



How to use the Arms Trade Treaty to address
Gender-Based Violence

A Practical Guide for Risk Assessment

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Cover photo:

A delegation of United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) female staff visited a women's shelter for victims of sexual abuse in Goma and donated much needed supplies.

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Launch of 16 days of activism to end violence against women and girls, Juba.

Children's hands linked together at an activity organised by the UN Police (UNPOL) officers of the Gender Child and Vulnerable Persons Protection (GCVPP) unit at the event.

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The Arms Trade Treaty (ATT) is the first legally binding global instrument to recognize and create obligations around the connection between arms transfers and gender-based violence (GBV). It presents a unique opportunity for States Parties to understand and apply its terms to meaningfully contribute to global efforts to reduce arms-related GBV.

Understanding the ATT's GBV obligations

All States Parties to the ATT, exporters and importers alike, need to understand when and how to assess the prevalence of arms-related GBV and states' responses to it, to effectively incorporate GBV-related ATT obligations into export assessments.

This practical guide offers advice to practitioners and state representatives engaged in export assessments required under the ATT in relation to GBV. It offers useful indicators, guidelines and emerging principles to help develop the requisite expertise and experience to meaningfully incorporate GBV into export assessments. It does not intend to be exhaustive, conclusive nor provide guidance on whether a certain situation or context could or would require a prohibition under Article 6 or a denial of authorization pursuant to Article 7. Instead, building on previous publications that identify indicators of GBV, sources of data and suggested questions to ask during export assessments,¹ it provides an implementing framework within which licensing officials can consider their GBV-related obligations in assessing arms transfers to ensure they comply with the ATT and promote its goals.

Article 7.4 of the ATT explicitly requires exporting States Parties to consider GBV as part of the comprehensive export assessment described in Article 7.1 (Export and Export Assessment). However, since certain acts of GBV can be committed as violations of international law, GBV must also be considered under Article 6.3.

Article 7.4 provides 'the exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2.1 or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of GBV or serious acts of violence against women and children'.²

The aim of Article 7.4 is to ensure that an exporting State Party takes into account this risk when conducting its export assessment outlined in Article 7.1, not to create a stand-alone criterion in export assessments additional to the risks outlined in Article 7.1.³ Its value as an explicit requirement is to reduce the historical tendency to overlook GBV and promote consideration of specific mitigation measures that may be required with respect to GBV compared to other more visible violations.

Key definitions: Gender-based violence and violence against women

Although the term 'gender-based violence' is often used interchangeably with the term 'violence against women',⁴ they are not the same. Violence against women is comprehensively defined in the 1994 Declaration on the Elimination of Violence Against Women and encompasses physical, sexual and psychological violence across a range of contexts.⁵ For consistency with pre-existing international legal definitions, this study defines GBV as 'violence that is directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty... While women, men, boys and girls can be victims of GBV, women and girls are the main victims.'⁶

There are three important features of this definition. First, gender can be understood as the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men – that vary across societies, can be changed,⁷ and intersect with other factors such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity.⁸ Second, GBV includes not just sexual violence, but also physical, economic and emotional and psychological violence – forms of violence that are severely under-reported in most, if not all countries. Third, while GBV can be perpetrated against men and boys, it is most prevalent against women and girls and linked to social attitudes that perpetuate gender inequalities and discrimination.⁹ These three features make it important to address GBV as an issue in its own right, and also as a means of preventing human suffering caused by violations of IHL and IHRL.

GBV also includes homophobic and transphobic violence against those who defy gender norms.¹⁰ Other examples of GBV include domestic violence, sex trafficking, forced and early marriage, honour crimes and harmful traditional practices.¹¹ This study mirrors the ATT's focus on violations of international law, and therefore examines primarily sexual and physical forms of GBV,¹² while noting that arms can also be implicated in serious violations of cultural, social and economic rights that may constitute GBV.¹³

GBV occurs in every country around the world, both in and outside of armed conflict, in the home and in the public sphere. In 2017, the World Health Organization reported that 35 per cent of women worldwide have experienced physical and/or sexual violence by a partner, or sexual violence by someone other than a partner.¹⁴ In its global report for 2016-17, Amnesty International highlighted high levels of GBV across diverse countries such as Brazil, Burundi, Egypt, El Salvador, India, Lebanon, Mexico, Namibia, New Zealand, Papua New Guinea, and the United States.

While arms are not always responsible for the threat or prevalence of GBV, there is a clear link between the risk of GBV and the use or availability of weapons, particularly of small arms and light weapons (SALW).¹⁵ For instance, in countries with high rates of female homicides, firearms are used in more than three-quarters of cases.¹⁶ SALW are also frequently used as a tool to inflict or facilitate 'psychological violence, emotional harm, intimidation, rape, sexual abuse, coercion and other forms of violence.'¹⁷ Examples of lawful arms-holders committing sexual abuse include acts by armed Sudanese government forces against expatriate and displaced women;¹⁸ by security forces against Sri Lankan and Mexican women in detention centres, in order to procure confessions;¹⁹ by police against Kenyan women during the 2007-2008 post-election violence;²⁰ by private security guards against Israeli women;²¹ and by peacekeepers across a range of contexts.²²

Recent multilateral efforts, particularly through the United Nations (UN), seek to recognize and address the devastating effects of GBV. Target 5.2 of the 2030 Sustainable Development Goals (SDGs) specifically calls for the elimination of violence against women and girls.²³ As the first legally binding global treaty to recognize the link between the international arms trade and GBV, the ATT is a critical contribution to global efforts to address GBV and is a further step in broader UN efforts to mainstream gender issues into global policy and practice.²⁴

**Incorporating GBV into
export assessments under
Articles 6.3 and 7.1**

1

Stage 1:

Identify what types of GBV are recognized as violations under Article 6.3 or Article 7.1 of the ATT.

