



# PREVENTING GENDER-BASED VIOLENCE THROUGH ARMS CONTROL

Tools and guidelines to implement the Arms Trade Treaty and  
UN Programme of Action

WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**





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# Executive summary

This report is about the effective implementation of the 2013 Arms Trade Treaty (ATT) and the 2001 UN Programme of Action on the illicit trade in small arms and light weapons (UNPoA) in regards to preventing gender-based violence (GBV) and gender discrimination in disarmament and arms control processes. The objective of this report is to provide tools and guidelines for effective implementation of the ATT and the UNPoA, including how to conduct an export risk assessment on GBV and how to enhance gender mainstreaming in disarmament and arms control.

The report provides an introduction to the concepts of gender and GBV, placing them in the context of conventional weapons, the ATT, and the UNPoA. It then provides an overview of current practices in export licensing, including applications and documentations, risk assessments, information sharing, monitoring, and transparency. Based on the analysis of current practice, the report then offers guidelines for assessing the risk of GBV. It covers items, intended end users, destination countries, criteria, and indicators relevant for assessing whether or not an arms transfer could result in GBV. It also provides informative guidelines for preventing GBV through arms control measures, such as legislation, national commissions, disarmament, demobilization and reintegration processes, data collection, and international aid. Finally, the report offers recommendation and resources to guide export officials in their responsibilities.

The executive summary provides a brief snapshot of each chapter; details, explanations, and resources can be found in the full report.

## About gender

The ATT is the first international agreement to recognise the link between the arms trade and GBV. The UNPoA does not explicitly make the connection at all. But the connection is real, and it is not new. All conventional weapons can—and have been—used to inflict violence on people based on discriminating norms and practices relating to their specific sex or gender role in society. GBV is a human rights violation and, when carried out during armed conflict, is a violation of international humanitarian law.

Yet because it is severely underreported and underdocumented, GBV is often overlooked in arms transfer risk assessments. Including a GBV-prevention provision in the ATT makes its exclusion from risk assessments more difficult. It also highlights that arms trade, possession, and use have specific gender and power dimensions that need to be addressed. The inclusion of the GBV criterion also serves as a reminder that in accordance with UN gender mainstreaming practice, the impact on all people of all policies and programmes needs to be taken into account and power structures that might be amplified by the presence of arms need to be further examined.

The report highlights some key facts that are critical to understanding the relationship between GBV and the international arms trade and illicit trafficking in weapons:

- GBV can occur both in times of conflict and outside of conflict. There can be a pattern of GBV in the absence of other indicators of human rights violations. The absence of

generalised violence does not mean that there is no risk of GBV.

- GBV is often invisible. Patterns are difficult to establish. Even a few reports of GBV can suggest that there are patterns and can be a cause of concern, especially if combined with government acquiescence.
- All weapons covered under the ATT and UNPoA can be used to facilitate or commit GBV.
- All end users, including the army, the police, and state security services, can commit GBV. The risk of this occurring must always be assessed, as must the risk of diversion.
- GBV is a cross-cutting issue: it is always a violation of international human rights, and, depending on the circumstances, can be a violation of international humanitarian law or constitute an act of terrorism, transnational organised crime, a war crime, a crime against humanity, or genocide. It is therefore covered under both Article 6 and Article 7 of the ATT.
- GBV goes hand in hand with a lack of gender equality. Indicators on gender equality, even if not explicitly linked to arms transfers, are therefore useful in assessing the risk of GBV, especially when information on GBV is not available.
- ATT and UNPoA implementation go hand in hand. Both instruments apply to exporting and importing states. Exporting states must ensure that importing states are implementing the UNPoA and mainstreaming gender in arms control and disarmament and must also make the same efforts themselves.

## Current practice

Different countries have different requirements for applications and end-use/r documentation, but most require some form of application to the government by a company in order for an arms deal to take place. It is at this stage that export officials must conduct a risk assessment process to determine the risk that the transfer would violate the ATT or UNPoA.

Currently, no countries explicitly include GBV in their required end-use/r documentation. Some countries or regional groups include language on human rights more broadly, particularly when it comes to the export of small arms and light weapons.

The responsibility for processing an application and deciding whether to grant or deny a transfer can lie with different governments agencies. Sometimes the process is dealt with differently if it is a commercial license or a government-to-government transfer. In some countries, there is an independent specialised export authorization agency. In other countries, decisions are made in inter-ministerial and interagency groups, with members of different ministries, such as defence, economy, and foreign affairs. Most export control officers do not have specialised expertise in gender, but can consult with gender experts. Often, they have general knowledge of international law.

Once the application is shared among relevant authorities, the advisors look at the license application against national, regional, and international criteria. Most arms export

authorities look at how the equipment will be used, rather than just the equipment itself. Arms export authorities also examine who the end user is intended to be, and whether that end user is of concern. Generally the risk assessment includes whether the end user and the end-user destination is considered “legitimate” and “credible” and whether there is no likelihood of diversion. Some countries have time limits on the risk assessment process, which can impede the process’ robustness.

81% of respondents to the Arms Trade Treaty baseline assessment survey, which includes 63 countries, stated that they already conduct risk assessments on GBV. 12% do not assess the risk of GBV, and 7% did not know whether they do. For those considering that they already account for GBV in their risk assessment processes, it seems to be accounted for in terms of violations of IHL or human rights. To assess the risk of GBV, most export officials use their Ministry of Foreign Affairs’ human rights reports. Many export officials also examine information from UN reports, NGO reports, and media reports.

None of the export officials interviewed for this study were aware of any denial based on GBV specifically. Export licensing officials interviewed here emphasised that the risk of GBV must be specifically linked to the weapons under consideration and to the end user. On paper, Sweden appears to be an exception. Its legislation requires a general assessment of the situation in the recipient country and does not require a specific link between the weapons under consideration and the risk of GBV or other violations of IHL or human rights. However, this does not always seem to be true in practice.

Most countries do not conduct any post-export monitoring of equipment. Some monitor various

end users through their embassies abroad or commercial entities involved in the transfer. Many exporting states publish an annual report on their arms exports. However, there is resistance to publishing “too much” information.

