

The nature, scope and regulation of the production and trade of law enforcement equipment and weapons and the relationship with torture and other cruel, inhuman or degrading treatment or punishment

Interim report of the Special Rapporteur on Torture to the 78th session of the General Assembly

Reply to the Questionnaire

Human Rights Intergovernmental Co-operation Division, Secretariat of the Council of Europe

The present document refers in particular to Recommendation [CM/Rec\(2021\)2](#) of the Committee of Ministers of the Council of Europe to member States on measures against the trade in goods used for the death penalty, torture, and other cruel, inhuman and degrading treatment or punishment. Recommendation CM/Rec(2021)2 sets out general principles and is accompanied by an appendix containing more detailed technical guidance, further numbered appendices containing lists of goods, equipment, and chemicals falling within the scope of the recommendation, and an explanatory report.

Question 1: Regulation of production

1.1 Does your country have national legislation or alternative regulatory, administrative, judicial or other measures, which prohibit or regulate the production of certain law enforcement equipment or weapons, and/or a system of classifying different types of the production of law enforcement equipment and weapons?

Reply

The Appendix to Recommendation CM/Rec(2021)2 (paragraph 1) calls on Council of Europe member States to:

- establish and regularly review and update a list of prohibited goods and equipment that should at least include the categories specified in Appendix 1;
- destroy any stock of equipment and goods referenced in this list that remains within their jurisdiction, unless used for the exclusive purpose of public display in a museum in view of their historical significance;
- ensure that advertising of such equipment and goods by any means is prohibited;
- forbid the provision of technical assistance related to any of the prohibited goods and equipment, except for procedures dedicated to conservation and preservation in museums
- ensure that effective, proportionate and dissuasive sanctions exist for activities in breach of [the prohibitions on advertising and technical assistance].

(One could understand the requirement to destroy stocks of prohibited goods and equipment to imply a prohibition on their production.)

Question 2: Regulation of trade

2.1 Does your country have national legislation or alternative regulatory, administrative, judicial or other measures, which prohibits the trade (import, export, transit) in any of the goods listed at 1.1. Please explain these legislation/measures and provide a copy or hyperlink to those documents.

Reply

The Appendix to Recommendation CM/Rec(2021)2 calls on Council of Europe member States to “ensure that national legal frameworks and administrative measures are established and implemented to prohibit the import, export and transit of equipment and goods, and the supply of technical assistance and training relating to [prohibited] equipment and goods” (paragraph 1.1.)

2.2 Does your country’s national legislation (or other measures) also regulate the trade (import, export, transit) in goods that have a “legitimate law enforcement purpose, but which may be easily abused for torture and ill-treatment or punishment”? Please explain these legislation/measures.

When answering this question, please be specific regarding the regulation of any of the following law enforcement equipment and consider the following:

- i. Riot control agents, malodorants, and associated delivery mechanisms*
- ii. Handcuffs, leg-cuffs and associated restraints, spit hoods and spit guards*
- iii. Acoustic devices and weapons that do not cause long-term or permanent damage to hearing*
- iv. Dazzling weapons employing lasers or optical light*
- v. Batons, truncheons, and other similar hand-held striking weapons*
- vi. Kinetic impact projectiles (including rubber bullets and plastic bullets) and associated launchers*
- vii. Electric shock projectile devices*
- viii. Other*

Reply

In relation to “controlled goods and equipment”, the Appendix to Recommendation CM/Rec(2021)2 calls on Council of Europe member States to:

- establish effective national export and transit control measures [the text contains further detail on specific measures to be taken in this respect] (paragraph 3.1.);
- establish effective national measures on licensing [the text contains further detail on specific measures to be taken in this respect] (paragraph 3.2.)

2.4 Other activities: Does the relevant legal framework (or alternative measures) regulate any of the following activities: promotion, brokering, transportation, technical assistance, and training in the use of prohibited or controlled goods?

(See answers to questions 1.1, 2.1 and 2.2 above)

2.5 Definitions and categorizations: How are prohibited and/or controlled goods defined and categorised under national legislation (or alternative measures)? If there are lists of prohibited and/or controlled goods, please provide details, including what mechanisms there are for updating these categories/lists, how often they are updated, and when was this last done.