2

Stage 2:

Identify (1) which of the violations listed in 'Stage 1' are prevalent in the recipient state; (2) the state's capacity to prevent and punish acts of GBV; and (3) whether the arms and items to be transferred, their end use and the end user, are legitimate under the ATT.

3

Stage 3:

Identify whether there is an overriding risk that the arms or items under Articles 2.1, 3 or 4 to be transferred would be used to commit or facilitate the relevant acts of GBV identified in Stage 2.

4

Stage 4:

Identify whether mitigating measures or other approaches satisfactorily and significantly reduce the relevant Article 7.1 risks identified in Stage 3.

Types of GBV violations covered by Articles 6.3 and 7.1

The first stage of incorporating GBV into an arms export assessment is to identify what types of GBV are recognized as violations under Article 6.3 or Article 7.1 of the ATT.

Article 6 obligations relate to all arms transfers, including exports, imports, transit and transshipment and brokering. Article 6.3 prohibits authorization of any transfer of items listed in Article 2.1, Article 3 or Article 4 if the State Party has knowledge at the time of authorization that the arms or items would be used in the commission of certain crimes. This relevantly includes when rape and sexual violence are committed as genocide,²⁵ and when rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity are committed as a crime against humanity.²⁶ In times of international armed conflict, it will include when rape or sexual violence is committed as an act of torture or inhuman treatment constituting a grave breach of the Geneva Conventions of 1949,²⁷ or other war crimes committed in non-international armed conflicts, such as torture, and outrages upon personal dignity – in particular humiliating and degrading treatment.²⁸


If the exporting state is a Party to the Rome Statute it will also include GBV committed as a broader range of war crimes as defined under this treaty, which comprises serious violations of the laws and customs in international armed conflict including: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other sexual violence (including torture or inhuman treatment mentioned above) constituting a grave breach of the Geneva Conventions (Art. 8.2(b)(xxii) of the Rome Statute). In non-international armed conflicts, this includes sexual violence committed as torture, outrages upon personal dignity – in particular humiliating and degrading treatment – and other serious violations of laws and customs in non-international armed conflict relevantly including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence (Art 8.2(e) of the Rome Statute).

If a transfer is not prohibited under Article 6, Article 7.1 requires the exporting State Party to assess the potential that the conventional arms or items:

1. Would contribute to or undermine peace and security
2. Could be used to:
 - a. Commit or facilitate a serious violation of international humanitarian law (IHL)
 - b. Commit or facilitate a serious violation of international human rights law' (IHRL)
 - c. Commit or facilitate an act constituting an offence under international conventions or relating to terrorism to which the exporting state is a Party
 - d. Commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting state is a Party.

Serious violations of IHL under Article 7.1(b)(i) of the ATT are distinguishable from the war crimes mentioned in Article 6.3. As international crimes, war crimes are acts that individuals are criminally responsible for. However, serious violations of IHL may be committed by states and organized armed groups party to an armed conflict without requiring proof of individual responsibility for specific acts.²⁹ Accordingly, acts of GBV constituting serious violations of IHL are as for war crimes listed above, but also include rape and slavery as serious violations of customary IHL.³⁰

GBV that constitutes serious IHRL violations include violations of *jus cogens* norms such as torture and slavery, as well as 'gross violations' such as enslavement, rape, and sexual violence of a comparable serious nature.³¹ Given the lack of consensus on what other IHRL violations may be sufficiently serious,³² determining whether other specific IHRL violations qualify as 'serious' so as to fall under Article 7.1(b)(ii) of the ATT should be determined both qualitatively and quantitatively by both the gravity of the violation (its character) and the manner of its commission (the extent of harm to victims, which need not be systematic or widespread).³³ Under the EU Council's 'User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment', even if an IHRL violation is not systematic or widespread it may still be considered serious if a competent body of the UN, the EU or the Council of Europe have established its occurrence. For the purposes of the ATT, serious IHRL violations under Article 7(b)(ii) are also committed by individuals and by civilian or military authorities responsible for an institutional failure to deal with violations under their command.³⁴



The sources identified in this case study are not exhaustive. They are indicative of the expert public-domain authorities that ATT States Parties should consult as part of their own comprehensive risk assessments, and to complement their own analytical, diplomatic and intelligence sources.

