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# European Union: Stopping the Trade in Tools of Torture

## Introduction<sup>1</sup>

At a time when the use of torture and cruel, inhuman and degrading treatment and punishment<sup>1</sup> remains widespread in many countries and has even been justified as part of the “war on terror”, governments of the European Union (EU) have made a commitment to prevent the trade in what may broadly be described as “tools of torture”.<sup>2</sup> However, the EU commitment is not yet strong enough to adequately prevent this trade.

As a result of concerns raised by Amnesty International and others, EU governments have consented to the European Commission (EC) bringing into force the “*European 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, 27 July 2005, (the Regulation)*”. This Regulation came into effect on 31 July 2006. To help prevent torture and other ill treatment, it is vital for all EU Member States to fully implement and strengthen the Regulation. Nevertheless, as this report shows, equipment designed for “security” purposes but which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (other ill treatment) has still been traded over the last few years by EU companies. As explained below, additional weaknesses also remain in the operational provisions of the Regulation and their application by Member States.

Amnesty International has campaigned for many years to end the trade in “torture equipment”. The prohibition on torture and other cruel, inhuman or degrading treatment or punishment extends to all circumstances, even during war.<sup>3</sup> The right to freedom from torture is so absolute that it can never be restricted. Torture is always, in every situation, unacceptable. Amnesty International therefore welcomes the introduction of the Regulation but is concerned about “loopholes” contained within the Regulation, which must be addressed by the European Commission, and weaknesses in the national implementing legislation of EU Member States.

In particular, this report identifies certain types of equipment with no practical use other than for the purpose of torture and other ill-treatment but which is offered for international sales to law enforcement agencies and is *not yet prohibited* by the new Trade Regulation. These include:

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<sup>1</sup> Research on equipment and trade for this report was carried out by the Omega Research Foundation, partly funded by the EC.

- spiked batons which are not on the Prohibited list in Annex II of the Trade Regulation;
- “irons” and “chains”, even though the Regulation acknowledges that these items should not be used as restraints;
- "wall handcuffs" which are designed to be permanently attached to a wall in a police or detention facility;
- “specially designed hanging ropes”, despite evidence of the existence of such ropes and the aim of the Regulation to prohibit the trade in death penalty equipment.

In addition, this report identifies types of equipment that could be used for the purpose of torture and other ill treatment but which *are not yet on the control list* of the Regulation. These include:

- a range of electric-shock devices on the international market that have been designed to operate at a voltage level below 10,000 volts which are specifically exempt from the Regulation – for example, the “PRO-TEC Personal Protector” which is described as having an operating voltage of 400 volts;
- “ordinary handcuffs” – although such items can be used as an essential tool of restraint in effective law enforcement, Amnesty International has documented many occasions where handcuffs have been used for torture or other ill-treatment;
- interrogation equipment and technology that can be easily used for torture and other ill-treatment;
- “sjamboks” or other specially designed whips

Moreover this report sets out why the Regulation has other weaknesses in its operational provisions and its application:

- based on responses to Amnesty International from EU Member States it appears that only 11 out of the 27 EU Member States have so far enacted laws or regulations to implement penalties under the Regulation;
- at least 3 EU Member States (Belgium, France and the Czech Republic) have indicated they have yet to enact legislation establishing penalties for infringements of the Regulation, despite this being a requirement of the Regulation.
- brokering<sup>4</sup> the transfer, sale or export of "torture" or other ill-treatment and death penalty equipment by EU citizens and residents, and by EU registered companies,

will not be prohibited by the Regulation, despite an EU Common Position requiring national laws to control arms brokering;

- national controls on intra-EU transfers of such equipment are not required by the Regulation despite documented incidents of torture or ill-treatment using for instance electric-shock batons within EU Member States;
- the transit and transshipment of “torture equipment” through the EU is not expressly prohibited;
- whilst the Regulation does prohibit the import of goods listed in Annex II, the Regulation does not adequately control the import of goods listed in Annex III;
- the provision of technical assistance by EU persons, residents or companies to third parties regarding the use of equipment listed in the Regulation is only partially addressed;
- the EC should add a “catch-all-clause” to extend controls to all types of equipment where it is reasonable to anticipate that the end-user will use such equipment to commit, or facilitate, torture or other ill-treatment.

Amnesty International also urges the EC to ensure the effective operation of machinery specified in the Regulation for reviewing compliance and the introduction of new equipment to be controlled. In particular Amnesty International is concerned that the committee tasked to assist the EC with matters relating to the Regulation appears not to have met since 2001 and that despite requests from Amnesty International, the EC has been unable to provide any information about the committee, its membership or its secretariat.

## 1. The Regulation

On 3 October 2001, the European Parliament adopted a Resolution urging the Commission to:

*"act swiftly to bring forward an appropriate Community instrument banning the promotion, trade and export of police and security equipment whose use is inherently cruel, inhuman or degrading"*<sup>5</sup>

and to ensure that this European Community instrument would:

*"suspend the transfer of police and security equipment whose medical effects are not fully known and of such equipment where its use in practice has revealed a substantial risk of abuse or unwarranted injury."*

In December 2002, the European Commission (EC) proposed a Council Trade Regulation (COM (2002) 770) to control, and in some cases prohibit, equipment that has been used for torture and other cruel, inhuman or degrading treatment or punishment.

The drafting of the Trade Regulation made slow progress and it was not until a Working Party on Trade Questions met on the 12 May 2005 that all delegations and the Commission agreed with a compromise proposal submitted by the then Luxembourg Presidency.

On 30 July 2006, European Commission Trade Regulation No. 1236/2005 came into force. Amnesty International welcomed the introduction of the Regulation, the first such regional legislation in operation anywhere in the world, as a positive and necessary step to control the trade in the equipment that is frequently used for torture and other ill-treatment.

The Regulation was created to:

- a) ban the trade in goods which "have no practical use other than for the purpose of capital punishment" or "for the purpose of torture and other cruel, inhuman or degrading treatment or punishment" (Annex II) and;
- b) introduce EC wide export controls on a limited range of items that "could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment".

While Amnesty International welcomed the Regulation it is concerned that the Regulation falls short of achieving these purposes in a number of areas. This report aims to highlight these areas and provide recommendations to Member States and the European Commission to strengthen the Regulation.

## **2. Obligations to implement and enforce the Regulation**

The Regulation came into force across the European Union on 30 July 2006. However, its practical effectiveness will depend substantially upon the willingness of Member States, and the European Commission, to implement, monitor and enforce it. An EU regulation is directly binding on all EU member states and supersedes national laws. This means that across the EU, this Regulation will automatically take effect at the national level, however, all states need to set up a penalty regime to enforce the law.

### **Limited enforcement measures:**

Whilst the Regulation has been in force for only six months and it is too early to assess how effectively Member States will enforce it, Amnesty International is concerned that some

Member States have failed to make the Regulation enforceable under their national laws and penalties, despite this being an obligatory requirement of the Regulation.

In particular, the Regulation requires Member States to put in place “effective, proportionate and dissuasive” penalties for breaches of the Regulation. Although the Regulation obliges Member States to send details of national legislation and penalty regimes to the EC by 29 August 2006, according to an EC official not all Member States have in fact done so.<sup>6</sup>

During research for this report, Amnesty International contacted the relevant authorities in every EU Member State to request details of national laws implemented to enforce the Regulation. At the time of writing this report,<sup>7</sup> Amnesty International had received information from twenty-two of the twenty-seven Member States contacted.<sup>8</sup>

According to this information, of these twenty-two Member States:

- only 11 states have passed specific legislation implementing the Regulation and introducing penalties for breaches: Austria, Denmark, Eire, Greece, Lithuania, Luxembourg, Malta, Poland, Slovenia, Sweden and the UK. In addition, Amnesty International was informed that Finland’s existing national penalties for ‘Regulation Offences’ will cover breaches of the Regulation.<sup>9</sup>
- implementing legislation was reported to be in the process of being drafted and enacted in ten other states (Belgium, the Czech Republic, Cyprus, France, Germany, Italy, Latvia, Netherlands, Slovakia and Spain), although only one (the Czech Republic) provided a copy of the draft legislation.
- officials from three of these states (Belgium,<sup>10</sup> France<sup>11</sup> and the Czech Republic<sup>12</sup>) confirmed that the legislation will not be in force until later in 2007. This is particularly problematic in the case of France and the Czech Republic, since Amnesty is aware of companies in both countries which say they have manufacture and exported equipment controlled by the Regulation (leg-irons or electric-shock devices).<sup>13</sup>

Amnesty International is concerned that several Member States have still not enacted penalty regimes by the 29 August 2006 deadline imposed by the Regulation, despite this being an obligatory requirement of the Regulation.