## Guidelines for assessing the risk of GBV

All conventional arms and ammunition covered under the ATT and UNPoA can be used to commit or facilitate acts of GBV. Export officials must conduct a risk assessment on GBV for every single arms export license application. They must assess the risk of sexual violence, domestic violence, impact on girls’ education, impact on women’s reproductive health, or the use of sex as a signifier in targeting attacks or conducting post-strike analyses. Different weapon systems can be used in different ways to inflict GBV related to the above, including small arms and light weapons, battle tanks, explosive weapons, or armed drones.

All intended end users can and have inflicted GBV, including national militaries, police, peacekeepers, private military and security companies, and armed groups. The risk of GBV must be assessed for all destination countries, whether or not they are in situations of conflict, and whether or not they are partners or developed countries. There is a misconception that most GBV happens in conflict situations. Of the 25 countries with the highest rates of women killed by armed violence, only Colombia, the Philippines, and the Russian Federation are currently affected by conflict.

Importing and exporting states must work together to ensure that items transferred under the ATT are not used to commit or facilitate GBV or diverted to uses that would violate Articles 6 or 7. Acts of GBV are covered both under



Article 6 (prohibitions) and Article 7 (risk assessment). Article 7(4) should therefore be interpreted as a recognition that GBV is a cross-cutting issue that must be analysed under each sub-section of both Article 6 and Article 7. GBV can constitute genocide, a crime against humanity, a war crime, a violation of IHL, or a violation of international human rights law. It can undermine peace and security and contribute to terrorism or organised crime.

There are a number of indicators to mark the risk of GBV for which those conducting risk assessment processes should look. These are listed in full in the report. Some of these include:

- Is there evidence of acts or patterns of GBV, including but not limited to sexual violence or domestic violence, in the recipient country?
- Have there been reports of women being compelled to marry the perpetrator of sexual violence as a form of traditional settlement?
- Have there been reports of crimes in the name of honour?
- Have there been reports of early marriage?
- Is there resistance to women's participation in peace processes?
- Is there a lack of presence of women in civil society organisations?
- Are there reports of high levels of sexually transmitted diseases?
- Are there reports of sexual abuse by security officers?
- Are there reports of threats to politically active women?
- Is there avoidance of markets or cross-border trade by women due to fear?
- Are there increased reports of prostitution and sex work?
- Have there been changes in school enrolment by women or girls?

For information, officials need to examine reports from the UN, governments, NGOs, and

the World Bank or other financial institutions. They also need to look at the recipient country's legislation, initiatives, police and military practices and training, and statistics on GBV as well as equality of women and LGBT people.

## Implementing the UNPoA to prevent GBV

The legal arms trade fuels the illicit trade in small arms and light weapons. ATT and UNPoA implementation must form part of an integrated approach to prevent GBV. Importing states must strengthen both import controls and national small arms control efforts, while exporting states must assess importing states' implementation of the UNPoA in their risk assessment under the ATT. Effective implementation of the UNPoA will reduce the availability of guns and therefore help prevent GBV.

While the UNPoA itself makes no mention of gender, and references women only once in the preamble, it does commit states to make "greater efforts to address problems related to human and sustainable development" and to promote conflict prevention and address its root causes, which should include promoting gender equality and preventing GBV. Gender mainstreaming is crucial to these efforts.

Gender mainstreaming refers to the process of:

- Assessing the implications for women and men of any planned action, including legislations, policies or programs in all areas and at all levels; and
- Making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.

The UN Security Council and the UN Secretary-General have emphasised the need for gender mainstreaming in small arms control for several years. The Global Study on the implementation of UN Security Council resolution (UNSCR) 1325, commissioned by the UN Secretary-General and published in 2015, emphasises the importance of measures dealing with the proliferation of small arms and violent masculinities. A gender-sensitive approach requires the recognition that small arms possession is linked to violent masculinities and that women are not just victims, but also perpetrators of armed violence as well as members of gangs, terrorist groups, and armed forces.

Experts on GBV prevention emphasise that interventions must deal with GBV's roots in gender discrimination and promote long-term social and cultural change towards gender equality, including through ensuring leadership and active engagement of women and girls and conducting advocacy to promote the rights of all affected populations. Data on conflict and violence prevention also show that a gender-sensitive approach makes conflict prevention interventions more effective.

To ensure effective gender mainstreaming in the implication of the UNPoA, legislators and governments must:

- Consult with women's groups and LGBT rights groups when drafting laws on gun control, the security forces, and GBV;
- Ensure that the government, judiciary, and law enforcement are given adequate training and resources;

- Consult with women's and LGBT rights groups and women ex-combatants in designing disarmament, demobilisation, and reintegration (DDR) programmes;
- Include women's and LGBT rights groups in national commissions on SALW;
- Promote and support data collection on gender and the use and trade in SALW; and
- Increase funding for gender-sensitive SALW control.

## Conclusion

The ATT has been called "ground breaking" for its recognition of the link between the international arms trade and GBV. However there remain many gaps in the Treaty's implementation, partly due to time limits, export officials' dual role as regulators and promoters of the arms industry, and lack of data and information linking GBV to specific weapons and/or end users. Embassies, country human rights teams, human rights organisations, NGOs, and UN entities must pay attention to the links between weapons, armed actors, and GBV.

In the end, it is up to licensing and export officials, as well as relevant government ministries, to make the call as to whether or not weapons will be transferred. These entities must include the prevention of GBV in their assessments in order to be in compliance with the ATT. This report aims to provide such officials with the relevant questions, resources, and tools necessary to fulfil their obligations.



# Introduction

Every day around the world, conventional weapons exacerbate power differences and facilitate acts of violence, including those rooted in gender discrimination. Armed violence is often an expression of violent masculinity. Across all cultures, young men are the overwhelming majority of users as well as direct victims of injury and death caused by conventional weapons. Gender-based violence (GBV), which is any violence directed at a person based on discriminating norms and practises relating to her or his specific sex or gender role in society, disproportionately affects women and is much harder to measure and assess.

