Argentinas S.R.L. (also called Houston Fundas).

Brazilian manufacturers include:

- Condor Tecnologias Não-Letais (Condor) - projectile electric shock stun guns, less-lethal launchers, stun grenades, kinetic impact ammunition and chemical irritants delivered by grenade, aerosol or firearm cartridge/canister.¹⁶¹
- Indios Pirotecnia (Indios) - CS gas grenades, stun grenades, 37/38mm kinetic impact ammunition which fires multiple projectiles and 37/38mm CS gas ammunition.¹⁶²
- RJC Defesa e Aeroespacial Ltda (RJC) - OC aerosol sprayers ranging in size from 25 to 350 grams.¹⁶³

¹⁵⁷ IDL Reporteros, *Convenio FAME Falken*, <<http://www.scribd.com/doc/257191855/Convenio-Fame-Falken>> [accessed 1 June 2016].

¹⁵⁸ IDL Reporteros, *Carta – Comunicado FAME*, <<http://www.scribd.com/doc/257838531/Carta-Comunicado-FAME>> [accessed 1 June 2016].

¹⁵⁹ CAVIM, 'FALKEN S.A.' <<http://www.cavim.com.ve/index.php/alianzas/falken>> [accessed 1 June 2015].

¹⁶⁰ Lisseth Boon and Cristina González, 'Brasil vende casi todas las bombas lacrimógenas', *Últimas Noticias*, 23 March 2014 <<http://www.ultimasnoticias.com.ve/noticias/actualidad/investigacion/video---brasil-vende-casi-todas-las-bombas-lacrimo.aspx>> [accessed 1 June 2016].

¹⁶¹ Condor Non-Lethal Technologies <<http://www.condornaletal.com.br/eng/produtos.php>> [accessed 1 June 2016].

¹⁶² Indios Pirotecnia, 'Catalogo Técnico Militar', <https://media.wix.com/ugd/a5801a_369dba91d6cb4e83b370c24fe807e5b9.pdf> [accessed 01 June 2016].

¹⁶³ RJC Defesa Aeroespacial <<http://www.rjc.com.br/Seguraca%20-%20espagidordegaspimenta.html>> [accessed 1 June 2016].

- CBC – manufactures a wide range of ammunition, includes 12 gauge kinetic impact ammunition.¹⁶⁴
- Taurus - wide range of small arms.
- Algemas Zorro (also called Algemas no RJ) - range of restraints, including metal handcuffs, thumb cuffs, leg cuffs and combination cuffs with belly chain. Thumb cuffs may be used to facilitate torture or other ill-treatment through ease of inflicting pain or used in ‘stress positions’ to restrain prisoners’ thumbs behind their back. The EU considers that thumb cuffs have no practical use other than for the purpose of torture and other cruel, inhuman or degrading treatment or punishment and has banned their production and export.¹⁶⁵



Thumb cuffs promoted on Algemas Zorro website.¹⁶⁶

III.II SOUTH AMERICAN MANUFACTURERS’ EXPORTS AND PROMOTIONAL ACTIVITIES

Attendance at trade fairs and other promotional activity

Although attendance at trade fairs in other countries does not necessarily mean companies are exporting to those countries, it indicates they are seeking to promote their goods for export. The following table shows a sample of South American companies that manufacture law enforcement equipment and have attended trade fairs in other countries. The trade fairs included in this table are the largest in the region.

South American Companies	FIDAE 2012 – Chile	LAAD Defence & Security 2013 – Brazil	FIDAE 2014 – Chile	LAAD 2015 – Brazil
Condor (Brazil)	Yes	Yes	Yes	Yes
Indios Pirotecnia (Brazil)	Yes	Yes	Yes	Yes
FAMAE (Chile)	Yes	No	Yes	Yes
FAME (Peru)	No	No	No	Yes
Indumil (Colombia)	No	Yes	No	Yes
DGFM (Argentina)	Yes	Yes	Yes	Yes

¹⁶⁴ ‘CBC’ <<http://intl.cbc.com.br/ammunitions/law-enforcement/service-ammunition/defense/less-letal>> [accessed 1 June 2016].

¹⁶⁵ European Union, Council Regulation (EC) No 1236/2005 of 27th June 2005 Concerning Trade in Certain Goods Which Could Be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (EC Torture Regulation).

¹⁶⁶ Algemas No RJ / Algemas Zorro <<http://www.algemaszorro.com.br/>> [accessed 1 June 2016].

Two of the three companies that attended all four trade fairs are privately-owned. The other companies are four of the largest South American state-owned companies that manufacture law enforcement equipment. In spite of their size, their attendance at the largest regional trade fairs was sporadic.

In recent decades, South American countries have not been large exporters of law enforcement equipment and this is particularly true with regard to the sale of equipment outside the region. Notwithstanding this, several companies have increased their presence outside of South America and some state-owned companies appear to be attempting to forge trading links with governments from other regions.

One indicator of this growing commercial activity is the participation of South American companies in arms and security trade fairs worldwide. Brazilian company Condor is most active in attending trade fairs outside the region. Since attending EUROSATORY 1996 in France, Condor has attended fairs in countries including China, the UK, the UAE and Malaysia. The regularity of Condor's attendance at these fairs has increased markedly since 2011.

Other companies have recently begun attending trade fairs outside of Latin America. FAMAE (Chile) '*made its presence felt in the international market*' by exhibiting weapons at EXPO SHOT in the USA in January 2015,¹⁶⁷ as well as participating in EUROSATORY 2014 in France in collaboration with Israeli company IWI.¹⁶⁸ Having no previous record of Brazilian manufacturer Indios participating in extra-regional fairs, the company's presence at fairs in the UK, France and the UAE in 2015 indicates a new export strategy.

Visits by country delegations could also be seen as an indicator of state-owned companies' presence internationally. Between September 2014 and August 2015, FAMAE was visited by delegations from China, the USA and several South American countries.¹⁶⁹ Colombian state-owned company INDUMIL was visited by a South Korean delegation in 2014.¹⁷⁰

Exports

As several of the countries in the region have placed increasing emphasis on the production of law enforcement equipment, transfers between both state- and privately-owned entities operating in different countries in the region have increased.

The lack of trade data available in most certain countries makes monitoring exports difficult; however, companies themselves or their clients sometimes make information available which suggests that transfers have occurred. On its website, Houston Fundas, an Argentinean manufacturer of, *inter alia*, handcuffs and striking weapons, lists distributors in Uruguay, the Dominican Republic, the USA, New Zealand and South Africa.¹⁷¹ Several state-owned companies manufacture small arms components for

¹⁶⁷ FAMAE, 'FAMAE se abre al mercado estadounidense con exitosa exhibición en EXPO SHOT de Las Vegas', <http://www.famae.cl/modulos_famae.php?cod=noticia_famae&id2=164> [accessed 7 December 2015].

¹⁶⁸ FAMAE, 'FAMAE Participó Exitosamente en la Feria Eurosatory 2014 Realizada en París', <http://www.famae.cl/modulos_famae.php?cod=noticia_famae&id2=149> [accessed 7 December 2015].

¹⁶⁹ FAMAE, 'Agregados Militares y de Defensa Extranjeros en Chile Visitaron FAMAE', <http://www.famae.cl/modulos_famae.php?cod=noticia_famae&id2=144> [accessed 07 December 2015]; FAMAE, 'Agregado Militar de la República Popular de China visita FAMAE', <http://www.famae.cl/modulos_famae.php?cod=noticia_famae&id2=180> [accessed 07 December 2015].

¹⁷⁰ Indumil, 'Corea Apoya Desarrollo Tecnológico Del Sector Defensa Nacional. - INDUMIL - Industria Militar' <<https://www.indumil.gov.co/noticia/noticia/225-corea-apoya-desarrollo-tecnologico-del-sector-defensa-nacional>> [accessed 1 June 2016].

¹⁷¹ 'DISTRIBUIDORES | HOUSTON' <<http://houstonfundas.com/distribuidores/>> [accessed 1 June 2016].

foreign companies. For example, in 2013 Indumil's foreign clients included Israeli company IWI (spare parts for ACE rifle) and South African company Denel (spare parts for the AR rifle), as well as the Ecuadorian State-owned Santa Barbara Munitions (9 mm ammunition).¹⁷²

Brazil publishes more extensive information on exporting companies. This, along with Brazil's status as the largest regional manufacturer of law enforcement equipment, are the reasons for focussing on Brazilian companies below. Much of the information pertains to Condor due to its global reach and the range of law enforcement equipment it produces.

Illustrative example of intra-regional transfers

Condor Non-Lethal Technologies (Brazil): According to reports, 60% of the 2,310 tear gas cartridges collected following an intervention by Venezuelan National Police and National Guard during a student protest in March 2014 were manufactured by Condor.¹⁷³ Official information indicates Condor exported goods to Venezuela for up to USD 11 million between 2010 and 2011.¹⁷⁴

According to its updated acquisition plan,¹⁷⁵ the Colombian National Police bought law enforcement equipment including chemical irritant grenades and 37/38 mm and 40 mm cartridges, launchers and stun grenades from Condor annually from 2011-2014 for a total of COP 5,835,839,145 (approx. USD 1,894,027)¹⁷⁶. The Colombian riot control agency, ESMAD, uses Condor launchers (model numbers AM 640 and AM 637), CS grenades (model number GL 300), CS 40 mm cartridges (model number GL 202) and stun grenades (model number GL 700).¹⁷⁷

There is also direct evidence of South American law enforcement equipment having been sold and used in other regions. The following table contains information on the total exports of three Brazilian companies: Taurus, Condor and Indios.

