Questions:

1. **What do you consider to be the main challenges to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment today, and why?**

   - The manufacture, trade in and use of, equipment with no purpose other than for torture or other ill-treatment (such as weighted leg restraints or body worn electric shock devices), and the abuse of other equipment by law enforcement officials to inflict torture or other ill-treatment (such as batons, handcuffs or pepper spray) remains a key challenge. This is exacerbated given the large and expanding market for less lethal weapons, estimated to be over $8 billion by 2020\(^2\), and increasing promotion by companies of their products—including equipment with no use other than torture and ill-treatment—internationally, online, at arms fairs and in other venues\(^3\).

   - Whilst almost anything can be used to perpetrate torture and ill-treatment, it is often perpetrated using specialist law enforcement equipment, including technologies that are specifically designed for such purposes. Despite some encouraging developments with the

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1 The Omega Research Foundation is an independent UK-based research organisation. We are dedicated to providing rigorous, objective, evidence-based research on the manufacture, trade in, and use of, military, security and police (MSP) technologies. This submission has been produced by the Omega Research Foundation (Omega) as part of a European Commission funded project into policing technologies and human rights, under the European Instrument for Democracy and Human Rights (EIDHR). Aspects of research for this report have been funded in part by the Joseph Rowntree Charitable Trust and the EIDHR. EIDHR donor contribution does not indicate endorsement by the EU or any EU Member State of the document’s findings or recommendations, which are solely those of the Omega Research Foundation. The implementing partners under this EU-funded project are: Institute for Security Studies (South Africa), Justiça Global (Brazil), Legal Resources Centre (South Africa) and Omega Research Foundation (UK). Aspects of research for this report have also been funded by the Joseph Rowntree Charitable Trust.

2 Markets and Markets (undated) *Non-Lethal Weapons Market worth 8.37 Billion USD by 2020*  

3 Amnesty International and Omega Research Foundation (2016). Why the EU should ban the commercial marketing and promotion of inhumane policing and prison equipment.  
https://www.amnesty.org/download/Documents/EUR0136362016ENGLISH.PDF
development of the Alliance for Torture Free Trade\(^4\), and the introduction of limited trade controls at the national and regional levels (both of which are discussed below under Question 3), there are no international instruments which prohibit the trade and transfer of equipment with no use other than torture and ill-treatment, or which control the trade in equipment that may be misused for such purposes. Torture is also facilitated by weak or no guidelines or protocols on the use of force and equipment by prison or police officials and inappropriate training in techniques that may facilitate torture or other ill-treatment.

- Impunity continues in many States to be a reality for those accused of inflicting torture or other ill-treatment. Individuals and companies who manufacture and supply this equipment and are complicit in facilitating violations are not being held adequately to account due to weaknesses in, or the absence of, effective national laws.

- Weak or non-existent human rights use of force protocols governing the use of weapons and equipment by law enforcement officials, both in non-custodial settings (on the streets) or in places of detention, continues to be a factor in violations. In many cases, weapon specific guidance does not exist and, even where it does, it is often vague and not in keeping with international norms and standards. Yet studies of certain police agencies that have introduced clear, and increasingly specific, criteria for the use of less lethal and other weapons have shown statistically significant decreases in the rate in which weapons governed by these policies are used. This indicates that, while policy alone is not sufficient to combat torture and ill-treatment, it has an important role to play.\(^5\)

- Torture prevention and detention monitoring bodies do not always have the necessary specialist skills or expertise to effectively monitor, document and identify the less lethal weapons, restraints and torture equipment in places of detention. They face further difficulties in knowing how best to formulate recommendations for authorities in this complex area.

- Privatisation of prisons and police services and the use of Private Military and Security Companies (PMSCs) has grown, but the necessary oversight and accountability structures have not been adequate to control their non-human rights compliant use of force or to address issues of impunity.

2. To what extent are challenges to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment linked to challenges facing human rights more broadly?

- A failure by States to effectively implement the full scope of existing human rights laws and standards and a failure to hold governments, individuals and corporations to account for violations of laws and standards is a common theme across all human rights challenges.

