

**Amicus Curiae Presented by the World Organisation against Torture, the Omega Research Foundation, Redress and the International Rehabilitation Council for Torture Victims**

To the Criminal Court in Case No. Por-Tor 02/2568 (2025)

Petitioner: Professor Dr. Thongchai Winichakul

Respondent - Director of Corrections Department

15 July 2025

**I. Interest of the *Amici Curiae***

*Amici curiae*, the World Organisation Against Torture (OMCT), the Omega Research Foundation (Omega), REDRESS and the International Rehabilitation Council for Torture Victims (IRCT) are independent non-governmental organisations with long-standing expertise in the protection of human rights and the prevention of torture and other ill-treatment, including in custodial and judicial settings. They have a particular interest in the understanding and application of international standards concerning the treatment of individuals deprived of liberty and fair trial standards.

OMCT is a global civil society coalition based in Geneva, Switzerland, and serves as the Secretariat of the SOS-Torture Network. It fights torture and other forms of ill-treatment and protects those most at risk, including detainees and human rights defenders. OMCT regularly engages with international human rights mechanisms such as the United Nations (UN) Committee against Torture (CAT), the Subcommittee on Prevention of Torture, and the UN Special Procedures and has submitted third-party interventions and amicus curiae briefs in national and international proceedings.

Omega is a research organisation based in the United Kingdom that specialises in the monitoring and analysis of the design, use, and human rights implications of security and custodial equipment. It has advised UN bodies, national human rights institutions, and policymakers on issues relating to the regulation and use of restraints. In 2024, Omega, the United Nations Office on Drugs and Crime (UNODC) and other partners jointly published the *Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings*,<sup>1</sup> which sets out relevant international and regional standards and good practices on the use of such equipment in judicial settings.

REDRESS is a non-governmental organisation that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of

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<sup>1</sup> Omega Research Foundation, United Nations Office on Drugs and Crime, UNDP, Conselho Nacional de Justiça, *Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings*, <https://omegaresearchfoundation.org/storage/2024/02/Handbook-on-Handcuffs-and-Other-Instruments-of-Restraint-in-Court-Hearings.pdf>

their human rights. We empower survivors to access justice through human rights cases and advocate for law enforcement bodies to prosecute perpetrators, and for legal and policy reforms to be implemented to prevent repetition. Under one of our programme areas, we work against torture used to silence dissent, including against human rights defenders.

The IRCT is a global network of civil society organisations and independent experts who support survivors of torture to heal and rebuild their lives through rehabilitation, including medical, psychological, legal and social support. As one of the world's leading experts on the physical and psychological effects of torture and ill-treatment, the IRCT is among organisations involved in the creation and the revision of the Istanbul Protocol, the internationally accepted standard for the effective investigation into allegations of torture and ill-treatment.

*Amici Curiae* submit this brief to provide the Court with technical and human rights-based expertise relevant to the use of physical restraints in courtrooms, drawing on international standards and research-based findings.

## **II. Shackling in Court as Cruel, Inhuman or Degrading Treatment and Punishment**

### **1. International Legal Standards**

The use of leg restraints, frequently referred to as shackles, leg irons, leg cuffs or foot restraints, is an intrusive form of restraint that, in many circumstances can constitute cruel, inhuman, or degrading treatment under international law. International human rights bodies have reiterated the strict limits under which such restraints may be used.

The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)<sup>2</sup> prohibit instruments of restraint that are inherently degrading or painful, including chains and irons (Rule 47(1)). Other forms of restraint are permitted only in exceptional circumstances—such as during transfer or to prevent imminent harm and must be removed when the person appears before a judicial or administrative authority. The rules further establish the following key principles: (a) instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement; (b) the method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed; (c) instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.

When monitoring the implementation of the UN Convention against Torture (CAT Convention)<sup>3</sup>, the Committee against Torture (CAT) has repeatedly raised concern about the compatibility of the use of restraint measures in light of obligations under Article 16 of the

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<sup>2</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) G.A. Res. 70/175, 17 December 2015.