¹⁷² INDUMIL, *Informe de Gestión 2014*, p. 22.

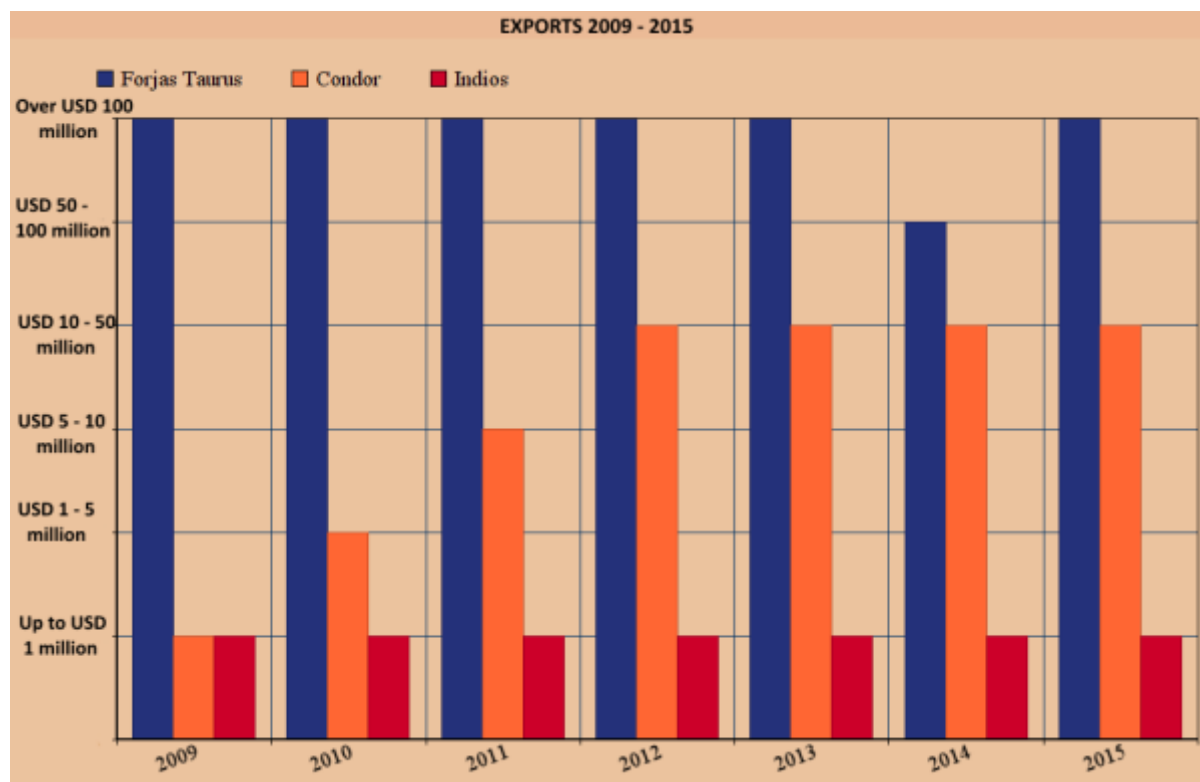
¹⁷³ 'Brasil Principal Proveedor de Lacrimógeno En Venezuela', *El Economista*, 24 March 2014, <<http://eleconomista.com.mx/industria-global/2014/03/24/brasil-principal-proveedor-lacrimogeno-venezuela>> [accessed 1 June 2016].

¹⁷⁴ Ministério do Desenvolvimento, Indústria e Comércio Exterior, <<http://www.mdic.gov.br/sitio/interna/interna.php?area=5&menu=1444&refr=603>> [accessed 24/11/2015]. Please note that a more exact figure could not be obtained due to the lack of specificity of the statistics available.

¹⁷⁵ Policía Nacional, *Procedimiento: Formular y Evaluar Proyectos de Inversión (2011-2015)* <https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwic5LCmxqbJAhWLFhoKHRRegDPIQFgghMAA&url=http%3A%2F%2Foasportal.policia.gov.co%2Fportal%2Fpage%2Fportal%2FCONTRATACION%2FPlan_de_compras%2FVIgENCIA%2520ACTUAL%2Fplan-adquisiciones-inversion-2015.xlsx&usq=AFQjCNGQY1bKUEEsVMRvTYzcYrPZPDBOyg&sig2=k2RgW2L6ORDQzZT0xc0mMA&bvm=bv.108194040,d.d2s> [accessed 23 November 2015].

¹⁷⁶ All conversions in this report were calculated on 23/11/2015.

¹⁷⁷ Óscar Sánchez Oviedo, 'El ESMAD por dentro,' *Reportajes*, 2 December 2014, <<https://www.youtube.com/watch?v=cejeuSf7TDA>> [accessed 1 June 2016].



Source: Brazilian Ministry of Development, Industry and Foreign Trade

The data presented in this table highlights the significant growth in exports by Condor from 2009 to 2012. The imprecise nature of the data does not allow us to ascertain whether this growth has continued since then, but the company has at the very least consolidated exports since 2012.

Some of the exports by Brazilian companies have been to regimes with poor human rights records, including one instance of equipment discovered in a country under UN arms embargo. In 2013, the UN Group of Experts on Cote d'Ivoire observed Condor-manufactured grenade launchers and associated ammunition in Danané, Sinématiali and Boundiali. Brazilian authorities informed the Group of Experts they had sold the equipment to the *État major particulier* of the Presidency of Burkina Faso, providing an end-user certificate stipulating that re-exportation would be subject to their authorization.¹⁷⁸ The Group of Experts noted they had not been informed of this transfer, in violation of UN Security Council Resolution 2045 (2012).

Omega wrote to Condor to ask what controls are in place to ensure purported end users do not re-export Condor products without receiving authorization from the Brazilian authorities. Condor replied that the company provided all information requested by the UN regarding the case mentioned above and that the legal procedures imposed on the company had been followed.¹⁷⁹ In addition, the company said that *'every contract, export or training in any country in which Condor operates is always based on the highest degree of ethics, respect and liability always in line with institutional approvals in this industry'*.

¹⁷⁸ Mid-term Report of the Group of Experts on Cote d'Ivoire presented to the UN Security Council, 14 October 2013, UN Doc. S/2013/605, <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_605.pdf> [accessed 1 June 2016], paras. 30-32.

¹⁷⁹ Correspondence sent by Condor Tecnologias Não-Letais, 3 February 2016.



Various types of 37/38-mm and 40-mm ammunition manufactured by Condor in August 2012 and found in Côte d'Ivoire in 2013. Mid-term Report of the Group of Experts on Cote d'Ivoire presented to the UN Security Council, S/2013/605, 14 October 2013, Annex 4.

In August 2013, the EU Foreign Affairs Council announced that Member States had agreed to 'suspend export licenses to Egypt of any equipment which might be used for internal repression'.¹⁸⁰ This was due to the disproportionate actions of the Egyptian security forces which resulted in 'an unacceptable large number of deaths and injuries'. Although not binding on non-EU states, this suspension sent a very strong signal to other exporting states. However Brazil did not apply similar criteria to exports of equipment that could be used for internal repression - exports by Condor to Egypt totalled USD 18,084 in 2015 and USD 1,835,485 in 2014.¹⁸¹

Condor law enforcement equipment has been used against peaceful protesters in several Middle Eastern countries. First found in 2011, chemical irritant cartridges manufactured by Condor continue to be found in Bahrain.¹⁸² According to the Brazilian Ministry of Development, Industry and Foreign Trade, Condor exported goods to Bahrain every year from 2012-2014, with USD 10.2m worth of goods sold in 2012.¹⁸³ Exports were permitted to go ahead in spite of concerns related to the excessive use of tear gas raised by the UN Office of the High Commissioner for Human Rights,¹⁸⁴ human rights organisations¹⁸⁵ and the BICI report,¹⁸⁶ which was commissioned by the king of Bahrain. Some of the tear gas used against protesters in Turkey in June 2013 was manufactured by Condor. Organisations such as Physicians for Human Rights and the Turkish Medical Association documented multiple cases

¹⁸⁰ Council of the European Union, 'Council conclusions on Egypt', Foreign Affairs Council Meeting, Brussels, 21 August 2013, <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/138599.pdf> [accessed 1 June 2016].

¹⁸¹ This is the total value of the goods actually exported, not to be confused with the total amount licences were awarded for. Figures ascertained by correlating information from two databases: Ministério do Desenvolvimento, Indústria e Comércio Exterior, <<http://www.mdic.gov.br/sitio/interna/interna.php?area=5&menu=1444&refr=603>> [accessed 24 November 2015] and AliceWeb, <http://aliceweb.mdic.gov.br/> [accessed 1 June 2016].

¹⁸² 'Brazilian Tear Gas Linked to Recent Death of Abdulaziz Al-Saeed', *Bahrain Watch*, 26 January 2015 <<https://bahrainwatch.org/blog/2015/01/26/brazilian-tear-gas-linked-to-the-recent-death-of-abdulaziz-al-saeed/>> [accessed 1 June 2016].

