



# General Assembly

Distr.: General  
24 August 2023

Original: English

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## Seventy-eighth session

Item 73 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Torture and other cruel, inhuman or degrading treatment or punishment**

### **Note by the Secretary-General\*\***

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards, submitted in accordance with Assembly resolution [77/209](#).

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\* [A/78/150](#).

\*\* The present report was submitted after the deadline to reflect the most recent information.



## **Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards**

### *Summary*

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards, presents an annual overview of torture-related trends and developments, as well as a 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. The thematic study includes three separate annexes where the Special Rapporteur respectively (a) presents a preliminary list of items that she identified as inherently cruel, inhuman or degrading and that, as such, are considered to be prohibited; (b) recommends a list of goods that ought to be regulated at the national and international levels, as while they have a legitimate use, they can be misused for torture and therefore necessitate some level of oversight; and (c) depicts the number of companies and/or States trading or promoting equipment that is either inherently cruel, inhuman or degrading, or could be misused for torture or other cruel, inhuman or degrading treatment or punishment. The report concludes with a number of recommendations, in particular the development of an international torture-free trade instrument to complement and reinforce existing obligations to prohibit and prevent torture and other cruel, inhuman or degrading treatment or punishment.

## I. Trends and developments

1. In line with paragraph 1 (g) of Human Rights Council resolution 52/7, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards, presents her annual overview of trends and developments.

2. Every State Member of the United Nations is party to one or more international treaties that prohibit or prevent torture (see list contained in the interim report of the Special Rapporteur (A/77/502)). The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the best blueprint that we have to reduce significantly the extent to which torture is perpetrated today. The fortieth anniversary of the Convention in 2024 is the perfect landmark for all States to become a party to the Convention. Only 22 States are not yet party to the Convention, including India (signatory), the Islamic Republic of Iran, Malaysia, Myanmar, Singapore, the United Republic of Tanzania and Zimbabwe.<sup>1</sup> The Special Rapporteur commends the leadership of the State-led Convention against Torture Initiative<sup>2</sup> as they work constructively with all States to reach universal ratification and implementation of the Convention.

3. For the Convention to be effective it must be followed. Too many States are behind in their reporting and are therefore not benefiting from national conversations in the preparation of reports, as well as meaningful discussions with and advice from the Committee against Torture. Positively, a number of States, such as Kyrgyzstan and Mexico, have been drafting action plans with the active participation of civil society to implement the Committee's recommendations.

4. In the area of national anti-torture crime frameworks, there have been some advances and some setbacks. At least 108 countries have an explicit and autonomous crime of torture in their national criminal codes (see A/HRC/52/30). Of note in the past year, Pakistan has enacted the Torture and Custodial Death (Prevention and Punishment) Act, and in Thailand the Prevention and Suppression of Torture and Enforced Disappearances Act took effect. Denmark introduced a bill into parliament to establish torture as an international crime. In Italy, there were regrettable signals that a pending bill may water down the country's anti-torture law.

5. A growing number of States are pursuing action in the courts. Kenya instituted torture proceedings against 12 police officers for the first time relating to election violence in 2017. Universal jurisdiction has been used effectively to try fugitives from the Gambia, Iraq and the Syrian Arab Republic. Although Australia has charged its first suspect of possible war crimes carried out in Afghanistan after its independent inquiry, the Special Rapporteur expects further indictments given the scale of allegations. The sad reality remains that far too many torturers are getting away with it.

6. In June, Canada and the Netherlands applied to open proceedings against the Syrian Arab Republic before the International Court of Justice through article 30 (1) of the Convention. This is only the second time that this article has been activated in relation to disputes over the interpretation or application of the Convention. The adoption of the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes was another noteworthy development.

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<sup>1</sup> The other non-parties are: Barbados, Bhutan, Brunei Darussalam (signatory), Democratic People's Republic of Korea, Dominica, Haiti (signatory), Jamaica, Micronesia, Palau (signatory), Papua New Guinea, Saint Lucia, Solomon Islands, Tonga, Trinidad and Tobago and Tuvalu.

<sup>2</sup> <https://cti2024.org/>.

7. In the present period of war, when there are more armed conflicts than at any time since 1945, there has been a corresponding uptick in torture. The Special Rapporteur has sent enquiries to the Russian Federation regarding information that she received which appears to show a pattern of torture by Russian military forces. The consistency in purposes, methods and supervisory structures suggest a level of coordination that points to direct authorization, deliberate policy or official tolerance from superior authorities. Torture and other cruel treatment have also been observed in the conflicts in Haiti, Mali, the Sudan, Yemen and elsewhere. The Special Rapporteur is particularly concerned by the prevalence of allegations of sexual violence.

8. There have been multiple incidents of police violence, some fatal, fuelled by a dangerous mix of heavily armed and technologically equipped police and increasing mobilization of social movements and peaceful protests. Incidents have taken place inter alia in Brazil, Chad, France, the Islamic Republic of Iran, Kazakhstan, Nicaragua, Peru, Senegal, Tajikistan, Tunisia, Türkiye and Uzbekistan. Deaths at the hands of police, including in the United States of America, continue to raise the alarm and call for a review of police leadership, recruitment, training and responsibilities. The demands on police in some countries to respond to call-outs for mental health emergencies have led to fatalities and serious injuries to persons with mental illness or dementia.

9. The deployment of torture and intimidation to quash political opposition and dissent has been reported in Afghanistan, Belarus, India, the Islamic Republic of Iran, Kazakhstan, Myanmar and Pakistan. Other worrying developments include examples of judicial harassment in Türkiye and clampdowns on human rights defenders and lawyers working specifically with torture victims, in Guatemala, the Russian Federation and Türkiye. The Organisation Mondiale Contre la Torture documents that human rights defenders are at risk in 55 countries.<sup>3</sup> China has remained defiant in the face of allegations of torture and ill-treatment against Uighurs in Xinjiang Uighur Autonomous Region. In all cases of alleged torture, investigations must be carried out. Public authorities are encouraged to review their rules of engagement to prevent future violations.

10. The extreme exclusion of women and girls from education, employment and other facets of public life in Afghanistan is degrading and inhuman, leading to unlawful suffering in violation of the prohibition of torture. Reproductive violence has been witnessed in a number of countries, including the repeal of constitutionally protected abortion rights in the United States, and other restrictions in Poland. Forcing pregnant women and girls to seek clandestine abortions is against the prohibition against torture and other ill-treatment; while denying abortion and other medical services to women and girls who have been raped or are survivors of incest risks exacerbating their trauma, subjecting them to additional psychological violence. In a world first, a military tribunal in the Democratic Republic of the Congo prosecuted and sentenced a leader of an armed group for forced pregnancy, recognizing it as a form of torture.<sup>4</sup> Liberia announced a three-year moratorium on female genital mutilation, in agreement with the National Council of Chiefs and Elders.

11. Death row has long been characterized as a form of inhuman treatment, as has the near total isolation of those convicted of capital crimes, who are often held in unlawful solitary confinement. Although the death penalty is permitted in very limited circumstances under international law, the reality remains that in practice it is almost impossible for States to impose it while meeting their obligations to respect the human

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<sup>3</sup> World Organisation against Torture, *Annual Report 2022*. Available at [www.omct.org/en/annual-report-2022](http://www.omct.org/en/annual-report-2022).

<sup>4</sup> *Case of Munyololo Mbaou, alias Ndarumanga*, Military Tribunal of Uvira, Democratic Republic of the Congo.

rights of those convicted. Serious allegations were received about executions in Afghanistan, the Islamic Republic of Iran, Saudi Arabia and the United States. The Special Rapporteur congratulates Equatorial Guinea and Ghana on having abolished the death penalty and welcomes the decision of the Parliament of Malaysia to revoke the country's mandatory death penalty for many serious crimes, a decision that could potentially spare the lives of 1,300 prisoners on death row.