GBV offences under international conventions or protocols relating to terrorism under Article 7(b)(iii) include actions that target individuals on the basis of gender or inflict gender-based harm. There are two particularly relevant international instruments. For example, the 1979 International Convention against the Taking of Hostages encompasses the threat to injure (which can include sexual violence, for instance) another person (who could be targeted on the basis of gender).³⁵ The 1997 International Convention for the Suppression of Terrorist Bombings covers bombings targeting individuals on the basis of gender intended to cause serious bodily injury.³⁶ The Organization of African Unity (OAU) Convention on the Prevention and Combating of Terrorism is a third (regional) instrument, in which the definition of terrorism includes acts that 'endanger the life, physical integrity or freedom of, or cause serious injury' to individuals: thus GBV could be committed either through the injury inflicted or by targeting individuals on the basis of gender.³⁷

Under Article 7(b)(iv), GBV can also constitute an offence under international conventions or protocols relating to transnational organized crime. The most relevant convention is the UN Convention against Transnational Organized Crime (the Palermo Convention) in which "[t]rafficking in persons" for the purpose of exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."³⁸ Also relevant is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the Palermo Protocol and requires States Parties to prevent and combat trafficking, as well as alleviate the factors that make women and children particularly vulnerable to trafficking.³⁹

Under Article 7.2 the exporting State Party is also to consider measures to mitigate the risk identified in Article 7.1, and Article 7.3 requires the export not be authorized if there is an overriding risk of any of the negative consequences in Article 7.1.

Incidence of and response to arms-related GBV in recipient state

The second stage of incorporating GBV into an export assessment involves identifying: which of the above types of GBV are prevalent in the recipient State; the State's capacity to prevent and punish acts of GBV; and whether the arms and items to be transferred, their end use and the end user, are legitimate under the ATT. The table below lists criteria, indicators of criteria, and data sources for both prevalence of GBV and state capacity to respond to GBV and regulate arms distribution in a manner compliant with the ATT. A very important preliminary qualification is that because GBV is notoriously under-reported, statistics should be assumed to universally underestimate the incidence of GBV they attempt to measure.⁴⁰ Relatedly, the absence of data regarding a particular form of GBV should not be assumed to reflect its non-commission, but rather inadequate data-collection.

The indicators are drawn from existing analysis produced by the International Committee of the Red Cross (ICRC) and Reaching Critical Will.⁴¹ Despite recent advances, there are still critical gaps in the collection, provision and analysis of (disaggregated) data on the extent and impact of GBV. Nevertheless, there is a wide range of credible sources that states should include as a minimum in any assessment of the risk of GBV, produced by the UN, regional institutions, states, civil society and academia. The sources identified in this case study are not exhaustive. They are indicative of the expert public-domain authorities that ATT States Parties should consult as part of their own comprehensive risk assessments, and to complement their own analytical, diplomatic and intelligence sources. This study informs and supports the ongoing work of Risk Watch, developed by Control Arms' ATT Monitor⁴² as a tool to gather and synthesize the vast pool of public-domain data on ATT-related risks for key contexts of concern, including GBV.

PREVALENCE OF GBV

Criteria	Indicator	Information sources
<p>Use of weapons in intentional killings, particularly of women (femicide) and of children (both in and outside armed conflict)</p>	<ul style="list-style-type: none"> • Overall homicides rate • Percentage of homicide carried out with firearms • Percentage of homicide victims that are women • Percentage of homicide victims that are children • Number of women, children, killed in indiscriminate or disproportionate attacks (in armed conflict) 	<p>UN Office of Drugs and Crime: Global Study on Homicide</p> <ul style="list-style-type: none"> • UNODC (2016). 'Intentional homicide victims by sex 2012-2016'. https://dataunodc.un.org/crime/intentional-homicide-victims-by-sex. • UNODC (2013). 'Global Study on Homicide 2013: Trends, Contexts, Data'. https://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf. • UNODC (2013). 'UNODC Homicide Statistics 2013'. https://www.unodc.org/gsh/en/data.html. <p>Small Arms Survey: Violent Deaths database</p> <ul style="list-style-type: none"> • Small Arms Survey (2016). 'Firearms and Violent Deaths', pp. 1-5. http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-60.pdf. • Small Arms Survey (2016). 'Monitoring Small Arms Deaths', pp. 4-5. http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-59.pdf. • Small Arms Survey (2017). 'Interactive Maps and Charts of Armed Violence Indicators'. http://www.smallarmssurvey.org/tools/interactive-map-charts-on-armed-violence.html. • Small Arms Survey (2016). 'A Gendered Analysis of Violent Deaths'. http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-63.pdf. <p>National criminal datasets where available</p> <p>Local or national casualty counting groups</p> <ul style="list-style-type: none"> • Syrian Observatory for Human Rights http://www.syriahr.com/en/?cat=44. <p>OHCHR national casualty data where available</p> <ul style="list-style-type: none"> • OHCHR (2018). 'Human rights by country'. https://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx. <p>Report of the Secretary-General on children and armed conflict</p> <ul style="list-style-type: none"> • UN Secretary General (2017). 'Children and armed conflict', pp. 2, 4-29. https://childrenandarmedconflict.un.org/document/report-secretary-general-children-armed-conflict/.