- For example: since 2011 the UN General Assembly has regularly called on States to “prohibit the production, trade...and use of equipment... [with] no practical use other than...torture” - however, apart from the EU this call has not been effectively enacted. Since 2002 the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa have promoted a strong and specific call in Guideline 14: “States should prohibit and prevent the use, production and trade of equipment or substances designed to inflict torture or ill-

\(^4\) [www.torturefreetrade.org/](http://www.torturefreetrade.org/)

treatment and the abuse of any other equipment or substance to these ends.”

The attack on civil society organisations, NGOs, human rights defenders and monitors, and the shrinking space for their activities in many countries (Russia, Israel, Turkey etc) greatly affects the ability to hold governments and authorities to account.

3. Please outline your views as to how these challenges are/can/should be addressed; insofar as relevant, please:
   a) identify any good or desirable practice;

Since 2006, the EU has imposed controls on the “trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment”. The controls were most recently amended by Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No 1236/2005, and prohibit the import and export of certain goods deemed to have no purpose other than for inflicting the death penalty or torture or other ill-treatment, and impose export controls from EU member states on a range of goods which could be misused for torture or other ill-treatment. The range of goods the EU has deemed as having no practical purpose other than for torture and are prohibited for import or export from the EU includes body worn electric shock devices, thumbcuffs, weighted leg restraints, spiked batons and whips.

Although there have been no other controls established to date in other regions, on 26th January 2018 the Parliamentary Assembly of the Council of Europe (PACE) unanimously adopted a Resolution calling on all 47 Council of Europe (CoE) Member states and relevant CoE bodies to take action to address the trade in security equipment that could readily be used for torture and ill-treatment.

Efforts have begun to gain support for international controls on this trade. In September 2017, on the margins of the UN General Assembly, the EU, Argentina and Mongolia launched the global Alliance for Torture Free Trade, with 57 states, plus the EU signing up to a political declaration.

In terms of controlling and regulating the use of weapons and equipment and the broader use of force, the UNODC OHCHR Resource Book on the Use of Force and Firearms in Law Enforcement gives guidance on applying existing international law sources relevant for the use of force and outlines good practices, building on the UN Basic Principles on the Use of Force and Firearms, and other key texts. A new process has been initiated in this area by the Geneva Academy of International Humanitarian Law and Human Rights, the University of

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Cambridge and the University of Pretoria, with a view to producing a practical guide concerning use of less lethal weapons. Begun in early 2018, this will be a useful initiative to aide the development and operationalisation of international laws and standards in this area.

b) identify any gaps in international law, as well as in the national regulatory frameworks you are most familiar with;

- The updated Standard Minimum Rules for the Treatment of Prisoners, the Nelson Mandela Rule, has been revised recently. On revision, the SMRs on use of force in places of detention were not updated, nor brought into line with existing soft law standards such as the Code of Conduct for Law Enforcement Officials or the Basic Principles on Use of Force and Firearms by Law enforcement Officials.

- The updated SMRs are on example to illustrate a general problem of imprecise definitions, a lack of specificity and an absence of guidance in standards. Rule 47 of the SMRs states: “The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.” (emphasis added). The lack of guidance on which instruments are inherently degrading or painful, and thus should be prohibited, means that certain restraints that should be prohibited, remain in use.

- Law enforcement training – technical assistance and training can play an important role in facilitating the appropriate use of law enforcement equipment in line with regional and international human rights standards. However, if not adequately regulated, there is a danger that the provision of certain training – whether by State entities or by commercial companies - may promote and legitimise potentially abusive practices. Currently there are almost no controls over the provision or content of training to military, security and police forces, including training which could facilitate or promote torture or other ill-treatment;

- The example of Euro Security Products (ESP) is illustrative. ESP is a Czech company manufacturing and supplying electric shock devices, mechanical restraints, batons and pepper spray devices for law enforcement, correctional and military personnel as well as for civilian use. ESP also designs and delivers training for law enforcement and security personnel worldwide, and has delivered training to police forces in many countries including Georgia, Botswana, China, D.R. Congo, India, Kosovo (UN), Mexico, Nigeria, Uganda, and Venezuela.11 For certain countries, this training has included employment of restraints to place prisoners in hyper-extended positions (hog-tying) and also in the use of batons for neck holds. Such techniques are similar to those that the Council of Europe’s Committee for Prevention of Torture (amongst others) has recommended be halted.12

c) provide your recommendations, if any, with a view to the further development of the normative and institutional framework.