12. The Special Rapporteur responded to urgent appeals to suspend deportation proceedings in respect of individuals at risk of torture or the death penalty. She reminds States of their obligations under the prohibition of refoulement, to which there are no exceptions.

13. Legislation passed in the United Kingdom of Great Britain and Northern Ireland (and proposals speculated in other countries) under which asylum-seekers and victims of trafficking, among others, are to be transferred to a third country (namely Rwanda) may – globally and in individual cases – violate the prohibition of refoulement. Obligations fall on both sending and receiving States. Some 30 per cent to 40 per cent of refugees are estimated to be victims of torture, and many others have secondary experience of it. They are particularly unsuited to accelerated processing, which limits the likelihood of identifying vulnerabilities and risks.<sup>5</sup> Past examples<sup>6</sup> where people have been transported to other countries and then left for years in endless legal or practical limbo, without long-term prospects for living fulfilling lives, are incompatible with the prohibition of torture and other ill-treatment. The Special Rapporteur cautions other States from following suit.

14. While taking note of an increasing number of persons who have been returned to their countries of nationality from the northern part of the Syrian Arab Republic in the past year, the Special Rapporteur joins calls for nationals to be brought home and, where applicable, prosecuted for any alleged crimes.

15. Through their presence, observations and recording, independent monitoring bodies shine lights on places where persons are deprived of their liberty. The Special Rapporteur welcomes the ninety-second ratification of the Optional Protocol to the Convention against Torture, by Côte d'Ivoire, and the establishment of new national preventive mechanisms in Benin, Burkina Faso, Madagascar and Mongolia. Owing to a denial of access to a number of places of detention, the visit of the Subcommittee on the Prevention of Torture to Australia was regrettably suspended, then cancelled for only the second time in the body's history.

16. Malpractice and incidents of violence in detention and prison facilities took place in many countries, which will be reported on more fully in the next report of the Special Rapporteur to the Human Rights Council.

17. Training and capacity-building on torture with the support of the United Nations and/or the Special Rapporteur were held in Australia, Georgia, Iraq, Morocco, Oman, Palestine, Timor-Leste and the United Kingdom.<sup>7</sup> Significant steps have been taken towards the international recognition and dissemination of the Principles on Effective Interviewing for Investigations and Information Gathering (Méndez Principles).<sup>8</sup> The

<sup>5</sup> European Court of Human Rights, *S.M. v. Croatia*, Application No. 60561/14, Judgment, 25 June 2020, para. 344.

<sup>6</sup> Special Rapporteur on Torture, communication AUS 7/2018. Available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>7</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *United Nations Human Rights Report 2022*. The Special Rapporteur or the staff supporting the mandate contributed to events in Australia, Morocco, Oman and the United Kingdom.

<sup>8</sup> See General Assembly resolutions 77/209 and 77/219. At the regional level, see resolutions of the General Assembly of the Organization of American States (OAS) (AG/RES.2991 (LII-O/22)) and African Commission on Human and Peoples' Rights (ACHPR/Res.545 (LXXIII) 2022).

state of Colorado in the United States joined another eight states that have curtailed or outlawed deception in police interviews with juveniles, a practice that regrettably is still prevalent in other states in the United States.

18. There was some noteworthy progress in respect of victims' rights to compensation and rehabilitation. The Republic of North Macedonia and Uzbekistan adopted new compensation laws. The International Criminal Court confirmed a package of more than \$30 million for thousands of victims of the warlord Bosco Ntaganda in the Democratic Republic of the Congo.

## **II. Global trade in equipment that can inflict torture and other cruel, inhuman or degrading treatment or punishment: a call for international regulation**

### **A. Introduction**

19. There is currently no international or multilateral agreement governing trade in items intended – or being misused – for torture or other cruel, inhuman or degrading treatment or punishment (other ill-treatment). In practice that means that companies are free to develop and sell items that have no legitimate purpose except to inflict pain and which are de facto modern-day torture tools, as horrifying as the racks and thumbscrews favoured by torturers in medieval Europe. These modern devices include spiked batons, thumb cuffs, electric shock shields and caged beds.

20. In her interim report to the General Assembly, the Special Rapporteur stated, “the manufacture, export and use of weapons, equipment and devices used in law enforcement [and by other public functions] ... designed for no legitimate reason except to inflict unnecessary harm on arrested or detained persons ... should be banned outright” (A/77/502, para. 49). Through the present report, she hopes to help inform discussions under the auspices of the United Nations towards a much-needed legally binding instrument.<sup>9</sup>

21. In the report, the Special Rapporteur clarifies existing legal obligations requiring States to prohibit and prevent the production, trade and use of certain items; presents a picture of the characteristics, scale and geographical scope of trade in equipment used for law enforcement and related public functions; and summarizes a range of existing regional and national practices. The Special Rapporteur presents her preliminary list of items that she has identified as inherently cruel, inhuman or degrading and, as such, they are considered to be prohibited (category A prohibited goods). The Special Rapporteur recommends a second list of goods that ought to be regulated at the national and international levels as, while these items have a legitimate use, they can be readily misused for torture necessitating some level of oversight (category B controlled goods). She makes a number of recommendations for the content of an international agreement.

22. The report covers equipment (restraints, weapons and other items) procured for law enforcement and other public authorities, including police, prison and other custodial services, gendarmerie, customs, immigration and border services, security and intelligence services and military carrying out internal security functions, as well as related oversight bodies, such as ministries of the interior and justice. Such

<sup>9</sup> General Assembly resolution 73/304; the report of the Secretary-General entitled “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards” (A/74/969); the report of the Group of Governmental Experts on torture-free trade entitled “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards” (A/76/850).

equipment is used in a wide range of contexts, such as ordinary law enforcement functions of arrest, interviewing, transportation or custody and during crowd control operations, as well as being used in hospitals, interview rooms, courts, prisons, immigration centres, hospitals and medical facilities, centres for youth, drug rehabilitation and psychiatric treatment and other places where persons are at risk of torture or other ill-treatment. The report does not cover military or dual use equipment or conventional arms or ammunition.<sup>10</sup>

23. Public authorities – including police and correctional services – have special responsibilities to protect our communities as well as individuals from unlawful treatment, while simultaneously being the public authorities most likely to be accused of misbehaviour. Such authorities are themselves human rights actors, and as such, they must put human rights at the centre of all their actions. States have obligations to “provide for the adequate selection, training, remuneration and equipment of law enforcement officials”.<sup>11</sup> When recruits are issued specific equipment, they must be able to trust that such equipment is lawful. The present report is aimed at helping States operationalize their globally accepted obligations to prohibit and prevent torture and other ill-treatment.

24. The Special Rapporteur is grateful for the submissions received from 10 States,<sup>12</sup> as well as 17 submissions from multiple additional stakeholders.<sup>13</sup>

## **B. Existing legal obligations to prohibit and prevent the use, manufacture and trade in certain items**

25. The *erga omnes* obligation to prohibit torture and other ill-treatment<sup>14</sup> is owed to the community of States as a whole and to every human being and requires concrete action to be taken. Concrete action would include regulating, monitoring and removing equipment and other items from the market which are not compatible with the absolute prohibition of torture and other ill-treatment.

26. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires the 173 States parties to take a wide range of measures that are proactive (i.e., prohibition and prevention) and reactive (i.e., investigation, prosecution and punishment). These obligations are also found in other human rights treaties (see [A/77/502](#)). In 2003, the then Special Rapporteur on Torture, Theo van Boven, reminded States that their obligation under article 2 of the Convention included: “the enactment of legal and other measures to stop the

<sup>10</sup> See instead, inter alia, Nuclear Supplier Group (1974); Australia Group (1985); Missile Technology Control Regime (1987); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (1993); Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (1995); Convention on Cluster Munitions (2008); Arms Trade Treaty (2014).