PREVALENCE OF GBV

Criteria	Indicator	Information sources
		<p>Reports of the UN Working Group on Children and Armed Conflict</p> <ul style="list-style-type: none"> A complete list of reports can be found here: https://www.un.org/sc/suborg/en/subsidiary/wgcaac/sgreports. <p>Human Rights Watch and Amnesty International</p> <ul style="list-style-type: none"> Amnesty International (2018). 'Amnesty International Report: the State of the World's Human Rights'. https://www.amnestyusa.org/wp-content/uploads/2018/02/POL1067002018ENGLISH.pdf Reaching Critical Will (2016). 'Preventing gender-based violence through arms control: tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action'. http://www.reachingcriticalwill.org/images/documents/Publications/preventing-gbv.pdf. Reaching Critical Will (2015). 'Women, weapons, and war: A gendered critique of multilateral instruments', pp. 7-12. http://www.reachingcriticalwill.org/images/documents/Publications/women-weapons-war.pdf. <p>National human rights groups reports, where available</p>
<p>Use of weapons to commit/threaten acts of torture or violence against specific groups, particularly based on gender-identity/sexual orientation</p>	<ul style="list-style-type: none"> Levels of intercommunal tensions in the recipient state Reports of weapons used to commit/threaten acts of torture or violence against specific gender groups Reports of hate speech or incitements to violence against specific gender groups 	<p>Reports of the Committee Against Torture</p> <ul style="list-style-type: none"> Committee Against Torture Annual Reports: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=27. <p>Human Rights Watch, Amnesty International, national human rights groups</p> <ul style="list-style-type: none"> Human Rights Watch reports on Torture: https://www.hrw.org/. <p>Early Warning Project</p> <ul style="list-style-type: none"> Early Warning Project (2018). 'Statistical Risk Assessment'. https://www.earlywarningproject.org/risk_assessments. <p>Social Hostilities Index (Pew Forum)</p> <ul style="list-style-type: none"> Pew Forum (2009). 'Social Hostilities Index'. http://www.pewforum.org/2009/12/17/social-hostilities-index-shi/. <p>Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</p> <ul style="list-style-type: none"> Reports from the Special Rapporteur: http://ap.ohchr.org/documents/dpage_e.aspx?m=103.

PREVALENCE OF GBV

Criteria	Indicator	Information sources
		<p>UN Special Advisors on the Prevention of Genocide and Responsibility to Protect</p> <ul style="list-style-type: none"> UN Office on Genocide Prevention and the Responsibility to protect. 'When to Refer to a Situation as Genocide'. http://www.un.org/en/genocideprevention/documents/publications-and-resources/GuidanceNote-When%20to%20refer%20to%20a%20situation%20as%20genocide.pdf. United Nations (2014). 'Framework for Analysis of Atrocity Crimes: A Tool for Prevention'. http://www.un.org/en/genocideprevention/documents/publications-and-resources/Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf. <p>World Economic Forum Global Gender Gap Reports</p> <ul style="list-style-type: none"> World Economic Forum (2017). 'The Global Gender Gap Report 2017'. Health statistics in the country profiles. https://www.weforum.org/reports/the-global-gender-gap-report-2017.
<p>Use of firearms in domestic violence, which may constitute a serious violation of IHRL</p>	<ul style="list-style-type: none"> High levels of domestic violence Civilian ownership of firearms Use of firearms reported in domestic violence incidents 	<p>UN Women Global Database on Violence against Women</p> <ul style="list-style-type: none"> UN Women (2018). 'Global Database on Violence against Women'. http://evaw-global-database.unwomen.org/en. <p>UNODC Crime Databank</p> <ul style="list-style-type: none"> UNODC (2016). 'Intentional homicide victims by sex 2012-2016'. https://dataunodc.un.org/crime/intentional-homicide-victims-by-sex. <p>Special Rapporteur on Violence against Women</p> <ul style="list-style-type: none"> Reports from the Special Rapporteur: https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/AnnualReports.aspx. <p>National criminal datasets, where available</p>

PREVALENCE OF GBV

Criteria	Indicator	Information sources
Existence of human trafficking networks, or of systematic modern slavery, including forced labour	<ul style="list-style-type: none"> • Rate of modern slavery within the recipient country • Existence of active human trafficking networks targeting people on basis of gender • Percentage of trafficking/ slavery victims are women or children 	<p>UNODC Human Trafficking Knowledge Portal</p> <ul style="list-style-type: none"> • UNODC (2018). 'Human Trafficking Knowledge Portal': https://www.unodc.org/cld/en/v3/htms/index.html <p>US Trafficking in Persons Report</p> <ul style="list-style-type: none"> • US State Department (2017). 'Trafficking in Persons Report 2017': https://www.state.gov/j/tip/rls/tiprpt/2017/index.htm <p>Walk Free Foundation Human Slavery Index</p> <ul style="list-style-type: none"> • Walk Free Foundation (2018). 'Human Slavery Index': https://www.globalslaveryindex.org/2018/data/maps/#response
Strategic use or high levels of rape and sexual violence	<ul style="list-style-type: none"> • Reports of rape as a weapon of war (in armed conflict) • Levels of sexual violence in the recipient country • Reports of weapons being used to facilitate sexual violence 	<p>National human rights groups reports and data, where available</p> <p>Human Rights Watch, Amnesty International, WILPF, ICRC reports</p> <ul style="list-style-type: none"> • Human Rights Watch reports on sexual violence and rape: https://www.hrw.org/topic/womens-rights/sexual-violence-and-rape • Amnesty International reports on sexual violence: https://www.amnesty.org/en/search/?q=&sort=date&issue=1619 • WILPF reports on sexual violence: http://www.peacewomen.org/search?kw=sexual%20violence&f%5B0%5D=field_peacewomen_consolidated_th%3A26&f%5B1%5D=type%3Areport_policy_brief • ICRC Reports on sexual violence: https://www.icrc.org/en/what-we-do/sexual-violence <p>UN Women Global Knowledge Platform to End Violence against Women</p> <ul style="list-style-type: none"> • UN Women (2018). 'Global Database on Violence against Women': http://evaw-global-database.unwomen.org/en • UN Women (2018). 'Virtual Knowledge Centre to End Violence Against Women and Girls': http://www.endvawnow.org/