<sup>3</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, ratified by Thailand 2 October 2007, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4).

CAT Convention (prohibition of cruel, inhuman, and degrading treatment and punishment).<sup>4</sup> For instance, the CAT has asked Switzerland to “eliminate practices involving the use of force that are not strictly necessary and proportionate, including the shackling”.<sup>5</sup>

On restraints during court hearings, the UN Human Rights Committee (HRC) has found a violation of Article 7 of the International Covenant on Civil and Political Rights (ICCPR),<sup>6</sup> when the State Party failed to demonstrate that the measure was “necessary for the purpose of security or the administration of justice, and that no alternative arrangements could have been made consistent with the human dignity of the author.”<sup>7</sup>

The European Court of Human Rights (ECtHR) has developed the most comprehensive jurisprudence on the use of restraints for persons deprived of liberty. In the context of Article 3 (the prohibition of torture and other ill-treatment) of the European Convention on Human Rights (ECHR),<sup>8</sup> the ECtHR has consistently affirmed that it is the State’s obligation to ensure that all conditions of deprivation of liberty respect the inherent dignity of the person and do not entail distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.<sup>9</sup> In its case law, the ECtHR has emphasized that the use of restraints, including during court appearances, must meet strict requirements of necessity and proportionality.<sup>10</sup> In the case of *Gorodnitchev v. Russia*, the ECtHR emphasized the importance of individualized risk assessment and the strict necessity.<sup>11</sup> In the absence of concrete evidence demonstrating that the person’s behaviour posed a threat to public security or the proper administration of justice, the ECtHR rejected the necessity of the measure and consequently found the treatment to be degrading.<sup>12</sup> In *Raninen v. Finland*, the ECtHR made clear that restraint may be justified only if there is reason to believe the person may resist, abscond, damage or suppress evidence.<sup>13</sup> Although not a requirement, the ECtHR has also recognized that public exposure of restraint measures can intensify feelings of humiliation and is incompatible with respect for human dignity.<sup>14</sup> The case law of the ECtHR points to the conclusion that the use of restraints is only

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<sup>4</sup> CAT, Concluding Observations on China, UN Doc. CAT/C/CHN/CO/5, 3 February 2016, para. 49; CAT, Concluding Observations on Mongolia, UN Doc. CAT/C/MNG/CO/1, 20 January 2011, para. 16.

<sup>5</sup> CAT, Concluding Observations on Switzerland, UN Doc. CAT/C/CHE/CO/8, 11 December 2023, para. 22.

<sup>6</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, ratified by Thailand 29 December 1996, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4).

<sup>7</sup> *Mikhail Pustovoit v. Ukraine* (Communication No. 1405/2005), U.N. Doc. CCPR/C/110/D/1405/2005, 12 May 2014, para. 9.3. The author of this communication was placed in a metal cage and handcuffed behind his back during court hearings.

<sup>8</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, 213 U.N.T.S. 221.

<sup>9</sup> *Kudla v. Poland* (Appl. No. 30210/96), Judgment (Grand Chamber), 26 October 2000, para. 94.

<sup>10</sup> *A.T. v. Estonia*, (Appl. No. 23183/15), Judgment (Second Section), 13 November 2018, para. 61–67.

<sup>11</sup> *Gorodnitchev v. Russia* (Appl. No. 52058/99), Judgment (First Section), 24 May 2007, para. 100.

<sup>12</sup> *Hénaf v. France* (Appl. No. 65436/01), Judgment (First Section), 27 November 2003, para. 48.

<sup>13</sup> *Raninen v. Finland* (Appl. No. 20972/92), Judgment (Chamber), 16 December 1997, para. 56.