<sup>11</sup> [A/HRC/RES/46/15](#), para. 23.

<sup>12</sup> Public submissions were received from Armenia, Colombia, Germany, Lithuania, Maldives, Mauritius, Mexico, Switzerland and Uruguay. One State requested that its submission be kept confidential. The Special Rapporteur wishes to express her gratitude to the Omega Research Foundation for its detailed research and analysis of equipment and existing markets and regulations that have helped inform the present report; and Sidley Austin LLP for providing pro bono legal services. She is also grateful to a helpful conversation with the Working Group on business and human Rights and other mandate holders. The Special Rapporteur has exercised her best efforts to ensure the accuracy of information provided in the present report. Any correction or requests for clarification can be directed to the Special Rapporteur.

<sup>13</sup> All submissions are available at: [www.ohchr.org/en/calls-for-input/2023/call-input-nature-scope-and-regulation-production-and-trade-law-enforcement](http://www.ohchr.org/en/calls-for-input/2023/call-input-nature-scope-and-regulation-production-and-trade-law-enforcement).

<sup>14</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, *I.C.J. Reports 2012*, p. 422, para. 99.

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” (E/CN.4/2003/69, para. 35). Successive Special Rapporteurs on Torture have echoed this position (see A/68/295; A/72/178; A/77/502). The Special Rapporteurs on the rights to freedom of peaceful assembly and of association, and on extrajudicial, summary or arbitrary executions, have also taken up the issue (see A/HRC/31/66).

27. Since 2002, Member States have reaffirmed their commitment to “take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that is specifically designed to inflict torture”.<sup>15</sup> This includes equipment that has “no practical use other than for the purpose of torture or other [ill-treatment]”.<sup>16</sup>

28. The chorus of supporting voices for better global regulation is growing. The African Commission on Human and Peoples’ Rights,<sup>17</sup> the Council of Europe,<sup>18</sup> and the Organization for Security and Cooperation in Europe (OSCE)<sup>19</sup> have passed resolutions. Sixty States so far have joined the Alliance for Torture-Free Trade being led by Argentina, the European Union and Mongolia. Meanwhile, non-governmental organizations are appealing for a legally binding instrument.<sup>20</sup>

29. The Human Rights Committee’s general comment No. 36 (2018) on the right to life provides that States should be “supplying forces responsible for crowd control with effective, less-lethal means and adequate protective equipment in order to obviate their need to resort to lethal force”.<sup>21</sup> States should ensure that “less-lethal weapons are subject to strict independent testing and evaluate and monitor the impact on the right to life of weapons such as electro-muscular disruption devices (Tasers), rubber or foam bullets, and other attenuating energy projectiles”.<sup>22</sup> The Committee against Torture has raised concerns regarding a range of items on a number of occasions.<sup>23</sup>

30. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) prohibit the “use of chains, irons or other instruments of restraint which are inherently degrading or painful”.<sup>24</sup> The Rules require States to authorize by law the use of other instruments of restraint,<sup>25</sup> follow specific principles when using restraints such as those are least intrusive and necessary and reasonable

<sup>15</sup> General Assembly resolutions 56/143, para. 11; 57/200, para. 12; 58/164, para. 13; 59/182, para. 10; 60/148, para. 12; 61/153, para. 13; 62/148, para. 16; 63/166, para. 22; 64/153, para. 22; and 65/205, para. 23.

<sup>16</sup> General Assembly resolutions 66/150, para. 24; 67/161, para. 25; 68/156, para. 30; 70/146, para. 16; 72/163, para. 19; 73/304, third preamb. para.; 74/143, para. 20; and 77/209, para. 21.

<sup>17</sup> Resolution on the prohibition of the use, production, export and trade of tools used for torture (ACHPR/Res.472 (LXVII) 2020), adopted 3 December 2020.

<sup>18</sup> 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 31 March 2021; Submission from Human Rights Intergovernmental Co-operation Division, Council of Europe.

<sup>19</sup> Organization for Security and Co-operation in Europe, Ministerial Council decision No. 7/20 on prevention and eradication of torture, and other cruel, inhuman or degrading treatment or punishment, 4 December 2020, para. 21.

<sup>20</sup> Shoreditch Declaration for a Torture Free Trade Treaty, January 2023; Submissions from Torture Free Trade Network; International Rehabilitation Council for Torture Victims; Center for Victims of Torture.

<sup>21</sup> CCPR/C/GC/36, para. 13.

<sup>22</sup> Ibid., para. 14.

<sup>23</sup> See examples in Part D of the present report.

<sup>24</sup> Resolution 70/175, annex, rule 47 (1).

<sup>25</sup> Ibid., rule 47 (2).



to control the prisoner's movement,<sup>26</sup> and provide training on the use of control techniques that would obviate the need for the imposition of instruments of restraint.<sup>27</sup>

31. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide that law enforcement officials shall be equipped with self-defensive equipment such as shields and helmets and that States carefully control the development and deployment of non-lethal incapacitating weapons.<sup>28</sup>

32. The European Union's anti-torture regulation, binding on its 27 Member States, is a positive example of a regional framework targeting items intended for torture or other ill-treatment. It restricts trade outside the Union in items identified in annexed lists, combining outright prohibition of higher risk items and an authorization regime for lower risk items which have legitimate uses.<sup>29</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has opposed the use of certain devices and equipment, including electric stun body belts<sup>30</sup> and cage or net beds,<sup>31</sup> and has urged an end to devices that block vision or blindfolding during transportation or police interviews.<sup>32</sup>

33. In Africa, Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) contain the recommendation that "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".<sup>33</sup> The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) seek to "limit the permissible use of restraints, and the type of restraints, to ensure consistency with the presumption of innocence, treatment of detained persons that accords with respect for the inherent dignity of the person".<sup>34</sup>

34. Corporate accountability for human rights violations is widely recognized, and is becoming more important over time. The United Nations Guidelines on Business and Human Rights recognize that State entities and corporations have a role to play in preventing and mitigating adverse human rights impacts.<sup>35</sup> These norms are important as Governments outsource various public functions to private non-State entities, such as private security or military contractors, transportation companies and

<sup>26</sup> Ibid., rule 48 (1).

<sup>27</sup> Ibid., rule 49.

<sup>28</sup> Adopted by the Eighth United Nations Congress on Prevention of Crime and the Treatment of Offenders, Havana, C27 August–7 September 1990, paras. 2 and 3.

<sup>29</sup> European Union, Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (European Union anti-torture regulation). The European Union anti-torture regulation has subsequently been revised and strengthened over time; see Regulation No. 1236/2005 of 27 June 2005, Official Journal of the European Union L200/1, 30 July 2005. Regulation (EU) 2019/125, the latest consolidated version, came into force on 20 February 2019.

<sup>30</sup> European Committee for the Prevention of Torture, *20th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment: 1 August 2009–31 July 2010* (CPT/Inf (2010) 28) (Strasbourg, 26 October 2010), para. 74.

<sup>31</sup> European Committee for the Prevention of Torture, "Means of restraint in psychiatric establishments for adults" (Revised CPT standards) (CPT/Inf(2017)6), 21 March 2017, para. 3.4.

<sup>32</sup> Steering Committee for Human Rights, CDDH(2019)31, 21 November 2019, para. 48.

<sup>33</sup> African Commission on Human and Peoples' Rights, Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture in Africa (ACHPR/Res.61(XXXII)02), adopted 23 October 2002, para. 14.

<sup>34</sup> Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, sect. VI, para. 25 (d).