**Recommendation: Amnesty International urges EU Member States, if they have not already done so, to fulfil their obligations under the Regulation by introducing legislation as soon as possible.**

### **Making manufacturers aware:**

Awareness of manufacturers and suppliers of policing and security equipment about their new legal obligations will also be critical to the effectiveness of the controls. Four states (Denmark, Finland, Spain and the UK) have stated that they have involved manufacturers and suppliers in meetings and consultations relating to the Regulation, or have sent details of the Regulation to supplier and industry bodies.<sup>14</sup>

**Recommendation: Amnesty International urges all EU Member States to take steps to make all manufacturers and suppliers of such equipment within their countries fully aware of the new controls.**

### **The Committee that never meets:**

Amnesty International is concerned that the mechanisms within the EC for effectively implementing and monitoring the Regulation do not appear to be functioning. Article 15 of the Regulation provides that when the Commission is dealing with matters relating to the Regulation;

*"The Commission shall be assisted by the committee on common rules for exports of products, set up by Article 4(1) of Regulation (EEC) No 2603/69."*<sup>15</sup>

Article 16 provides that the Committee will examine questions concerning the implementation of the Regulation. Despite repeated requests since May 2006, the Commission has been unable to provide details or contacts for this Committee, and Amnesty International has been unable to contact the Committee or to establish its membership or activities. We have found no indication of the Committee having met since 8 May 2001.<sup>16</sup>

Although this Committee procedure will (in theory) deal with general matters arising from the Regulation, the instrument lays down no procedure for a formal review of the Regulation. Amnesty urges the Committee to meet as required under the Regulation and for it to work to produce a clear timetable for review of the content of the Regulation and its effectiveness, particularly in the light of the need for improvements highlighted by this report.

## **3. Equipment not appropriately covered by the Regulation**

Amnesty International is deeply concerned that there are items of military, security or police (MSP) equipment or expertise that could be used to facilitate torture or other ill-treatment that are not yet subject to control under the Regulation or are inadequately controlled. The list of



equipment already prohibited by the Regulation is included in Annex II and the list of equipment controlled by the Regulation, which would require an authorisation, is listed in Annex III. Such export authorisations will be refused if there are reasonable grounds to believe that the items might be used for torture or other ill-treatment. Competent authorities should take into account:

- available international court judgements;
- findings and reports from the UN, Council of Europe, and the EU;
- other information from national court judgements, civil society and destination countries.

The items of MSP equipment that are not appropriately covered by the Regulation include:

- a. Equipment that is on the controlled list of the Regulation but should be prohibited (that is, move from Annex III to Annex II)
- b. Equipment that is not listed but should be prohibited (that is, put into Annex II)
- c. Equipment that is not listed but should be subject to control (that is, put into Annex III)

#### **a) Equipment that is on the control list but should be prohibited (that is moved from Annex III to Annex II)**

##### **Leg irons**

In the final text of the Regulation leg irons or "irons" were moved from Annex II (prohibited) to Annex III (controlled). This move by the EU Member States contradicts the longstanding prohibition on the use of such "irons" as restraints in the UN Standards Minimum Rules for the Treatment of Prisoners.<sup>17</sup>

*"As regards leg-irons, gang-chains and shackles and cuffs, it should be noted that Article 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners disposes, that instruments of restraint shall never be applied as a punishment. Furthermore, **chains and irons shall not be used as restraints.**"<sup>18</sup>*

In other words, even though the UN Standard Minimum Rules acknowledge that "irons" and "chains" should not be used as restraints, the trade in such goods will only be controlled and not prohibited by the Regulation.

In addition, Annex III of the Regulation defines leg-cuffs as cuffs with an "overall dimension, including chain, measured from the outer edge of one cuff to the outer edge of the other cuff" that is greater than 280mm. This is problematic in that it would allow companies

to supply larger ('oversized') cuffs with only a short chain attached, which could be exported from the EU and then be adapted to become leg irons by having a longer chain attached.

A more detailed definition of leg irons is that which existed in UK legislation, before it was amended to comply with the Regulation, and which defined leg cuffs as those incorporating:

*"Individual cuffs having an internal perimeter dimension exceeding 165mm when the ratchet is engaged at the last notch entering the locking mechanism and shackles made therewith."*<sup>19</sup>

As Amnesty International has consistently highlighted over the past 15 years, without export control laws and regulations in the EU containing explicit and detailed technical descriptions of security equipment, such as "cuffs", manufacturers and suppliers will sidestep controls on "leg irons" by exporting large cuffs without the chains only for the chains to then be attached and the equipment marketed, and used in foreign countries.

**Recommendation: The European Commission and EU Member States should explicitly include "irons", "chains" and "leg irons" in the list of prohibited items under the Regulation.**

**In addition, the European Commission and EU Member States should include an adequate description of handcuffs and 'oversized' cuffs in Annex III of the Trade Regulation in order to contribute to the prohibition in the use of leg irons.**

## **b) Equipment that is not listed but should be prohibited (that is, put into Annex II)**

### **Spiked Batons**

The photographs below show spiked batons, one described by the manufacturer as a "Sting stick" and reportedly used by Chinese police.



**Sting stick which was purchased from a Chinese supplier by school students as part of the Dispatches programme 'After School Arms Club' broadcast in April 2006 Photograph taken in London, 14 March 2006. © Robin Ballantyne**

A February 2002 account from Falun Gong members, details how Chinese police officers threatened to use such equipment at Wanyaoshan Detention Centre.

*“Policewoman Fan saw one of the practitioners lying on the ground motionless, so she kicked her brutally and said, “Get up! Don't play dead. If you don't get up now, I'll use the spiked baton to beat you to death.”<sup>20</sup>*

The UN Code of Conduct for Law Enforcement Officials<sup>21</sup> states that police officers and others may use force “only when strictly necessary and to the extent required for the performance of their duty”. It is difficult to see how such “spiked” batons would meet this UN requirement.

While Amnesty International has found no evidence to suggest there are EU companies, producing and trading in this equipment, Amnesty International nonetheless urges the EU to ban the trade in this type of equipment which has no practical use other than for the purposes of torture or other ill-treatment.

**Recommendation: The European Commission and EU Member States should ensure that equipment which has no practical use other than for the purposes of torture or other ill-treatment, such as “steel sting sticks” and “spiked batons”, is added to Annex II and banned for export.**

### **Hanging Ropes**

The Regulation introduces a prohibition on the export of most types of death penalty equipment. However, despite representations from Amnesty International to the Chair of the Council Working Party on Trade Questions<sup>22</sup>, the Regulation does not introduce export controls for “specially designed hanging ropes”. Some EU Member States apparently argued

that it would be impossible to introduce such controls as this would catch the whole range of “ordinary” ropes.

Little has been written about the subject but it is clear that there is both i) a market and ii) technical specifications, for specially designed hanging ropes and this should be addressed by the Regulation, as the examples below illustrate.

In August 2004, a newspaper article identified that Central Jail at Buxar, a district town 100 km from Patna, India was “probably the only place in the country where the hanging rope is made” and that the prison made three types of rope - tent rope, handcuff rope and hanging rope. The hanging rope is a “special Manilla rope which is supplied to other states on requisition for Rs 182 a kilo (about six ft)” and uses the “J-34 variety of cotton for making hanging rope.”<sup>23</sup>

In October 2006 the Times of India reported the purchase of a hanging rope for the execution of Mohammad Afzal, who was sentenced to death in December 2002 after being convicted of conspiracy to attack the Parliament of India (Afzal is yet to be executed following a mercy petition)<sup>24</sup>:

*”Deputy superintendent of Tihar jail Anjani Kumar visited Buxar Central Jail on Friday and purchased a special wax-coated Manila rope that weighs 3 kg and 750 gram and is 16 feet long.*

*The special rope, used for hanging those facing the gallows, is manufactured only in Buxar Central Jail. Confirming the purchase of the Manila rope by Tihar jail authorities for Afzal superintendent of Buxar central jail I H Ansari told TOI that the rope cost Rs 180 per kg, totalling Rs 675.*

*The rope was manufactured by six to seven inmates of Buxar central jail on a spinning machine under the supervision of technical experts, Ansari said. It was prepared by mixing 20 yarns and then coated by wax that becomes very soft. Ansari added that earlier, in 2004, Alipore jail authorities had purchased the rope to hang Dhananjay Chatterjee.”<sup>25</sup>*

In June 1999, the Daily Record reported how, when 3 men were hanged in Trinidad & Tobago that:

*“They were hanged **using rope specially imported from Britain** and the death sentences were carried out so far apart because each victim had to be left dangling for an hour to make sure they were dead”.<sup>26</sup> (Emphasis added).*

The type of hanging rope used by the UK and supplied by the UK to colonial governments, Commonwealth and other countries was made from a 9 to 13ft length of  $\frac{3}{4}$ ” diameter hemp rope. This type of rope was developed from the end of the 1800’s onwards in a

series of “improvements” and can be seen to be a specially designed piece of equipment. It was manufactured by a single manufacturer in London, but it is currently not clear if this product is still manufactured in the UK.