Effective implementation of the Arms Trade Treaty (ATT) and the UN Programme of Action on small arms (UNPoA) presents a unique opportunity to prevent GBV. The ATT specifically requires that states assess the risk of GBV before approving an arms export. A number of experts<sup>1</sup> and government export licensing officials<sup>2</sup> have highlighted the need for guidance, especially on how states should take the risk of GBV into account when assessing arms exports. One government official stated that although there is “a general principle” that is being discussed in various disarmament forums, “there is very little tangible specificity that goes with it, for people that are not in the field. That is why it is something that is not in the core principles guiding the export licensing process.”<sup>3</sup> Another expressed the need for a reference guide to use on a daily basis and for discussions among states parties.

“In order to implement this tangibly speaking, you have to make it clear to the licensing officer what does gender-based violence mean,” argued one official. “And not only to the licensing officer—it has to be clear to my political director

involved in the different areas where the exports are being sent to. There have to be certain weight points. GBV is being conducted when? 1-2-3-4. ... Where is it being conducted? When is it considered unlawful and in violation of humanitarian principles? Once these guidelines are established, it is easier to provide those principles to people that engage in the licensing process and incorporate that principle into the review process in itself.”<sup>5</sup>

## Objectives

This report seeks to provide tools and guidelines for effective implementation of the ATT and the UNPoA, including how to conduct an export risk assessment on GBV and how to enhance gender mainstreaming in disarmament and arms control. It is primarily aimed at assisting licensing and export officials with compliance. It is also meant to assist government agencies and parliamentarians, UN agencies, and NGOs to improve policy and practice, advocacy, and monitoring on arms control.

## Methodology

This report is based on over twenty telephone and in-person interviews, electronic communication, and questionnaires with government export licensing officials, UN personnel, academics, researchers, and members of civil society between October and December 2015. It also draws on a review of existing guidelines, research tools, legal texts, reports, and articles, as well as public arms export data. It is a result of collaborative work with WILPF members in Cameroon, Colombia, Spain, and Sweden. Questionnaires are available upon request.

# About gender

## What is gender?

Gender does not refer to biological sex, but rather to socially constructed ideas that attribute meaning to and differentiate between sexes. Socially constructed understandings of gender affect perceptions of social roles, behaviour, and identity, and have implications for relations between people. Using a gender perspective means examining how these constructed gender roles might affect policy decisions or budgets. It also means being sensitive to the fact that women and men may be differently affected, may play different roles, and may have different experiences in a particular situation due to their sex or expectations about gender. Questions of gender do not exclusively concern women, but all sexes and sexual and gender identities. It is also important to recognise that “women” are not a single homogeneous social category. Women are of different ages, races, ethnicities, religions, and sexualities; are differently abled; have different political views, socioeconomic statuses, and experiences. As a result of this, women have different experiences before, during, and after armed conflict and armed violence.

## What is gender-based violence?

Gender-based violence (GBV) is the most prevalent form of violence in the world. It exists and is widespread in all countries and all societies. GBV is violence that is directed at a person based on discriminating norms and practises relating to her or his specific sex or gender role in society. It is linked to the

gendered identity of being a woman, man, intersex, transsexual, or transgendered. The term GBV recognises that violence takes place as a result of unequal power relations and discrimination in society on the basis of one's sex or gender. There are different types of GBV that can be grouped into these four categories:

- Sexual violence: Sexual harassment, rape, forced prostitution, sexual violence during conflict and harmful customary or traditional practices such as female genital mutilation, forced marriages, and honour crimes
- Physical violence: Physical assault, domestic violence, human trafficking and slavery, forced sterilization, forced abortion
- Emotional and psychological violence: Abuse, humiliation, and confinement
- Socioeconomic violence: Discrimination and/or denial of opportunities and services; prevention of the exercise and enjoyment of civil, social, economic, cultural, and political rights

The most prevalent form of GBV is violence against women and girls. Its root cause lies in the unequal power relationship between men and women and it cuts across age, race, ethnicity, religion, sexuality, income level, and geographic location.

## Gender and the ATT and UNPoA

Because the legal arms trade fuels the illicit trade in small arms, ATT and UNPoA implementation must form part of an integrated approach. The UNPoA does not mention gender

or GBV, and only mentions women once, in its preamble. But its effective and inclusive implementation is key in reducing and preventing GBV. In the UNPoA Article I.11, states have also committed to assess applications for export authorisations according to strict national regulations and procedures. In 2010, the UN Office for Disarmament Affairs and the International Action Network on Small Arms jointly undertook to review and update the guidelines for gender mainstreaming for the effective implementation of the UNPoA.<sup>7</sup> The latest biennial meeting of states of the UNPoA, held in June 2014, has several references to women in its outcome document. It commits states to promote the role of women in preventing, combating, and eradicating the illicit trade in SALW, “including through access to training, as well as through their meaningful participation and representation in policymaking, planning and implementation processes.”<sup>8</sup>

The ATT is the first multilateral treaty to recognise the link between the international arms trade and GBV.

It builds on widespread precedent from national, regional, and international courts and UN human rights bodies recognizing that gender-based violence is a violation of international human rights, and can also constitute a war crime, a crime against humanity, or genocide, depending on the circumstances. GBV is therefore covered under multiple provisions in Article 6 and Article 7 of the ATT. Article 7(4), a separate provision, which stipulates that states parties “must take into account” the risk of gender-based violence

“in making this assessment,” means that GBV must be analysed under each sub-section of Article 6 and Article 7. Even if serious violations of international human rights law or international humanitarian law include acts of GBV, it is important to have the GBV criterion included specifically as it is often overlooked in assessments of rights violations.