<sup>35</sup> United Nations Guiding Principles on Business and Human Rights, 2011, principles 2, 3 and 11.

correctional services providers (including in the immigration and refugee contexts). Similar privatization is also evident in the health, drug rehabilitation, elderly care, and psychiatric care sectors. Outsourcing does not absolve a State of its human rights obligations. States are required to establish national regulations, including imposing human rights due diligence responsibilities on operators which would encompass a risk assessment to rights-holders, as well as monitoring and reporting obligations. States are also obligated to investigate complaints and prosecute violations. As explained by the Working Group on business and human rights, “Businesses are not neutral actors; their presence is not without impact. Even if business does not take a side in the conflict, the impact of their operations will necessarily influence conflict dynamics”.<sup>36</sup> The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises expect risk-based due diligence assessments to be incorporated into enterprise risk management systems.<sup>37</sup>

### C. Scale, characteristics and geographical scope of the trade in question

35. Trade in equipment used for law enforcement and other public functions that can be deployed for torture or other ill-treatment is significant. According to one forecast agency, global trade in law enforcement equipment is estimated to be at \$18.3 billion, with a projection of \$27 billion by 2028, at a compound growth rate of 8.1 per cent.<sup>38</sup> The market in less-lethal weapons, a subset of the overall market, is estimated to reach nearly \$12.5 billion by 2028, rising from \$7.4 billion in 2020.<sup>39</sup> The industry involves a diverse range of companies from around the world, involved in manufacturing, promoting, supplying and training. It includes small businesses operating within their own or neighbouring countries, as well as medium and large private and State-owned enterprises with subsidiaries, agents, or associated entities in multiple countries. Many of these companies conduct business on a regional or global scale.

36. To provide an indication of the scale and character of the trade in items covered by the present report, the Special Rapporteur undertook research into commercial companies involved in the manufacture and supply or promotion of items that are considered inherently cruel, inhuman or degrading (category A items), and equipment that could be misused for torture or other ill-treatment (category B items), over the period January 2018 to June 2023. Information was gathered from a range of sources, including company websites, industry directories, as well as the exhibitor listings of international arms and security trade fairs. See tables reflecting traded items in annex 3.<sup>40</sup>

37. Major producers and exporters of items for law enforcement and other public authorities include China, the European Union, Israel, the Russian Federation, the United Arab Emirates and the United States. Companies in emerging economies, such as Brazil, Türkiye and South Africa, also produce for their domestic market and export widely.

<sup>36</sup> A/75/212, para. 43.

<sup>37</sup> General Principle 1, arts. 10–13, and IV on Human Rights.

<sup>38</sup> Research and Markets, *Global Police and Law Enforcement Equipment Market (2023–2028)* (February 2023).

<sup>39</sup> Allied Market Research, *Non-lethal Weapons Market Expected to Reach \$12.49 Billion by 2028*, 20 July 2023.

<sup>40</sup> Annex 3 will be available at: <https://www.ohchr.org/sites/default/files/documents/issues/srtorture/Annex3-to-GA-78-049.pdf>.

38. In her research, the Special Rapporteur found that more than 335 companies based in 54 countries in all regions had been engaged in manufacturing and/or promoting prohibited equipment in the Special Rapporteur's category A list. Nearly half of these companies were based in Asia (146), with the next highest number in Europe (76) followed by North America (71). Of these documented companies:

- Category A restraints were manufactured or promoted by 92 companies located in 21 States
- Thumb cuffs were manufactured or promoted by 51 companies in 15 States
- Category A striking kinetic impact weapons were manufactured or promoted by 133 companies in 35 States
- Spiked batons and spiked shields were manufactured or promoted by 27 companies in 3 States
- Category A electric shock weapons were manufactured or promoted by more than 200 companies in 38 States
- Direct contact electric shock weapons were manufactured or promoted by 196 companies in 38 States
- Information was not available regarding millimetre wave weapons

39. In her research, the Special Rapporteur was not able to identify the total number of companies engaged in manufacturing and/or promoting category B items, but she was able to identify that companies manufacturing and promoting such items were operating in at least 63 States. For example, restraints were manufactured or promoted in 44 States, while striking and kinetic impact weapons were manufactured or promoted in 54 countries. Projectile electric shock weapons were manufactured or promoted in 13 States; while chemical irritants and delivery mechanisms were manufactured or promoted in 52 States.

40. For trade in controlled law enforcement items covered by the European Union anti-torture regulation, collated data is more accessible owing to reporting obligations under the regulation. From 2017 to 2021, a total of 1,333 requests for export authorizations of controlled goods were received by national agencies, of which about 3 per cent were rejected.<sup>41</sup> The top 10 most recurring destinations for these goods in 2021 were Switzerland, South Africa, Andorra, United Kingdom, Japan, Australia, Bosnia and Herzegovina, India, Ukraine and Argentina.<sup>42</sup> The top European Union exporters were Czechia, Germany, Spain, France, Italy, Latvia, the Netherlands, Austria and Sweden.<sup>43</sup>

41. In terms of the promotion of equipment, more than 160 arms and security trade fairs and other related exhibitions were held in about 40 countries: 66 in Europe, 54 in Asia, 20 in North America, 12 in Latin America, 12 in Africa and 2 in Oceania. Equipment considered by the Special Rapporteur to be prohibited has been repeatedly marketed at such events. Some promoters were explicit about which items cannot be displayed at their trade fairs by citing applicable regulations.<sup>44</sup>

<sup>41</sup> Report from the Commission to the European Parliament and the Council on export authorizations in 2021 pursuant to the Regulation concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (COM(2022) 567 final), 31 October 2022. Note that the reported figures include trade in items for capital punishment, also covered by the European Union anti-torture regulation but not covered by the present report.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> Submission from Maat for Peace, Development and Human Rights referring to Egypt. Available at [www.cdis-egypt.com/compliance-eligibility-exhibit](http://www.cdis-egypt.com/compliance-eligibility-exhibit).

42. Countries are also involved in transferring items from both Categories A and B to a State's own military or police forces involved in peacekeeping or policing operations in other countries, often with little oversight. In addition, States or State-owned companies have gifted equipment directly to military, security, or police forces of other countries as part of assistance or development packages and security sector reform projects. Such transfers may circumvent any existing national government oversight and regulation mechanisms.

43. Various ancillary activities also play a crucial role in facilitating the transfer and broader trade of equipment. These include direct and third-country brokering services, promotional activities, financing and insurance, transport services, technical assistance and training.

#### **D. The Special Rapporteur's prohibited list of inherently cruel, inhuman or degrading items**

44. The Special Rapporteur's first list contains items (category A) which are considered to be inherently cruel, inhuman or degrading based on either (a) their technical specifications (design) such that they inflict pain or suffering, or are humiliating or debasing, that is, beyond the threshold permitted by the prohibition on torture or other ill-treatment; or (b) because the purpose for which they are being used can be achieved by less harmful means, and hence their purpose is deemed to be illegitimate. Regrettably, the use of such equipment has been documented in all world regions, in both custodial and extra-custodial settings. A total of 20 types of equipment or weapons have been identified based on available information. The Special Rapporteur will keep her list updated as developments arise. Annex 1 contains a detailed list and explanation of items in category A.<sup>45</sup> A summary is provided in the present report.

45. Certain restraints which pose a heightened risk of serious injury, or cause excessive or unnecessary stress or physical pain or mental suffering, or are humiliating or degrading, are listed as prohibited items. These include restraint chairs with metallic restraints, thumb-cuffs, leg irons/bar fetters, rigid bar combination cuffs, gang chains, weighted hand or leg restraints, fixed restraints, cage or net beds, hoods and blindfolds and spit hoods.