In Sri Lanka, in March 1999 the office of the President Chandrika Bandaranaike Kumaratunga announced that death sentences would no longer be automatically commuted when they come before the President. Up until then, Sri Lanka had been for twenty-three years an abolitionist state in practice.<sup>27</sup> In 2000, appeals for the resumption of executions increased amid a rise in crime in the country.<sup>28</sup> In November 2000 the government finally announced that it would be putting into practice the decision to reinstate the death penalty, although to date no execution has taken place. In 2003 the Sri Lankan parliament debated reintroducing executions, but no vote was taken. In September 2003 the Interior Minister assured a delegation of European parliamentarians that the government had no plans to resume executions. In July 2005, the Commissioner General of Prisons reported that there were approximately 100 prisoners on death row.<sup>29</sup>

Against this background Amnesty International was very concerned to find that in February 2001 a Sri Lanka company had sent a request for “Noose (rope) to be used in the gallows” to an EU-based tenders website.<sup>30</sup> While it is not known if any European company responded to this request, it is clear that there have been several countries attempting to purchase ropes specifically designed for use in the execution of human beings. Amnesty International is concerned that as the regulation now stands, there is nothing to stop persons from EU Member States from supplying such specifically designed ropes, despite the fact they are clearly, indeed, explicitly, designed for capital punishment, a practice that the EU opposes.

**Recommendation: The European Commission and EU Member States should add to the Regulation a prohibition banning ropes specifically designed for carrying out executions. They should also work to identify the types of “specially designed ropes” used for executions and explicitly prohibit such ropes by including them in Annex II of the Regulation.**

### **Wallcuffs**

At present the list of controlled goods in Annex III of the Regulation includes a reference to “individual cuffs”. It is unclear whether this refers to individual cuffs of “normal handcuff” size or the larger “individual cuffs” that have commonly been used in the manufacture of leg cuffs/leg irons.

The UK government has stated that: “The control in the Regulation applies to individual cuffs irrespective of size.”<sup>31</sup> Amnesty International welcomes the UK Governments’ unequivocal statement on single cuffs and calls on all EU member state to apply the same definition.

Amnesty International further believes that the Regulation should explicitly include a prohibition on equipment such as single "wall handcuffs" which are designed to be permanently attached to a wall in a police station, prison or other or other detention facility. Amnesty International and other human rights organisations have documented cases in many countries where such restraint techniques have been associated with torture or other ill-treatment. For example:

- Egypt: An eyewitness who was at the reception of the Maadi police station said: "I saw a person with his right hand handcuffed to the wall. He asked for a cigarette. He was fine. Three or four persons were beating him strongly, and he fell to the ground. He screamed from the pain sometimes, he shouted, and also wept at times. At about 12.30 at night, he was taken from the room and I did not hear his voice again." <sup>32</sup>
- USA: a report of a jail inmate in Colorado punished with a stun gun for "verbal aggression" while he was handcuffed to a wall. <sup>33</sup>

The photograph below illustrates how a single handcuff linked by chain to a bolt type fixing:



Single wall handcuff purchased from Eltraf Bis by school students as part of the Dispatches programme 'After School Arms Club' broadcast in April 2006. Single Handcuff Price: 9,0 GBP (British pounds ) Photograph taken in London, 14 March 2006. © Robin Ballantyne

**Recommendation: "Wall Cuffs" should be included in the prohibited list of the Regulation, Annex II.**

**The European Commission and EU Member States should apply the controls on single cuffs 'irrespective of their size'.**

### c) Equipment that is not controlled but should be (that is, put into Annex III)

#### **Stun batons and guns that are designed to operate below the 10,000 volt criteria included in the Regulation and the import of tasers.**

The Regulation contains the following descriptive text in relation to the electric-shock devices that must be controlled:

*“2.1. Portable electric shock devices, including but not limited to, electric shock batons, electric shock shields, stun guns and electric shock dart guns having a no-load voltage exceeding 10 000 V.”*

Thus the export controls will **not** apply to any electric-shock devices or stun weapons that have a “no-load voltage” **below** 10,000 volts.

Amnesty International is concerned there are a range of electric-shock devices that have been designed to operate at a voltage level below 10,000 volts which will not be covered by the Regulation. An example of these devices would include the PRO-TEC Personal Protector which is described as having an operating voltage of 400V. The brochure claims that:

*“The PRO-TEC Personal Protector provides you round-the-clock protection anytime, anywhere. It provides fast and powerful protection. When activated, it releases a strong electric current — 400V/76A -- in 0.01 seconds. It comes with two 5mm electric pins which can penetrate through clothing and deliver a sharp current of energy to stun burglars or wild animals, thereby giving users an opportunity to escape. Takes only 0.5 seconds to recharge and it is ready for use again. PT-07 PRO-TEC Personal Protector \$28.00.”<sup>34</sup>*



**PRO-TEC Personal Protector (PT-07). High current electrical shock!**

Amnesty International considers that electro-shock weapons designed for use on human beings are inherently open to abuse as they can inflict severe pain at the push of a button without leaving substantial marks, and can further be used to inflict repeated shocks. Amnesty International believes that hand-held electric stun guns and stun belts are particularly open to abuse, as they are designed for "pain compliance" and tend to be used against individuals who are already in custody or under police control, often with multiple shocks.

Amnesty International is further concerned about dart-firing "taser" weapons which are used to inflict high voltage shocks. Tasers are produced in the USA and designed for use by police as a "stand-off" weapon to stop an individual threatening to inflict serious injury. However, tasers can also be switched over to become stun guns and a civilian version has been marketed in the USA. Police and law enforcement authorities in Belgium, Finland, Germany, France, Greece, Luxembourg, Spain, Sweden and the UK have acquired tasers. Northern Ireland and the Republic of Ireland are both currently considering imports.

Despite being increasingly deployed by law enforcement agencies in EU countries, there has been insufficient rigorous, independent and impartial study into the use and effects of tasers. Medical opinion has continued to raise concern about potential health risks from tasers, particularly in the case of people suffering from heart disease, or under the influence of certain drugs. Amnesty International's concerns are heightened by a growing number of deaths of individuals struck by police tasers in the USA. The organization believes that the taser cannot be ruled out as a possible contributory factor in some deaths. Concerns about the risks associated with tasers increase as they become more widely deployed.

Many police agencies claim that tasers have the potential to save lives or avoid serious injury in cases where police officers might otherwise resort to firearms or other forms of deadly force. It is self-evident that tasers are less-lethal or injurious than firearms. Amnesty acknowledges that there may be situations where tasers can effectively be used as "stand-off", defensive weapons as an alternative to firearms in order to save lives. This appears to be the aim of the limited introduction of tasers to UK police who operate under strict rules, limiting tasers only to authorised situations where trained officers might otherwise use a firearm.

**Recommendation: The European Commission and EU Member States should suspend the transfer of all hand-held portable electro-shock devices intended for use on human beings regardless of the level of voltage and power used pending a rigorous, independent and impartial inquiry into their use and effects.**

**Such an inquiry should be carried out by acknowledged medical, scientific, legal and law enforcement experts who are independent of commercial and political interests in promoting such equipment. They should rigorously assess their medical and other effects in terms of international human rights standards regulating the treatment of prisoners and use of force; the inquiry should include the systematic examination of all**



**known cases of deaths and injury involving the use of such weapons and also consider the mental impact of being subjected to electro-shock. The study should recommend strict rules, safeguards and oversight procedures to prevent misuse of any types of electro-shock equipment that may be viewed as having a legitimate use in law enforcement. A report of the findings of such an inquiry should be made public by the EC promptly after completion of the study.**

**The European Commission should amend the Regulation to require importers of items listed in Annex III to first obtain an import authorisation on a case by case basis.**

### **Handcuffs and belly chains**

The Regulation does not require export controls on “ordinary handcuffs”. Whilst Amnesty International recognises that handcuffs may be used as a legitimate tool of restraint in effective law enforcement, sometimes handcuffs are used in acts of torture and other ill-treatment and occasionally the design of handcuffs can be exploited for abusive purposes. .