The export officials interviewed for this study often referred to the repression of public protests when speaking about their existing human rights risk assessments. As opposed to public protests, which are often documented in social media, if not in the mainstream media, GBV is often invisible. Indeed, of all the grave human rights violations monitored by the Special Representative for Children and Armed Conflict, rape and sexual violence is the most underreported.<sup>9</sup> Human rights organisations have pointed out time and again that both male and female victims of GBV are stigmatised and reluctant to talk.<sup>10</sup> This is because of the risks, trauma, shame, and stigma faced not only by those who come forward, but also witnesses, human rights defenders, service providers, journalists, and justice officials.<sup>11</sup> Furthermore, GBV is often not a policy priority.<sup>12</sup> It disproportionately affects women, who are in a disadvantaged position compared to men when it comes to highlighting and confronting human rights abuses. In his 2015 report on conflict-related sexual violence, the UN Secretary-General remarked, “despite the political momentum and visibility gained in recent years, the reality on the ground is that many governments have not been able to create an

# ATT, Article 7: Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security;

(b) could be used to:

(i) commit or facilitate a serious violation of international humanitarian law;

(ii) commit or facilitate a serious violation of international human rights law;

(iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or

(iv) 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.

2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.

3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.

4. 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 gender-based violence or serious acts of violence against women and children.

5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.

6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.

7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

environment in which survivors feel safe to report sexual violence. The fear of stigmatization and reprisals is almost universal.”<sup>13</sup>

According to the World Health Organization, more than one in three women (35.6%) globally report having experienced physical and/or sexual violence, showing that it is a public health problem of epidemic proportions. It pervades all corners of the globe, puts women's health at risk, limits their participation in society, and causes great human suffering.<sup>14</sup>

Because it is so difficult to document, GBV can easily be overlooked in arms transfer risk assessments. Including a GBV-prevention

provision in the ATT makes its exclusion from risk assessments more difficult. It also highlights that arms trade, possession, and use have specific gender and power dimensions that need to be addressed. The inclusion of the GBV criterion also serves as a reminder that in accordance with UN gender mainstreaming practice, the impact on all people of all policies and programmes needs to be taken into account and power structures that might be amplified by the presence of arms need to be further examined.

Assessing the risk of GBV requires an extra effort. Article 7(4) requires that export officials

make that extra effort, pay attention to the limited data available, and actively seek information when it is not immediately available.

## Important facts to remember

- GBV can occur both in times of conflict and outside of conflict. There can be a pattern of GBV in the absence of other indicators of human rights violations. The absence of generalised violence does not mean that there is no risk of GBV.
- GBV is often invisible. Patterns are difficult to establish. Even a few reports of GBV can be a cause of concern and suggest that there are patterns, especially if combined with government acquiescence.
- All weapons covered under the ATT and UNPoA can be used to facilitate or commit GBV.
- All end-users, including the army, the police, and state security services, can commit GBV. The risk of this occurring must always be assessed, as must the risk of diversion.
- GBV is a cross-cutting issue: it is always a violation of international human rights, and, depending on the circumstances, can be a violation of international humanitarian law or constitute an act of terrorism, transnational organised crime, a war crime, a crime against humanity, or genocide. It is therefore covered under both Article 6 and Article 7 of the ATT.
- GBV goes hand in hand with a lack of gender equality. Indicators on gender equality, even if not explicitly linked to arms transfers, are therefore useful in assessing the risk of GBV, especially when information on GBV is not available.
- ATT and UNPoA implementation go hand in hand. Both instruments apply to exporting and importing states. Exporting states must ensure that importing states are implementing the UNPoA and mainstreaming gender in arms control and disarmament and must also make the same efforts themselves.

# Current practice on export licensing

This section reviews current arms export control processes relevant to preventing GBV. Its findings are based on interviews with government export officials, academics, and members of civil society, as well as a review of government documents and guidelines for arms exports.

## Company applications and end-use/r documentation

In most countries, companies seeking to export weapons must submit an application to the relevant authority. Sometimes they must be pre-registered and approved with the government arms export agency.<sup>15</sup> The application generally must include an end-user certificate (EUC) from the ultimate end-user, which can be the army or the police in another country, or a private entity.<sup>16</sup> While some states oblige exporters to provide end-use/r documentation as part of their application for authorisation to export controlled items, others do not have such a legal requirement.<sup>17</sup> Sometimes, the embassy in the destination country is involved in securing an end-user certificate.<sup>18</sup> In the Swedish case, it is on bank note paper that is provided by the Swedish government to the end-user.<sup>19</sup>

End-user documentation can include exporter details, a copy of the contract, the quantity, value and description of arms being exported, a signature of the end-user's representative, a statement that the goods being exported will not be used for purposes other than the declared use, or a statement from the importer/end-user not to divert or relocate the conventional arms

covered by the end-use/r documentation to another destination.<sup>20</sup>

Although no countries explicitly include GBV in their end-user documentation, a few countries, such as Germany, include assurances on human rights for small arms and light weapons (SALW) exports. The end-user must sign the following declaration: "I/we/the end-user named in item 6 certify that the SALW or technology related to the design, production, testing and upgrading of SALW described in item 8 will not be used for human rights violations, e.g. torture, slavery, cruel and inhuman punishment."<sup>21</sup>

According to a recent United Nations Institute for Disarmament Research (UNIDIR) study, when importing conventional arms, around one third of respondent states do not use templates or checklists provided by the exporting state.<sup>22</sup> An expert group meeting organized by UNIDIR found that authorities in exporting states often accept, on a case-by-case basis, end-use/r documentation that is missing requested information, possibly because importing states have their own end-use/r documentation that does not contain all of the required elements, or because there is a misunderstanding by the exporter that is submitting an application for authorisation to export.<sup>23</sup>

Some states provide a variety of templates, with slightly different contents depending on the type of end-user (government or non-government) or item (SALW, conventional arms, dual-use items, technology, or parts and components to be integrated into a system).<sup>24</sup> Because of the



confusion caused by different requirements, there have been a number of calls for the harmonisation of end-use/r control systems.<sup>25</sup>

Companies are encouraged to play a key role in the process. Larger companies put in place internal compliance programs, akin to having their own licensing officer.<sup>26</sup> At Rolls-Royce, for example, the person in charge of compliance has previously worked as a government export licensing officer.<sup>27</sup> According to Paul Holtom, expert on the international arms trade, the approach in many Western European countries is to utilise the arms exporting companies as “the first line of defence” and assume that the company that is seeking to export knows the law and has already conducted its own assessment.<sup>28</sup> Based on several interviews, it seems that companies generally check whether there are arms embargoes and whether there is a risk of diversion, but do not seem to assess the risk of GBV.