46. Restraint chairs with metal fixtures have been recommended for abolition by the former Special Rapporteur on Torture,<sup>46</sup> Juan Mendez, and the Committee against Torture as "[t]heir use almost invariably leads to breaches of article 16".<sup>47</sup> When used in police interviews, for example, they can be intimidating, giving a sense that questions must be answered and thus interfering with the presumption of innocence and the right to remain silent. Thumb-cuffs are another unnecessary and disproportionate restraint, which risk nerve damage and fractures of the fine bones of the thumb or hand. The Committee against Torture has called for bar fetters to be banned.<sup>48</sup> The Special Rapporteur considers that they unnecessarily restrict movement and stability resulting in heightened risk of injury and falls, and that ordinary restraints can be used instead. For this reason, she also adds rigid bar combination cuffs, which link hand and leg restraints causing significant restrictions on movement and stability such that they constitute an unlawful stress position.

<sup>45</sup> Annex 1 is available at: <https://www.ohchr.org/sites/default/files/documents/issues/srtorture/Annex1-to-GA-78-049.pdf>.

<sup>46</sup> A/68/295, para. 58.

<sup>47</sup> Report of the Committee against Torture (twenty-third and twenty-fourth sessions) A/55/44, p. 32.

<sup>48</sup> Committee against Torture, concluding observations on Bangladesh (CAT/C/BGD/CO/1), 26 August 2019, para. 46.

47. Gang chains, in which persons are restrained together, are inherently degrading, conjuring up negative and harmful connotations of slavery and other forms of servitude. Standard leg or hand restraints can achieve the same objective. Weighted hand or leg restraints, which add extra weight to restraints, increase risk of injury and perform no legitimate purpose that cannot be achieved by standard hand or leg cuffs. Fixed restraints in which single or double lockable cuffs are attached to a floor, wall, ceiling or other immovable object shackle prisoners in a degrading and inhuman way reminiscent of slavery and the convict era.

48. The Human Rights Committee has condemned the use of cage beds and net beds, specifically in psychiatric institutions.<sup>49</sup> The Special Rapporteur considers that such beds should be prohibited under all circumstances as caging individuals is treatment that is degrading per se and treats individuals as less than human.<sup>50</sup> The European Union bans their export.<sup>51</sup>

49. Hooding, in combination with other measures, has been held by the European Court of Human Rights to constitute inhuman treatment.<sup>52</sup> The Special Rapporteur considers that even alone the use of hoods and blindfolds carries unacceptable risks, causing a prisoner to become disoriented, stressed and at a heightened risk of suffocation, asphyxiation or even strangulation (some are even locked around the neck). She agrees with the European Court of Human Rights<sup>53</sup> that blindfolding a prisoner is contrary to the fundamental principles of fair justice as blindfolding and hooding prevent the identification of the perpetrators. The Special Rapporteur includes spit hoods and guards to her list, as they carry serious risk of causing anxiety, agitation, acute distress and disorientation to the detainees and can trigger other adverse reactions such as panic. They have been proved ineffective against transmissible diseases.<sup>54</sup> The Special Rapporteur considers that public officials should be provided with protective equipment to guard against transmission of blood or saliva as the appropriate human rights response.

50. Certain striking and kinetic weapons are a second category of item on the Special Rapporteur's category A list, owing to the excessive or unnecessary pain or injury caused, and for which standard equipment is available. Her list includes spiked batons, spiked shields and body armour, weighted batons and gloves, whips and sjamboks, lathis, ammunition containing multiple non-metallic kinetic impact projectiles and automatic/multi-barrel launchers firing kinetic impact projectiles.

51. Spiked batons, shields and body armour cannot be used without inflicting excessive and unnecessary pain or injury, as they easily tear through skin and can puncture vital organs and are thus inherently cruel.<sup>55</sup> Extra weight added to batons or gloves generates excessive kinetic energy inflicting serious pain and increasing risk

<sup>49</sup> Concluding observations of the Human Rights Committee (Czech Republic) (CCPR/C/CZE/CO/2) para. 13; European Committee for the Prevention of Torture, "Means of restraint in psychiatric establishments for adults" (see footnote 32), 2017, general principle 3.4.

<sup>50</sup> European Committee for the Prevention of Torture, CPT Standards, "Substantive sections of the CPT's General Reports" (CPT/Inf/E (2002) 1 – Rev 2015), p.59, para. 40.

<sup>51</sup> European Union anti-torture regulation, annex II.

<sup>52</sup> European Court of Human Rights, *Ireland v. United Kingdom*, Application No. 5310/71, Judgment, 18 January 1978, paras. 167 and 168.

<sup>53</sup> European Court of Human Rights, *Aksoy v. Turkey*, Application No. 21987/93, Judgment, 18 December 1996, paras. 60, 64 and 80; *Aydin v. Turkey*, Application No. 57/1996/676/866, Judgment, 25 September 1997, paras. 84 and 86.

<sup>54</sup> Australian Federal Police, Media statement on banning spit hoods, 14 April 2023. Available at [www.afp.gov.au/news-centre/media-releases/media-statement-0](http://www.afp.gov.au/news-centre/media-releases/media-statement-0).

<sup>55</sup> OHCHR, *Human Rights Guidance on Less-lethal Weapons in Law Enforcement* (Geneva, 2020), para. 5.1.

of serious injury, and for this reason they are considered inherently cruel, inhuman or degrading.

52. In certain Southern African States, police have used reinforced whips called sjamboks against individuals and to violently disperse public protests. In certain Asian States, police use lathis – polycarbonate, bamboo, or wooden rods – as weapons. These lathis can become particularly dangerous when a large group of officers collectively employ them in “lathis charges” to disperse large crowds. Owing to their design, the level of force is hard to control. Some of these rods can be excessively long and heavy. Certain whips, canes, and other hand-held striking weapons have been used in custodial contexts, including in the administration of formal judicially sanctioned corporal punishment. All forms of corporal punishment are prohibited.<sup>56</sup>

53. Ammunition and launchers containing multiple (as opposed to single) projectiles are unsafe to deploy. Because they are inaccurate, they hit targets indiscriminatorily and arbitrarily,<sup>57</sup> and pose a significant risk to bystanders, to whom authorities owe a duty of care. Such projectiles can cause significant injuries, including to sensitive parts of the body such as the head or eyes. They can also provoke panic and dangerous stampedes.

54. “Electric shock weapons”, such as body-worn electric shock devices and direct contact electric shock batons, shields and guns, are also prohibited. Their use is reported throughout the world. These devices allow for the repeated application of intensely painful electric shocks. Both the European Court of Human Rights and the European Committee for the Prevention of Torture have expressed “strong reservations” about the use of electric shock equipment in direct contact mode, noting that “properly trained law enforcement officers have many other control techniques available to them when they are in touching distance of a person who has to be brought under control”.<sup>58</sup> Many projectile electric shock weapons, commonly known as tasers (see category B controlled items list below), incorporate a drive-stun mode whereby the device can be used as a de facto direct contact electric shock weapon. The Committee against Torture has expressed concern about “the frequent use of the so-called “stun mode”, which is intended only to inflict pain”<sup>59</sup> and recommended that their “use in drive stun mode” should be prohibited.<sup>60</sup> The discontinuation of stun drive mode is necessary.

55. Body-worn and remote-controlled stun belts, vests and cuffs inflict severe pain on individuals, leading to symptoms such as muscular weakness, involuntary urination, defecation and even seizures. These devices are sometimes worn for extended periods, creating a constant fear of activation, which in turn results in profound anxiety and psychological stress. The Committee against Torture<sup>61</sup> and the

<sup>56</sup> Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, para. 5; Human Rights Council, *George Osbourne v. Jamaica* (CCPR/C/68/D/759/1997), 13 April 2000, para. 9.1; Committee against Torture, concluding observations on Bangladesh (CAT/C/BGD/CO/1), 26 August 2019, para. 46; Committee on the Rights of the Child, general comment No. 8, (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, para. 13.

