

# **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 78<sup>th</sup> session of the General Assembly**

### **Concept note and Questionnaire**

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#### **I. Background**

In Resolution 2001/62, the UN Commission on Human Rights called on “all governments 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” and requested the then-UN Special Rapporteur on Torture, Mr. Theo Van Boven, “to study the situation of trade and production in [-] equipment, its origin, destination and forms, with a view to finding the best ways to prohibit such trade and production and combat its proliferation, and to report thereon to the Commission.”<sup>1</sup> In his 2003 study that followed, the then-Special Rapporteur reminded States of their obligations under Article 2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and indicated that: “the enactment of legal and other measures to stop the production and trade of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment is part of this obligation of a general nature to prevent acts of torture.”<sup>2</sup>

In a subsequent 2004 report to the Commission on Human Rights, the then-Special Rapporteur recommended, inter alia, that States:

- Designate and prohibit the manufacture, transfer and use of certain forms of equipment specifically designed for or which “has no or virtually no, practical use other than for the purpose of” torture, whose use is inherently cruel, inhuman or degrading;
- Introduce strict controls on the export of other security and law enforcement equipment to help ensure that it is not used to inflict torture or ill-treatment;
- Consider the development of an international regulatory mechanism.<sup>3</sup>

Nearly fifteen years later, amid growing cross-regional support for an international instrument, the General Assembly adopted resolution 73/304, at its 73<sup>rd</sup> session, on 28 June 2019, entitled “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards”. Through this resolution, the General Assembly requested the Secretary General, with the provisions of resolution 72/163 in mind, to seek the views of Member States on the feasibility and possible scope of a range of options to establish common international standards for the import, export and transfer of goods used for (a) capital punishment, (b) torture or other cruel, inhuman or degrading treatment or punishment.<sup>4</sup> Resolution 73/304 also called on the Secretary General to subsequently establish a Group of Government Experts (GGE) to report on the range of options to establish common international standards.<sup>5</sup>

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<sup>1</sup> UN Commission on Human Rights, Resolution 2001/62, Torture and other cruel, inhuman or degrading treatment or punishment, paras 8-9.

<sup>2</sup> Study on the situation of trade in and production of equipment which is specifically designed to inflict torture Submitted by the Special Rapporteur on torture E/CN.4/2003/69, para. 35.

<sup>3</sup> Report of the Special Rapporteur on the question of torture, Theo van Boven, E/CN.4/2005/62, paras 37-39.

<sup>4</sup> UN General Assembly, Resolution Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards, 28 June 2019, Seventy-third session, A/73/L.94

<sup>5</sup> General Assembly resolution 73/304, paras 1-2.

The UN Secretary General's report, published in July 2020, noted that of those responding States, the majority supported the proposal to establish common international standards and that a majority were in favour of a legally binding instrument.<sup>6</sup>

In May 2022, the Group of Governmental Experts in their report recommended that any future international standards include a prohibition on the production and trade in inherently abusive law enforcement equipment. The GGE Report also recommended the development of trade controls on law enforcement goods "where there are reasonable grounds for believing" they will be used for torture or other ill-treatment. The GGE proposed two options for international regulation either (i) a legally binding international instrument or (ii) non-binding guidance that could eventually lead to a legally binding instrument. The Group recommended that the question of the death penalty be treated distinctly and separately from that of torture and other cruel, inhuman or degrading treatment or punishment.<sup>7</sup>

In resolution 77/209 adopted at its 77<sup>th</sup> session on 15 December 2022, the General Assembly called upon all States "to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment."<sup>8</sup>

## **II. Purpose of the report of the Special Rapporteur on torture**

The Special Rapporteur, Dr. Alice Jill Edwards, noted in her first interim report to the UN General Assembly in October 2022, that the trade in such equipment will be one of the subjects on her agenda, expressing her view that "some [weapons, equipment and devices used in law enforcement] appear to be designed for no legitimate reason except to inflict unnecessary harm on arrested or detained persons. Where they meet this threshold such devices should be banned outright".<sup>9</sup>

As a contribution to the ongoing discussions on the regulation of the production and trade in such equipment, the Special Rapporteur is dedicating her next report to the 78<sup>th</sup> Session of the General Assembly, to be presented in October 2023, on this subject, with a view to updating the general knowledge base around this subject. She notes that there are significant gaps in publicly available information documenting the contemporary scale, nature, and geographic scope of the production and trade in both inherently abusive equipment and law enforcement equipment and weapons misused for torture and other ill-treatment. Similarly, there is a lack of documentation and analysis of relevant national regulations.