Amnesty International has documented numerous occasions on which handcuffs have been used in human rights abuses. For example:

- USA – Kelly McAllister, a white transgender woman, was ordered out of her parked truck on 16 August 2002 by deputies from the Sacramento County Sheriff’s Department (SCSD). When Kelly McAllister refused she was reportedly beaten, pepper-sprayed, hog-tied, dragged across the pavement face down and eventually put in a patrol car. Hog-tied refers to when the wrists are handcuffed behind the back, and the ankles are tied together with a strap linking the wrist and ankle restraints.<sup>35</sup>
- Russian Federation – A report in 2000 detailed the continuing abuse of Chechen civilians in the “filtration camp” in the town of Urus- Martan: “20-year-old Beslan Satabayev, had his ears pierced with nails. He was also handcuffed and suspended from the ceiling while being beaten all over his body.”<sup>36</sup>
- Spain - Eighteen-year-old Pedro Garcia Muñoz claimed that, on 9 February 2001, he was beaten by three Local Police officers at Villaviciosa de Odón (Madrid), after entering into an argument with a man who claimed that his car was obstructing the entry to his shop. “He alleged he was thrown to the ground and immobilized. One of the officers knelt on his back, pressing his knees into the neck and face. He was handcuffed, and allegedly punched and beaten around the head with a second pair of handcuffs.”<sup>37</sup>
- Equatorial Guinea – A group of South Africans and Armenians were kept handcuffed and shackled for twenty-four hours a day from the day of their arrest on 8 March 2004. One of the defendants had earlier written a concise account of his torture on the

back of a carton of cigarettes, which was smuggled out of prison. Here is an extract of his account. "10/3 22h00-23h00 I was taken to the police station for interrogation. I had no lawyer. I was asked many questions. I had no answers for them....' Handcuffs tightened and cut into my flesh, into bone of right hand." <sup>38</sup>

- Japan – In June 2005, a pregnant detainee in Tokyo Detention Centre was handcuffed in hospital during her delivery, and prevented from seeing her newborn baby. She had also been required by the detention centre to have the birth induced to fit the hospital schedule. In October, the Minister of Health and Labour stated that births should be induced only when a clear medical need was established by a doctor. <sup>39</sup>

Amnesty International remains concerned that, because the trade in handcuffs is not controlled in the Regulation, companies in EU Member States will be able to export these items freely without the need to meet certain design criteria and apply for an export licence. If such controls are not included, handcuffs could continue to be supplied with impunity to countries and security forces with a history of human rights abuses, or even those subject to EU Embargo (for example, Zimbabwe or Myanmar).

The text of the EU Zimbabwe embargo provides that it is prohibited “(a) to grant, sell, supply or transfer technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, directly or indirectly to any person, entity or body in or for use in Zimbabwe”. <sup>40</sup>

Whilst the trade in handcuffs remain uncontrolled by either EU Member States’ national legislation or the Regulation it is difficult to see how the supply of such equipment to destinations subject to EU embargo can be effectively controlled.

It is paradoxical that if a company exported handcuffs to the USA from the EU and then sought to re-export them, they would require a US export licence as handcuffs are a controlled good under US export legislation.

Furthermore, Amnesty International is concerned that some handcuffs exported from EU Member States can be used for incorporation into metal restraints that would not be authorised for direct export from EC countries.

For example, the American company, Discount Handcuff Warehouse advertises the “Hiatts Model 7000FR Belly Chain With Handcuffs Linked” and claims that the:

*“Belly chain with two permanently attached model 2010 HIATTS handcuffs, linked together, positioned in front. Adjustable chain, 30 inches to 58 inches. "When extra*

*security is paramount, Hiatt-Thompson chainwork is the answer for your security needs." Nickel plated to resist rust. Made in the USA. 30 ounces.*"<sup>41</sup>

The Model 2010 handcuffs are manufactured by Hiatt & Co Ltd in Birmingham, UK. Because they are classed as "ordinary handcuffs" they do not require a UK export licence or any approval for export, either to non EC destinations - such as the USA – where they may be incorporated into restraints such as "belly chains", or to other destinations subject to EU embargoes.

The photograph below was taken in Guantánamo Bay on 23 August 2004 and shows various restraints including "ordinary handcuffs" attached to a range of shackle chains or belly chains.



**Leg irons and hand cuffs hang on a board at Camp Delta at Guantánamo Naval Base August 23, 2004 in, Guantánamo Bay, Cuba. (Photo by Mark Wilson/Getty Images)**

On 9 September 2005, the UK's Guardian newspaper reported a demonstration outside Hiatt & Co Ltd facilities in Birmingham. The article reported how some of the "cuffs" used at Guantánamo, which bind hands with a restraining device strapped around the body, bore the name Hiatt and the words "Made in England". According to Moazzam Begg, a former Guantánamo detainee:

*"When I was in Guantánamo Bay, one of the things I pointed out to my lawyer was how it was ironic that these shackles were made in England, just like me and him. It was very bizarre. Those shackles would often cut into my arms and legs and make me bleed. It was those very same shackles I saw being used by American soldiers in Bagram airbase to hang a prisoner from the ceiling. It said 'Made in England' on there too. If these cuffs are used to shackle people up to the tops of ceilings or cages and then [those people are] beaten, it calls into question what those shackles are actually being used for."*

Moazzam Begg described how the handcuffs were attached to a "three-piece suit" and how:

*"A pair of handcuffs was attached to a waist chain which was in turn attached to another chain which led from the waist to the ankle and was then attached to a leg iron."*<sup>42</sup>

The use of handcuffs in "short shackling" of detainees in Guantánamo Bay also shows how they can be misused. According to testimony from a translator:

*"The man in shackles was already waiting for us in the interrogation booth, a bare room with a couple of folding chairs and a D ring on the linoleum floor [...] The air-conditioning was turned up too high. The captive's ankle chains had been shortened and attached to the ring so there was no play in his feet, and a short chain connected his handcuffs to the ring as well. The arrangement forced him to hunch over, partially squatting."*<sup>43</sup>

Also according to testimony from US FBI agents:

*"Two FBI agents each stated that they witnessed a detainee in an interrogation room that had been "short shackled" to the floor. Short shackling is the process by which the detainee's hand restraints are connected directly to an eyebolt in the floor requiring the detainee to either crouch very low or lay in a fetal position on the floor."*<sup>44</sup>

Another example showing the risk of misuse of handcuffs was cited in a 2004 report by Amnesty International which raised the case of the Spanish company Larrañaga y Elorza that had over the last decade specialized in manufacturing restraint devices. Larrañaga has continued to manufacture a range of handcuffs under the trade name 'Alcyon' and has promoted them, including the Model 5050 handcuffs at trade shows such as the IWA Sporting and Hunting show in Nuremberg Germany.<sup>45</sup>

Despite a statement from the Spanish government in October 2000 banning the trade in leg irons and shackles by Larrañaga y Elorza,<sup>46</sup> at least two companies in other countries are continuing to offer belly chains and leg restraints that appear to be manufactured using Alcyon cuffs.

For example, in January 2007, the Venezuelan company Centurion CA was continuing to offer a range of Alcyon products under the following headings: handcuffs, Belly Chain and leg cuffs.<sup>47</sup>

The Assegai Trading Company (South Africa) was continuing to offer the model 5240 Belly Chain constructed using the model 5050 handcuffs as well as a range of other restraints including leg irons.<sup>48</sup>



**Belly Chain #5240**

The Model 5240 Belly Chain was originally manufactured and marketed by Larranaga y Elorza and was described in company brochures in June 1998 as the: **Belly Chain - 5226 (Ref. 5240)**<sup>49</sup>

Amnesty International does not know if Larranaga y Elorza is aware of the adaption of its products as described above but remains seriously concerned that the lack of export controls on “ordinary handcuffs” in the Regulation will mean that handcuffs manufactured in Britain, Spain or other EU countries, could continue to be incorporated into “belly chains” or other restraints in foreign countries, including for purposes of torture and other ill-treatment in foreign countries.

