

**ENDING THE TRADE IN**

**“TOOLS OF TORTURE”:**

**FIVE KEY PRINCIPLES**



# ENDING THE TRADE IN “TOOLS OF TORTURE”: FIVE KEY PRINCIPLES

Every year in countries around the world, law enforcement officials subject detainees to torture and other forms of ill-treatment using a variety of equipment and techniques. This can take place on the streets, in transit, in police stations, prisons or detention centres. Some equipment - such as body worn electric shock devices, weighted leg restraints and spiked batons - is inherently abusive, while other equipment, like ordinary handcuffs, tear gas, pepper spray or Tasers, can have a legitimate role in law enforcement, but is systematically abused. Law enforcement officials also use techniques such as waterboarding, strangulation holds and hog-tying to commit acts of torture.

In 2004, following a study of the production and trade of law enforcement equipment and restraint devices, the UN Special Rapporteur on Torture urged States to introduce effective controls on such equipment. The United Nations General Assembly has subsequently 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 have no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment.”*<sup>1</sup>

Although every State has the obligation to combat torture and other ill-treatment, concrete action by States has generally been inadequate. To end this trade in “tools of torture” and prevent torture and other ill-treatment, Amnesty International and the Omega Research Foundation are calling on all States to incorporate in their legal and administrative frameworks the following five principles:

## 1. A BAN ON THE PRODUCTION OF AND TRADE IN INHERENTLY INHUMANE LAW ENFORCEMENT EQUIPMENT AND TRAINING

States should prohibit the production, export, import, transit, or trans-shipment<sup>2</sup> of equipment or related training:

- That has no practical use in law enforcement other than for the purpose of capital punishment, torture and other cruel, inhuman or degrading treatment or punishment; or
- Where its use in practice has revealed a substantial risk of unwarranted injury.

States should designate as prohibited law enforcement equipment such as: body-worn electric shock equipment (so-called stun belts); direct-contact electric shock devices; spiked batons and other spiked kinetic impact devices; thumb-screws and thumb-cuffs; neck cuffs; weighted leg or hand restraints; leg or hand restraints for attachment to fixed objects; restraint chairs, shackle-boards and shackle-beds; cage beds; and execution equipment such as gas chambers, gallows and electric chairs.

States must ban technical assistance such as: training in the use of prohibited equipment; training in the inappropriate use of equipment such as employment of batons for strangulation, neck-holds or use of restraints for “hog-tying”; training in torture techniques such as water-boarding, infliction of “white noise”; use of stress positions for sustained periods; and sleep deprivation and disorientation techniques.

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<sup>1</sup> See for example, United Nations, General Assembly, 66th Session, Third Committee, Torture and other cruel, inhuman or degrading treatment or punishment, A/C.3/66/L.28 Rev 1, 8th November 2011, paragraph 24.

<sup>2</sup> For definitions of transit and transshipment, see UNODA, Arms Trade Treaty Toolkit, Module 8 Transit and Trans-shipment, available at: <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2015/08/2015-08-21-Toolkit-Module-8.pdf>

States must establish a list of prohibited law enforcement equipment and related training and should regularly review and update this list to take account of new data and technological developments.

## **2. STRICT, RISK-BASED RESTRICTIONS ON THE TRADE IN LAW ENFORCEMENT EQUIPMENT THAT COULD BE EASILY MISUSED FOR TORTURE AND OTHER ILL-TREATMENT**

States should strictly regulate the import, export, transit or trans-shipment of equipment and associated technical assistance and training that can be used legitimately in a manner consistent with UN standards for law enforcement, but nevertheless can also be misused for torture and other ill-treatment.

Controlled equipment would include ordinary hand cuffs; truncheons and batons; kinetic impact projectiles and launchers, including plastic and rubber bullets; electric shock projectile weapons (Tasers); and riot control agents and appropriate means of delivery.

States must establish a list of controlled equipment and related technical assistance which must be regularly reviewed and updated to take account of new data and technological developments. If there is a substantial risk that the equipment would be used for purposes of torture and other ill-treatment by the recipient law-enforcement authority, or be diverted to another unauthorised end-user, States should not authorise the transfer.

## **3. A COMPREHENSIVE NATIONAL TRADE CONTROL SYSTEM**

States must establish a comprehensive national trade control system to vet prospective transfers of controlled equipment. Decisions to grant export authorisations for controlled law enforcement equipment should be made on a case-by-case basis by the competent authority in the State where the applicant is based.

To evaluate licence applications, the authority should take into account relevant information derived from UN and regional human rights monitors and respected NGOs, relating to the activities of the proposed law enforcement end users, in particular their compliance with human rights law and standards and their reported use, misuse and regulation of law enforcement equipment. States must regularly review export licences; in the event of the emergence of any substantial risk of misuse, states must immediately suspend licences pending further review.

The control system should also incorporate:

- a legal framework to strictly regulate brokering, transport and other services that includes registration of operators and licensing of their activities;
- end-use controls through verifiable written undertakings and subsequent end use monitoring mechanisms;
- criminal or other proportionate sanctions for any violation of relevant trade legislation;
- a system of detailed record-keeping of all international trade and transactions of law enforcement equipment processed through the national control system.

## **4. REPORTING AND INFORMATION SHARING ON THE TRADE IN “TOOLS OF TORTURE”**

States should inform their legislature and share information with other States about measures taken to regulate the trade in law enforcement equipment and technical assistance. They should publish an annual report in a timely

manner containing meaningful information on the volume, value, nature of equipment, and destination of their trade in this area, so as to enable appropriate oversight by elected representatives and independent bodies. States should notify their legislature of all decisions approving or rejecting a request for an export authorisation and of any decisions rescinding an export authorisation that has already been granted, along with the reasons for each decision.

## 5. REGIONAL AND INTERNATIONAL MEASURES TO REGULATE THE TRADE IN “TOOLS OF TORTURE”

Establishing effective national measures to regulate the trade in law enforcement equipment and technical assistance is an important step that all States can immediately take to fulfil their international obligations to combat torture and other ill-treatment. However national measures, though vital, will not be sufficient to ensure that law enforcement agencies engaged in torture and other ill-treatment do not continue to receive the “tools of torture” from unscrupulous exporters in other countries. To combat such activities, inter-governmental organizations should establish regional, and eventually international, standards and instruments regulating trade in this area.

In May 2005 the EU adopted European Council (EC) Trade Regulation No. 1236/2005 *concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment*. The EC ‘Torture Regulation’, which came into force in May 2006, filled a major gap in human-rights-based export controls, introducing unprecedented trade controls that are binding on all EU Member States on a range of security equipment. EC Regulation 1235/2006 can go a long way to ensuring that companies operating in the EU do not facilitate and thereby profit from torture and other ill-treatment conducted elsewhere.

However the EC ‘Torture Regulation’ cannot directly influence trade and transfers between countries outside the EU. This needs action by the wider international community.

Amnesty International and the Omega Research Foundation believe that the EC ‘Torture Regulation’ should act as a precedent and spur for the introduction of similar controls by other sub-regional, regional and multilateral organizations. It is hoped that the establishment of effective national controls to regulate the trade in law enforcement equipment by a growing number of States, together with initiatives at the regional level, will eventually lay the basis for the development of much needed international trade controls on such equipment.

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