PREVALENCE OF GBV

Criteria	Indicator	Information sources
		<p>UNODC data crimebank</p> <ul style="list-style-type: none"> UNODC (2017). 'Crimes and Drugs Data'. https://dataunodc.un.org/. <p>UNICEF data on sexual violence prevalence among girls and boys</p> <ul style="list-style-type: none"> UNICEF Data (2017). 'Sexual Violence'. http://data.unicef.org/topic/child-protection/violence/sexual-violence/#. UNICEF (2017). 'A Familiar Face: Violence in the lives of children and adolescents'. https://data.unicef.org/resources/a-familiar-face/. <p>OECD data on sexual violence</p> <ul style="list-style-type: none"> OECD (2018). 'Violence against women (indicator)'. https://data.oecd.org/inequality/violence-against-women.htm. <p>Reports of the Secretary-General on conflict-related sexual violence</p> <ul style="list-style-type: none"> UN Secretary General (2018). 'Report of the Secretary-General on conflict-related sexual violence'. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/reports/sg-reports/SG-REPORT-2017-CRSV-SPREAD.pdf. UN Secretary-General (2018). 'Report of the Secretary-General on conflict-related sexual violence'. http://undocs.org/S/2018/250. <p>World Health Organization (WHO)</p> <ul style="list-style-type: none"> World report on violence and health (2002), pp. 147-174. http://apps.who.int/iris/bitstream/handle/10665/42495/9241545615_eng.pdf;jsessionid=A6E396E74315A7F48AF6401366C52A?sequence=1. <p>UN Team of Experts on the Rule of Law / Sexual Violence in Conflict (TOE) reports</p> <ul style="list-style-type: none"> UN TOE (2018). 'Annual Report 2017'. https://www.un.org/sexualviolenceinconflict/wp-content/uploads/Team-of-Experts-on-Rule-of-Law-Sexual-Violence-in-Conflict-Annual-Report-2017.pdf. <p>Sexual Violence Research Initiative (SVRS) reports</p> <ul style="list-style-type: none"> SVRI (2018). 'Regional data: Interactive map'. http://www.svri.org/world-map. SVRI reports on prevalence of violence against women: http://www.svri.org/our-priorities/nature-prevalence?link-section=reports.

STATE CAPACITY

Criteria	Indicator	Information sources
Existence or risk of armed conflict within the recipient state	<ul style="list-style-type: none"> • Ongoing armed conflict within the recipient state • High level of state fragility • Absence of effective rule of law 	<p>Uppsala Conflict Data Programme (UCDP)</p> <ul style="list-style-type: none"> • UCDP (2018). 'Countries in Conflict Database'. http://ucdp.uu.se/. <p>International Institute of Strategic Studies Armed Conflict Database (IISS)</p> <ul style="list-style-type: none"> • IISS (2018). 'Armed Conflict Database [paid subscription needed]'. https://www.iiss.org/publications/armed-conflict-database. <p>Heidelberg Institute for International Conflict (HIIK)</p> <ul style="list-style-type: none"> • HIIK (2018). 'Conflict Database'. https://hiik.de/data-and-maps/conflict-database/?lang=en. • HIIK (2018). 'Conflict Barometer'. https://hiik.de/conflict-barometer/current-version/?lang=en. <p>World Bank list of Fragile and Conflict-Affected Situations</p> <ul style="list-style-type: none"> • World Bank Group (2018). 'Harmonized List of Fragile and Conflict-Affected Situations'. http://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonized-list-of-fragile-situations. <p>Fund for Peace: State Fragilities Index</p> <ul style="list-style-type: none"> • Fund for Peace (2018). 'State Fragilities Index'. http://fundforpeace.org/fsi/. <p>World Governance Indicators: Political Stability and Absence of violence/terrorism index</p> <ul style="list-style-type: none"> • World Bank Group (2018). 'Political Stability and Absence of violence/terrorism index'. Land Portal. https://landportal.org/book/indicator/wb-pvest.
Existence of insecure communities within recipient state	<ul style="list-style-type: none"> • Number and/or insecure refugee settlements within the borders of a receiving country 	<p>UNHCR: Countries with refugee emergencies and situations</p> <ul style="list-style-type: none"> • UNHCR (2018). 'Operational Portal: Refugee Situations'. https://data2.unhcr.org/en/situations.

