## **Amnesty International/Omega RESEARCH FOUNDATION submission to the Group of Government Experts on torture free trade**

1 December 2021

### **1.** **The feasibility of common international standards**

The feasibility of the development and implementation of common international standards to regulate trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment (ill-treatment) and the death penalty relies on:

* a legal and political foundation;
* significant support for an international instrument;
* and experience gained through existing national, regional and international control regimes and guidance.

**Legal and political foundation**

The prohibition on torture and other ill-treatment is absolute.[[1]](#endnote-2) It applies in all circumstances and, as part of international customary law, to all states. UN bodies have recognised that prohibitions and controls on the trade in equipment used for torture or other ill-treatment are part of states’ positive obligations to prevent and eradicate torture and other ill-treatment.[[2]](#endnote-3) UN member states have reaffirmed their commitment to “take appropriate effective legislative, administrative, judicial or other measures to prevent and prohibit the production, trade, export and use of equipment which is specifically designed to inflict torture or other cruel, inhuman or degrading treatment” in successive UNGA resolutions on torture and other cruel, inhuman or degrading treatment.[[3]](#endnote-4)

The abolition of the death penalty is a set goal under Article 6(6) of the International Covenant on Civil and Political Rights. Its Article 6 further prohibits the arbitrary deprivation of life; and establishes the framework for restrictions to the application of the death penalty – which have, however, been violated in countries that still use this punishment.[[4]](#endnote-5) The obligation to protect the right to life by law also includes an obligation “to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including from threats emanating from private persons and entities”.[[5]](#endnote-6) This obligation requires states “to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life under Article 6 of the Covenant would be violated;”[[6]](#endnote-7) and “for countries that have abolished the death penalty, […] not to expose a person to the real risk of its application.”[[7]](#endnote-8) Ending trade in goods specifically designed to carry out the death penalty and regulating trade of other specific equipment, substances, and related technical assistance to ensure they are not misused to carry out or facilitate executions is a necessary step for abolitionist states to fulfil this obligation.

**Significant support from states, regional bodies and international institutions**

There is significant support among states for the creation of international standards to address this issue. The Alliance for Torture-Free Trade, launched in September 2017, currently has over 60 participating states from all regions which have pledged to “act together to further prevent, restrict and end trade” in goods used for torture, other ill-treatment and the death penalty.[[8]](#endnote-9) In July 2020, the UN Secretary General’s report analysing states views on this issue noted that most responding states supported the proposal to establish “common international standards” in this area and that a majority were in favour of a “legally binding instrument establishing measures to control and restrict trade in goods used for capital punishment, torture or other forms of ill-treatment”.[[9]](#endnote-10)

**Existing and emerging national, regional and international control regimes and guidance**

A growing number of states and regional bodies have adopted a range of overlapping and complementary laws and other measures on this issue. In 2005 the EU established a comprehensive trade control regime through binding regional legislation directly applicable in all 28 (now 27) member states, covering trade in goods used in torture, other ill-treatment and the death penalty. [[10]](#endnote-11) The Regulation has subsequently been reviewed and strengthened to address developments in the trade and use of such goods.[[11]](#endnote-12)

In December 2020, the Organization for Security and Co-operation in Europe (OSCE) Ministerial Council adopted a Decision incorporating a call upon its 57 participating States to “prevent and prohibit” trade in equipment having “no practical use” other than for torture or other ill-treatment.[[12]](#endnote-13) In March 2021 the Council of Europe Committee of Ministers adopted a Recommendation calling on and providing guidance for the introduction of national measures by its 47 member States to address the trade in goods used for the death penalty, torture and other ill-treatment.[[13]](#endnote-14) In December 2020, the African Commission on Human and Peoples’ Rights passed a Resolution on the prohibition of the use, production, export and trade of tools used for torture,[[14]](#endnote-15) calling on its 55 Member States to uphold their commitments established under the 2002 Robben Island Guidelines.[[15]](#endnote-16)