**Recommendation: The European Commission and EU Member States should include handcuffs in the “controlled” goods list in Annex III of the Regulation.**

### **Sjamboks, and other specially designed whips**

According to the US supplier, Cold Steel:

*“In Africa, the Sjambok is a cattle prod, a whip, a riding crop and a means of self protection...its considerable reach, lightning speed and devastating impact have built it quite a reputation as a sure defense against deadly snakes. The new Cold Steel® synthetic Sjambok hits just as hard as one that is made out of the traditional Hippo hide...this bigger, thicker handle, when combined with the heavier, beefier lash allows our new Sjambok to be swung with even greater power and control...”*<sup>50</sup>

While the sjambok was infamous for its use in torture and other cruel and inhuman or degrading treatment or punishment during the Apartheid era in South Africa, sjamboks have continued to be used to inflict torture and other ill-treatment in neighbouring countries. Amnesty International’s 2002 report on southern Africa, “Policing to protect human rights” provides examples of how sjamboks have been used for abuse in Namibia and Zambia.

- Namibia: In February 2000, a 25-year-old farmer, Kamungwe Ngondo, was arrested by paramilitary police in northern Namibia for failing to present an identity document on request. He was held at the paramilitary police base for two weeks and allegedly sjambokked (whipped) repeatedly.

- Namibia: Oscar Lumphalezwi, a former senior policeman with more than 24 years' experience, Namibia. He has over 50 scars on his neck and back from the sjamboks (wooden whips) that were used to beat him following his arrest in August 1999.
- Zambia: Detainees show signs of severe beatings, Zambia, November 2000. Four suspects were brought before a Magistrate's Court in Lusaka to face charges of aggravated robbery and had visible marks of beatings on their bodies. They said they had been repeatedly beaten with sjamboks (wooden whips) while held without charge in police custody for two weeks.
- Zambia: Danistan Chisanga, aged 25, one of 11 detainees reportedly assaulted by police officers and members of a community vigilante group, Zambia, January 2001. Accused of murder and aggravated robbery, Danistan Chisanga said officers took turns to beat them using sjamboks (whips), electric cable and batons.<sup>51</sup>

**Recommendation: The European Commission and EU Member States should ensure that “sjamboks” and other specially designed whips are added to the “controlled” list in Annex III of the Regulation.**

### **Interrogation equipment and technology**

The Regulation does not control specially designed “interrogation equipment” for security and law enforcement that can easily be used for torture and other ill-treatment. Amnesty International is extremely concerned by reports that companies have been seeking the supply of interrogation equipment that seems to have no practical use other than for the purposes of torture or other ill-treatment.

In October 2004, a Bangladesh import/export agent posted a request on a tender website stating that they were looking for “Intelligence / Security Equipment for Police”. Amongst the equipment required was the following:

- 17) Interrogation Face Light.
- 18) Interrogation Foot Heater (Digital Control)
- 19) Interrogation Chair with Accessories
- 20) Interrogation Hanger (Remote Control).<sup>52</sup>

The tender specified that the Interrogation Foot Heater should be capable of reaching temperatures up to 200 degrees Celsius..

In an earlier tender request the company had claimed to be:

*“a government-approved Indenting House of Bangladesh and act as Agent of Overseas Companies.”<sup>53</sup>*

In December 2004, a Bangladesh newspaper reported that:

*“Reliable sources said the home ministry has also floated a tender to purchase various interrogation equipment like interrogation foot heaters (digitally controlled), interrogation hangers, interrogation chairs, interrogation face lights, lethal electric shock batons, voice recorders, and interrogation audio/video hidden evidence monitors.”<sup>54</sup>*

While Amnesty International cannot currently verify the facts in this newspaper report, the organisation remains concerned that interrogation technologies and equipment may be designed and used to inflict torture and other ill-treatment on detainees and prisoners and should be prohibited by the Regulation.

<p><b>Recommendation: The European Commission and EU member states should work to identify those types of interrogation equipment and technologies that should be explicitly controlled or prohibited by the Regulation.</b></p>
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## 4. Other detailed concerns about the Regulation

Whilst the introduction of the EC Regulation is an important step forward in measures to prevent torture and other ill-treatment and the Regulation has been welcomed by human rights organisations, it contains several other weaknesses which continue to be of concern to Amnesty International

### a) ‘List-based’ control systems.

The Regulation contains lists of specifically named goods that are prohibited (Annex II) and controlled (Annex III). Whilst most export control systems operate lists of equipment and technology, such systems have several weaknesses including that unscrupulous suppliers can evade the controls by re-naming their products and certain specific products are not controlled because they are not named on the control lists.

In 1995, to avoid such problems with the export of dual-use items that could be used in the production of weapons of mass destruction (WMD), the European Union introduced a “catch-all clause”. This additional security measure focuses on the specific end-use of the product. This “catch-all clause” means that if the exporter has a suspicion that a product may be used for a WMD programme it is always necessary to apply for export authorisation.

Amnesty International believes that the Regulation should contain a “catch-all clause” for torture and other ill-treatment equipment. This would enable compliance actions to be taken against exporters of equipment where it would have been reasonable to expect the exporter to have known that the transfer of such equipment would go to end-users likely to commit torture or other ill-treatment.

**Recommendation: Amnesty International urges the EC to amend the Regulation and add a catch-all clause requiring governments to prohibit the trade of any items not listed in the Annexes that clearly have no practical use other than for the purposes of torture and other ill-treatment; or where there are reasonable grounds to believe that such items would be used, or converted for use, for the purposes of torture and other ill-treatment by a law enforcement authority or any natural or legal person in a third country.**

**In addition:**

**Amnesty International urges the EC and EU Member States to amend the Regulation and add a provision to the effect that notwithstanding the provisions in Articles 5 and 6, a Member State may adopt or maintain a prohibition on the export and import of any other item which it considers to have no practical use other than for the purposes of torture and other ill-treatment.**

**b) Brokering the transfer of equipment or technology by persons, based within the EU, where equipment or technology does not enter EU territory.**

Amnesty International has serious concerns that existing loopholes in national laws regarding brokering will undermine the European Union efforts to ban the trade in "torture equipment" and to control the trade in other security equipment.

There are at least 150 companies<sup>55</sup> in 21 EU countries<sup>56</sup> that have distributed or supplied electric-shock batons and stun guns throughout the world often without bringing such equipment into the EU. Of these, 17 companies in 7 EU countries (Austria, France, Germany, Lithuania, Portugal, Sweden and the UK) were known to have offered to supply electric-shock batons and stun guns that were originally manufactured outside of the EU. Similarly, at least 32 companies in 7 EU countries<sup>57</sup> have supplied leg-irons, shackles and leg-cuffs. Of these, 9 companies in 3 EU countries (France, Germany and United Kingdom) are known to have supplied or distributed leg-irons and shackles originally manufactured outside of the EU.

Article 7(1) (National Measures) of the new EU Regulation provides that “*a Member State may **adopt** or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices.*” (Emphasis added).



Yet the Regulation does not prohibit the brokering of transactions in equipment which has no practical use other than for the purpose of torture, other ill-treatment or death penalty. It does not prohibit the activities of EU based companies and individuals who may arrange, or facilitate, the sale or transfer of torture or other ill-treatment or death penalty equipment from manufacturers or suppliers outside the EU to foreign destinations. Nor does the Regulation require the control of brokering activities in relation to exports or imports of items listed in Annex III.

EC officials argued that in EC trade regulations the EC does not have the legal competency to control such brokering activities. However, the EU Council has agreed a Common Position on the control of brokering of transactions in conventional arms.<sup>58</sup> Whilst many EU Member States have introduced controls on the activities of brokers operating in the Member States' territory, as far as Amnesty International is aware, only the UK has introduced full-extra-territorial controls to ban the brokering of "torture equipment" by UK citizens or companies whether they are based inside or outside the UK.<sup>5960</sup>

Amnesty International is concerned that without extra-territorial controls on the brokering of equipment listed in the Regulation, EU-based companies would be able to arrange transactions or to "drop-ship"<sup>61</sup> such equipment from non-EU based manufacturers or suppliers to another non-EU country without it passing through the EU. This could be done by EU persons even if the final destination country has a documented record of using such equipment for torture or other ill-treatment or if the items transferred had no other practical use than for the purpose of torture and other ill-treatment.