¹⁸³ Figures ascertained using official sources, see note 181.

¹⁸⁴ Office of the High Commissioner for Human Rights, 'Briefing Note on Bahrain', 20 March 2012 <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11989&LangID=E>> [accessed 08 December 2015].

¹⁸⁵ See, for example, Physicians for Human Rights, *Weaponizing Tear Gas: Bahrain's Unprecedented Use of Toxic Chemical Agents Against Civilians*, 2012, <<http://physiciansforhumanrights.org/library/reports/weaponizing-tear-gas.html>> and Human Rights Watch, *Targets of Retribution: Attacks against Medics, Injured Protesters, and Health Facilities*, 2011 <<https://www.hrw.org/report/2011/07/18/targets-retribution/attacks-against-medics-injured-protesters-and-health>> both accessed on 1 June 2016.

¹⁸⁶ Bahrain Independent Commission of Inquiry, *Report of the Bahrain Independent Commission of Inquiry*, 2011 <<http://www.bici.org.bh/BIClreportEN.pdf>> [accessed 1 June 2016], p.267.

SECTION IV: LAW ENFORCEMENT EQUIPMENT IMPORTED INTO SOUTH AMERICA

Law enforcement equipment imported into South America

When public bodies wish to purchase equipment manufactured in other countries they either deal directly with the foreign company but often with locally-based distributors. Although the quality and accessibility of data available on public acquisition websites varies greatly by country, it is possible to ascertain information on purchases of law enforcement equipment in some South American countries.

Argentina: Sociedad Internacional de Representaciones s.a. (SIR s.a.) sells a wide range of law enforcement equipment, including single and multiple launchers, kinetic impact munitions, chemical irritant grenades, cartridges and aerosols (CN, CS and OC), stun grenades and handcuffs. In 2011, SIR s.a. was awarded a contract for the sale of equipment including tear gas grenades and stun grenades to the Argentinian National Gendarmerie for USD 57,879.78.¹⁸⁹

Bolivia: Lynx Importaciones S.R.L. is a distributor that has been awarded several contracts by the Bolivian authorities. This includes the sale of protective clothing to be used in riot situations to the Interior Ministry¹⁹⁰ and CS triple action hand grenades, shotgun-launched multi-projectiles, chemical irritant aerosol spray and launcher-fired 37/38 mm cartridges to the Mining Corporation of Bolivia – *Corporacion Minera De Bolivia* (Comibol).¹⁹¹ The items sold to Comibol were imported from the following US manufacturers: Combined Systems Inc., NonLethal Technologies and Guardian Protective Devices, Inc.¹⁹²

Chile: In 2012, the Chilean *Carabineros* ordered 10 water cannon vehicles, each equipped with a Mercedes Benz chassis and engine, from Rosenbauer International AG (Austria), through its Chilean representative Comercial Pirecsa Ltda.¹⁹³ The vehicles, four ACTROS 3348K/6X4/3900 and six ACTROS 2041/4X4/AK, cost a total of EUR €5,148,900 (approx. US \$5,588,372).

¹⁸⁹ Gendarmería Nacional, Licitación Pública Nº 08/2011, for access to documentation please refer to: <https://www.argentinacompra.gov.ar/prod/onc/sitio/Perfiles/PUB/mcc_detalle_procedimiento.asp?idPrc=287123&vigente=N> [accessed 1 June 2016].

¹⁹⁰ Ministerio de Gobierno, 'Contratacion por excepcion adquisicion de equipo antimotin para la policia bolivia', Cuce: 12-0015-00-368862-0-E <<http://www.infosicoes.com/contratacion-por-excepcion-adquisicion-de-equipo-antimotin-para-la-policia-bolivia-lct189641.html>> [accessed 11 November 2015].

¹⁹¹ Corporacion Minera De Bolivia – Comibol, 'Provision de gases y cartuchos para escopeta lanza gas (4 items)', Cuce: 13-0517-00-402560-0-E <<http://www.sicoes.com.bo/provision-de-gases-y-cartuchos-para-escopeta-lanza-gas-4-items--lct114462.html>> [accessed 1 June 2016].

¹⁹² Ibid.

¹⁹³ Carabineros de Chile, 'Adquisición Carros Lanza Agua para Carabineros', Purchase Order Nº 5240-133-SE12, <<http://www.mercadopublico.cl/PurchaseOrder/Modules/PO/DetailsPurchaseOrder.aspx?qs=8L2BjN40PG6Gf nA%2fgUgd%2fQ%3d%3d>> [accessed 10/12/2015].

Illustrative case study: Restricted access to company information

Colombian company Eagle Commercial supplies various government agencies including the Colombian National Police and the National Police Directorate of Intelligence – *Dirección de Inteligencia de la Policía Nacional* (DIPOL), with a range of law enforcement equipment.¹⁹⁴ Much of Eagle Commercial’s website is restricted, preventing access to information on the exact types of equipment available. In response to an email sent by Omega, the company refused to send any further information electronically, stating that any information could only be delivered in person with the authorisation of their clients.¹⁹⁵ When faced with such restrictions, it is difficult for human rights organisations to monitor the trade of law enforcement equipment, including investigating whether the company offers inherently abusive equipment.

According to its updated acquisition plan,¹⁹⁶ the National Police bought projectile electric shock stun guns and cartridges from Eagle Commercial in 2011, 2012 and 2013 for a total of COP 2,099,364,288 (approx. USD 681,152). Although limited information is available, the company’s website does market batons, grenades, handcuffs and gas launchers, among other products, in its ‘riot control and anti-explosive’ section and it appears to represent US manufacturer Taser International Inc.¹⁹⁷

Colombia: The Colombian riot control agency ESMAD imports a range of equipment from neighbouring countries but also from further afield. Combined Systems Inc., a US manufacturer, supplies chemical irritant grenades to ESMAD. These include the 6210 grenade which discharges smoke and CN gas; the 7290 Flash Bang, a stun grenade which emits a bright light and loud bang; the 9594 Irritant Sting-Ball Grenade which discharges both kinetic impact rubber balls and OC chemical irritant, as well as emitting a loud bang; the 9230 Outdoor Jet-Lite Rubber Ball CS (‘Ballerina’ Grenade) which discharges CS irritant gas; and the 5231 Outdoor Triple Phaser CS Grenade.¹⁹⁸ Notably, although the product description on the company website explicitly specifies that the 5231 should not be used indoors due to its ‘fire producing capability’,¹⁹⁹ an ESMAD official describing this piece of equipment on video states it is used to ‘*remove people or troublemakers who are on roads, in buildings, etc.*’²⁰⁰ This suggests that officials using this equipment may not be adequately trained in correct usage procedures as misuse could lead to serious injuries or even death. The Colombian National Police paid Combined Systems Inc. a total of almost US \$2.5m for equipment provided between October 2013 and January 2014.²⁰¹

¹⁹⁴ Eagle Commercial, ‘Clientes’

<http://www.eaglecommercial.com.co/index.php?option=com_content&view=article&id=308> [accessed 1 June 2016].

¹⁹⁵ Email sent by Eagle Commercial to Omega, dated 21 August 2015.

¹⁹⁶ Policía Nacional, note 175.

¹⁹⁷ Eagle Commercial, ‘Municiones’

<http://www.eaglecommercial.com.co/index.php?option=com_content&view=article&id=171> [accessed 1 June 2016].

¹⁹⁸ For information on this equipment, please refer to: ‘Combined Systems, Inc.’

<<https://www.combinedsystems.com/index.php>> [accessed 1 June 2016].

¹⁹⁹ Combined Systems, Inc. ‘Outdoor 52 Series Triple Phaser Grenades’,

<<https://www.combinedsystems.com/products/?cid=66>> [accessed 1 June 2016].

²⁰⁰ See minute 13:00, Óscar Sánchez Oviedo, note 177.

²⁰¹ Dirección General de la Policía Nacional, Proceso Número PN DIRAF CD 144 2013,

<<https://www.contratos.gov.co/consultas/detalleProceso.do?numConstancia=13-12-1984581>> [accessed 1 June 2016].



Law enforcement equipment promoted on Combined Systems Inc.'s website²⁰²

Paraguay: Seguridad, Inteligencia y Tecnología del Paraguay SA (SIT) distributes law enforcement equipment manufactured outside Paraguay and also provides private security services. SIT has sold a wide range of equipment to public agencies, including Defense Technology (US) chemical irritant hand grenades to the Ministry of the Interior,²⁰³ Glock (Austria) pistols to the National Anti-Drug Service (SENAD), and Monadnock restraints (US)²⁰⁴ and ATK (US) ammunition to the National Police.²⁰⁵

Illustrative case study: Diversion of imported goods from Paraguay.

A 2009 classified US pre-license check, made public by Wikileaks, names Dalmacio R. Marengo as owner and manager of the company TSB Sport Hunting-Fishing-Munitions and owner of Safari Sport S.A. The check concluded that Marengo was 'not a bonafide end-user' and recommended that the license be rejected, as arms previously imported by Marengo had allegedly ended up in the possession of FARC.²⁰⁶ Marengo and the companies he is associated with continue to supply law enforcement equipment to the Paraguayan authorities.