In addition, certain states have established national measures in this area. The USA have established national controls in effect prohibiting export of "specially designed implements of torture” and controlling the export of a range of law enforcement equipment and execution equipment.[[16]](#endnote-17) The UK, in contrast, prohibits export of goods having “no practical use” other than for torture, other ill-treatment and the death penalty, and controls export of law enforcement goods to prevent their use in torture and other ill-treatment and of certain pharmaceutical chemicals to prevent their use in the death penalty.[[17]](#endnote-18)

In its 2012 guidance, the UN Office on Drugs and Crime noted that it may have “no choice but to employ a temporary freeze or withdrawal of support” of technical assistance to stakeholders within criminal justice systems should executions for drug-related offences continue.[[18]](#endnote-19)

1. **The scope of goods to be included**

Amnesty International and the Omega Research Foundation recommend that the (non-exhaustive) categories of goods listed below are included, as a minimum, within the scope of legally binding international trade controls. The selection of goods draws upon decades of primary research by both organisations. [[19]](#endnote-20) It incorporates goods with no practical use other than for torture or other ill-treatment, as well as an additional range of law enforcement equipment and weapons which can have a legitimate function, when used in strict accordance with international human rights law and standards on the use of force, but which can be, and readily are, misused by law enforcement officials to torture or otherwise ill-treat people.[[20]](#endnote-21)

Most of these goods have also been documented by Amnesty International and the Omega Research Foundation at international arms and security fairs or have been promoted by companies through online and offline marketing materials.[[21]](#endnote-22) In addition, it incorporates execution equipment as well as certain pharmaceutical chemicals that can be misused for lethal injection executions. An analysis of the human rights risks related to the technical characteristics and use of this equipment has informed the determination of whether specific goods should be prohibited or controlled.[[22]](#endnote-23)

**Goods with no practical use other than for torture or other ill-treatment (and which should be prohibited)[[23]](#endnote-24)**

Mechanical restraint devices unsuitable for law enforcement including:

* + thumb cuffs, finger-cuffs, thumbscrews; leg irons; bar fetters;
  + weighted restraints;
  + gang chains;
  + fixed restraints (intended for attaching to walls, floor, ceiling);
  + neck restraints;
  + restraint chairs, shackle boards/beds with metal restraints; restraint chairs, shackle boards/beds with fabric restraints if used for law enforcement purposes;[[24]](#endnote-25)
  + cage and net beds;
  + prisoner hoods and blindfolds.
* Hand held kinetic impact devices/weapons unsuitable for law enforcement including:
  + spiked batons, spiked shields, spiked body armour and any other spiked or serrated devices;
  + weighted batons and weighted gloves;
  + whips and sjamboks.
* Automatic, automated and/or multiple kinetic impact launchers that are inherently indiscriminate or which result in unnecessary injuries.
* Non-metallic single projectiles that are inherently injurious or insufficiently targetable.[[25]](#endnote-26)
* Non-metallic ammunition containing multiple projectiles that are inherently injurious or inherently indiscriminate.
* Inherently indiscriminate or dangerous riot control agent (RCA) delivery mechanisms that are designed to deliver large quantities of RCA in enclosed spaces, over large areas or to extended distances.
* Electric shock devices/weapons unsuitable for law enforcement including:
  + body-worn electric shock devices such as belts, vests, sleeves and cuffs;
  + direct contact electric shock devices/weapons including shock shields, shock batons; shock (stun) guns, shock (stun) gloves and shock grabbing devices;
* Equipment or weapons employing millimetre wave energy technology to cause painful heat sensation on the skin of the targeted individual or group of individuals from a distance;
* Unique components and specifically designed parts for the goods listed above.

**Law enforcement equipment and weapons that can be misused for torture or other ill-treatment (and which should be controlled)[[26]](#endnote-27)**

* Equipment for restraining human beings such as ordinary handcuffs, leg-cuffs, combination cuffs, and spit guards;
* Projectile electric shock weapons suitable for law enforcement;
* Riot control agents (RCAs) employed for law enforcement purposes, including CS, CN, CR, MPK/MPA OC, and PAVA;
* RCA dispersal equipment (for example, aerosols, hand-held RCA sprayers or single-barrel RCA launchers) targeting one individual or disseminating a limited dose over a small area;
* Certain RCA dispersal equipment intended for disseminating RCAs over a wide area, including water cannons;
* Hand-held striking weapons including batons, truncheons and *tonfas*;
* Launchers and non-metallic kinetic impact projectiles, including rubber bullets, plastic bullets and bean bags;
* Devices employing laser or optical light designed to temporarily disrupt the sight or visual acuity of an individual or group of individuals, that do not cause long-term or permanent loss or damage to sight or visual acuity when used in conformity with standard operating procedures;
* Acoustic devices or weapons employing audible soundwave technology that do not cause long term or permanent loss or damage to hearing when used in conformity with standard operating procedures;
* Unique components and specifically designed parts for the goods listed above.