**Recommendation: EU Member States should regulate *all* brokering activity, by EU companies and individuals who seek to arrange transfers of items listed in the EC Regulation. This should include instances where the brokering activity is conducted outside the EU or where the equipment does not enter the EU.**

**Thus, EU Member States should a) prohibit the brokering of transactions by any EU natural or legal person from any place involving transfers, including sales and exports, of equipment with no practical use other than for torture or other ill-treatment, as included in Annex II; and b) also introduce effective mechanisms to control the brokering of transactions in any other equipment in the Regulation in Annex III.**

### c) Intra-EU Transfers

The European Commission has argued that all EU Member States have legislation banning torture and cruel, inhuman or degrading treatment or punishment and this is one reason why the Regulation does not require national controls on intra-EU transfers. However, there have

been incidents of torture and other ill-treatment using electric-shock batons within EU member state countries.

For example, in March 2004, Amnesty International raised concerns about the ill-treatment of Roma citizens by police officers in Eastern Slovakia:

*"In the course of the day, police officers reportedly indiscriminately entered Romani homes without presenting search warrants or having other appropriate legal grounds for such actions. They reportedly beat with truncheons, **prodded with electric batons**, kicked and otherwise physically assaulted men, women and children, irrespective of their age or physical and/or mental condition. Some of the officers reportedly addressed racist insults to the victims."*<sup>62</sup> (Emphasis added)

Amnesty International has also documented ill-treatment using "electric shocks" within other EU Member States including:

- Greece: In its 2003 Annual Report, Amnesty International reported that: In August, Yannis Papakostas, a Greek military conscript who was detained for driving a motorcycle without a licence, alleged that a plainclothes police officer at Aspropyrgos police station had subjected him to electric shocks on his shoulders and genitals.<sup>63</sup>
- Spain: In September 2005 the civil liberties organisation, Statewatch, reported on the death of Juan Martínez Galdeano in the Guardia Civil station in Roquetas del Mar (Almería) in July of that year. Quoting from the Spanish parliament report, the Statewatch article related the incident at the police station:

*"While he was being restrained on the ground, the plain-clothed lieutenant of the station appears, who, equipped with a defence [instrument], apparently rigid, of a telescopic type in one hand and with an **electric defence** [instrument] in the other, starts to restrain the detainees with defence [instrument] blows and **electric discharges**, at the same time as the detainee kicked out and made sharp body movements."*<sup>64</sup> (Emphasis added)

- Bulgaria: In 2004, Amnesty International reported that: Officers reportedly punched and kicked them, or beat them with cables or electric truncheons, to obtain confessions" and " In March, two Romani men (names withheld), gathering firewood in the forest near Lukovit, were stopped by two police officers and several forest guards. One man was reportedly knocked unconscious with a rifle butt, handcuffed, beaten, and prodded with an electric-shock baton, while the second was made to dig a pit as "a grave for the two of [them]", then beaten, according to reports.<sup>65</sup>

Amnesty International believes that such cases of torture and other ill-treatment documented using "electric-shock" devices within EU Member States demonstrate the need for some form of intra-EU controls on such equipment.

The UK government stated that it would “maintain national controls regarding export, trade and transit, on intra-EC exports for those goods previously subject to a complete UK ban on export, namely: Gang Chains and Leg-irons; Portable devices designed for the purpose of riot control or self protection by the administration of an electric shock (e.g. electric shock batons, electric shock shields, stun guns, electric shock dart guns having a no load voltage exceeding 10000 volts) and components therefore specially designed or modified for such a purpose; and electric shock having a no load voltage exceeding 10000volts.”<sup>66</sup>

These national controls mean that the export of such goods from the EC will be controlled by the Regulation and the export to other EU Member States by UK controls.

This would be in accordance with Article 7(1) (National Measures) of the Regulation which provides that “a Member State may *adopt* or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices.” (Emphasis added) it would be possible for all EU Member States to adopt such controls since concerns remain that unscrupulous dealers will exploit any differences in how EU Member States implement the Trade Regulation in their national laws, regulations and administrative practices.

**Recommendation: EU Member States should introduce national export mechanisms to prohibit the Intra-EU trade in leg irons, gang chains and those portable electric shock devices whose effects are cruel, inhuman or degrading. EU Member States should also introduce national controls and national reporting systems for the Intra-EU trade in other security and law enforcement equipment covered by the Regulation.**

#### **d) Equipment in Transit and Transshipment through the EC**

The Regulation provides that an export authorisation for goods listed in Annex III [Control list] will not be required for:

*“goods which only pass through the customs territory of the Community, namely those which are not assigned a customs-approved treatment or use, other than the external transit procedure within Article 91 of Regulation (EEC) No 2913/92, including storage of non-Community goods in a free zone of control type 1 or a free warehouse;”*

Thus it would appear that no export authorisations, or controls, will be required for “external transit” or transshipment– even if companies or agencies based outside the EU that are known to trade in “torture equipment” are discovered to be sending equipment “in-transit” through such facilities within the EU.

Amnesty International has previously raised concerns regarding the lack of controls on military, security, and police equipment in transit through EU Member States. For example:

*“Violating EU Code Export Criteria – in contravention of several Criteria of the EU Code, governments may allow arms to transit through their territory to end users to whom EU governments would not normally allow arms to be transferred directly.”<sup>67</sup>*

Given the current concern within EU Member States about the rendition of foreign nationals through EC airspace en-route to third countries where they are reportedly tortured or ill-treated it seems an omission that such concerns have not been raised about the transit of “torture equipment” through EC facilities.

The UK government has stated that transit controls do apply in respect of goods in Annex II and that for “goods listed in article 7(1) national transshipment controls can be maintained. The UK will continue to maintain transit controls on article 7(1) goods. i.e. leg-irons, gang-chains and portable electric shock devices.”<sup>68</sup>

**Recommendation: EU Member States should be required to prohibit the transit or transshipment of goods prohibited by the EC Regulation and to control all other equipment listed in the annexes of the Regulation that is in transit or transshipped through their territory.**

### **e) Technical Assistance and Training**

Article 3(1) of the Regulation provides that “[T]he supply of technical assistance related to goods listed in Annex II, whether for consideration or not, from the customs territory of the Community, to any person, entity or body in a third country shall be prohibited.”

Thus all EU Member States should have introduced controls on the provision of technical assistance<sup>69</sup> or training in relation to prohibited items in Annex II of the Regulation. However, with the exception of the United Kingdom which has introduced national controls, the Regulation does not control the provision of technical assistance by EU citizens, residents or companies to foreign persons in relation to the use of equipment controlled under the Regulation (Annex III).

Such controls on persons are probably outside the competency of the Regulation powers, Amnesty International, therefore, calls on Member States to examine how their national legislation can meet their obligations to prevent such transfers.

**Recommendation: EU Member States should introduce a provision to regulate the transfer of technical assistance and training regarding the use of controlled equipment in Annex III of the Regulation.**

## 5. Recommendations

The newly-introduced EU Regulation 236/2005 is a positive and necessary step to control the trade in the equipment that is frequently used for torture, and other cruel, inhuman or degrading treatment or punishment. At the same time, this report shows that it is crucial for EU Member States to strengthen and fully implement the Regulation if governments are to prevent the trade in “tools of torture”.

In his report on the subject, the UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment stated the following:

*“The Special Rapporteur would like to remind States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of its article 2 which provides that “each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. He believes 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>70</sup>*

This report highlights the limited scope of the new EC Regulation, for example the absence of controls on the transit trade and brokering of security equipment. The report documents the types of equipment that are currently omitted from the Regulation. Some items included in the Regulation are currently controlled when they should be prohibited. Insofar as new technologies and designs for what are deemed to be items of equipment appropriate for law enforcement are constantly coming onto the international market, the list of controlled and prohibited items in the Regulation and its implementation needs to be kept under regular review.

Thus, Amnesty International is calling on EC and the EU Member States to:

- produce a clear timetable for review of the content of the Regulation and its effectiveness.
- ensure that handcuffs are included in the “controlled” goods list in Annex III of the Regulation.