STATE CAPACITY

Criteria	Indicator	Information sources
Existence of GBV prevention and punishment laws and policies including as IHL and IHRL violations	<ul style="list-style-type: none"> • Legal frameworks with comprehensive definitions, appropriately severe punishments, and protection and support procedures 	<p>World Health Organization Global Status Report</p> <ul style="list-style-type: none"> • WHO (2014). 'Global Status Report on Violence Prevention', http://www.who.int/violence_injury_prevention/violence/status_report/2014/en/. <p>ICRC National Implementation of IHL</p> <ul style="list-style-type: none"> • ICRC (2018). 'National Implementation of IHL' https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/vwLawsByCountry.xsp.
Ability of the state to uphold and enforce GBV prevention laws and policies including as IHL and IHRL violations	<ul style="list-style-type: none"> • Evidence of effective implementation of international IHL and human rights commitments in national laws • Evidence of investigations and prosecutions of perpetrators of gender-based violence under their authority • Evidence of relevant authorities/end-user cooperating with international investigations • Evidence of practical measures introduced in response to GBV incidents 	<p>ICRC National Implementation of IHL</p> <ul style="list-style-type: none"> • ICRC (2018). 'National Implementation of IHL' https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/vwLawsByCountry.xsp. <p>OHCHR Universal Human Rights Index database</p> <ul style="list-style-type: none"> • OHCHR (2018). 'Universal Human Rights Index database': https://www.ohchr.org/EN/HRBodies/Pages/UniversalHumanRightsIndexDatabase.aspx. <p>OHCHR's Database on practical means to combat racial discrimination, xenophobia and related intolerance</p> <ul style="list-style-type: none"> • OHCHR (2018). 'Anti-discrimination database': https://adsdatabase.ohchr.org/SitePages/Anti-discrimination%20database.aspx. <p>Amnesty International annual reports</p> <ul style="list-style-type: none"> • Amnesty International (2018). 'Amnesty International Report: the State of the World's Human Rights': https://www.amnestyusa.org/wp-content/uploads/2018/02/POL1067002018ENGLISH.pdf. <p>UN Women Global Knowledge Platform to End Violence against Women</p> <ul style="list-style-type: none"> • UN Women (2018). 'Global Database on Violence against Women': http://evaw-global-database.unwomen.org/en. • UN Women (2018). Virtual Knowledge Centre to End Violence Against Women and Girls': http://www.endvawnow.org/.

STATE CAPACITY

Criteria	Indicator	Information sources
Ability of the state to protect against diversion	<ul style="list-style-type: none"> • Evidence of preventative measures to mitigate the risk of diversion • Evidence of appropriate measures taken to detect diversion • Evidence of cooperation and exchange of information to mitigate the risk of diversion 	<p>Initial Reports submitted by ATT States Parties</p> <ul style="list-style-type: none"> • ATT Baseline Assessment Project (2018). 'ATT-BAP Survey Database'. http://www.armstrade.info/country-profiles/. • ATT Secretariat (2018). 'Reporting'. Initial Reports available for download: https://www.thearmstradetreaty.org/index.php/en/2017-01-18-12-27-42/reports.
Effectiveness of the state of developing laws that minimize violence perpetrated with illicit arms	<ul style="list-style-type: none"> • Evidence of national legislation prohibiting or penalizing illicit firearm possession • Evidence of national programmes to reduce the number of illicit firearms in circulation 	<p>Gunpolicy.org (International firearm injury prevention and policy) data</p> <ul style="list-style-type: none"> • Gunpolicy.org (2018). 'Armed violence and gun laws, country by country'. http://www.gunpolicy.org/firearms/home. <p>National monitoring groups reports and data, where available</p>

Arms or items under Article 2.1, 3 or 4 at risk of being used to commit or facilitate the relevant acts of GBV

The third stage of the export assessment requires determining whether and how the arms or items to be authorized would be used by the recipient to commit GBV committed as a violation under Article 6.3 or could be used by the recipient to commit or facilitate GBV as a violation under Article 7.1. This terminology requires the exporting state to predict the likelihood of violations under Articles 6.3 and 7.1 will occur, which in turn will depend on past behaviour and evidence indicating likely future behaviour⁴³ based on the types of data sources appearing in the table above. For Article 6.3 violations, this does not require proving that they would be perpetrated should the transfer be authorised,⁴⁴ but rather that 'there is sufficient information, or reasonable grounds, or a reasonable basis for believing the arms would be used for that purpose'.⁴⁵ Article 7.4 is not a balancing exercise but a process that requires a transfer be denied if an overriding risk of any one of the negative consequences listed in Article 7.1 could occur. This assessment occurs after assessing the potential under Article 7(a) that the arms or items to be transferred would contribute to or undermine peace and security – requiring a higher level of certainty than the term 'could' in Article 7(b).⁴⁶

'Use' is understood as the discharge of a firearm, the firing of a bullet, or the launching, firing, or dropping of another weapon, such as a rocket or bomb;⁴⁷ and the term 'facilitate' means that the weapons may be one or more steps removed from the actual violation,⁴⁸ may be 'only an incidental factor in the commission of the primary act, and may have contributed only to a minor degree, if at all, to the injury suffered'.⁴⁹ There are still varying interpretations and applications of the term 'overriding risk' that should be resolved through shared information contributing to converging risk assessments amongst State Parties. In the interim, the examples below, drawing on the types of GBV and SALW in the table seek to illustrate circumstances that indicate *prima facie* that the subject transfer may be prohibited or should be denied.

Types of GBV	Relevant Types of items under Article 2.1 of the ATT
<p>Sexual: rape, forced prostitution, sexual violence, forced abortion, forced sterilization, forced pregnancy</p>	<p>Battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, small arms and light weapons, ammunition/munitions</p>
<p>Physical: physical assault; human trafficking and slavery; honour killings; attacks targeting women human rights defenders, activists or politicians; attacks targeting LGBTQI individuals</p>	

Examples of incorporating Article 7.4 into assessments under Article 6.3 and Article 7.1

Example 1: Battle tanks, armoured combat vehicles / sexual violence as torture

In an internal armed conflict when police or military officers target women, transport them to detention centres, and perpetrate rape and other sexual violence to coerce confessions from them, the evidence suggests their vehicles and their ammunition would be used to facilitate the war crime of (rape as) torture; or, if the practice is systemic or widespread, this would also constitute torture as a crime against humanity. In either case, the transfer of the SALW and ammunition would be prohibited under Article 6.3 of the ATT.