**Execution equipment**

*Equipment and devices that have no practical use other than for the execution of human beings (and which should be prohibited). These include* gallows, gas chambers, electric chairs, automatic lethal injection systems, and unique components and specifically designed parts for such equipment and devices. *Equipment, devices and pharmaceutical substances that can be misused to execute people (and which should be controlled), including short-acting and intermediate-acting barbiturate anaesthetic agents.*

**Training and technical assistance**

While the UN GGE requested information on the scope of *goods* that should be covered, Amnesty International and Omega further recommend that international standards should also cover certain associated technical assistance and training.

Technical assistance and training related to any of the prohibited equipment should itself be prohibited. Similarly, technical assistance or training relating to controlled equipment should be strictly regulated to ensure it does not facilitate or encourage abusive techniques and practices. Training in other techniques employed for torture or other ill-treatment not directly related to law enforcement equipment (including sleep deprivation, stress positions) should also be prohibited.

1. **Draft parameters for a range of options to establish common international standards**

Given the gravity of the issue and the international nature of the problem, Amnesty International and the Omega Research Foundation strongly support the creation of **a global, legally binding instrument** to regulate the trade in torture and death penalty goods.

An international legally binding instrument, as opposed to soft-law guidance, is essential to build a common architecture for compliance at international and state level, such as standardised national control regimes, information sharing and trade monitoring mechanisms. Binding international law is the only means to ensure that companies – wherever they are based – trading in inherently abusive equipment will have no international market for such goods; and that companies manufacturing controlled goods are subject to a common regulatory “level playing field” wherever they are based or operate. Only a legally binding instrument can ensure transparency and accountability through effective, proportionate and dissuasive sanctions.

The precedent for a legally binding instrument which explicitly links the legality of the trade in commonly abused goods with international human rights and humanitarian law has already been set through the adoption by 156 States of the Arms Trade Treaty in April 2013.[[27]](#endnote-28)

For such an instrument to be effective, Amnesty International and the Omega Research Foundation believe that certain essential elements are required:

3.1 **A commonly agreed trade control system** – implemented by all States Parties through national measures to:

1. Prohibit and prevent the manufacture and transfer (export, import, transit, or trans-shipment) of equipment that has no practical use in law enforcement other than for the purpose of torture, other ill-treatment and the death penalty. The prohibition includes related brokering activities (that is, organizing transfers between third countries); transport, financial, insurance, promotion and advertising services; and technical assistance and training in torture or other ill-treatment. Destroy any stock of prohibited equipment discovered by states within their jurisdiction.
2. License the transfer of controlled law enforcement equipment and related services, denying authorisation where there are reasonable grounds for believing that the law enforcement equipment and services will be used for torture or other ill-treatment or the goods will be diverted. Assessments should take into account relevant information derived from UN, regional and national human rights monitors and NGOs, relating to the activities of the proposed law enforcement end users.
3. Control and license the export and transit of certain goods and pharmaceutical substances to ensure that they are not transferred for use in executions in states still applying the death penalty. States parties’ action should not limit the trade of such goods or chemicals for legitimate uses, including medical, veterinary or other purposes. License determinations should incorporate a similar human rights based risk assessment process as 1.(b).

3.2 Comprehensive, regularly updated internationally agreed lists of prohibited and controlled goods and services.

3.3 Requirements for record keeping and annual national reporting on the volume, value, destination, end users, and proposed end use of all exports and imports of equipment, weapons, related technical assistance and of training listed. These reports should be made public.