Safari Sport SRL was contracted directly to supply Aguila Ammunition kinetic impact ammunition to the Ministry of Justice in 2015 and Dalmacio Ramón Marengo Colonel was named as the company's

²⁰² See <https://www.combinedsystems.com/index.php> [accessed 1 June 2016].

²⁰³ Ministerio del Interior, 'Adquisición de Proyectoil Lacrimogeno, Granada de Mano, Balin de Goma, Cartuchos y Spray de Agente Incapacitante', Id: 242825 <<https://host-243.dncp.gov.py/licitaciones/adjudicacion/contrato/242825-seguridad-inteligencia-tecnologia-paraguay-sa-sit-4.html>> [accessed 20 November 2015].

²⁰⁴ Ministerio del Interior, 'Adquisición de Equipos Especiales para la Policia Nacional', Id: 264510, <https://host-243.dncp.gov.py/licitaciones/adjudicacion/contrato/264510-seguridad-inteligencia-tecnologia-paraguay-sa-sit-4.html#items_adjudicados> [accessed 20 November 2015].

²⁰⁵ Policia Nacional / Ministerio del Interior, 'Adquisición de Municiones y Balines de Goma', Id: 282852, <<https://host-243.dncp.gov.py/licitaciones/adjudicacion/contrato/282852-seguridad-inteligencia-tecnologia-paraguay-sa-sit-5.html>> [accessed 20 November 2015].

²⁰⁶ Wikileaks, 'Cable: 09ASUNCION214_a' <https://wikileaks.org/plusd/cables/09ASUNCION214_a.html> [accessed 1 June 2016].

representative.²⁰⁷ According to the Paraguayan website for public tenders, TSB Import Export is the commercial name of the company legally named TERESA SUBELDIA BENITEZ. In 2013, TSB Import Export was awarded a contract to sell equipment including handcuffs to the Paraguayan Ministry of Justice and Labour.²⁰⁸ The 600 pairs of handcuffs in question were manufactured by Spanish manufacturer Alcyon and sold for PYG 93,000,000 (approx. US \$16,125). The same Paraguayan company was awarded a contract for the supply of law enforcement equipment by the National Police in 2013. This equipment included 12 gauge kinetic impact ammunition manufactured by the Mexican company Aguila Ammunition for PYG 42,000,000 (approx. US \$7,430).²⁰⁹ TSB Import Export was contracted directly by the Ministry of Justice in 2014 to supply equipment including Aguila Ammunition kinetic impact ammunition and Alcyon handcuffs.²¹⁰ Although TSB Export Import was represented by Teresa Subeldia Benítez in the above transactions, Dalmacio Marengo was named as representative of the company when it bid for another public contract in 2013.²¹¹

Venezuela: It has been reported that the Venezuela National Guard received delivery of 560 vehicles from Chinese manufacturer Norinco in 2015. Among the vehicles delivered were armoured VN4 4x4 and the WCT-1 water cannon vehicles.²¹² During a visit by Norinco Vice President Mr. Zheng Yi to the National Guard General Command in 2013, Major General Juan Francisco Romero Figueroa said that updating the institution's military equipment was aimed at safeguarding public order and providing security to the Venezuelan public.²¹³ Various images of the VN4 show the vehicle mounted with what appears to be a multiple grenade launcher.²¹⁴

²⁰⁷ Ministerio de Justicia, 'ADQUISICION DE MUNICIONES', Id: 293153, available at <<https://www.contrataciones.gov.py/>> [accessed 1 June 2016].

²⁰⁸ Ministerio de Justicia y Trabajo, 'LPN 25 - ADQUISICIONES DE EQUIPOS Y ACCESORIOS DE SEGURIDAD', Id: 258633, available at <<https://www.contrataciones.gov.py/>> [accessed 1 June 2016].

²⁰⁹ Policía Nacional, 'ADQUISICIÓN DE PROYECTILES Y MATERIALES DE ADIESTRAMIENTO', Id: 251629, available at <<https://www.contrataciones.gov.py/>> [accessed 1 June 2016].

²¹⁰ Ministerio de Justicia y Trabajo, 'CD N° 33 ADQUISICION DE ESPOSAS Y MUNICIONES', Id: 283260, available at <<https://www.contrataciones.gov.py/>> [accessed 1 June 2016].

²¹¹ Comando de la Fuerza Aerea, 'Licitación Pública Nacional FAP N° 10/13 'Adquisición de Motor para Aeronave Casa 212-S400'', available at <<https://www.contrataciones.gov.py/>> [accessed 1 June 2016].

²¹² 'La Guardia Nacional de Venezuela recibe 560 vehículos para orden interno - Noticias Infodefensa América', *Infodefensa.com*, 3 December 2015 <<http://www.infodefensa.com/latam/2015/12/03/noticia-guardia-nacional-venezuela-recibe-vehiculos-orden-publico.html>> [accessed 1 June 2016]; 'China Delivers 557 Military Vehicles To Venezuela' *DefenseWorld.net*, 29 June 2015 <http://www.defenseworld.net/news/13301/China_Delivers_557_Military_Vehicles_To_Venezuela#.VqC9D1KXrPI> [accessed 1 June 2016].

²¹³ Guardia Nacional Bolivariana, 'vice-Gerente General de Norinco Visito la Cogeguarnac', <<http://www.guardia.mil.ve/index.php/directivas/directivas-comando-general/2-sin-categorias/2134-vice-gerente-general-de-norinco-visito-la-cogeguarnac.html>> [accessed 17 September 2015].

²¹⁴ 'Venezuela compra 300 nuevos equipos antidisturbios para la Guardia Nacional - Noticias Infodefensa América', *Infodefensa.com*, 8 August 2014 <<http://www.infodefensa.com/latam/2014/08/08/noticia-guardia-nacional-venezuela-recibira-nuevos-equipos-antimotines.html>> [accessed 1 June 2016]; 'National Guard of Venezuela Will Receive More Chinese-Made Norinco VN4 4x4 Armoured Vehicles 1203134' *armyrecognition.com*, 12 March 2013 <http://www.armyrecognition.com/march_2013_news_defence_army_military_industry_uk/national_guard_of_venezuela_will_receive_more_chinese-made_norinco_vn4_4x4_armoured_vehicles_1203134.html> [accessed 1 June 2016].



Photo from an unknown source of Norinco VN4 armoured vehicles with the Venezuela National Guard insignia allegedly taken in China.²¹⁵

In addition to the examples of transfers mentioned above, some Spanish manufacturers of law enforcement equipment have taken advantage of close ties between Spain and many South American countries to forge trading links. Spain publishes annual statistics showing the number of licenses awarded and the amount of money received for the export of riot control equipment from Spain. Although these statistics would be more transparent if they included the names of individual companies and a detailed description of the products being exported, they provide an overall picture of where Spanish companies are exporting law enforcement equipment to. Such trade data facilitates increased accountability for exports.

Export of Riot Control Equipment from Spain to South America				
	New export licences 2013	Total exports 2013	New export licences 2014	Total exports 2014
Bolivia	EUR 0 1 licence		EUR 2,813,403 2 licences	EUR 2,866,319 End user: Police Equipment: Triple action cartridges, tear gas devices, smoke grenades
Peru	EUR 17,732,212 5 licences	EUR 1,452,623 End user: Armed Forces and Police Equipment: Tear gas cartridges and devices. Raw materials and components for the production of tear gas devices		EUR 1,689,897 End user: Armed Forces Equipment: Tear gas devices, launchers, raw materials

²¹⁵ Ibid.

Venezuela	EUR 3,294,792 9 licences	EUR 787,710 End user: Armed Forces and Police Equipment: Fuses for stun devices, handcuffs and handcuff holders, raw materials for the production and maintenance of tear gas devices		EUR 1,483,263 End user: Armed Forces and Police Equipment: Raw materials, chrome handcuffs, 'propellant cartridges'
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This report does not consider the provision of training of personnel by foreign law enforcement agencies or companies, or the regulatory control thereof. This is an area that requires further research, particularly given the high level of assistance given to several South American countries by the US Government and others.

SECTION V: TRADE CONTROLS

V.I SOUTH AMERICAN TRADE CONTROLS ON LAW ENFORCEMENT EQUIPMENT

Considering the global nature of the trade in law enforcement equipment and the frequency with which equipment is abused to commit human rights violations, it is important that production and proliferation are strictly controlled in order to mitigate the risk of facilitating torture and other forms of ill-treatment. Any control of the production and trade of law enforcement equipment is typically via legislation on arms and related equipment. However, many types of equipment are frequently omitted from such legislation and manufacture, trade and use of these devices (e.g. restraints, some types of chemical irritants, striking weapons and electric discharge weapons) would therefore not be controlled by states. State-owned manufacturers of law enforcement equipment are often regulated by separate laws, some of which do not clearly set out the process for export approval.

In light of these concerns, a detailed study of national legislation would be valuable to identify equipment which is frequently used to facilitate or perpetrate torture or other forms of ill-treatment but which is not sufficiently controlled. This is particularly true given that several states have updated their arms control legislation in recent years.