<sup>57</sup> Joint submission from International Network of Civil Liberties Organisations et al.

<sup>58</sup> *Anzhelo Georgiev and Others v. Bulgaria*, Application No. 51284/09, Judgment, 30 September 2014, para. 76; European Committee for the Prevention of Torture, CPT Standards, “Substantive sections of the CPT’s General Reports” (CPT/Inf/E (2002) 1 – Rev 2015), p. 111, para. 78.

<sup>59</sup> Committee against Torture, concluding observations on the seventh periodic report of the Netherlands (CAT/C/NLD/CO/7), 18 December 2018, para. 42.

<sup>60</sup> Committee against Torture, concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (CAT/C/GBR/CO/6), 7 June 2019, para. 29.

<sup>61</sup> Report of the Committee against Torture (23rd and 24th session) A/55/44, para. 180 (c).

European Committee for the Prevention of Torture<sup>62</sup> have condemned the use of body-worn electric shock devices and recommended that such practices be halted.

56. Millimetre wave weapons are a form of directed energy weapon intended to disperse crowds and ensure compliance at a distance. They are designed to non-injuriously heat the topmost layer of skin of those targeted with a focused beam of millimetre wave energy with the aim of encouraging people to leave the scene. However, the silent and invisible nature of the beam makes avoidance difficult and can prevent people from dispersing safely and lead to panic-driven stampedes. Because the pain has been reported as intolerable and the potential short-term and long-term health effects are not yet fully known, such weapons appear on the Special Rapporteur's list of prohibited items.

### **E. The Special Rapporteur's list of equipment to be controlled because of risks of misuse**

57. The Special Rapporteur's second (non-exhaustive) category B list contains certain restraints, weapons and other equipment that can have a legitimate public function when used in strict accordance with international human rights standards but which pose a heightened risk of misuse for torture and ill-treatment. The items are set out in more detail in annex 2.<sup>63</sup> A summary is provided in the present report.

58. Certain restraints serve a legitimate purpose in ensuring the safe detention and restraint of individuals when "necessary" and "in a manner that is proportional to the objective sought and the resistance encountered";<sup>64</sup> however they are regularly misused. These items include restraint chairs with non-metallic restraints, restraint boards with non-metallic restraints, handcuffs, leg cuffs, combination cuffs and belly chains/restraint belts. Misuse includes excessive tightening, prolonged use, stress positions, including suspending prisoners, or to facilitate torture in conjunction with other means of force such as batons or pepper spray,<sup>65</sup> or by restricting movement to perpetrate rape or other sexual assault.

59. Some striking and kinetic impact weapons are commonly used to manage assemblies and protect public officials from violent attacks or during arrests of resisting suspects.<sup>66</sup> These items include batons, crowd control shields and ammunition containing single non-metallic projectiles. Human rights organizations from all regions have consistently documented their misuse both inside and outside of custodial settings.<sup>67</sup> Baton weapons have been misused to inflict pain and injury by targeting victims' joints, using abusive neck holds to choke, or committing sexual assault such as anal or vaginal rape.

60. Single projectile electric shock weapons, commonly known as tasers, are small weapons where darts connected by electrical wires deliver an incapacitating high-

<sup>62</sup> European Committee for the Prevention of Torture, *20th General Report* (CPT/Inf (2010)28) (see footnote 31), para. 74.

<sup>63</sup> Annex 2 is available at: <https://www.ohchr.org/sites/default/files/documents/issues/srtorture/Annex2-to-GA-78-049.pdf>.

<sup>64</sup> United Nations, *Resource Book on the Use of Force and Firearms in Law Enforcement* (2017), pp. 82 and 129.

<sup>65</sup> Council of Europe, "Report to the Spanish Government on the visit to Spain carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment" (CPT) 14 to 28 September 2020 (CPT/Inf (2021) 27) (Strasbourg, 9 November 2021).

<sup>66</sup> OHCHR, *Human Rights Guidance on Less-lethal Weapons in Law Enforcement* (2020), pp. 25 and 26.

<sup>67</sup> Amnesty International, "Blunt Force: Investigating the misuse of police batons and related equipment", 2021.

voltage electric shock at a distance, usually causing the person to lose muscle control and fall to the ground. The Committee against Torture has stated that they are permissible when “used exclusively in extreme and limited situations – where there is a real and immediate threat to life or risk of serious injury – as a substitute for lethal weapons and by trained law enforcement personnel only”.<sup>68</sup> However, the Committee is of the view that they should not form part of the equipment of custodial staff in prisons or any other place of deprivation of liberty, including mental health settings.<sup>69</sup> The Committee recommends “establishing a high threshold for their use [...] expressly prohibiting their use on children and pregnant women.”<sup>70</sup> Regrettably, there is widespread documentation of misuse in all parts of the world.<sup>71</sup>

61. Chemical irritants and delivery mechanisms are frequently used for legitimate purposes in the context of managing public assemblies and during the arrest and restraint of individuals. These include chemical irritants, malodorants, chemical irritant portable sprayers, chemical irritant projectiles and grenades, fixed sprayers, large calibre chemical irritant munitions and single/limited shot launchers. However, their misuse has been extensively documented, including cases where they have been used to mistreat and torture individuals in prisons, as well as during the policing of public assemblies. Concerns include their use in excessive quantities in the open air, as well as their use in confined spaces<sup>72</sup> which can lead to serious injury or death from the toxic properties of the chemical agents or from asphyxiation.

62. While the appropriate and selective use of limited amounts of certain chemical irritants, such as tear gas and pepper spray, may be justifiable in certain situations, certain delivery mechanisms can be indiscriminate or disperse excessive amounts of these irritants over wide areas, affecting large numbers of people. These mechanisms include remotely activated internal dispersion equipment fixed to walls or ceilings within places of detention, multiple-barrel launchers firing large salvos of projectiles simultaneously and equipment and munitions designed for dispensing substantial quantities of chemical irritants from aerial platforms.

63. A wide range of other types of equipment are placed in the Special Rapporteur’s category B because of their likelihood of being misused. These include water cannons, acoustic weapons and devices, dazzling lights and lasers, drones armed with less-lethal weapons and stun grenades.

## F. Examples of regional and national regulations

64. There are several regulatory regimes that govern the trade of military and dual-use items, which are considered to pose human rights or national security risks owing to their technical specifications or potential uses.<sup>73</sup> Many States have national regulations in respect of military or dual-use equipment including firearms and ammunition.<sup>74</sup> However, regulation of trade in other equipment that can be used for torture is presently far more limited.<sup>75</sup>

<sup>68</sup> Committee against Torture, concluding observations on the combined third to fifth periodic reports of the United States of America (CAT/C/USA/CO/3-5), 19 December 2014, para. 27.

<sup>69</sup> CAT/C/GBR/CO/6, para. 29.

<sup>70</sup> Ibid.

<sup>71</sup> Amnesty International and Omega Research Foundation, “Combating torture: the need for comprehensive regulation of law enforcement equipment”, 24 September 2018, p. 8.

<sup>72</sup> Submission from Melbourne Activist Legal Support.

<sup>73</sup> See footnote 11.

<sup>74</sup> Submissions from Armenia; Mexico; Asia Alliance Against Torture; joint submission from Amnesty International USA et al.; Dejusticia.

<sup>75</sup> See A/74/969.