The European Union (EU), Organisation for Security and Cooperation in Europe (OSCE), United Nations Coordinated Action on Small Arms (UN CASA), and Wassenaar Arrangement all provide guidance on end-user controls.<sup>29</sup> The OSCE Template for End-User Certificates for Small Arms and Light Weapons includes insurances on human rights.<sup>30</sup> Assurances contained in end-use/r documentation are a political commitment and not regarded as legally-binding, but can and should have implications for future arms export decisions.<sup>31</sup>

## Arms export decision-making authority

The responsibility for processing an application and deciding whether to grant or deny a transfer can lie with different governments agencies, such as the Ministry of Foreign Affairs,<sup>32</sup> the Ministry of Defence, the Ministry of Development,<sup>33</sup> or the Ministry of Economy and Finance.<sup>34</sup> Sometimes the process is dealt with differently if it is a commercial license or a government-to-government transfer. In the United States, for example, the Directorate of Defense Trade Controls (DDTC) at the Department of State is responsible for commercial applications, while the Department of Defense is responsible for government-to-government transfers.<sup>35</sup> If DDTC decides that the application has met the initial requirements, it is distributed to all the relevant agencies, including the Commerce Department, the Defense Department, and within the State Department to the relevant regional bureau and country desk, as well as to the bureau of Democracy, Human Rights, and Labor (DRL), which has a security and human rights office.<sup>36</sup> “At any point along that chain, someone can raise any kind of concern,” said Rachel Stohl, an expert on the arms trade at a US-think tank, the Stimson Center. “It can be a human rights concern broadly, it could be a very specific gender-based violence concern, it could be violence against children, it could just be general—we know that their human rights record is bad.”<sup>37</sup>



Credit: Flickr/UK Department for International Development

In some countries, there is an independent specialised export authorization agency, such as the Swedish Inspectorate for Strategic Products (ISP), the Department of Business Innovation and Skills (BIS) in the UK, or BAFA (the Federal Office for Economic Affairs and Export Control) in Germany.<sup>38</sup> Professional licensing officers conduct the assessments and may call upon expertise from different ministries.<sup>39</sup> In the UK, BIS consults with small arms advisors, the Ministry of Defense, the Foreign Commonwealth Office (FCO), and the Department of International Development (DFID), in order to get a sustainability perspective.<sup>40</sup> The export licensing authority assesses the advice it receives from different agencies and makes the final decision whether to issue a license or not. A meeting takes place every week to assess cases. Occasionally, there are differences of view across government agencies, which have to be resolved. If a license is refused, a letter is

issued to the applicant stating the specific criteria and reasons for refusal. If the license is issued, the export proceeds.<sup>41</sup>

In other countries, decisions are made in inter-ministerial and interagency groups, with members of different ministries, such as defence, economy, and foreign affairs.<sup>42</sup> Spain is one such example.<sup>43</sup>

## Gender expertise

Most export control officers do not have specialised expertise in gender, but can consult with gender experts. Often, they have general knowledge of international law. The Swedish ISP's director-general, Christer Ahlstrom, is an Associate Professor of International Law at Uppsala University.<sup>44</sup> There are no specialists on gender at ISP. The gender perspective is provided by the Swedish Ministry of Foreign Affairs.<sup>45</sup>

In the US, the bureau of Democracy, Human Rights, and Labor (DRL) at the Department of State has a security and human rights office that vets licenses.<sup>46</sup> This office of security and human rights is less than two years old.<sup>47</sup> According to Rachel Stohl, this office is possibly “the only office that gets security and human rights and that links them together. Most people either do human rights or export controls. But it is rare to find bureaucrats that can get both. That office is intended to be that bridge.”<sup>48</sup> DRL also includes experts on gender.

Other export licensing officers from smaller exporting countries stated that there is no or little gender expertise among those making export decisions. One export control officer stated, “We don’t have that capacity in government to incorporate a specific component of gender-based violence in the export licensing process.”<sup>49</sup> He added, “Very few of [the licensing officers] will have exposure on issues of GBV, there is very little expertise on this factor. And if there was to be someone injected at this process, at which level would he be injected? At the Ministry of Foreign Affairs? At the Ministry of Defence? At the Ministry of Development, which is the final authority on the exporting license?”<sup>50</sup> The lack of expertise makes it much more difficult to evaluate the risk of GBV and “would take additional resources and require a lot more time and evaluation of the situation on the ground.”<sup>51</sup>

### **Expertise on development, social, economic and cultural rights**

In the UK, the national development agency, DFID, plays a role in the assessment. “We want to play a responsible role in sustainable development,” says UK export officer Mike Reilly. DFID “checks licenses for countries in receipt of assistance. I cannot remember the

exact figure they use, but they would look at a large order that is a percentage or even a fraction or a percentage of an aid receipt figure to check that it does not cross any UK red lines in terms of sustainability.”<sup>52</sup> While there does not seem to have been any recent denials based on sustainability, “a large order for defence equipment to a country that is in receipt of ODA [official development assistance] for example, whether it is from the UK, or from the IMF [International Monetary Fund], or from the World Bank, where the human development indicators are very low, where there is a history of poverty and famine, situations that could lead to fragile or failed states,” could be denied.<sup>53</sup>

In Sweden on the other hand, ISP does not consult with SIDA, the Swedish development agency, in making its export licensing decisions.<sup>54</sup> The development perspective is provided by the MFA and through checking international development indices.<sup>55</sup> If there is a case involving a developing country, “that would normally go to the Export Control Council, and in that setting, the Ministry of Foreign Affairs, which of course has expertise in gender and development, would participate in the discussions,” noted the ISP director-general.<sup>56</sup>

### **The risk assessment**

Once the application is shared among relevant authorities, the advisors look at the license application against national, regional, and international criteria.<sup>57</sup> Most arms export authorities look at how the equipment will be used, rather than just the equipment itself.<sup>58</sup> “For example, intrusive surveillance equipment could enable an internal security agency to identify someone and to monitor their movements.”<sup>59</sup>