3.4 An international implementation support and monitoring body to detect and track developments in the global trade in of goods and services covered under the scope of the instrument; and review cases brought to it by relevant UN,[[28]](#endnote-29) regional[[29]](#endnote-30) and national torture prevention mechanisms, states parties and civil society. This body will also and facilitate international information exchange, cooperation and assistance measures.

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1. OHCHR, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984,

   entry into force 26 June 1987, in accordance with article 27 (1). [↑](#endnote-ref-2)
2. See for example, UN Commission on Human Rights, Torture and other cruel, inhuman or degrading treatment or punishment, 77th meeting, Resolution 2001/62, 25 April 2001; UN Commission on Human Rights, E/CN.4/2003/69, 13 January 2003; UN Commission on Human Rights, Report of the Special Rapporteur, Theo van Boven, E/CN.4/2005/62, 15 December 2004 [↑](#endnote-ref-3)
3. UNGA, Resolution adopted by the General Assembly on 18 December 2019, A/RES/74/143. Torture and other cruel, inhuman or degrading treatment or punishment, 22 January 2020, paragraph 20. [↑](#endnote-ref-4)
4. UN General Assembly, Moratorium on the use of the death penalty – Report of the Secretary-General, 13 August 2020, UN Doc.A/75/309, paras.19-55; Human Rights Council, Question of the death penalty – Report of the Secretary-General, 13 August 2020, UN Doc.A/HRC/45/20, paras. 24-57. [↑](#endnote-ref-5)
5. Human Rights Committee, General Comment 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, UN Doc. CCPR/C/GC/36, para.19 [↑](#endnote-ref-6)
6. Human Rights Committee, General Comment 36 (2018), para.30; in this regard, it worth bearing in mind that “States parties to the Covenant that have abolished the death penalty, through amending their domestic laws, becoming parties to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, or adopting another international instrument obligating them to abolish the death penalty, are barred from reintroducing it. Like the Covenant, the Second Optional Protocol does not contain termination provisions and States parties cannot denounce it,” Human Rights Committee, General Comment 36 (2018), para 34. [↑](#endnote-ref-7)
7. Human Rights Committee, *Roger Judge v. Canada*, Communication No. 829/1998, 13 August 2003, UN Doc.CCPR/C/78/D/829/1998, para.10.4 [↑](#endnote-ref-8)
8. Alliance for Torture-Free Trade, “Political Declaration”, 18 September 2017. [↑](#endnote-ref-9)
9. UN, Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards: report of the Secretary-General, A/74/969, July 2020, paragraph 36. [↑](#endnote-ref-10)
10. European Union, EC Regulation 1236/2005 of 27th June 2005 concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, published in Official Journal of the European Union, L200/1, 30th July 2005. The latest consolidated version, Regulation (EU) 2019/125, was published in January 2019 and came into force on 20 February 2019. [↑](#endnote-ref-11)
11. The latest consolidated version, Regulation (EU) 2019/125, was published in January 2019 and came into force on 20 February 2019. [↑](#endnote-ref-12)
12. OSCE, Ministerial Council Decision No. 7/20: Prevention and Eradication of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Tirana, 4 December 2020, paragraph 21. [↑](#endnote-ref-13)
13. Council of Europe, Recommendation CM/Rec(2021)2 of the Committee of Ministers to member States on measures against the trade in goods used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, adopted by the Committee of Ministers on 31 March 2021. [↑](#endnote-ref-14)
14. African Commission on Human and Peoples’ Rights, Resolution 472 on the prohibition of the use, production, export and trade of tools used for torture, ACHPR/Res.472 (LXVII) 2020, December 2020. [↑](#endnote-ref-15)
15. African Commission on Human and People’s Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture in Africa, ACHPR/ Res. 61(XXXII) 02 (2002),23 October 2002, Appendix 1 [Robben Island Guidelines]. Under Guideline 14 States should “prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends” [↑](#endnote-ref-16)
16. See US Bureau of Industry and Security, Export Administration Regulations, notably the Commerce Control Lists, available at www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear [↑](#endnote-ref-17)