<sup>14</sup> *Filiz Uyan v. Turkey* (Appl. No. 7496/03), Judgment (Second Section), 8 January 2009, para. 30; *A.T. v. Estonia* (Appl. No. 23183/15), Judgment (Second Section), 13 November 2018, para. 67.

compatible with the ECHR when the person concerned has previously exhibited attempts of escaping or violent behaviour.<sup>15</sup>

## **2. Leg Restraints And The Injury Risks Associated With Their Use**

While there are many types of instruments to restrain the legs, standard leg cuffs comprise two adjustable cuffs linked by a chain, which is longer than the chain usually found on handcuffs in order to permit a greater degree of movement. Nonetheless, leg restraints are designed to restrict movement and their use carries an inherent risk of secondary injuries caused by falls. Additionally, all metal instruments of restraint present a general risk of causing abrasions and lacerations. Over-tightening, whether accidental or intentional, carries additional risks. Prolonged use, such as during a journey from the place of custody to the courthouse, the subsequent wait before being brought before the court, and the court hearing itself, increases the risk of injury. In the case of leg restraints, these risks include deep vein thrombosis and necrosis.<sup>16</sup>

There is no agreed terminology to describe different types of leg restraints. Thus, the term ‘shackles’ is frequently used to refer to a range of instruments, some of which are more intrusive or likely to cause injury than others. While all leg restraints constitute an intrusive form of restraint, some are inherently degrading or unnecessarily degrading. For example, weighted leg cuffs are heavier than other instruments of restraint, restricting movement to a much greater degree and increasing the risk of injury. The UN Special Rapporteur on torture has recommended that these and several other types of leg restraints be prohibited.<sup>17</sup> As it is for the judge to decide whether, in exceptional circumstances, an instrument of restraint should be used during a judicial hearing, it is also the judge’s responsibility to ensure they ascertain the type of instruments being used in their courtroom and ensure that any use meets international standards.

## **3. Psychological Harm and Dehumanization**

The use of shackles during court proceedings goes beyond physical restraint. It carries significant psychological and symbolic consequences that may amount to cruel, inhuman or degrading treatment, particularly when applied without strict necessity or individual risk assessment. Shackling in court can inflict deep psychological distress,<sup>18</sup> including:

- Feelings of humiliation and degradation, particularly in front of judges, the public, and family members.<sup>19</sup>

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<sup>15</sup> This was the case in *A.T. v. Estonia*, (Appl. No. 23183/15), Judgment (Second Section), 13 November 2018, para. 61–67, where the ECtHR did not find an Article 3 of the ECHR violation.

<sup>16</sup> *Ibid*, p. 36.

<sup>17</sup> UN Special Rapporteur on torture, Thematic study on the global trade in weapons, equipment and devices used by law enforcement and other public authorities that are capable of inflicting torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/78/324, 24 August 2023, Annex I.

<sup>18</sup> Physicians for Human Rights, [Broken Laws, Broken Lives](#), 2008.

<sup>19</sup> Li, W. W., Heward, C., Merrick, A., Astridge, B., & Leow, T. (2024). Prevalence of experiencing public humiliation and its effects on victims’ mental health: A systematic review and meta-analysis. *Journal of Pacific Rim Psychology*, 18. <https://doi.org/10.1177/18344909241252325> (Original work published 2024).

- Loss of agency and control, reinforcing a sense of powerlessness and subjugation. A direct consequence of this sense of powerlessness.
- Heightened anxiety or re-traumatization, especially for individuals with a history of abuse, torture, or trauma. Numerous psychological studies and human rights reports emphasize that visible restraint in public settings can produce trauma akin to public shaming or ritual degradation.

Shackling in court constitutes symbolic dehumanization<sup>20</sup> and loss of personhood, which contradicts the foundational principle of human dignity in human rights law. This practice visibly marks the accused as “other,” dangerous, and unworthy of respect; reinforces societal stigmas, especially when applied disproportionately to Human Rights Defenders (HRDs) and political dissidents.