Arms export authorities also examine who the end-user is intended to be, and whether that end-user is of concern. Does the intended end-user have a history of human rights abuses?<sup>60</sup> In the U.K., this information can come from reports that non-governmental organisations (NGOs) have produced about end-users who have a history of human rights abuses. “You put the two together, intrusive surveillance equipment with an end-user that has a track record of human rights abuses—then that is a clear risk and that would be a refusal,” explained Reilly.<sup>61</sup>

In the United States, export officials are legally obligated to look at the record of individual army units. The Leahy Law prevents weapons from going to any unit of the security forces of a foreign country if the Secretary of State has credible information that the unit has committed a gross violation of human rights.<sup>62</sup> The DDTC may also put conditions on a particular sale, and require that it be used for one purpose but not another, or that it can be used by one unit and not another.<sup>63</sup> Spain also examines the end-user certificate and the end-use guarantees, down to the exact unit of the army or the police.<sup>64</sup>

Generally the risk assessment includes whether the end-user and the end-user destination is considered “legitimate” and whether there is no likelihood of diversion.<sup>65</sup> Arms export officials also examine whether the request is credible. For example, if a small maritime unit asked a U.K. company for 3,000 radios for its own use and that seemed excessive, “we would be concerned about the risk of diversion.”<sup>66</sup> Export officials might also check if the end-user is legitimate, give them a call or do a search online in order to check if they actually exist and are still alive.<sup>67</sup> There are some cases in which the person who signed the EUC was either dead, or had left their position six to 12 months earlier.<sup>68</sup>

## **Gender-based violence in risk assessment processes**

81% of respondents to the Arms Trade Treaty baseline assessment survey, which includes 63 countries, stated that they already conduct risk assessments on gender-based violence (GBV).<sup>69</sup> 12% do not assess the risk of GBV, and 7% did not know whether they do.<sup>70</sup> Christer Ahlstrom, the director of ISP, noted that while the ATT has put “a special focus on gender-based violence,” acts of GBV were already considered violations of international humanitarian law. “I think you could say that we looked at these elements before.”<sup>71</sup>

In 2015, the UK made a legislative change in parliament to incorporate the GBV criterion under UK’s Criterion 2 on international human rights, international humanitarian law, and internal repression.<sup>72</sup> A UK export official remarked that the UK would refuse a license if there were concerns that a particular end-user was engaged in GBV.<sup>73</sup> Reports from private individuals and NGOs showing that GBV is at “such an extreme level” and that there is “a clear risk” that providing equipment to a particular end-user would lead to GBV, “are taken very seriously and could be sufficient to refuse a license.”<sup>74</sup>

None of the export officials interviewed for this study were aware of any denial based on GBV.<sup>75</sup> Interviewees knew that human rights and international humanitarian law had been a point of denial but did not know about GBV specifically.<sup>76</sup> The UK government refuses roughly 40 or 50 license applications per year on international human rights, international humanitarian law, or internal repression (Criterion 2 of the EU Common Position) grounds.<sup>77</sup> UK refusals on human rights grounds usually relate to police brutality or police

oppression of political groups and tend to be for small arms, body armour, radios, and equipment that could be used to round up protesters and tap phone calls.<sup>78</sup> “Not all public order equipment would be refused, only where we would have concern about how the equipment would be used.”<sup>79</sup>

Conversely, some export officials admitted that there is no risk assessment on GBV specifically.<sup>80</sup> An export official from Greece noted, “We do not differentiate women from men, from children etc. It is the end-user, which is important. It is the destination which is critical, the equipment and the material that are being exported.”<sup>81</sup> He added that violence will “inevitably be widespread through the community as a whole, not necessarily focused on specific individuals.”<sup>82</sup> Though it “does not necessarily fall outside the scope of the review process, it is not a priority to deny or approve a license based on the specificity of an issue as gender-based violence.... For me, it is not an issue with which I grapple on a day-to-day basis and it is not necessarily related to security.”<sup>83</sup>

Latvia, on the other hand, conducts a risk assessment on GBV not only for exports but also for transit and transshipment.<sup>84</sup> Issued licenses can be annulled, if the situation in end-user country changes.<sup>85</sup> Latvia addresses the following questions among others:

- Is there evidence of acts or patterns of GBV in the recipient country?
- What is the current and past record of the proposed end-user in relation to the perpetration of GBV? Is the evidence of such violations reoccurring? Is the evidence reliable and credible?
- What has the importing state’s response been to past incidents of GBV?
- Has the importing state cooperated with other states, UN investigations, or the International

Criminal Court in connection with criminal proceedings relating to GBV?

- Is there national legislation in place allowing for cooperation with international investigations and tribunals?
- Are there laws, policies, and implementation mechanisms in the importing state designed to prevent GBV?
- Are there laws, policies, and implementation mechanisms in the importing state designed to regulate the sale, transfer, and use of arms, including obligations to record, report, and document acts of armed violence?
- Is there a coordination of policies and legislation on GBV and on the possession of firearms?
- Are there vetting systems for the acquisition of firearms or the enrolment of private security companies and do they include background checks on GBV or psychological tests that would take into account risk of GBV?
- Are there mandatory firearms (private or official) removals by justice and police officers for suspects of GBV if they possess a firearm?
- Are these laws and policies implemented?
- Has the importing state taken concrete steps to implement any of the UN Security Council resolutions on women, peace and security?
- What is the importing state’s capacity to ensure that the arms or equipment transferred are used in a manner consistent with international law relevant to women’s rights and are not diverted or transferred to other destinations where they might be used for serious violations of this law?<sup>86</sup>

The latest version of the User’s Guide to the EU Code of Conduct, updated in July 2015 to incorporate the ATT, added two paragraphs on GBV.<sup>87</sup> The understanding was that GBV was always—albeit implicitly—covered by criterion 2, international human rights and international humanitarian law.<sup>88</sup> A working group was



established on GBV, which produced and coordinated a first and second draft via email making it explicit that GBV is covered by criterion 2.<sup>89</sup> The guide includes a list of relevant questions on international humanitarian law (IHL) and international human rights law, but this section was not updated and does not include questions specifically on GBV.<sup>90</sup>

