



Permanent Mission  
of the Republic of Indonesia to the UN, WTO,  
and Other International Organizations  
in Geneva

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The Permanent Mission of the Republic of Indonesia to the United Nations, WTO, and Other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and with reference to the note verbal dated 10 March 2020 and subsequent note verbal dated 23 March 2020, has the honour to convey the Government of Indonesia's response to the questionnaire on the subject: GA Resolution 73/304: "Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards".

The Permanent Mission of the Republic of Indonesia to the UN, WTO, and Other International Organizations in Geneva, avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



May 2020

**Office of the High Commissioner for Human Rights**

**Geneva**

**The Government of the Republic of Indonesia's Response to the Office of the High Commissioner for Human Rights Questionnaire on Common International Standards on the Import, Export and Transfer of Goods Used for Capital Punishment and Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment**

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1. What are the regional and/or national instrument or policies guiding your country for the regulation of trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment? Please provide examples. Which government department/agency is responsible for monitoring the implementation of such regulations/policies, if any?

**a) Capital punishment**

Indonesia's penal system apply capital punishment only to the most serious crimes under the Criminal Code and has been deemed constitutional by the Constitutional Court of Indonesia. The penalty is carried out by firing squads using a specific type of **organic** firearm (SS1 V1) as regulated by Presidential Determination No. 2 of 1964 and Chief of National Police Regulation No. 12 of 2010.

This type of firearm is produced by the national defence industry (PT Pindad) whose operation and trade are guided by Law No. 16 of 2012 on Defence Industry and supervised pursuant to the standards set by the 2001 Firearms Protocol . The export, import, and transfer of any defence goods produced by this industry must obtain prior approval from the Minister of Defence.

Monitoring mechanism is carried out by government institutions as stipulated in the Minister of Defence Regulation No. 6 of 2017 (the Directorate General of Customs and Excise of the Ministry of Finance and appointed independent surveyor). Moreover, Law No. 16 of 2012 also includes monitoring of the implementation by the public through the Parliament.

**b) Torture or other cruel, inhuman or degrading treatment or punishment**

Indonesia has never produced nor exported any goods which have no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment. These are regulated by the Criminal Code and in line with Indonesia's commitment through the ratification of the Convention against Torture (CAT) and UNGA Resolution 72/163.

Production and/or trade on social policing and riot control goods are conducted pursuant to Law No. 16 of 2012.

Indonesia's legal framework imposes certain conditions to dual-use goods, for example to the use of chemicals for pharmaceutical precursor purposes, that should be in line with the *Wassenaar Arrangement on Export Control for Conventional Arms and Dual-Use Goods and Technology*. Similar treatment is also imposed to strategic and dangerous goods.<sup>1</sup>

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<sup>1</sup> Law No. 17 of 2006 on Customs, Law No.16 of 2012 on Defence Industry, Law No.10 of 1997 on Nuclear Energy, Law No.9 of 2008 on the Use of Chemical Materials and the Prohibition of the Use of Chemical Weapons

2. Have there been any investigations and/or convictions for breached of national regulations on the trade in goods indicated by paragraph 8 of the introduction to this questionnaire? If so, please provide details.

No. cases relating to the type of goods, as indicated by para 8 of the introduction to the questionnaire, are mostly related to unlawful ownership of firearms.

3. Do you agree with the proposed categorization of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment indicated in paragraph 8 of the introduction to this questionnaire? If not, which categories would you propose?

No. As capital punishment is not a subject regulated under the CAT or related with any practice of torture and other related crimes, it is not advisable to include that category on the list. Further, due to various methods of capital punishment among countries, it will be difficult to reach unanimity regarding the inclusion of such category.

It would be more effective and beneficial if countries focus more on the core of the Convention which regulates the practice of torture or other cruel, inhuman or degrading treatment or punishment rather than including a subject that is beyond the ambit of the Convention. The categorization should provide proper guidance and consideration in regulating the export, import and transfer of any goods which have no other use than torture or other cruel, inhuman or degrading treatment or punishment as well as any goods which in nature are dual-use goods.

4. Please indicate whether you believe there should be an exhaustive list of goods under each category. If yes, should there be a mechanism for regular updating of the lists under each category?

**Yes**, an exhaustive list of goods under each category is required to avoid practical confusion and to provide a common guideline on how those goods should be handled. It is worth noting that the condition imposed on the dual-use goods would not breach WTO trade restriction principles.

A regular updating mechanism is required for the list of goods which have no practical use other than for the purpose of torture or other cruel, inhuman, or degrading treatment or punishment.

5. Should the proposed common international standards prohibit trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman, or degrading treatment or punishment? If not, please provide other explanations.

Referring to the answer to question number 3, prohibition of trade should be imposed towards goods which have no practical use other than for the purpose of torture or other

cruel, inhuman, or degrading treatment or punishment, in line with the underlying spirit and purposes establishing the anti-torture regime under CAT.

It is worth noting that any items can be used as tools to conduct torture or other cruel, inhuman, or degrading treatment or punishment. In this case, it is crucial for States to continue strengthening its anti-torture regulations and policies.

6. Should the proposed common international standards provide for strict control of trade in goods that could be used for the purpose of torture or other cruel, inhuman, or degrading treatment or punishment and goods that could be used for the purpose of capital punishment? If not, please provide justification.

Yes, stricter control for dual use goods should also be advocated in the proposed common international standards. Most importantly, the proposed common international standards should provide for the establishment of a monitoring mechanism to ensure that these goods are not used to conduct torture or other cruel, inhuman or degrading treatment or punishment.

7. What types of activities linked to “import, export and transfer” should the proposed common international standards regulate? Please consider activities such as transit, promotion, technical assistance and training, brokering, sharing technology, manufacturing, production and commercial marketing, among others. Please also provide an explanation for why these activities should be regulated or not

Any regulation on import, export and transfer of regulated goods as well as related to their transit, promotion, technical assistance and training, brokering, sharing technology, manufacturing, production and commercial marketing, among others, should consider the possibility of cross-cutting issues with applicable laws in other areas such as international trade law, international investment law, and international environmental law. This is important to ensure that any anti-torture measure on regulated goods does not become a blanket discriminatory practice or a non-trade barrier, **and** to ensure the transport of such goods are conducted in a safe manner.

8. Please indicate which risk assessment mechanisms and criteria should be considered for the import, export and transfer of a) goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment; and b) goods that could be used for the purpose of capital punishment. Please consider, inter alia, the criteria for preventing diversion to third countries.

Prior to the creation of a mechanism and criteria to ascertain the risks of import, export, and transit of regulated goods, categorization on goods based on their uses is required. Since there will be goods that have different purposes from the others, it may require different method of use and risk criteria.

For example, chemicals such as *sodium thiopental* or *pentobarbital* are dual-use items which have medical purposes but could also endanger human lives if it is not used or even transported properly.

Therefore, relevant transport of goods regulations such as IATA Dangerous Goods Regulation dan Annex 18 on the Safe Transport of Dangerous Goods by Air or International Maritime Dangerous Goods (IMDG) Code, must be strictly observed. This is to ensure that the packing, labelling, storage, loading, and transport can be done in a safe manner.

9. Please indicate what you consider to be the most suitable type of international instrument to establish common international standards for regulating goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Please provide further explanation.

In the event that the relevant parties agreed to establish the common international standards, it would be appropriate to publish it as an Optional Protocol under CAT that serves as the main umbrella convention on torture-related issues.

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