- ensure that “sjamboks” and other specially designed whips are added to the “Controlled” list in Annex III of the Regulation.
- work to identify the types of “specially designed ropes” used for execution and add those types of rope to the “Prohibited” list in Annex II of the Regulation.
- explicitly include “irons”, “chains” and “leg irons” in the list of prohibited items (Annex II) of the Regulation and also include adequate descriptions of leg irons so as to contribute to the prohibition of the trade and use of leg irons.
- prohibit “wall cuffs” by including them within Annex II; and produce a more detailed definition of “individual cuffs” to control handcuffs within Annex III;
- work to identify those types of portable electro-shock devices and interrogation equipment and technology that should be explicitly prohibited or controlled under the Regulation and suspend transfers of those types of devices whose effects on humans are cruel, inhumane or degrading ;
- introduce effective national laws, regulations and administrative procedures so as to prohibit and control the brokering of transactions in “security and law enforcement equipment” as defined in the Regulation.
- establish mechanisms to effectively regulate the import of items listed as “controlled” equipment in the EC Regulation and mechanisms to prohibit and control the transit or transshipment of goods whose trade is prohibited or controlled by the Regulation.
- include intra-EU trade in the national export prohibitions, controls and reporting of security and law enforcement equipment covered by the Regulation.
- examine how the national legislation of EU Member States can meet their obligations to prevent the transfer of technical assistance to foreign persons and governments regarding the use of equipment controlled under the Regulation.
- introduce a penalty regime under national laws and regulations for breaches of the Regulation if they have not already done so.

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## End Notes

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<sup>1</sup>The term “torture and cruel, inhuman and degrading treatment” is shortened to “torture and other serious ill-treatment” in this report.

<sup>2</sup> For purposes of brevity this report will refer to the range of equipment which could be used for torture and other ill-treatment such as stun guns, shock batons, leg-irons, leg cuffs etc as “torture equipment”.

<sup>3</sup> Torture and other cruel, inhuman or degrading treatment or punishment are prohibited by treaties - see Articles 4 and 7 of the International Covenant on Civil and Political Rights, 1966, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, and Common Article 3 of the Geneva Conventions, 1949.

<sup>4</sup> Arms brokering is activity carried out for a commission, advantage or cause, whether financial or otherwise, including political or personal consideration, by private individuals or corporate entities involving one or more of the following: acting as an intermediary to negotiate or arrange an arms transaction; arranging contracts and obtaining necessary documents on behalf of others to conduct an arms transaction; organising, negotiating or brokering essential services to complete an arms transaction; acting as an agent or representatives for buyers, sellers, or brokers to negotiate or implement or concludes an arms transaction.

<sup>5</sup> As worded in the Council Regulation No 1236/2005 of 27 June 2005 in referring to OJ C 87E, 11.4.2002, p136.

<sup>6</sup> Telephone communication with EC official, 5 February 2007

<sup>7</sup> The information was up-to-date as of 31 January 2007.

<sup>8</sup> Responses were received to letters, emails and telephone calls to relevant authorities in Austria, Belgium, the Czech Republic, Cyprus, Denmark, Eire, Finland, France, Germany, Greece, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Poland, Slovakia, Slovenia, Spain, Sweden, and the UK. Unfortunately authorities in Romania and Bulgaria (who acceded to the EU in January 2007) had not be contacted at the time of publication, since details of the relevant authorities dealing with the Regulation could not be obtained in time from the European Commission.

<sup>9</sup> Chapter 46, Section 1 of the Finnish Penal Code - email communication from Mika Lehtonen, Police Department, Finland, 5 July 2006.

<sup>10</sup> Communication with Mr de Bontridder, Ministerie van Economie, Energie, Handel en Wetenschapsbeleid, Belgium, 23 January 2007.

<sup>11</sup> Telephone communications with Mme Rocca, Ministère de l'économie, des finances et de l'industrie, France, 8 June 2006 and 22 January 2007.

<sup>12</sup> Correspondence from Petr Gilka, Director of the Department of Special Material, Licensing Office, Ministry of Industry and Trade, Czech Republic, 9 June 2006: “The wording of the bill is that one submitted to the government, but according to the elections in the Czech Republic it has not come on its agenda. Unfortunately, for reasons mentioned above the act will not enter into force and the rules on penalties applicable to infringements of

the Regulation will not be laid down on the prescribed date.”; telephone communication with Vera Vakova, Licensing Office, Ministry of Industry and Trade, Czech Republic, 17 January 2007.

<sup>13</sup> Rivolier (leg-irons) and Alfa - Proj spol s.r.o (leg irons and handcuffs etc) and Euro Security Products Ltd (FLY Security Products) - electro-shock.

<sup>14</sup> Email communication from Antonio Segura Alvarez, Ministerio de Industria, Turismo y Comercio, Spain, 31 May 2006; telephone communication with Rasmus Kiefer Kristensen, Justice Ministry, Denmark, 23 January 2006; email communication with Jim Boutell, Department of Trade and Industry, UK, 14 July 2006; email communication from Mika Lehtonen, Police Department, Finland, 5 July 2006.

<sup>15</sup> This Regulation was established in 1969 and that committee established under this regulation is also supposed to deal with the new *EC Trade Regulation No. 123/2005 concerning the trade in goods which can be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.*

<sup>16</sup> Written parliamentary answers provided by UK Trade Ministers Patricia Hewitt and Douglas Alexander on 19 May 2002, 21 May 2002, 19 September 2002, 18 November 2004, 2 March 2005 & 20 December 2005. The EU's Comitology database (the database for all EC committee documents) returns no documents when searched for the Advisory Committee on Common Rules for Exports of Products: see <http://ec.europa.eu/transparency/regcomitology/recherche.cfm?CL=en>

<sup>17</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Rule 33 provides, *inter alia*: “*Instruments of restraint, such as handcuffs, chains, irons and strait-jacket, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.*”

<sup>18</sup> COMER 53. 8888/05. Working Party on Trade Questions, 13 June 2005. Note 15. Page 6. <http://register.consilium.eu.int/pdf/en/05/st08/st08888.en05.pdf>

<sup>19</sup> PL5001, Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, <http://www.opsi.gov.uk/si/si2003/20032764.htm>

<sup>20</sup> Barbaric Acts of Policewomen at Wanyaoshan Detention Centre. Criminal Actions of Policewomen at the Wanyaoshu Detention Centre in Panzhuhua City By Falun Dafa Practitioners in China. <http://www.clearharmony.net/articles/200202/3345.html>. Last accessed 1 February 2007.

<sup>21</sup> Adopted by General Assembly resolution 34/169 of 17 December 1979.

<sup>22</sup> Amnesty International EU office, letter to Mr Arnold van Rijn, Chair of the Council Working Party on Trade Questions Brussels, 8 October 2004, Ref : b 426.

<sup>23</sup> Asia Africa Intelligence Wire, August 22, 2004. Hanging rope comes for Rs 182 a kilogram.

<sup>24</sup> **URGENT ACTION** India: Further information on imminent execution: Mohammad Afzal (m), 6 December 2006, AI Index, ASA 20/033/2006

<http://web.amnesty.org/library/Index/ENGASA200332006?open&of=ENG-IND>

<sup>25</sup> Times of India, 16/10/2006. “Special rope for Afzal's execution costs Rs 675”.

<sup>26</sup> Daily Record, June 5, 1999. THREE MURDERERS GO TO THE GALLOWS AS A FINAL PLEA FOR



MERCY IS REJECTED.

<sup>27</sup> In March, amid reports of rising crime, the government announced that death sentences would no longer be automatically commuted when they come before the President. Instead a policy was put in place whereby the President would refrain from commutation if the judge in the case, the Attorney General and the Minister of Justice unanimously recommended execution. AI expressed concern about this retrograde step for Sri Lanka after 23 years of being a *de facto* abolitionist state. Annual Report 2000, Amnesty International.

<sup>28</sup> On 13 March 1999, the office of President Chandrika Bandaranaike Kumaratunga announced that death sentences would no longer be automatically commuted when they come before the President. Amnesty International, *The Death Penalty worldwide: Developments in 2000*, May 2001, (AI Index: ACT 50/001/2001).

<sup>29</sup> Sri Lanka entry, Annual Report 2006, Amnesty International.

<sup>30</sup> [www.ecurope.com](http://www.ecurope.com) 27/2/2001: Offer to Buy. Subject Heading: [LK]: Noose (rope) to be used in the gallows. Category: Security & Protection Products. Preferred Region: Worldwide. Trade Lead Message: A supplier or a manufacture of Noose (Rope) to be used in the...

<sup>31</sup> RESPONSE TO CONSULTATION - On the implementation of the EC Regulation on trade in goods which could be used for capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment. Export Control Organisation, UK Government, July 2006. <http://www.dti.gov.uk/files/file32090.pdf>

<sup>32</sup> <http://www.derechos.org/human-rights/mena/eohr/tort.html>

Last Accessed 1 February 2007

The Egyptian Organization for Human Rights REPORT. Torture in Egypt, Cairo, February 1999. Police excesses and the difficulty of obtaining evidence. The seventh EOHR report on torture and ill-treatment inside police stations in Egypt.