Although national laws governing the import and possession of policing and security equipment by law enforcement officials, private security and civilians are not the focus of this report, their relevance warrants a mention. Such instruments should clearly set out the types of equipment that are prohibited and those that are restricted. The protection of human rights, particularly the right to life and to bodily integrity and the absolute prohibition of torture should be a central concern when creating and implementing controls. In this regard, the possession and use of equipment which has no practical use other than for the purposes of torture or other cruel, inhuman or degrading treatment or punishment should be prohibited (e.g. thumb cuffs), and strict controls should be placed on equipment which is often abused for such human rights violations or which is unsuitable.

V.II CONCERNS REGARDING EXPORT CONTROLS

While carrying out the research for this report, information requests were submitted to various government agencies involved in the licensing process for the export of controlled weapons in Argentina, Brazil, Chile, Colombia and Peru. These officials were asked for information on exactly what types of law enforcement require an export license, statistical information on licenses awarded and refused, and information on diversion of law enforcement equipment. The level of response received was poor, with some government bodies failing to respond, while others failed to provide complete answers. Although the Chilean government bodies were more responsive, they informed Omega that national law prevented them from providing information pertaining to licenses awarded or denied for the export, transit or brokering of law enforcement equipment. This sub-section will examine some of the issues Omega considers of particular relevance with regard to export controls in South America, as well as taking a slightly more in-depth look at the export process in Peru.

Transparency: The amount of public information regarding the export of law enforcement equipment varies widely across the region. For instance, it is possible to search for Uruguayan export data by category and by company.²¹⁶ The information includes the total amount of exports per category of

²¹⁶ Uruguay XXI, 'Sistema de Información de Exportaciones' <<http://aplicaciones.uruguayxxi.gub.uy/uruguayxxi/inteligencia/sie/>> [accessed 1 June 2016].

goods, the total amount exported by each company per year and the country destination. However, there is no precise description of the goods, nor the identity of the purchaser or eventual end user.

Brazil also publishes a limited amount of information concerning exports.²¹⁷ The Brazilian Ministry of Development, Industry and International Commerce publishes searchable data on exports made by Brazilian companies since 2000. While the data includes the name of the company and the country where the goods were exported, there is only limited information on the total amount of goods sold, with no information provided regarding the end user, the purchaser or the nature of the goods. The Brazilian Government has refused freedom of information requests for details of weapons transfers to countries where mass human rights violations were being committed.²¹⁸

Finally, although Chilean public bodies were responsive to information requests, it was not possible to obtain detailed information on the export of law enforcement equipment as it is considered classified. Article 16 of Chilean Law N^o. 17798, '*Control of Arms and Similar Elements*', prohibits the Directorate General of National Mobilisation (DGMN) from revealing information received or emitted in the carrying out of its duties regarding the supervision and control of weapons and related material. Any export of weapons or military equipment by the state-owned FAMAE must be authorised by the Under-Secretary for Defence in the form of a Ministerial Resolution.²¹⁹ However, the Under-Secretary for Defence informed Omega that it is not permitted to provide information on FAMAE exports, stating that it acts only as the body through which FAMAE deals with the Government.²²⁰

The availability and accessibility of information on the type of equipment exported, the identity of the end user and the parties to the transaction and the amount paid for the goods are vital in facilitating greater accountability and oversight of the trade in law enforcement equipment, thereby helping to prevent human rights violations. At present, such transparency is lacking in South America.

Transit: Law enforcement equipment often has to be transported through one or more transit countries to reach its final destination. While steps have been taken by several countries in the region to control the transporting of certain equipment through territory under their control,²²¹ it is important to ensure that a formal process requiring companies to obtain a transit authorisation is in place. Such controls, properly implemented, have a real impact on domestic law enforcement. Given that diversion of firearms is a challenge in the region, such controls are of particular importance.

There are examples of states acting to prevent the illegal transit of military equipment through their territory. In March 2015, the Colombian Attorney General's Office intercepted a Chinese ship which docked at Cartagena while en-route to Cuba with military equipment reportedly manufactured by Norinco Corp.²²² Although the ship's documentation reportedly stated that it was carrying grains, a Cartagena court eventually authorised the ship to continue its journey due to the lack of local capacity

²¹⁷ Ministério do Desenvolvimento, Indústria e Comércio Exterior, <<http://www.mdic.gov.br/sitio/interna/interna.php?area=5&menu=1444&refr=603>> [accessed 24/11/2015].

²¹⁸ Amnesty International, *Amnesty International Report 2014/15: The State of the World's Human Rights.*, p. 86.

²¹⁹ Correspondence received from FAMAE, 4 December 2015.

²²⁰ Correspondence received from the Chilean Under-Secretary for Defence, 30 November 2015.

²²¹ See for example, RENAR Regulation 251/08, Importación/exportación de armas de fuego, materiales de usos especiales, repuestos y municiones - aprobación instructivos y procedimientos, Arts 5-6 (Argentina).

²²² 'China Says Arms Found in Cuba-Bound Ship Were Part of 'Normal Military Trade', *EFE*, 4 March 2015 <<http://latino.foxnews.com/latino/news/2015/03/04/colombia-discusses-arms-cargo-aboard-detained-chinese-ship/>> [accessed 1 June 2016].

to unload, store or destroy the equipment on board.²²³ While carrying out inspections of this kind are a step in the right direction, it is incumbent on states to effectively control the transit of military and law enforcement equipment through their territory.

Brokering: It is important that countries also control the brokering of law enforcement equipment, i.e. arranging the transfer of equipment between third countries, where the items do not enter the broker's own country. In Peru, the manufacture, trade or use of weapons and related equipment without authorisation is prohibited by law.²²⁴ However, trade is defined as '*activities of import, export and internal trade*'.²²⁵ This narrow definition does not cover brokering activities, which suggests individuals operating under Peruvian jurisdiction, including Peruvian nationals operating outside of Peru, could broker the transfer of law enforcement equipment, including goods which may serve no purpose other than to inflict torture or other forms of ill-treatment, between third countries without any oversight whatsoever.

Human rights safeguards: When deciding whether or not to grant a licence for the export, transit or brokering of law enforcement equipment, relevant bodies should pay particular heed to both the type of equipment involved and the human rights record of the end user, evaluating the risk of the equipment being used to carry out or facilitate torture or other ill-treatment or internal repression. Brazilian exports of law enforcement equipment to countries with poor human rights records suggest that the government does not have sufficiently robust human rights safeguards in place.

In Argentina, when the National Weapons Registry (RENAR) receives an export licence application, the Ministry of Foreign Affairs and Culture provides an opinion on the political conditions in the destination country. The Ministry is expected to give particular importance to international human rights standards and embargoes or sanctions placed on the importing country by the UN, the OAS or other international organisms.²²⁶ Unfortunately, the limited data available on exports of equipment from Argentina make it difficult to evaluate the effectiveness of these safeguards.

States must put effective safeguards in place to prevent the transfer of law enforcement equipment where it is reasonably likely to be used for the perpetration of human rights abuses.

Illustrative example of national export controls

Peru: In Peru, Law N° 25054 controls the production, trade, possession and use of non-military weapons and ammunition by civilians. The National Superintendence for the Control of Security Services, Arms, Ammunition and Explosives for Civilian Use (SUCAMEC) is tasked with controlling and authorising the export of equipment falling under this law.

In 2014, 75 checks were carried out of arms, ammunition and related material being exported from Peru.²²⁷ On paper, this law has some effective control mechanisms, including the

²²³ 'Colombia Clears Departure of Chinese Weapons-Carrying Ship to Cuba', *World Maritime News*, 22 April 2015 <<https://worldmaritimeneews.com/archives/158574/colombia-clears-departure-of-chinese-weapons-carrying-ship-to-cuba/>> [accessed 1 June 2016].

²²⁴ Ley N° 25054, que norma la Fabricación, Comercio, Posesión y Uso por Particulares de las Armas y Municiones que no son de Guerra, Art 27.

²²⁵ Decreto Supremo No. 007-98-IN, El Reglamento de la Ley N° 25054, que norma la Fabricación, Comercio, Posesión y Uso por Particulares de las Armas y Municiones que no son de Guerra, Art 46.

²²⁶ XXII Meeting of the Mercosur and Associated States Working Group on Firearms and Ammunition, Mercosur/FCCP/GTAFM/ACTA No 01/2012, p. 4.

²²⁷ Superintendencia Nacional de Control de Servicios de Seguridad, Armas, Municiones y Explosivos de Uso Civil (SUCAMEC), 'Evaluación del Plan Estratégico Institucional 2013 – 2016',

requirement that SUCAMEC checks the equipment for export before it leaves the warehouse and again at the point of departure.²²⁸ A 2013 amendment to the law authorised electric shock devices and pneumatic weapons that fire ‘rubber bullets’ for civilian use, meaning their import and export by civilians is now controlled by SUCAMEC, which was not previously the case.²²⁹

However, the law also has weaknesses. The UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition provides that in cases involving international transactions of firearms, state records should include the equipment’s final recipient.²³⁰ This would normally take the form of an end user certificate. Peruvian law governing the export of firearms and related material seemingly makes no mention of end user certificates²³¹ and the absence of such a requirement suggests that Peruvian authorities may not be required to consider who the end user will be when deciding whether or not to award an export license. This loophole could potentially be exploited to sell weaponry covered by the law (including electric shock devices) to states, individuals or groups involved in human rights violations. In addition, it appears that the export and import of some types of law enforcement equipment, including pepper spray and mechanical restraints, are not controlled by this or other laws.