The EU guide includes questions based on practical experience and on the questions that EU states currently address in their risk assessments.<sup>91</sup> Though none of them are explicitly about GBV, the questions about IHL cover GBV. Currently, EU states address the following questions, which relate to GBV:

- Is there national legislation in place prohibiting and punishing violations of IHL?
- Has the recipient country put in place requirements for its military commanders to prevent, suppress and take action against those under their control who have committed violations of IHL?
- Has the recipient country ratified the Rome Statute of the International Criminal Court?
- Does the recipient country educate and train its military officers as well as the rank and file in the application of the rules of IHL?
- Has IHL been incorporated in military doctrine and military manuals, rules of engagement, instructions, and orders?
- Are there legal advisers trained in IHL who advise the armed forces?

To assess the risk of GBV, most export officials use their MFA's human rights reports.<sup>92</sup> MFAs often have a human rights department assessing countries' performances against their international human rights obligations, including their obligations to prevent and punish GBV.<sup>93</sup> Export officials also look at other government sources. Latvia consults its security and state

police, its Ministry of Defence, and the EU denial database.<sup>94</sup>

Many export officials examine information from UN reports, NGO reports, and media reports. ISP in Sweden looks at UN sources for development indices and Amnesty International reports.<sup>95</sup> In Spain, the inter-ministerial agency in charge of approving arms exports, the "Junta Interministerial para el Reguladora del Comercio Exterior y Control de Material de Defensa y Tecnologías de Doble Uso (JIMDDU)" uses NGO reports from organizations such as Amnesty International, reports of the Escola de Cultura de Pau (School for a Culture of Peace) of the Autonomous University of Barcelona, which includes information on gender-based violence, as well as reports by the Small Arms Survey, the Stockholm International Peace Research Institute (SIPRI) and the Conflict Armament Research.<sup>96</sup> In the UK, export officials look at UN reports, NGO reports, and media reports.<sup>97</sup> Latvia consults US risk reports, public media, Amnesty International reports, information from other EU countries, and UN and EU resolutions.<sup>98</sup>

## The need for a specific risk linked to the arms export under consideration

Export licensing officials emphasised that the risk of GBV must be specifically linked to the weapons under consideration and to the end-user: "It is one thing to say there is widespread gender-based violence in country X, it is quite a leap to say from that, well you cannot supply body armour to that particular unit in the police. It would have to be clearly linked and it would have to be evidence-based," argued UK official Reilly.<sup>99</sup> Greece's export official asked, "Would you deny weapons to the government even



though the government might not be persecuting these women? How would you justify denying a license when our indicators are still all green based on the Code of Conduct?"<sup>100</sup>

The rationale is that "every country has a right to defend itself, to provide security for its citizens, and that includes being able to acquire arms to do so," said Reilly.<sup>101</sup> Reports of GBV to UK export officials must show that there is a systemic problem, identify clearly who is responsible, and be corroborated by the local embassy. "Looking externally it might look a bit odd when you see that the UK is exporting radios to Country X and we have concerns with the police in Country X. Well that might not be the full story, the full story might be that there is a reason why the police need radios in Country X. Although one of the units is a bad unit or has had a history of human rights abuses, if that is not the end-user for the product, we would not have grounds to refuse the license unless we had diversion concerns."<sup>102</sup>

Spain also require "a clear link between gender-based violence and the arms export under consideration, rather than general reports of gender-based violence that have nothing to do with the use of military products."<sup>103</sup> Yet in some cases, Spain has taken into account general levels of violence. For example, Spain has denied small arms exports to Central American countries where there were a lack of guarantees about the end-user and high levels of violence. Unaware of other useful sources, Spain mostly uses the monthly report of the Small Arms Survey and the annual report of the Escola de Cultura de Pau of the Autonomous University of Barcelona because it they link gender and armed violence: "Currently, we use these reports of the Escola de Pau because they are the only source that we know of that links gender-based violence to the proliferation of arms. Other re



Credit: Pixabay

ports would be very useful. We do not use reports by the CEDAW [Convention on All Forms of Discrimination against Women] committee because they are not linked to armed violence."<sup>105</sup> In reality, CEDAW reports can be very useful, because the CEDAW committee frequently makes observations on armed violence, gender, and women's rights.<sup>106</sup>

Sweden's legislation goes beyond the ATT. It requires a general assessment of the situation in the recipient country and does not require a specific link between the weapons under consideration and the risk of gender-based violence. "In most situations where we decline exports, we make it on an overall assessment. It is also very often based on our domestic guidelines because they refer to the general human rights situation in the country, which is not the case with the EU Common Position and is not the case with the ATT."<sup>107</sup> In practice, however, Sweden has exported arms to countries where there are widespread human rights violations, such as Saudi Arabia.<sup>108</sup>

## Information sharing

Some states only look at their own record of diversion, while others share information and ask other states about their experiences.<sup>109</sup> Most states share information bilaterally. “Let’s say Country X comes to me and say we’re switching from Country A, we now want you to supply our weapons, I might, if I’m being diligent, speak to Country A to find out what’s going on, because Country A might have said, we’re no longer supplying weapons to that country anymore, because they’re so risky, they just all end up with rebels in the neighbouring country.”<sup>110</sup>

Sweden shares information about diversion. Information is primarily exchanged plurilaterally, within the EU and within the Wassenaar Arrangement. Bilateral exchange between national intelligence authorities also occurs. The nature of the information provided by Sweden is decided case-by-case.<sup>111</sup> In Spain, if there is a denial by another EU country, it is not exactly mandatory, but it is almost certain to be denied, according to the Common Position 2008/944/CFSP of 8 December defining common rules governing control of exports of military technology and equipment and the proliferation of weapons of mass destruction, and its guidelines.<sup>112</sup>