<sup>33</sup> AI Index: AMR 51/107/2000 1 July 2000.

<sup>34</sup> [www.ssainvestigations.com/products/other7.html](http://www.ssainvestigations.com/products/other7.html).

Last Accessed 1 February 2007

<sup>35</sup> USA California: Transgender woman ill-treated and raped in jail, Amnesty International, AI Index: AMR 51/142/2005

<sup>36</sup> <http://web.amnesty.org/library/index/ENGEUR460362000> *Russian Federation: Continuing torture and rape in Chechnya*, 8 June 2000.

<sup>37</sup> <http://web.amnesty.org/library/index/ENGEUR410042001> *SPAIN: THE ALLEGED ILL-TREATMENT OF PEDRO GARCIA MUÑOZ BY MADRID POLICE OFFICERS*, 22 August 2001.

<sup>38</sup> <http://web.amnesty.org/library/Index/ENGAFR240052005?open&of=ENG-GNQ> *Equatorial Guinea: A trial with too many flaws*, 7 June 2005, AI Index AFR 24/005/2005.

<sup>39</sup> Japan entry, Annual Report 2006, Amnesty International

<sup>40</sup> [http://www.sipri.org/contents/expcon/zimbabwe\\_embargo\\_2004\\_01.pdf](http://www.sipri.org/contents/expcon/zimbabwe_embargo_2004_01.pdf) 19<sup>th</sup> February 2004.

<sup>41</sup> [www.handcuffwarehouse.com/hiatmod70bel1.html](http://www.handcuffwarehouse.com/hiatmod70bel1.html). Last Accessed 1 February 2007

<sup>42</sup> [http://www.guardian.co.uk/uk\\_news/story/0,,1565807,00.html](http://www.guardian.co.uk/uk_news/story/0,,1565807,00.html) 9 September 2005.

<sup>43</sup> Excerpts from Saar, Erik and Novak, Viveka (2005) *Inside the Wire: A Military Intelligence Soldier's Eyewitness Account of Life at Guantanamo*.

Published by Penguin, New York 2005

[http://humanrights.ucdavis.edu/HRthe\\_chair\\_and\\_the\\_eye\\_bolt.htm](http://humanrights.ucdavis.edu/HRthe_chair_and_the_eye_bolt.htm)

<sup>44</sup> Army Regulation 15-6: Final Report: Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility, 1 April 2005 (amended 9 June 2005),

<http://www.defenselink.mil/news/Jul2005/d20050714report.pdf>.

<sup>45</sup> For example, Larranaga y Elorza exhibited at IWA 2003, IWA 2004 and IWA 2006.

<sup>46</sup> Observer, September 10, 2000, p15, 'Shame of British firms who trade in torture: Revealed: How UK companies are exploiting legal loopholes to broker the export of deadly instruments to the Third World.'

<sup>47</sup> <http://www.centurion.com.ve/prodalcyon.htm> accessed 24 January 2007.

<sup>48</sup> Leg Irons 5270 Nickel . [www.assegaitrading.co.za/handcuffs\\_legirons.htm](http://www.assegaitrading.co.za/handcuffs_legirons.htm) accessed 24th January 2007

<sup>49</sup> Larranaga y Elorza brochure June 1998.

<sup>50</sup> <http://www.coldsteel.com/95sseries.html> accessed 24th January 2007

<sup>51</sup> Amnesty International. 2002. Policing to protect human rights: A survey of police practice in countries of the Southern African Development Community, 1997-2002.

[http://web.amnesty.org/library/pdf/AFR030042002ENGLISH/\\$File/AFR0300402.pdf](http://web.amnesty.org/library/pdf/AFR030042002ENGLISH/$File/AFR0300402.pdf).

<sup>52</sup> [www.postoffer.net:8088/mardetail.aspx?Offerid=75814&offertype=b](http://www.postoffer.net:8088/mardetail.aspx?Offerid=75814&offertype=b) 5/10/2004: Buy Intelligence / Security Equipment. Message: We are looking for - Intelligence / Security Equipment for Police.

<sup>53</sup> [www.tradeengine.com/Message/Lead.asp?Type=0&Page=1&Code=2001&EID=0000171868&ID=0005102170](http://www.tradeengine.com/Message/Lead.asp?Type=0&Page=1&Code=2001&EID=0000171868&ID=0005102170) 24/10/2004.

<sup>54</sup> <http://thedailystar.net/2004/12/08/d4120801022.htm> 8<sup>th</sup> December 2004. Hi-tech gadgets, training on way to upgrade Rab.

<sup>55</sup> These figures in this section are based on data extracted from the Omega Research Foundation MSP database and include information on companies between 01/01/2000 to 31/01/2007.

<sup>56</sup> Countries include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom.

<sup>57</sup> Countries include: Czech Republic, France, Germany, Italy, Poland, Spain, United Kingdom.

<sup>58</sup> EU Council Common Position on the control of arms brokering. 2003/468/CFSP of 23 June 2003 on the control of arms brokering

<sup>59</sup> On 1<sup>st</sup> May 2004, the UK export controls on the "trafficking and brokering" of "restricted goods" came into force. The controls on "Restricted Goods" will apply to UK persons operating overseas as well as any persons within the UK. The following are currently listed by the DTI as being in the "Restricted Goods" category: Long-Range (i.e. 300km or more) Missiles or UAVs and any specially designed components there of Equipment which has already been banned for export from the UK due to evidence of its use in torture, specifically equipment falling

within categories PL5001 (c) and (g) of the Military List. (“*Portable devices designed or modified for riot control purposes or self- protection to administer an electric shock, including electric-shock batons, electric shock shields, stun guns and specially designed components for such devices; leg irons, gang-chains, shackles (excluding normal handcuffs) and electric-shock belts designed for the restraint of a human being*”).

The controls on “Restricted Goods” also contain no exemptions for general advertising so even the act of distributing brochures or marketing these products would require a licence if the goods were likely to be sourced from outside the UK to a non-UK customer. <http://www.dti.gov.uk/files/file8423.pdf> .

<sup>60</sup> The UK government has stated that it wishes to maintain trade controls (brokering controls) on all those “*goods previously controlled by UK legislation. Furthermore, because it would be anomalous to apply UK trade controls only to certain goods controlled by the Regulation (that is, those previously in UK legislation) but not to others, UK trade controls will be applied to **all** the items listed in Annexes II and III to the EU Regulation. This preserves existing UK trade controls on security and paramilitary goods, and also extends them to cover certain items prohibited by the Regulation but not previously in the UK military list: Gallows and guillotines; · Electric chairs; · Air-tight vaults; · Automatic drug injection systems; · Restraint chairs; · Shackle boards; · Thumb-cuffs and thumb-screws.*”<sup>60</sup> (Emphasis added)

<sup>61</sup> One definition of drop shipping is where “you can direct your supplier (in our case, the manufacturer) to ship the product directly to your customer without having to bring the product into your location. This method will reduce the costs of labor, storage and transportation. You, in turn, will invoice your customer as if the product was shipped from your location.” [http://www.canadaone.com/ezine/expert/expert\\_qa.html?id=85](http://www.canadaone.com/ezine/expert/expert_qa.html?id=85).

<sup>62</sup> AI Index: EUR 72/002/2004 (Public). 8 March 2004. Amnesty International: Disturbances in Eastern Slovakia. News Service No: 54.

<sup>63</sup> <http://web.amnesty.org/report2003/Grc-summary-eng>.

<sup>64</sup> <http://www.statewatch.org/news/2005/sep/02roquetas.htm>.

<sup>65</sup> <http://web.amnesty.org/report2004/bgr-summary-eng>.

<sup>66</sup> <http://www.dti.gov.uk/files/file32090.pdf> July 2006.

<sup>67</sup> [http://web.amnesty.org/library/pdf/ACT300032004ENGLISH/\\$File/ACT3000304.pdf](http://web.amnesty.org/library/pdf/ACT300032004ENGLISH/$File/ACT3000304.pdf) Undermining Global Security, Amnesty International 2004.

<sup>68</sup> <http://www.dti.gov.uk/files/file32090.pdf> July 2006.

<sup>69</sup> (f) ‘technical assistance’ means any technical support related to repairs, development, manufacture, testing, maintenance, assembly or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance and assistance provided by electronic means;

<sup>70</sup> UN Doc. E/CN.4/2003/69, 13 January 2003, para. 35.