In sum, international human rights law requires that any use of restraints be strictly necessary and that the least intrusive means available be employed. Requiring an accused to appear in court in chains not only causes a risk for injury but also risks publicly undermining their dignity. When visible restraints are used in the presence of judicial authorities, court personnel, family members, or the media, the courtroom itself may become a site of humiliation, reinforcing feelings of stigma, shame, and powerlessness. Unless justified by a concrete and individualized security assessment, and where no less restrictive alternatives exist, their use constitutes degrading treatment according to Article 16 of the CAT Convention and Article 7 of the ICCPR. States have a positive obligation to assess less intrusive alternatives, such as trained courtroom personnel, discreet escort procedures, or secure courtroom architecture, before resorting to physical restraints.<sup>21</sup>

### **III. Violation of Presumption of Innocence**

International human rights law (e.g. Article 14 of the ICCPR) guarantees the right to equality before courts and tribunals, and the right to a fair and public hearing by a competent, independent, and impartial tribunal. These guarantees require not only that justice be done, but that it be seen to be done free from unnecessary displays of coercion or measures that might prejudice the public perception of the accused. This presumption of innocence must be respected not only in judicial reasoning but also in the treatment and presentation of accused persons throughout criminal proceedings.<sup>22</sup> To produce an accused before court in handcuffs or shackles or similarly restraints when not necessary, risks severely undermining this right. As the HRC has explicitly stated in its General Comment No. 32 “it is a duty for all public

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<sup>20</sup> Lamb S.(2003) [The Psychology of Condemnation: underlying emotions and their symbolic expression in condemning and shaming](#). (n.d.). *Brooklyn Law Review*, Volume 68, Issue 4.

<sup>21</sup> Omega Research Foundation, United Nations Office on Drugs and Crime, UNDP, Conselho Nacional de Justiça, Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings, p. 15, <https://omegaresearchfoundation.org/storage/2024/02/Handbook-on-Handcuffs-and-Other-Instruments-of-Restraint-in-Court-Hearings.pdf>.

<sup>22</sup> Ibid p. 12–13.

authorities to refrain from prejudging the outcome of a trial [...] Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals”.<sup>23</sup> Such measures, when not strictly necessary, compromise the presumption of innocence by visually portraying the individual as already guilty or dangerous.

Empirical research confirms that the use of visible restraints can significantly bias perceptions. The more severe the restraint method shown in images or courtroom settings, the higher the likelihood that observers, including judicial actors, will assume guilt. This can influence decisions and thus affect the fairness of proceedings.<sup>24</sup>

The legitimacy of courts in a democratic society depends not only on the fairness of their decisions, but also on the perception of fairness by the public and, crucially, by the individual standing trial, a principle also underlined by the ECtHR in a case concerning the use of restraints during court hearings.<sup>25</sup> The burden lies with the State to demonstrate, in each individual case, that the use of restraints is strictly necessary for security and proportionate to a legitimate aim. Absent such justification, the mere use of shackles becomes incompatible with the structural guarantees of fair trial.

Because measures of restraints can violate the presumption of innocence, it is ultimately up to the court and not police or security staff to decide whether restraints can be used before court. Delegating such decisions to security officials may raise concerns regarding the principle of judicial independence.<sup>26</sup>

#### **IV. Special Considerations for Human Rights Defenders**

In judicial proceedings involving HRDs, courts must adopt heightened scrutiny in applying measures that may undermine their status, given the role HRDs occupy in safeguarding democratic values and civic participation. The UN Declaration on Human Rights Defenders (1998)<sup>27</sup> recognizes the special status of HRDs and urges States to ensure their protection “against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights” (Article 12). The UN Special Rapporteur on the Situation of Human Rights Defenders has thus stressed that the judiciary plays an important role in upholding States’ obligations to provide

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<sup>23</sup> HRC, General Comment No. 32, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 30.