State-owned manufacturer FAME is governed by a different legal regime. According to Peruvian law, FAME has administrative, technical, commercial and financial autonomy and its operations and foreign trade agreements are to be bound only by ‘*the uses and customs of international trade and generally accepted international legal norms*’.²³² Although FAME’s objectives include the trade of weapons and ammunition in both national and international markets,²³³ there appears to be very little control of such activities and neither Law N° 29314, which establishes the legal framework within which FAME is required to act, nor the FAME Regulation of Organisation and Functions make any reference to human rights.

The Arms Trade Treaty (ATT) represents an advance in the regulation of the international trade in conventional weapons and ammunition, but it does not cover most law enforcement equipment. The ATT has been ratified by Argentina, Guyana, Paraguay, Peru and Uruguay, and signed by Brazil, Chile, Colombia and Suriname. Omega encourages those states that have yet to ratify the ATT to do so as soon as possible, as well as expanding controls to cover law enforcement equipment.

The ATT’s focus is on military assistance and the international trade in conventional weapons. The Treaty consolidates the requirements on states to assess the risks of serious human rights violations before licensing the export of ‘*the broadest range of conventional weapons*’. Article 7 prohibits arms exports where there is an overriding risk of committing or facilitating a serious violation of international human rights law. Article 13 of the Treaty requires States Party to submit detailed annual

<http://www.peru.gob.pe/docs/PLANES/13933/PLAN_13933_2015_SEGUIMIENTO_PEI_-_A%C3%91O_2014.PDF> [accessed 1 June 2016], p.5.

²²⁸ Decreto Supremo N° 007-98-IN, Articles 64 and 65.

²²⁹ Decreto Supremo N° 006-2013-IN.

²³⁰ UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Article 7.

²³¹ United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC), *Normas e instrumentos legales sobre armas de fuego, municiones y explosivos*, 2010, <<http://www.unlirec.org/ourwork/documents/nationalstudies/peru.pdf>>, p. 76, accessed 21/12/2015.

²³² Ley N° 29314, Ley de la Fábrica de Armas y Municiones del Ejército FAME S.A.C., 2009, Article 3.

²³³ Ibid. Article 2(b).

reports. Virtually all states already control the transfer and use of firearms and related ammunition and some states already use conventional arms control lists which include certain chemical irritants, projectiles and their launchers and armoured vehicles. However, some of the law enforcement equipment mentioned in this report is not covered by these lists (for example, PAVA or OC—commonly found in ‘pepper sprays’—, restraints and electric shock devices) and states should ensure that laws are in place to regulate their trade.

Argentina is a participating state in the Wassenaar Arrangement, meaning certain chemical irritants (including CS, CR and CN) and their means of delivery are subject to controls. Argentinian law actually goes beyond this by controlling electric shock weapons and sprays containing under 500ml of *any* aggressive chemical irritant.²³⁴ Unfortunately, the Argentinian authorities have not responded to Omega’s requests for information on their interpretation of their laws and implementation of controls.²³⁵

V.II CONTROLLING LICENSED PRODUCTION

Licensed production overseas is of particular concern in relation to irresponsible weapons proliferation as it involves the establishment of new centres of production and the spread of technology over which the licensor’s government may have little or no control.²³⁶ Omega has examined what controls the Spanish Government has over the illustrative examples of licensed production agreements mentioned in Section III (above see pages 36-37).

Analysis of Spanish Government control of licensed production agreements

Falken-FAME: This joint venture agreement covered both licensed production of law enforcement equipment to be sold in Peru and internationally, as well as technology transfer. According to the agreement, 75% of profits from national sales were to go to Falken, with 25% going to FAME, and Falken was to be entitled to 90% of profits from international sales.²³⁷ In addition to potential issues regarding domestic use, the level of autonomy FAME has and the apparent absence of any reference to human rights in the legal instruments governing the company’s activities (see page 53) give rise to concerns regarding a potential lack of mechanisms aimed at preventing irresponsible export of law enforcement equipment. Given the involvement of a Spanish company and the fact that the majority of profits would go to Spain, it is incumbent on the Spanish authorities to ensure adequate controls are in place. The contract between FAME and Falken makes no mention of any Spanish State requirements which would need to be met in order to export equipment produced under this agreement from Peru.

Falken-CAVIM: In March 2014, 13 licenses for the export of riot control equipment to Venezuela were suspended by the Spanish Government due to the ‘*situation of internal instability and risk of deviation of use*’.²³⁸ These licenses had been awarded for the export of

²³⁴ Article 5 of Decreto 395/75.

²³⁵ Omega sent communications to the National Arms Registry (RENAR), DGFM and an Argentinian Foreign Ministry official.

²³⁶ For further discussion of licensed production agreements, see Omega Research Foundation, *Undermining Global Security: the European Union’s arms exports*, 2004, pp. 32-39; UK Working Group on Arms, *Submission: 2007 review of the UK Export Control Act*, 28 September 2007, pp. 20-24.

²³⁷ IDL Reporteros, *Convenio FAME Falken*, <<http://www.scribd.com/doc/257191855/Convenio-Fame-Falken>> [accessed 1 June 2016].

²³⁸ Secretaría de Estado de Comercio, ‘Estadísticas españolas de exportación de material de defensa, de otro material y de productos y tecnologías de doble uso, año 2014. Anexo II. Estadísticas de exportación de otro

riot control equipment, gas masks, dyes, 'propellant cartridges', handcuffs and raw materials and components for the production of tear gas devices. These licenses remain suspended and no further authorisations have been granted '*for the export of products which could be used in internal repression*'.²³⁹ However, information on the licensed production agreement between Falken and CAVIM on the CAVIM website makes no reference to this suspension and it is not clear if the licensed production of tear gas has been affected in any way. While the Spanish authorities suspended licenses for the export of raw materials and components for the production of tear gas devices in 2014, it is possible that CAVIM continues to use Falken S.A. technology. Unless adequately controlled, licensed production agreements could be used to evade export controls, even when the awarding of licenses to the destination country has been suspended.



Picture of coloured smoke grenades. Cavim website²⁴⁰

Omega contacted the Spanish authorities to address the concerns outlined above. Spanish law does not control the signing of licensed production agreements.²⁴¹ It does control the transfer of components, technology and production techniques. However, the re-export of goods produced outside of Spain under licensed production agreements involving Spanish companies are not controlled by the Spanish authorities.

Article 3.16 of Law 53/2007²⁴² defines licensed production and article 8 sets out the reasons for which export authorisations can be denied, suspended or revoked, including when there are indications that equipment could be used for internal repression or human rights violations. Article 2(1) of Royal Decree 679/2014,²⁴³ regulating Law 53/2007, provides that activities including the '*transfer of*

material antidisturbios y armas de caza y tiro deportivo, año 2014,' <<http://www.comercio.gob.es/es-ES/comercio-exterior/estadisticas-informes/PDF/INFORMEESTAD%C3%8DSTICAS2014.pdf>> [accessed 1 June 2016], p. 78.

²³⁹ Correspondence received from an official from the Directorate General for International Trade and Investments, Secretariat of State for Trade, Ministry of Economy and Competitiveness, 15 February 2016.

²⁴⁰ CAVIM, 'FALKEN S.A' <<http://www.cavim.com.ve/index.php/alianzas/falken>> [accessed 1 June 2016].

²⁴¹ Correspondence received from an official from the Directorate General for International Trade and Investments, Secretariat of State for Trade, Ministry of Economy and Competitiveness, 15 February 2016.

²⁴² Law 53/2007 of 28 December, on the control of the foreign trade in defence and double-use equipment.

²⁴³ Royal Decree 679/2014 of 1 August 2014 establishing the control Regulation on external trade in defence material, other material and dual-use items and technologies.

components, technology and production techniques derived from a licensed production agreement require authorisation. However, this requirement relates to equipment defined as 'Defence Equipment' and there is no analogous requirement for 'Other Equipment'. Some law enforcement equipment, such as chemical irritants including CS gas, could fall into either category.²⁴⁴ The Spanish authorities informed Omega that CS gas is controlled under the Common Military List of the EU, but Spanish export statistics have classified it as 'Other Equipment'.²⁴⁵ Spanish authorities confirmed that technology transfer and the transfer of components carried out by Spanish companies under licensed production agreements require state authorisation.

In addition, article 30 of Royal Decree 679/2014 states, *'The final destination certificates shall at least reflect the commitment (...) to not re-export/re-dispatch [the items or technology] without the prior written authorisation of the competent authorities, and to use the said material for the end-use declared.'* Whilst the Spanish authorities have told Omega that *'in all exports [of CS and OC ammunition and aerosol sprays, stun grenades and kinetic impact rubber pellets] authorised by Spain to public and private end users, an end-use certificate signed by the importing country's authorities is required, including a clause to not re-export or use for purposes other than those stated in the application'*, this relates to finished products exported from Spain as opposed to products manufactured outside of Spain under licensed production agreements.²⁴⁶ When components or technology acquired from a Spanish company under licensed production agreements are used to produce goods in a second country, these goods can be re-exported to a third country without any involvement of the Spanish Government. Spanish authorities informed Omega that such activity would be subject to the authorisation of the destination country's government.²⁴⁷

Omega recommends that the Spanish Government addresses the concerns raised here over the control of goods produced under licensed production agreements. This is in particular true given that a portion of the profits from any re-exports would go to the Spanish company party to the licensed production agreement. This loophole could potentially be used to evade strict Spanish export controls by moving production to countries with laxer control regimes.