As part of the research for this report, the Special Rapporteur kindly requests that all UN Member States complete the following questionnaire, detailing existing national legislation, policies and other measures intended to regulate this trade. The Special Rapporteur would also welcome contributions from other stakeholders including international and national non-governmental organisations,

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<sup>6</sup> UN, Report of the Secretary General, Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards, UN Doc. A/74/969, 28 July 2020, para. 36.

<sup>7</sup> Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards, Report of the Group of Governmental experts, Note by UN Secretary General, UN Doc. A/76/850, 30 May 2022.

<sup>8</sup> UN, General Assembly, Resolution on torture and other cruel, inhuman or degrading treatment or punishment, 15 December 2022, Third Committee, Seventy-second session, Resolution A/RES/77/209, para. 21.

<sup>9</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/77/2972, 4 October 2022, para. 49.

national human rights institutions, national preventive mechanisms, and companies and private entities involved in the production or trade of law enforcement equipment.

### III. Questionnaire

Kindly send your contributions to [hrc-sr-torture@un.org](mailto:hrc-sr-torture@un.org), by **28 April 2023**. Thank you in advance for your valuable contribution to the work of this mandate.

All submissions will be published on the website of the Special Rapporteur, unless the provider requests confidentiality.

Please note that The Omega Research Foundation (Omega) – an independent UK-based research organisation, will assist the Special Rapporteur with the research related to this study.

*When responding to this questionnaire, please provide copies of any national legislation or other regulatory, administrative, judicial or other measures relevant to the following questions.*

#### 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?

When answering this question, please be specific regarding the prohibition or regulation of any of the following law enforcement equipment and consider the following or other goods that may be prohibited in your country:

- i. Leg irons, gang chains, fetters, weighted leg restraints, thumb cuffs, restraints fixed to walls or other objects, blind-folds and hoods
- ii. Multi-point restraints such as shackle beds, restraint chairs and cage beds
- iii. Body worn electric shock devices such as electric shock belts
- iv. Direct contact electric shock devices such as stun batons, stun guns or stun shields
- v. Spiked batons, spiked shields, weighted batons, whips
- vi. Multi-barrel kinetic impact launchers, single non-metallic projectiles that contain ammunition containing multiple projectiles
- vii. Laser weapons intended to blind or impair sight
- viii. Millimetre wave energy weapons
- ix. Other

1.2 How are “prohibited goods” defined and categorised under national legislation (or alternative regulatory, administrative, judicial or other measures)? If there are lists of prohibited 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.

#### 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.

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

2.4 Other activities: Does the relevant legal framework (or alternative measures) regulate any of the following activities: promotion, brokering, transportation, technical assistance<sup>10</sup>, and training in the use of prohibited or controlled goods?

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.

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.

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.

2.8 Denial of export: In the last five years has your Government denied any requests (or licenses) to export law enforcement equipment and if so, how many times and on what grounds?

2.9 Reporting: Are exporters (including the State) required to report to the Government, Parliament or another entity, on the exports of controlled goods and related training? Are these reports publicly available? If so, please provide copies from 2018-2022.

2.10 Regional or international standards: Is the domestic legal framework (or alternative measures) based on existing regional or international standards, whether binding or non-binding? If so, please provide details.

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<sup>10</sup> “Technical assistance” can be considered as any technical support related to repairs, development, production (manufacture), testing, maintenance, assembly or any other technical service. It may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance can include verbal forms of assistance and assistance provided by electronic means.

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.

**Question 3: Main producers , suppliers and exporters of law enforcement equipment**

Please provide details of the main producers, suppliers and exporters of law enforcement equipment and weapons covered by the categories listed in Question 1.1 or 2.2, for the period 2018-2022.

**Question 4: Training Services and Review of Procedures**

What training is provided by relevant State entities (including military forces, police forces, immigration, or associated training colleges), commercial companies or academic institutions in the use of law enforcement equipment and weapons to domestic and/or foreign military, security or police personnel?

If such training is regulated, please provide details, including whether this regulation incorporates a human rights-based risk assessment procedure and whether certain types of training are prohibited.

**Question 5: Investigations and prosecutions**

Have there been any investigations, prosecutions and/or convictions for breaches of national law on the trade in such goods? If so, please provide details.