Even if the evidence does not establish the standard of 'would' under Article 6.3, the SALW, security vehicles and ammunition could be used to commit or facilitate rape and sexual violence as torture committed as serious violations of IHL under Article 7.1(b)(i) of the ATT. Even if the requested transfer is for only one of these items, this would be sufficient to constitute 'facilitation' under Article 7.1.

Example 2: Security vehicles, SALW, ammunition / human trafficking and enforced prostitution

In a non-conflict country, when there is evidence that State military or law enforcement forces are involved in human trafficking and forced prostitution on a widespread basis, there is an overriding risk that their arms and ammunition could be used to commit, and their security vehicles to facilitate, the serious IHRL violation of enforced prostitution under Article 7.1(b)(ii) of the ATT. In addition, if the exporting state is a Party to the Palermo Convention, the transfer should be denied under Article 7.1(b)(iv) because there is an overriding risk it could be used for or facilitate trafficking for the purposes of sexual exploitation, which constitutes an offence under a convention relating to transnational organised crime.

Example 3: Facilitation by arms and ammunition / violence perpetrated on the basis of sexual identity

When government law enforcement officers target LGBTQI human rights defenders for arrests, and detention without criminal charges results in physical and/or sexual abuse, their arms and ammunition are being used to commit or facilitate the serious IHRL sexual and physical violations under Article 7.1(b)(ii) even if there is no incident of violence caused by firearms.

Example 4: Use of and facilitation by arms / widespread domestic violence and homicides

When individuals with a history of domestic or intimate partner violence can legally purchase arms and ammunition, and a high proportion of homicides in these contexts involves these items, they are being used to commit or facilitate serious acts of GBV and/or serious acts of violence against women and children that constitute serious IHRL violations (sexual and physical violence including killing) pursuant to Article 7.1(b)(ii). An export assessment for transfer of these arms and ammunition would need to consider whether the importing State has implemented mitigation measures such as mandatory background checks for arms purchases.

Mitigating measures or other approaches to reduce the risks in Article 7.1

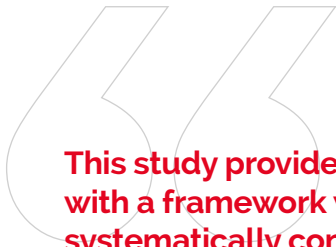
Given the prevalence of GBV and its mandatory incorporation into every export assessment pursuant to Article 7.4, measures that mitigate the risk of GBV violations under Article 7.1 are particularly important in breaking the link between GBV and the arms trade. In fact, the more specifically an exporting state identifies mitigating measures, the more likely they are to be effective. One method to achieve this is to examine a recipient State's related obligations under other instruments.

An importing state's commitments pursuant to other international instruments cannot be assumed to reflect compliance. However, such obligations do provide additional legal authority to an exporting state's decision to deny authorization or require certain mitigation measures to reduce the risks identified in Article 7.1. For example, if shadow reports and recommendations made under the CEDAW reporting procedures indicate causes and remedies for types of arms-related GBV, these may include measures that would mitigate Article 7.1 risks. The table below includes some key relevant instruments, including human rights treaties that involve state reporting procedures.

IDENTIFYING STATE COMMITMENTS		
Criteria	Indicator	Information sources
Membership of key IHL instruments	<ul style="list-style-type: none"> • Membership of recipient state to Geneva Conventions and additional protocols • Membership of recipient state to the ICC (and other relevant regional courts) 	<p>ICRC IHL Database: Treaties, States Parties and Commentaries</p> <ul style="list-style-type: none"> • ICRC (2018). 'IHL databases'. https://ihl-databases.icrc.org/applic/ihl/ihl-search.nsf/home.xsp.
Membership of key human rights agreements	<ul style="list-style-type: none"> • Membership of recipient state to CEDAW • Membership of recipient state to Convention on the Rights of the Child • Membership of recipient state to ICCPR • Membership of recipient state to Convention against torture • Membership of recipient state to relevant regional human rights instruments 	<p>OHCHR Status of Ratification Interactive Database</p> <ul style="list-style-type: none"> • OHCHR (2018). 'Status of Ratification Interactive Database'. http://indicators.ohchr.org/. • Universal Periodic Review reports and shadow reports: https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx. <p>Shadow reports and UN recommendations for instruments</p> <ul style="list-style-type: none"> • OHCHR complete list of Universal Periodic Review reports and shadow reports: https://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx. • CEDAW reports: http://www.un.org/womenwatch/daw/cedaw/index.html. • Convention Against Torture reports: https://www.ohchr.org/en/hrbodies/cat/pages/ngosnhris.aspx. • Convention on the Rights of the Child reports: https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx.