²⁴⁴ See annexes of Royal Decree 679/2014, regulating Law 53/2007.

²⁴⁵ In 2014, exports of 'Other Equipment (Riot Control)' included triple action cartridges, tear gas devices and raw materials. See Secretaría de Estado de Comercio, note 238.

²⁴⁶ Correspondence received from an official from the Directorate General for International Trade and Investments, Secretariat of State for Trade, Ministry of Economy and Competitiveness, 15 February 2016 and 4 April 2016.

²⁴⁷ Correspondence received from an official from the Directorate General for International Trade and Investments, Secretariat of State for Trade, Ministry of Economy and Competitiveness, 4 April 2016. Furthermore, article 30 of Royal Decree 679/2014 also contains a provision allowing exporters to be exempt from having to present end user documentation, which is cause for concern.



Photo taken at an exhibition and demonstration hosted by FAME SAC (Peru) and attended by representatives from the police forces of Argentina, Bolivia, Chile, Ecuador and Panama²⁴⁸

The examples discussed above examine the Spanish Government's obligation to prevent companies based in its jurisdiction from contributing to human rights violations abroad. South American companies also have such obligations and further research of the licensed production agreements involving South American companies would be useful, for example, with regard to the production of weapon parts which are produced in South America and then exported to companies based elsewhere.

Omega encourages all states to examine their trade controls and to determine whether they are adequate to prevent licensed production agreements from being used to evade export controls.

V.III REGIONAL CONTROLS

Although this report does not include a detailed study of regional controls in South America, brief reference will be made to two instruments.

Organisation of American States (OAS)

The OAS adopted Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA) in 1997 and it has been ratified by all South American states, thus enjoying legally-binding status. The Convention covers important issues such as the marking of firearms, information-sharing amongst State Parties and the

²⁴⁸ Official Facebook account of the Peruvian Ministry of Defence, photo uploaded on 18 September 2013, <<https://www.facebook.com/ministeriodedefensa/photos/a.266343430074257.61131.257373387637928/591798517528745/?type=1&theater>> [accessed 1 June 2016].

establishment of effective import, export and transit licensing systems. Although much of the law enforcement equipment mentioned in the previous section could be interpreted to be covered by the Convention, this depends on states interpreting the definitions set out in Article 1 of the Convention to include less lethal weapons, such as chemical irritant grenades and ammunition, kinetic impact ammunition and the firearms and launchers used to fire them. Deciding which weapons are covered under CIFTA should not be left open to interpretation and the Organisation of American States should clarify exactly what types of equipment are covered. Furthermore, much law enforcement equipment including restraints, chemical irritants dispensed via aerosol sprayers, striking weapons, electric discharge weapons and water cannon fall outside the definitions provided.

Mercosur

The Common Market of the South – *Mercado Común del Sur* (Mercosur) – is a sub-regional bloc whose full members are Argentina, Bolivia, Brazil, Paraguay, Uruguay and Venezuela. Chile, Colombia, Ecuador, Guyana, Peru and Suriname are Associate States.

The MERCOSUR Working Group on Firearms and Ammunition (the Working Group) has made efforts to harmonise legislation and customs controls to combat the trafficking of small arms and light weapons. These efforts include the creation of a Joint Register Mechanism of Consumers and Sellers of Firearms, Ammunition, Explosives and Other Related Materials in 1998²⁴⁹ and an agreement for the exchange of information concerning the illicit production and trafficking of firearms, ammunition, explosives and other related materials in 2012.²⁵⁰ The Working Group also seeks to improve implementation of relevant international standards, CIFTA, the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunitions, and the Arms Trade Treaty.

Challenges and opportunities

While there are efforts at the regional level to stem the illegal flow of firearms and ammunition to non-state actors and criminals, there are several obstacles to putting effective controls in place. These include a culture of secrecy, weak institutional capacity and poor implementation of existing norms.²⁵¹ One of the tangible consequences of these obstacles is inaccurate reporting by states. A study using data from the UN's COMTRADE database comparing arms import and export data provided by Latin American countries and their trading partners found that one of the parties either did not have or failed to provide information on 70-80% of transfers.²⁵² Thus far, regional efforts to improve controls have focused on firearms and ammunition. Given the proliferation of illegal firearms and the high homicide rates in many countries in the region, this is understandable. However, it is important not to overlook other law enforcement equipment that is frequently used for torture and other forms of ill-treatment.

The use of certain terminology could also pose a challenge. In South America, several regulatory instruments refer to less lethal law enforcement equipment as '*armas no letales*', which translates as

²⁴⁹ Mercosur/CMC/Dec No 07/98 que aprueba el 'Mecanismo Conjunto de Registro de Compradores y Vendedores de Armas de Fuego, Municiones, Explosivos y otros Materiales Relacionados para el MERCOSUR'.

²⁵⁰ Mercosur/CMC/Dec No 09/12, 'Acuerdo entre los Estados Partes del Mercosur y los Estados Asociados para el intercambio de información sobre la fabricación y el tráfico ilícitos de armas de fuego, municiones, explosivos y otros materiales relacionados'.

²⁵¹ Diego Fleitas Ortiz de Rozas, 'Fire Fighters: Latin America battles to stem illegal arms flows,' *HIS Jane's Intelligence Review*, January 2016.

²⁵² Diego Fleitas Ortiz de Rozas, *El Tráfico de Armas en Latinoamérica, Parte I*, Asociación para Políticas Públicas, 2009.

'non-lethal weapons'.²⁵³ While some less lethal equipment has a legitimate law enforcement equipment when used correctly, this term ignores the fact that equipment such as chemical irritants, kinetic impact projectiles and electric shock devices have led to deaths and serious injuries. Referring to less lethal ammunition and the weapons used to fire such ammunition as 'non-lethal' could also lead to a failure to implement control mechanisms established under national and international law for this equipment, in spite of it meeting the definitions laid out in those instruments (see, for example, CIFTA).

Although the international norms emanating from both regional and global intergovernmental organisations aimed at controlling the transfer of most types of conventional military weapons and munitions cover some weapons used for law enforcement purposes, other types of equipment are often not covered. The European Union (EU) is the only inter-governmental body to have made significant progress towards filling some of these gaps.

In 2006, following sustained advocacy by Amnesty International and Omega, the EU – through a European Commission (EC) Regulation - introduced the world's first multilateral trade controls to prohibit the international trade in equipment '*which has no practical use other than for the purposes of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment*'; and to control the trade in a range of law enforcement and security equipment abused to violate human rights.²⁵⁴ The EC Regulation covers the trade of 28 EU member states and introduced unprecedented, binding controls on a range of equipment not usually included on EU member states' military or dual-use export control lists, including most of the equipment mentioned in this report. While this instrument has been crafted for a specific region, it may be a useful source of information for identifying gaps in existing regional and national control regimes.

²⁵³ For example, article 5 (a) of the Use of Force Guidelines for the Ecuadorian national Police [*Acuerdo Ministerial 4472 de fecha 10 de julio de 2014*] categorises chemical irritants and conducted energy devices as non-lethal weapons; the Colombian Manual for the Police Service on the Care, Management and Control of Crowds [*Manual para el servicio de policía en la atención, manejo y control de multitudes*] classifies equipment including 37/38 mm kinetic impact ammunition which fires multiple projectiles as non-lethal, as well as various types of chemical irritant grenades and ammunition.

²⁵⁴ EC Torture Regulation, note 165.

SECTION VI: CORPORATE OBLIGATIONS

Traditionally, obligations arising out of international human rights law had been understood to rest solely on states. However, this viewpoint has evolved significantly in recent decades and the UN Guiding Principles on Business and Human Rights (the Guiding Principles) set out the responsibility of corporate actors to respect human rights.

The Guiding Principles, although not legally binding, have significant moral force deriving from their unanimous endorsement by the UN Human Rights Council. Furthermore, they are based on existing international legal instruments and principles, and in abiding by them, business enterprises can reduce the risk of facing legal action as a consequence of their activities.

In June 2014, the UN Human Rights Council adopted a resolution to create an open-ended inter-governmental working group mandated with the elaboration of *'an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'*.²⁵⁵

The Guiding Principles, based on the three pillars of Protect, Respect and Remedy, are the most widely accepted source of corporate human rights responsibilities. Due diligence is one of the concepts underpinning the responsibility of business entities to respect human rights. The Guiding Principles stipulate that this process should be initiated as early as possible and it *'should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed'*.²⁵⁶

Any company selling law enforcement equipment to end users known to be committing serious human rights violations would risk being in breach of these standards and could face possible legal action for complicity in human rights violation involving the equipment. The question of corporate complicity in human rights violations has been examined in depth by the International Commission of Jurists (ICJ).²⁵⁷ The ICJ panel considered that a company could be complicit in gross human rights violations when the company's conduct enabled, exacerbated or facilitated the abuse, and the company knew, or ought reasonably to have known, of the risk that the abuse would occur.