17. For further information see UK Department for International Trade Guidance on export controls on goods that can be used for torture or capital punishment, last updated 1 January 2021, www.gov.uk/guidance/controls-on-torture-goods [↑](#endnote-ref-18)
18. UNODC, “UNODC and the Promotion and Protection of Human Rights”, p.10, https://www.unodc.org/documents/justice-and-prison-reform/UNODC\_Human\_rights\_position\_paper\_2012.pdf [↑](#endnote-ref-19)
19. For details of relevant Amnesty International and Omega Research Foundation publications see, https://www.amnesty.org/en/ and https://omegaresearchfoundation.org/publicationss/act30/6998/2017/en/. [↑](#endnote-ref-20)
20. See for example: Amnesty International & Omega Research Foundation, Blunt Force: investigating the misuse of police batons and related weapons; Amnesty International, Tear gas: an investigation; Amnesty International & Omega Research Foundation, Ending the Torture Trade: The path to global controls on the 'tools of torture', December 2020. [↑](#endnote-ref-21)
21. See, for example, Amnesty International & Omega Research Foundation, China's Trade in Tools of Torture and Repression. 2014; Amnesty International and Omega Foundation, Grasping the Nettle: Ending Europe ́s Trade in Execution and Torture Technology, 2015; Omega Research Foundation, Tools of Torture and Repression in South America: Use, manufacture and trade,2016; Omega Research Foundation, Manufacturing torture? – South Africa’s trade in electric shock equipment, 2016; Omega Research Foundation, Briefing Paper: Use of Tools of Torture in OSCE participating States, 2017;  Amnesty International and Omega Research Foundation, Tackling the trade in tools of torture and execution technologies, ACT 30/6998/2017, 2017; Amnesty International, “EU: Amnesty discovers gruesome illegal torture equipment for sale in Paris”, 22 November 2017; Omega Research Foundation, Manufacture, trade and use of ‘tools of torture’ in the Council of Europe, 2018; Amnesty International and Omega Research Foundation, Combating torture: the need for comprehensive regulation of law enforcement equipment, ACT 30/9039/2018, 2018; Omega Research Foundation, Review of EU Anti-Torture Regulation and its implementation, 2020; Amnesty International & Omega Research Foundation, Ending the Torture Trade: The path to global controls on the 'tools of torture', December 2020; Omega Research Foundation, The manufacture, trade and regulation of law enforcement and security equipment in Brazil, 2021. [↑](#endnote-ref-22)
22. For further analysis of the disparate categories of equipment listed below please see for example: Amnesty International & Omega Research Foundation, The Human Rights Impact of Law Enforcement Equipment,: ACT 30/1305/2015,April 2015;Amnesty International & Omega Research Foundation, Combating Torture: The Need for Comprehensive Regulation of Law Enforcement Equipment, 2018; Omega Research Foundation, Visual Guide to Law Enforcement andSecurity Equipment, 2021 [↑](#endnote-ref-23)
23. For more detailed descriptions of this equipment, see The Omega Research Foundation, A Visual Guide to Military, Security & Police Equipment, 2015, omegaresearchfoundation.org/sites/default/files/uploads/Publications/Visual%20Glossary%20Introduction\_English.pdf [↑](#endnote-ref-24)
24. Some full body restraints might have legitimate employment in restricted and carefully controlled medical contexts, for instance to prevent movement during emergency treatment, or to prevent suicide or self-harm. However, a range of devices incorporating multiple fabric restraints such as shackle boards, shackle beds and restraint chairs have been commercially promoted for penal and law enforcement use, although they are inappropriate for such use. [↑](#endnote-ref-25)
25. This submission does not address firearms and standard metal ammunition as these items are covered by existing instruments and standards. [↑](#endnote-ref-26)
26. For more detailed descriptions of this equipment, see The Omega Research Foundation, A Visual Guide to Military, Security & Police Equipment, 2015. [↑](#endnote-ref-27)
27. Arms Trade Treaty, thearmstradetreaty.org/hyper-images/file/ATT\_English/ATT\_English.pdf?templateId=137253 [↑](#endnote-ref-28)
28. Including UN Special Rapporteur on Torture, Committee Against Torture, Subcommittee for the Prevention of Torture and the Office of the High Commissioner for Human Rights. [↑](#endnote-ref-29)
29. Including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), the Committee for the Prevention of Torture in Africa (CPTA). [↑](#endnote-ref-30)