Reply

Appendix I to Recommendation CM/Rec(2021)2 states that inherently abusive [i.e. prohibited] goods and equipment should be considered to include but not to be limited to:

- gallows, guillotines, blades for guillotines, gas chambers, electric chairs and automatic lethal injection systems designed for capital punishment;
- thumb-cuffs, finger-cuffs, thumbscrews, bar fetters; cuffs for restraining human beings, designed to be anchored to a wall, floor or ceiling; weighted leg restraints; gang chains comprising bar fetters or weighted leg restraints, restraint chairs and shackle boards/beds with metal restraints; cage beds and net beds;
- spiked batons or truncheons and shields with metal spikes, whips comprising multiple lashes or thongs or having one or more lashes or thongs fitted with barbs, hooks, spikes, metal wire or similar objects enhancing the impact of the lash or thong;
- body-worn electric shock devices such as belts, sleeves and cuffs designed for restraining human beings by the administration of electric shocks

Appendix III states that controlled goods and equipment should be considered to include but not to be limited to:

- shackles, gang chains, spit hoods, individual cuffs or rings fitted with a locking mechanism, having an inside circumference exceeding 165 mm when the ratchet is engaged at the last notch entering the locking mechanism;
- portable electric discharge weapons that can target only one individual each time an electric shock is administered, including but not limited to electric shock batons, electric shock shields, stun guns and electric shock dart guns, and kits containing the essential components for assembly of such portable discharge weapons;
- fixed or mountable electric discharge weapons that cover a wide area and can target multiple individuals with electric shocks;
- riot control agents (RCAs) employed for law-enforcement purposes, such as:
 - o 2-Chlorobenzylidenemalonitrile (CS) (CAS 2698- 41-1);
 - o 2-Chloroacetophenone (CN) (CAS 532-27-4);
 - o Dibenz-(b,f)-1,4-oxazepine, (CR) (CAS 257-07-8);
 - o N-Nonanoylmorpholine, (MPA) (CAS 5299-64-9);
 - o Oleoresin capsicum (OC) (CAS RN 8023-77-6);
 - o Pelargonic acid vanillylamide (PAVA) (CAS RN 2444-46-4);
- RCA dispersal equipment targeting one individual or disseminating a limited dose over a small area;
- fixed RCA dispersal equipment intended for disseminating a limited dose of RCA over a small area inside a building;
- RCA dispersal equipment intended for disseminating RCAs over a wide area, including water cannons.

2.6 Actors: Please indicate whether the relevant legal framework (or alternative measures) covers trade of goods undertaken by any of the following actors: commercial companies, State-owned companies, police forces, military forces, other State or private entities.

Reply

Recommendation CM/Rec(2021)2 calls on Council of Europe member States to “ensure, by appropriate means and action, a wide dissemination of the principles set out in the appendix to this recommendation among competent authorities, notably those implementing and overseeing regulation of the trade in goods that can be used for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, specifically including national human rights institutions, national preventive mechanisms, ombudsman institutions, relevant trade unions, civil society organisations, companies manufacturing, promoting and transferring law-enforcement equipment and other relevant goods, such as certain pharmaceutical chemicals, and companies organising and operating trade fairs, as well as other relevant natural and legal persons domiciled in member States” (paragraph 2).

2.7 Human rights risk assessment: When determining whether to allow specific exports of controlled law enforcement equipment and weapons to a potential end user in a recipient State, are the goods subject to a human rights-based risk assessment procedure? As part of that procedure, is there an assessment of the risk that the goods to be exported may be used for potential acts of torture or other cruel, inhuman, or degrading treatment or punishment? If so, please describe what this assessment entails.

Reply

The Appendix to Recommendation CM/Rec(2021)2 calls on Council of Europe member States to “ensure that the evaluation of export licences or transit applications incorporates an assessment of the risk that [controlled goods and equipment] will be diverted or used for torture and other cruel, inhuman or degrading treatment or punishment. The assessment should take into account relevant judgments of international courts and information provided by competent authoritative international and national bodies regarding the use and regulation of the goods and equipment by the proposed end-users; other relevant information that may be taken into account includes national court judgments, reports or other information prepared by civil society organisations and information on restrictions of exports of [inherently abusive or controlled goods and equipment] by the country of destination” (paragraph 3.2.2.)

2.11 Future intentions: If your State has no legislation or measures currently in place, is your Government intending to introduce such legislation/measures? If so, please provide details of any commitments made to this end or processes that are ongoing (e.g. draft bills) and any timescale given for the introduction of such legislation/measures.

Reply

Recommendation CM/Rec(2021)2 calls on Council of Europe member States to “regularly review their national legislation and practice related to the trade in goods that are inherently abusive, as well as in goods which can be misused for the death penalty, torture and other cruel, inhuman or degrading treatment or punishment, in order to make sure that they comply with the measures set out in the appendix to this recommendation” (paragraph 1).