Furthermore, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions state that the responsibility of businesses to avoid causing or contributing to adverse human rights impacts through their own activities and address adverse human rights impacts in which they are involved extends to impacts that are directly linked to their operations, products or services. This includes businesses supplying *'less-lethal weapons or equipment or surveillance technologies which are used in the policing of assemblies'*.²⁵⁸

There are several actions companies can take to mitigate the risk of breaching human rights standards and lessen their exposure to potential civil and/or criminal liability for complicity in human rights violations. Putting robust due diligence mechanisms in place would be a major advance in this regard. Such mechanisms should contain, at the very minimum, regular analysis of the human rights context in which the end user is operating, taking into account factors such as the use of force rules in place

²⁵⁵ UN Human Rights Council, Resolution 26/9, 25 June 2014, UN Doc. A/HRC/26/L.22/Rev.1.

²⁵⁶ UN Guiding Principles on Business and human Rights, Principle 17.

²⁵⁷ International Commission of Jurists, *Report of the ICJ Expert Legal Panel on Corporate Complicity in International Crimes, Volume 1*, 2008.

²⁵⁸ UN Special Rapporteurs Joint Report, note 39, para. 83.

and the implementation thereof, reports of past human rights violations committed by the end user and the safeguards in place to prevent abuse (e.g. accountability mechanisms). Companies should not supply law enforcement equipment if they consider that there is a risk that it could be used in the commission of human rights abuses.

The due diligence process should also include a mechanism to monitor the use of the equipment sold. Human rights organisations, potentially affected stakeholders and their representatives should be given the opportunity to feed into this mechanism. When the equipment has been used in violation of human rights standards, the company should act to mitigate the adverse impact, prevent any further violations and provide remedy to the victims. Actions may include using any leverage the company may have to alter the end user's behaviour, providing training and considering suspending or terminating the business relationship.

CONCLUSION

This report provides a general overview of the production, proliferation and use of law enforcement equipment in South America. Further research and documentation is required in several areas, particularly with regard to trade controls, transparency concerns, corporate accountability and use of force regulations. Nonetheless, several conclusions and trends can be identified on the basis of this initial report.

Cases of torture and other ill-treatment perpetrated against people in places of detention or exercising their right to protest are commonplace, and carried out with a wide range of law enforcement equipment, ranging from handcuffs to live ammunition. Weak use of force regulations which do not conform with international human rights standards compound this problem. Given the widespread human rights violations that are occurring, it is important that human rights organisations and the general public know where the equipment being used by law enforcement officials is coming from.

Although South American countries continue to import a large amount of law enforcement equipment from outside the region, regional production capacity is increasing rapidly and the international presence of South American manufacturers is growing. As such, extra attention must be placed on all parties involved in the transfer of law enforcement equipment, monitoring the compliance of national authorities with their obligations under national and international law and of companies with their responsibility to respect human rights. There is evidence that South American companies have made transfers to end users with a pattern of human rights violations.

Trade controls are generally weak and poorly enforced, in spite of the increased production of law enforcement equipment in South America. Key concerns include the lack of transparency regarding exports, the absence of human rights safeguards in certain export control regimes and the failure to regulate brokering activities. Controls over licensed production and the export of equipment produced under such agreements to third countries need introducing.

At the regional level, progress has been made on standard-setting aimed at eradicating the illicit manufacturing and trafficking of certain types of equipment. However, the focus of these efforts has been firearms and ammunition, meaning other types of equipment often misused or abused by law enforcement officials have yet to receive similar scrutiny. Furthermore, there are obstacles to putting effective regional controls in place, including a culture of secrecy, weak institutional capacity and poor implementation of existing norms.

The following recommendations are submitted for the careful consideration of policy makers, trade control officials, monitoring bodies and companies involved in the manufacture and trade of law enforcement equipment.

RECOMMENDATIONS

Use of Force

- States should ensure that domestic legislation, protocols and guidelines governing the use of force and firearms and all other law enforcement equipment are in compliance with international human rights law and standards. When a state decides to amend an existing norm or create a new one, civil society organisations should be invited to actively participate in a meaningful, inclusive process.
- In particular legislation and other norms governing the use of force and firearms should:
 - Specify the circumstances under which law enforcement officials are authorized to carry firearms, less lethal weapons and restraints and prescribe the types permitted.
 - Ensure that all firearms, less lethal weapons, restraints, and other uses of force, are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm.
 - Prohibit the use of firearms, less lethal weapons, restraints and other uses of force that cause unwarranted injury or present an unwarranted risk.
 - Establish robust mechanisms to ensure accountability for both law enforcement officials employing force in public gatherings and places of detention and their superior officers. This should include a system of reporting whenever law enforcement officials use force in the performance of their duty.
 - Echoing Principle 7 of the BPUFF, *'Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.'*
- States should:
 - Strictly control the design, transfer, selection and testing of law enforcement equipment.
 - Ensure a thorough, independent review based on international human rights law and standards is carried out by independent medical, legal, police and other experts to ascertain whether new or untested equipment is fit for use in law enforcement.
 - Monitor and publish information on the implementation of legislation and other norms governing the use of force and firearms, including accountability mechanisms.
 - Ensure that public use of force is controlled by a strict legal framework. Agencies without a legal mandate to use force should be prevented from doing so.
- Armed forces should only carry out law enforcement functions in exceptional circumstances for the shortest amount of time possible, within strict parameters set out in law and under the direction of civilian authorities. Any security officials carrying out law enforcement functions must be instructed and trained in accordance with international human rights standards for the use of force.

Production, promotion and trade of law enforcement equipment

Omega calls on state authorities in South America and elsewhere to:

- Compile public activity reports on the export of law enforcement equipment and technical assistance (tangible and intangible transfers) on a regular basis. Reports should include information on the number of applications received, the items involved, the country of destination and the proposed end user, as well as the decisions made on each application. To further promote **transparency**, states should provide information on the financial details of the licences awarded and the criteria on which decisions are based.

- Require companies to obtain a **transit** authorisation for the transit of controlled or restricted equipment through national territory.
- Establish a formal licencing process for those engaged in **brokering** the transfer of law enforcement equipment. This process should include the requirement for brokers to apply for licences for each individual transaction.
- Ban the production, promotion, trade, transfer and use of law enforcement equipment with inherent effects likely to result in unwarranted injuries, torture or other ill-treatment.
- Establish up-to-date trade control regulations for security and police equipment that can have legitimate uses, in line with international standards on law enforcement, but which is prone to abuse or causing injury or death.
- Immediately suspend and deny export licences where there are credible allegations that the agencies and security forces involved have recently used such equipment to commit or facilitate serious human rights violations, or where there is a **substantial risk of serious violations of human rights being perpetrated** with such equipment. The suspension should remain until the substantial risk has been removed, for example after prompt, independent and impartial investigations into the violations and a demonstrable commitment by the authorities, for example through prosecution of the perpetrators, legal reforms and revised training and accountability systems, to only use such equipment in accordance with international standards.
- Submit **licensed production agreements** for the manufacture of law enforcement equipment to the same level of control as physical exports, requiring companies to obtain prior authorisation before entering into such agreements. This should be incorporated into national legislation, ensuring that each agreement to establish a facility should also require the monitoring of such licensed production. Where there is credible evidence that arms resulting from such a facility have been used to commit or facilitate a serious violation of international human rights law or international humanitarian law in the licensee's home country, or have been exported to destinations not subject to agreement, the licensed production agreement should be immediately revoked. In such cases all provision of related machine tools, parts, training and technology should be halted.
- **Licensed production agreements** should contain: (1) specific re-export clauses requiring the production company to seek prior approval from the government of the licensor's country of origin before exporting to a third country; (2) specific clauses on the duration of the contract and what happens when the contract expires; (3) clauses establishing clear production ceilings and requiring the licensor to seek additional export licenses for any production exceeding the limits set; (4) a clause allowing the government of the licensor's country of origin to suspend or terminate the agreement if there is an overriding risk that the equipment produced could be used to commit or facilitate a serious violation of international human rights law or international humanitarian law.

Omega invites Mercosur and other inter-governmental bodies to:

- Carry out a detailed study of Council Regulation (EC) No 1236/2005 '*Concerning Trade in Certain Goods Which Could Be Used for Capital Punishment, Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment*' with a view to **identifying and addressing gaps in the control regimes** currently in force.

Corporate Accountability

Omega calls on companies involved in the production and trade of law enforcement equipment to:

- Cease and refrain from the manufacture, promotion, brokering or transfer of all equipment with inherent effects likely to result in unwarranted injuries, torture or other ill-treatment.
- Put in place robust due diligence mechanisms with the aim of assessing actual and potential human rights impacts resulting from the production and/or trade of law enforcement equipment, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Monitoring Bodies

- Monitoring bodies tasked with visiting places of detention and/or monitoring the public use of force should provide their members with sufficient training so they can record violations and use terminology in an informed, accurate and consistent manner. This may include the development of a standardised list of equipment and common abuses to look out for.



Law enforcement equipment on display at the Condor Non-Lethal Technologies stand at the LAAD Defense & Security Exhibition 2007, Rio de Janeiro, Brazil, April 2007. ©Robin Ballantyne, Omega Research Foundation