IDENTIFYING STATE COMMITMENTS

Criteria	Indicator	Information sources
<p>Membership of key arms control agreements</p>	<ul style="list-style-type: none"> • Membership of recipient state to the ATT • Membership of recipient state to CCW, CCM, MBT • Reports submitted to the UN PoA • Membership of recipient state to the Firearms Protocol • Membership of recipient state to the Wassenaar Arrangement • Membership of recipient state to relevant regional arms control instruments 	<p>ATT Secretariat</p> <ul style="list-style-type: none"> • ATT Secretariat (2018). 'Status of Participation'. http://www.thearmstradetreaty.org/index.php/en/the-arms-trade-treaty. <p>UN Programme of Action ISS</p> <ul style="list-style-type: none"> • PoA ISS (2018). 'National Reports on the Programme of Action'. http://www.poa-iss.org/poa/nationalreportlist.aspx. <p>UN Treaty Collection</p> <ul style="list-style-type: none"> • UN Treaty Collection (2018). 'Depositary Notifications'. https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en. <p>Wassenaar Arrangement</p> <ul style="list-style-type: none"> • Wassenaar Agreement (2017). 'About Us'. https://www.wassenaar.org/about-us/. <p>Landmine & Cluster Munition Monitor</p> <ul style="list-style-type: none"> • Landmine & Cluster Munition Monitor report search: http://www.the-monitor.org/en-gb/home.aspx.
<p>Existence of national laws to tackle GBV</p>	<ul style="list-style-type: none"> • Existence of National Action Plan to implement UN Security Council Resolution 1325 • National laws criminalising human trafficking (in line with the UN Trafficking Protocol) • Existence of National Action Plan to address modern slavery • Evidence of provision of services and support to victims of GBV • Existence of laws to protect against rape and sexual violence • Existence of laws to protect against domestic violence and child abuse • Existence of laws to protect against discrimination or violence based on sexual orientation and identification 	<p>Inter-Agency Network on Women and Gender Equality- National implementation of Security Council resolution 1325</p> <ul style="list-style-type: none"> • UN Women (2015). 'Global Study on the Implementation of Security Council Resolution 1325'. http://wps.unwomen.org/resources/. <p>Walk Free Foundation: Government Response Database</p> <ul style="list-style-type: none"> • Walk Free Foundation (2018). 'Government Response Database'. https://www.globallslaveryindex.org/data/. <p>World Health Organisation: Global Status Report on Violence Prevention</p> <ul style="list-style-type: none"> • WHO (2014). 'Global Status Report on Violence Prevention'. http://www.who.int/violence_injury_prevention/violence/status_report/2014/en/. <p>UN Women Global Knowledge Platform to End Violence against Women</p> <ul style="list-style-type: none"> • UN Women (2018). 'Global Database on Violence against Women'. http://evaw-global-database.unwomen.org/en. • UN Women (2018). 'Virtual Knowledge Centre to End Violence against Women and Girls'. http://www.endvawnow.org/.



This study provides licensing officials with a framework within which to systematically consider GBV in export assessments. Definitions of key terms, suggestions of publicly accessible sources to determine GBV prevalence and State capacity to comply with GBV-related ATT obligations, and examples of scenarios suggesting GBV violations fall under Article 6.3 or 7.1 are intended to offer initial practical guidance.

Conclusion

The two-tiered effect of Articles 6 and 7 suggests that if a transfer for arms to a particular recipient is prohibited under Article 6.3, then the transfer of any items that facilitate the violation pursuant to Article 7.1 should not be authorized. That is, if an exporting state determines that a conventional arm under Article 2.1 or item under Article 3 or 4 to be transferred would be used by the recipient to perpetrate an Article 6.3 violation, then any items under Article 3 or 4 not directly used to perpetrate the violation could be used to facilitate a serious violation of IHL or IHL under Article 7.1.

Relatedly, if the evidence is not robust to support a prediction that the arms or items to be transferred would be used to perpetrate an Article 6.3 violation, it is nevertheless possible that the arms or items could be used to commit or facilitate a serious IHL or IHL violation under Article 7.1.

This study provides licensing officials with a framework within which to systematically consider GBV in export assessments. Definitions of key terms, suggestions of publicly accessible sources to determine GBV prevalence and State capacity to comply with GBV-related ATT obligations, and examples of scenarios suggesting GBV violations fall under Article 6.3 or 7.1 are intended to offer initial practical guidance. It is hoped that developing expertise through consistently incorporating Article 7.4 into export assessments will promote increasingly more specific guidance in the coming years.

Such circumstances suggest a transfer denial should still be a highly likely outcome or that very rigorous mitigation measures would be required to overcome the risks of any negative consequences under Article 7.1.



Endnotes

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- 23 Sustainable Development Goal 5 in UNGA (2015). 'Transforming our world: the 2030 Agenda for Sustainable Development'. 21 October 2015. A/RES/70/1. http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E..
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- 31 However, given the qualitative and quantitative elements of serious IHRL violations, it may not be useful to apply these categories. Instead, examining the relevant phenomena and its effects may better capture the full range of 'serious' IHRL violations. This range includes for instance, excessive use of force, arbitrary deprivation of liberty, forced labour, denial of housing and food, and discrimination, among others. Circumstances in which these violations may constitute GBV is beyond the scope of this study, but would be useful to explore in future studies. Casey-Maslen, S.et. al. (2016). 'Art. 7 Export and Export Assessment'. op. cite. pp. 262, 270.
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- 46 Ibid., p. 131.
- 47 Casey-Maslen, S.et. al. (2016). 'Art. 7 Export and Export Assessment'. op. cite. p. 274.
- 48 Ibid., p. 255.
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