<sup>24</sup> Omega Research Foundation, United Nations Office on Drugs and Crime, UNDP, Conselho Nacional de Justiça, Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings, p. 12, <https://omegaresearchfoundation.org/storage/2024/02/Handbook-on-Handcuffs-and-Other-Instruments-of-Restraint-in-Court-Hearings.pdf>.

<sup>25</sup> *Svinarenko and Slyadnev v. Russia* (Appl. Nos. 32541/08 and 43441/08), Judgment (Grand Chamber), 17 July 2014, para. 131.

<sup>26</sup> Omega Research Foundation, United Nations Office on Drugs and Crime, UNDP, Conselho Nacional de Justiça, Handbook on Handcuffs and Other Instruments of Restraint in Court Hearings, p. 12, <https://omegaresearchfoundation.org/storage/2024/02/Handbook-on-Handcuffs-and-Other-Instruments-of-Restraint-in-Court-Hearings.pdf>.

<sup>27</sup> U.N. General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res. 53/144, U.N. Doc. A/RES/53/144, 8 March 1999.

an enabling environment for the work of defenders, and the Rapporteur “applauds those in judicial systems prepared to withstand political pressure and to protect defenders.”<sup>28</sup>

At the same time, the UN Special Rapporteur on the situation of human rights defenders has repeatedly warned that judicial systems can be misused to delegitimize dissent.<sup>29</sup> Judicial harassment, which can include (arbitrary) arrest and detention, enactment of repressive legislation and policies, and all other forms of charges, prosecutions, and judicial processes imposed to interfere with HRDs’ work, and/or intimidate and harass HRDs, is one of the most common violations that HRDs face.<sup>30</sup>

HRDs by virtue of their role in promoting accountability, equality, and the rule of law, often come under scrutiny from powerful actors and institutions. When judicial proceedings are initiated against such individuals, particularly in cases involving vaguely defined offences related to national security or public order, there is an elevated risk that the legal process may be instrumentalised to suppress dissent or intimidate others. In this context, courtroom practices, including the use of shackles or other restraints, take on symbolic significance. Publicly displaying an HRD in shackles may serve to portray them as dangerous or criminal, irrespective of their actual conduct. This may damage their reputation and perceived legitimacy of their human rights work and can have a chilling effect on broader civil society engagement.<sup>31</sup>

Courts have a countervailing duty not to be complicit in reinforcing a narrative of criminality. Public perception of HRDs in chains erodes public trust in the judiciary's impartiality and may deter others from engaging in peaceful human rights work. In the case of HRDs, the wider consequences for civic space, democratic participation, and the right to defend rights have to be taken into account when assessing the proportionality of restraint measures.

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<sup>28</sup> UN General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/77/178, 18 July 2022, para. 97.

<sup>29</sup> UN General Assembly, Report of the Special Rapporteur on the situation of human rights defenders, UN Doc. A/75/165, 16 July 2020, para. 36; OHCHR, UN experts urges Zimbabwe to end judicial harassment of education and labour rights defenders, 24 May 2023, <https://www.ohchr.org/en/press-releases/2023/05/un-expert-urges-zimbabwe-end-judicial-harassment-education-and-labour-rights>; OHCHR, UN experts urge Bangladesh to end judicial harassment of journalists, 22 February 2023, <https://www.ohchr.org/en/press-releases/2023/02/un-experts-urge-bangladesh-end-judicial-harassment-journalists>;

<sup>30</sup> Forum Asia, Defending in Numbers, 2023, <https://forum-asia.org/wp-content/uploads/2023/06/Defending-in-Numbers-Rising-Together-Against-All-Odds-com.pdf>.

<sup>31</sup> OMCT, Call for Action: Protecting public watchdogs across the EU: a proposal for an EU Anti-Slapp Law, 1 December 2020, [https://www.omct.org/files/2020/12/26214/anti\\_slapp\\_model\\_directive.pdf](https://www.omct.org/files/2020/12/26214/anti_slapp_model_directive.pdf).