65. The European Union anti-torture regulation is currently the only binding multilateral instrument specifically governing trade with third countries in equipment that can be used for torture.<sup>76</sup> Originally limited to regulating the export and import of covered items, it has progressively been expanded to regulate the provision of services – transit, brokering, technical assistance, training, displaying and offering for sale, advertising related to those items.<sup>77</sup> Annex II to the regulation contains a list of goods that are prohibited for export under article 3, including “goods which have no practical use other than ... for the purpose of torture and other cruel, inhuman or degrading treatment or punishment”.<sup>78</sup> Technical advice relating to such items is also prohibited.<sup>79</sup> Annex II to the regulation contains goods that require authorization for export under article 11, which are “goods which are primarily used for law enforcement purposes” and “present a material risk of use for torture or cruel, inhuman or degrading treatment or punishment”.<sup>80</sup> National competent authorities are designated to regulate and license the export and transit of items, excluding military, firearms and dual-use items which are subject to separate rules. National competent authorities also apply penalties in case of violations, subject to domestic regulations. An Anti-Torture Coordination Group has been tasked with examining the application of the regulation. European Union Member States have introduced national legislation<sup>81</sup> and produce statistics annually, including in some cases on end uses.

66. Certain other European States have introduced or are in the process of introducing national legislation or measures based on the European Union anti-torture regulation, including Iceland,<sup>82</sup> Montenegro,<sup>83</sup> North Macedonia,<sup>84</sup> and Switzerland.<sup>85</sup> The United Kingdom has retained the regulation following its exit from the European Union, such that United Kingdom rules remain broadly in line with those in the European Union.<sup>86</sup>

67. Outside the European Union, the picture is mixed. The United States has established a “Commerce Control List” covering a wide range of relevant equipment, requiring a human rights review before export is authorized. These items include less-lethal grenades and projectiles, devices to administer electric shocks, restraint devices, striking weapons and certain chemical irritants.<sup>87</sup> United States national measures include a separate category for items which are subject to a policy of denial for commercial exports to all destinations.<sup>88</sup>

<sup>76</sup> See footnote 30; submission from Service Foreign Policy Instruments of the European Commission.

<sup>77</sup> See Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (Official Journal of the European Union L 200/1, 30 June 2005).

<sup>78</sup> European Union anti-torture regulation, annex II.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Submissions from Germany and Lithuania.

<sup>82</sup> Ministry for Foreign Affairs, Regulation on the Control of Services and Items that may have Strategic Significance.

<sup>83</sup> Official Gazette of Montenegro (OG MNE No. 2/18), Law on Foreign Trade of Goods and Services Which May be Used for the Execution of a Death Penalty, Torture or Other Cruel, Inhuman or Humiliating Treatment or Punishment.

<sup>84</sup> Council of Europe, Steering Committee for Human Rights, draft feasibility study of a legal instrument to strengthen international regulations against trade in goods used for torture or other cruel, inhuman or degrading treatment or punishment and the death penalty (CDDH(2019)31), 21 November 2019, Response from North Macedonia to CDDH questionnaire.

<sup>85</sup> Submission from Switzerland.

<sup>86</sup> The Trade in Torture etc. Goods (Amendment) (EU Exit) Regulations 2020; joint submission from Action on Armed Violence et al.

<sup>87</sup> Commerce Control List Overview and the Country Chart, Part 738.

<sup>88</sup> Export Administration Regulations, Part 742 – Control Policy, title 15, § 742.11.

68. Australia assesses whether goods on its Defence Trade export control list, including certain equipment such as tear gas, “may be used to commit or facilitate serious abuses of human rights”.<sup>89</sup> In Brazil, the Ministry of Foreign Affairs considers the possibility of weapons, including kinetic impact ammunition, stun grenades, projectile electroshock weapons, and chemical irritant sprays and grenades, being used to facilitate human rights violations or breaches of international humanitarian law when deciding on authorizing their export.<sup>90</sup>

69. Canada requires export permits for riot control agents and certain electric shock weapons such as tasers. It conducts a human rights assessment process based on the criteria in the 2013 Arms Trade Treaty before issuing export permits for this equipment.<sup>91</sup> Similarly, New Zealand incorporates human rights assessments into export determinations of certain equipment.<sup>92</sup> Colombia established some national controls on the marketing, import and export of certain kinds of weapons, including handheld kinetic weapons, electronic control devices and kinetic impact projectiles.<sup>93</sup>

70. Maldives has import controls for a limited range of items, as well as permits for use. Although the Government acknowledges that a specific human rights-based risk assessment does not (yet) take place, the Police Services Act stresses that any less lethal weapon must not cause serious harm to any person and must be a weapon used by agencies in democratic countries.<sup>94</sup>

71. Mauritius maintains controls on the import and export of certain weapons and equipment for police which are monitored by the Mauritius Revenue Authority and Police.<sup>95</sup> Ghana and Nigeria likewise have import restrictions for “weapons ... designed for the discharge of any noxious liquid, gas, or other similar substance[s]”.<sup>96</sup>

## **G. Objectives and considerations for an international torture-free trade instrument**

72. The aspirations of an international agreement regulating the trade in items, used by law enforcement and other public authorities, that have the capability to be deployed for cruel, inhuman or degrading effects or other unlawful purposes, would be to:

(a) Assist States to implement their existing international obligations to prohibit and prevent torture and other ill-treatment by all means;

(b) Protect individuals in custodial and extra-custodial settings from being subjected to torture or other ill-treatment by removing specified items from circulation, as well as monitor and control the use of other items;

(c) Protect public officials by ensuring that they are properly protected and issued with lawful equipment that has a legitimate purpose when used in a human rights-compliant manner, and are provided sufficient training, oversight and accountability in the use of all equipment issued;

(d) Bring great transparency in equipment traded and procured that pose risks of torture or ill-treatment;

<sup>89</sup> Defence Trade Controls Regulation 2013, Section 8.

<sup>90</sup> Presidência da República Secretaria-Geral Subchefia para Assuntos Jurídicos, Decreto N° 9.607, de 12 de Dezembro de 2018.

<sup>91</sup> Submission from Harvard Law School International Human Rights Clinic.

<sup>92</sup> Ibid.

<sup>93</sup> Submission from Colombia.

<sup>94</sup> Submission from Maldives.

<sup>95</sup> Submission from Mauritius.

<sup>96</sup> Submission from Harvard Law School International Human Rights Clinic.

(e) Build responsible States, as well as companies.

73. The purpose of controls on trade in items outlined in the present report is not intended to disrupt trade in goods needed for legitimate official purposes, nor to make ordinary household items prohibited or controlled, even though they too can be used to torture.

74. Such an international agreement should be as wide as possible to cover all actions that are in the chain, including development, manufacture, import and export and transfer (inclusive of gifting), as well as associated practices including technical assistance and training, brokering, financing and promotion.

75. The agreement should halt all development, manufacture, use and trade (and related services) of prohibited category A items that are inherently cruel, inhuman or degrading. It should require the destruction and/or decommissioning of the listed prohibited items.

76. The manufacture, trade and use (and related services) of category B goods should be controlled by designation, and States would operate an authorization or licensing scheme, which would enhance accountability in the trade and use of such equipment. Operators would be required to carry out due diligence risk assessments.

77. Predefined lists, such as those contained in the European Union anti-torture regulation and some national laws and as presented in the present report by the Special Rapporteur, have the benefit of providing predictability to operators, who can easily cross-check whether their items are covered by the lists, and for customs controls. However, lists can quickly become outdated even with a mechanism or body designated with responsibility for updating those lists, a process that would be even more difficult at the multilateral level. Including also end-use controls<sup>97</sup> is attractive as these provide flexibility to adjust to fast-moving technological developments, or evolving human rights situations. End-use controls can also make operators more involved in identifying risks (as they are closer to information on underlying facts and should take action to prevent and mitigate those risks). The likelihood of a country diverting the goods for unauthorized purposes also needs to be assessed.