For ease of readings, our recommendations are divided into those pertaining to controlling the trade in torture, and those pertaining to controlling the use of weapons and restraints for torture – though we recognise, in practice, that there are strong inter-linkages between these two areas.

12 See for example: CPT, Report to the Slovenian Government on the visit to Slovenia carried out by the CPT from 31 January to 6 February 2012, 19 July 2013, paragraph 67; Report to the Slovenian Government on the visit to Slovenia carried out by the CPT from 31 January to 8 February 2006, 15 February 2008, paragraph 11.
Recommendations on controlling the trade.
The Omega Research Foundation together with Amnesty International have repeatedly emphasised the importance of States introducing effective national, regional and international measures to tackle the trade in tools of torture. The two organisations have jointly called 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 related training; and specifically designed execution technologies. The prohibited goods list should include at a minimum direct-contact electric shock devices; spiked batons; thumb-screws and thumb-cuffs; neck cuffs; weighted leg or hand restraints; leg or hand restraints for attachment to fixed objects; restraint chairs, shackles-boards and shackles-beds; cage beds; and execution equipment.

2. Strict, risk-based restrictions on the trade in law enforcement equipment that could be easily misused for torture and other ill-treatment, including, for instance, plastic and rubber bullets; electric shock projectile weapons (Tasers); and riot control agents and appropriate means of delivery. Similar controls need to be established to ensure that certain dual use drugs which have legitimate medical usages are not employed for “lethal injection” executions.

3. A comprehensive national trade control system to vet prospective transfers of controlled equipment taking into account relevant information derived from UN, regional and national human rights monitors and NGOs, relating to the activities of the proposed law enforcement end users, in particular their compliance with human rights law and standards.

4. Reporting and information sharing on the trade in “tools of torture and execution technologies”. 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 a publicly available 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, civil society and independent bodies.

5. Regional and international measures to regulate the trade in “tools of torture and capital punishment”. Establishing effective national measures to regulate the trade in law enforcement equipment and technical assistance, 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.

Recommendations on controlling use.

1. In the case of equipment with no use other than torture or ill-treatment; A joint statement by relevant UN Special Procedures which clearly sets out equipment that has no use other than torture and ill-treatment and whose use should be prohibited. This includes, but is not limited to; spiked batons, body worn electric-shock devices and chains and irons.

2. For equipment that has a legitimate law enforcement purpose, but which is frequently misused; Developing a draft framework for the process under which less lethal weapons are selected, tested, trialled, deployed, regulated, evaluated and held to account – in line with Principle 3 of the BPUFF which states that less lethal weapons should be ‘carefully evaluated... and carefully controlled’. This should include:

- Develop international technical and operational standards for the design and function of less lethal weapons and restraints, with full reference to human rights laws and standards. Only those weapons and restraints that fulfil such standards would be permitted for use, and only then under carefully controlled conditions.

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• Agreeing principles for selection and testing. States should adopt legally constituted and independent selection and testing processes. These should be free from commercial (manufacturer) or political interference. This should include agreeing a list of principles to help assess whether technologies are appropriate for use, e.g. does the weapon carry a high risk of causing significant injury including to persons other than the intended target? Does it cause harm which is disproportionate to the objective to be achieved?

• Agreeing principles for training; for example, that it should be frequent, should include de-escalation and should be human rights based.

• Agreeing principles around the drafting of guidance for less lethal weapons. For example, each weapon / means of restraint should have an evidence based, human rights compliant guidelines. This should be drafted following a process of consultation and should be made publicly available.

• Agreeing principles for reporting and accountability requirements post-use. Use of force data collection and analysis should be mandatory for all use of force incidents. Oversight of less lethal weapons and restraints should be carried out by independent accountability structures with effective and dissuasive sanctions/penalties for misuse/abuse.

3. The creation of a UN Expert Group on the use of less lethal weapons and restraints, as proposed by the current UN Special Rapporteur on Torture, and the former UN Special Rapporteurs on Extrajudicial Executions and Freedom of Assembly should be pursued.