78. In terms of making assessments for denying or suspending authorizations in relation to evolving human rights situations, the question of the standard of proof is pivotal. The European Union anti-torture regulation provides that Member States “shall not grant any authorization where there are reasonable grounds to believe that [such] goods might be used for torture or other [ill-treatment], including judicial corporal punishment [-]”.<sup>98</sup> The Group of Governmental Experts also proposed that for export, import and transfer controls the standard of “reasonable grounds for believing that the law enforcement/detention equipment will be used for torture or ill-other cruel, inhuman or degrading treatment or punishment”.<sup>99</sup> Non-governmental organizations have also proposed this standard.<sup>100</sup>

79. Risk triggers should serve within a torture-free trade treaty and there are a range of sources to draw from in making such assessments. The European Union anti-torture regulation asks national competent authorities to take into account international court judgments and findings of various listed United Nations and European bodies, as well as those of the Special Rapporteur on Torture.<sup>101</sup> Reference could also be had to the

<sup>97</sup> By way of example, see regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (recast), OJ L 206, 11 June 2021, arts. 5 and 9.

<sup>98</sup> European Union anti-torture regulation, art. 12 (2).

<sup>99</sup> A/76/850, para. 126.

<sup>100</sup> Ibid., para. 97 (b).

<sup>101</sup> European Union anti-torture regulation, art. 12, para. 2 (a) and (b).

United Nations Framework of Analysis for Atrocity Crimes.<sup>102</sup> The Working Group on Business and Human Rights has highlighted four key triggers that invoke “heightened due diligence” responsibilities on businesses, namely: armed conflict or other forms of instability; weakness or absence of State structures; record of serious violations of international human rights and humanitarian law; and warning signals, such as the amassing of weapons and arms.<sup>103</sup> A country without regulations relating to goods on the Special Rapporteur’s lists would be another risk factor.

80. Constant monitoring of risks in other countries and a trigger mechanism for when trade should be temporarily suspended or cancelled should be a key feature of any national regulation and international agreement. The presence or imminence of such a threat erupting is also another key consideration, for which further reflection would be needed.

81. Any international agreement should require national legislation and regulation, which in turn should “set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations”<sup>104</sup> and lay out the applicable criminal or other sanctions for infringements. Disclosure and reporting obligations on companies would be a basic element of any national regulation.<sup>105</sup> Other requirements should include the duty to investigate infringements of the rules.

82. As a torture-free trade agreement is intended to promote respect for human life and fundamental human rights, it is considered that export controls would be compatible with the exceptions to international trade rules arising from either security considerations or public morals.<sup>106</sup>

### III. Recommendations and conclusion

83. **Given the transnational nature of the trade – and the widespread situations where human rights are being abused – the Special Rapporteur recommends that an international torture-free trade instrument be developed and encourages the participation of all States. Such an agreement would be intended to complement and reinforce existing obligations to prohibit and prevent torture and other ill-treatment or punishment. It is the Special Rapporteur’s view that any such agreement should:**

(a) **Define the range of equipment it covers and provide a list of prohibited inherently cruel, inhuman or degrading equipment and another list of controlled equipment that has a legitimate purpose but which can be misused for torture or ill-treatment and punishment. The category A and category B goods described in the present report, which are also listed in annexes 1 and 2, set out the Special Rapporteur’s recommended classifications of equipment types;**

(b) **Prohibit all inherently cruel, inhuman or degrading equipment, including the production, transfer (export, import and transit, including gifting), technical assistance (training on use and capacity-building), and related services, such as brokering, financial and insurance services and advertising at arms and security fairs, on the Internet, or through any other means;**

<sup>102</sup> United Nations, “Framework of analysis for atrocity crimes: a tool for prevention” (2014), risk factor 5.

<sup>103</sup> [A/75/212](#), paras. 14–21.

<sup>104</sup> United Nations, Guiding Principles on Business and Human Rights, 2011, principles 2, 3 and 11.

<sup>105</sup> OECD Guidelines for Multinational Enterprises (2011), III,1.

<sup>106</sup> World Trade Organization, General Agreement on Tariffs and Trade (1994), arts. XX (a), XXI (b) (i), (ii) and (iii), and (c).

- (c) **Require States to decommission or destroy all prohibited equipment in their territories or places and locations under their effective control;**
- (d) **Agree additionally on an end-use clause, such that where any item that is not (yet) listed but is considered to be inherently cruel, inhuman or degrading, or is presently or imminently at risk of violating the prohibition on torture or ill-treatment, such trade in the item shall be suspended or not authorized;**
- (e) **Obligate States to enact national laws, regulations and others measures to prohibit and prevent the production, trade, acquisition, stockpiling and use of prohibited goods and to regulate the trade in controlled goods that can be misused for torture and ill-treatment. National laws should impose risk assessment and due diligence obligations on operators; and require States to carry out investigations and impose appropriate penalties, including criminal prosecution, for any breaches;**
- (f) **Establish a (early) warning trigger mechanism requiring States (and operators) to temporarily suspend or cancel trade of items where there are reasonable grounds to believe that that the item in question is being used to torture or inflict ill-treatment or punishment;**
- (g) **Allow States to designate existing national control and monitoring systems or where that is not feasible or appropriate, establish new ones;**
- (h) **Require States to provide robust end user documentation for approved exports and transits and take measures to prevent diversion;**
- (i) **Obligate States to keep records and report nationally and internationally, to ensure transparency and accountability that supports strong treaty implementation, alongside international cooperation and assistance and other measures;**
- (j) **Provide for continuous monitoring and subsequent updating of the agreement.**

84. **At the national level, the Special Rapporteur recommends that States can already take a number of actions including to:**

- (a) **Review and amend national laws and procedures, in particular to ensure that items on the Special Rapporteur's category A items are prohibited and removed from production, trade and use, and that items on the category B list are controlled;**
- (b) **Establish a timetable to destroy and decommission any stocks of prohibited goods;**
- (c) **Ensure that public officials are informed about the prohibition of torture and other ill-treatment, trained on the proper use of equipment, and that any misuse of such equipment is reported, investigated and prosecuted;**
- (d) **Impose risk assessments and due diligence obligations on operators, disclosure and reporting requirements, and establish penalties for non-compliance;**
- (e) **Develop a mechanism of early warning that will trigger a suspension or cancellation of transfers of controlled equipment where there are reasonable grounds to believe that the item in question is at risk of being misused to torture or ill-treatment or punishment;**
- (f) **Designate responsibility to a national authorization body to authorize exports and transfers;**
- (g) **Update national procurement laws and regulations;**

(h) **Keep records and report periodically on the manufacture and trade in controlled items including number of approved licences, authorizations and rejections, as well as suspensions or terminations owing to risk of torture or other ill-treatment or punishment;**

(i) **Consult national preventive mechanisms, national human rights institutions including independent police oversight bodies, and others fulfilling similar functions in processes of identifying and updating of items in national lists.**

85. **The eradication of torture and other ill-treatment is a collective effort. The Special Rapporteur encourages the Committee against Torture and the Human Rights Committee (and relevant regional human rights bodies) to examine a State's trade and use of equipment referred to the present report in the course of their routine consideration of States parties' reports; and further recommends that these issues be taken up by the Subcommittee on the Prevention of Torture (and relevant regional bodies) during country visits.**

86. **Imagine a world where all inherently cruel, inhuman or degrading equipment used by law enforcement and other public officials was no longer in the hands of untrained officers or ruthless leaders, because its manufacture and trade had been banned. Consider a world where responsible exporters and government regulators halt the export of certain equipment when there is evidence that such equipment is being misused to torture, harm or repress political opponents or citizens exercising their rights to assemble and express themselves, or against other vulnerable persons including young people in detention, psychiatric patients, or the elderly. An important means of facilitating torture and other harmful or excessive conduct would be extinguished. Not only that, removing the incentive to trade in barbarous items would reduce research and development of such items: a significant victory for human rights.**

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