Countries can collect information from their partners in the region, especially in the EU or OSCE, or through export control regimes like Wassenaar.<sup>113</sup> “If everyone else has said no, we should not be supplying small arms to country A, and you come out and say here’s a deal for 1 million arms to country A, you should be saying no.”<sup>114</sup> In the EU, there should be informal pressure, but in reality there are differences of opinion even within a group of countries that are supposed to have comparable risk assessment

processes and similar conclusions and outcomes.<sup>115</sup>

The ATT does provide for information sharing under Articles 5, 13, and 15, but there is no mechanism that can be compared with the EU working group on arms exports. States parties could develop information sharing procedures in future conferences of states parties. In the export control regimes like Wassenaar and the EU working group on arms exports, “there are mechanisms that have been tried and tested to help with such information, but it is very sensitive to send that information out because there might be someone that says, ‘Great, that is a wonderful opportunity for me—everyone is denying exports to Country X, but we can make big bucks there.’ A certain level of trust is required. (...)It takes some time for that confidence and trust to build up between states.”<sup>116</sup>

## Time limits

There is a tension for most arms export bodies, which are simultaneously attempting to promote and regulate their countries’ arms exports.<sup>117</sup> “We’re not trying to stop people exporting, we’re just trying to apply responsible controls on those exports,” said the UK official.<sup>118</sup> As a result, there is an effort to process license applications in the shortest time possible. In several countries, such as Greece, the limit set by law is 30 days.<sup>119</sup> In the US, the DDTC posts on its website the average time it takes to process a commercial license application.<sup>120</sup> The timing for government-to-government license applications, processed by the Department of Defense, is not publicly available.<sup>121</sup>

In the UK, the government sets targets: 20 days for a standard export licensing decision and 99%

of licenses processed within 45 days.<sup>122</sup> Most licenses are processed very quickly, within a few days if they are not contentious.<sup>123</sup> “Obviously if they’re body armour or if they’re going to a country which has a human rights history of concern then that takes a little bit longer because we would have to check with a range of processes and with our human rights department.”<sup>124</sup> About 70% of licenses are granted or denied within 20 days.<sup>125</sup> The majority of licenses are processed within a month and a half.<sup>126</sup>

In Spain, for sensitive exports, where the end-user is not clear or not all the information needed is available, it can take from one to three months to assess an application.<sup>127</sup> Sometimes Spain decides not to approve a license and wait for the situation to change. There is an administrative limit of six months, after which the license is presumed to be denied..<sup>128</sup> In Latvia, the process takes between one week and one month.<sup>129</sup>

## Threshold: on balance vs. clear risk test

After a risk assessment has been completed, there are two different approaches to making a decision. The US has an “on balance” approach to arms sales. If there is a concern, there are interagency meetings to go through the case in detail. The approach is to weigh security interests against various criteria: “you could have a country where the office is really concerned about their human rights record, or even, the risk to GBV, but it could be outweighed, or overruled by some other concern, whether it’s national security, or foreign policy.”<sup>130</sup>

The EU test, on the other hand, is a “clear risk test” and more of an absolute approach: if there

is a clear risk that the goods or the equipment might be used for GBV or other violations, the application must be denied.<sup>131</sup> In reality, EU countries still have exported arms to countries where there is a clear risk of human rights violations.

## End-use monitoring

Most countries do not conduct any post-export monitoring of equipment.<sup>132</sup> While the UK does monitor various end-users through its embassies, there is no monitoring of how specific weapons are being used “because it just simply would not be economically feasible. The resource implications of that would be massive. We rely heavily on the strength of our export controls to make sure we made that initial decision correctly and of course if there [are] instances of British equipment being used in ways which are incompatible with our international obligations then please let us know, because we will investigate it thoroughly.”<sup>133</sup>

In the United States, the State Department, the Department of Defense, and the Commerce Department each have their own end-use monitoring programs.<sup>134</sup> While they do not check every single export, they can monitor an export at any time during the lifetime of the weapon.<sup>135</sup> According to Paul Holtom, the US goes much further than most countries and requests more in terms of confirmation of delivery, site inspections, and checks after delivery of sensitive items or to sensitive destinations. “Most countries take the approach that they do their risk assessment, send it off and once it’s gone, what can we do except if it’s misused maybe we can stop subsequent [transfers] and maybe share this information with other states.”<sup>136</sup>

Post-delivery controls and monitoring can be conducted not only by government agencies but also by commercial entities involved in the transfer (e.g. the exporting company can in some cases monitor the end use through the ongoing provision of technical assistance over several years after deliveries of complete systems have been completed).<sup>137</sup>

## Transparency

Many exporting states publish an annual report on their arms exports, including the UK, Sweden, and Spain. Still, there is resistance on

publishing too much information. “To publish information on every individual license application, it’s 16,000, 17,000 applications issued every year,” argued Reilly. That would be a huge administrative burden but also for the companies involved, and these are private companies, who have commercial relationships with the end-users that just wouldn’t be appropriate.”<sup>137</sup>

## Minimum-standard practices

The following are examples of existing state practices that states should follow at a minimum. Some of the examples below include commitments that states have made that have been incorporated into law but are not necessarily followed in practice.

- 1) The arms export decision-making authority includes experts on gender, human rights, and arms control, such as the specialised office on security and human rights in the Bureau of Democracy, Human Rights, and Labor at the U.S. Department of State. Experts on social, economic, and cultural rights and sustainable development play a key role in the process, such as DFID in the UK.
- 2) The risk assessment has no express time limit set by law (Spain, the US). There should be efforts to reduce the pressure to make quick decisions.
- 3) The risk assessment is not limited to government sources, but also includes UN and NGO sources, including reports and observations by UN human rights treaty bodies, the Human Rights Council, OHCHR and its special procedures (the UK), reports by NGOs (the UK, Sweden), academic institutions such as Escola per la Pau of the University of Barcelona (Spain), and media reports (the UK).
- 4) Government and embassy human rights reports and sources include information on gender-based violence (Sweden, the U.K.) and make the link with weapons (Canada).
- 5) The risk assessment is not specific to the weapons used, but looks generally at human rights violations in the destination country as a whole (Sweden).<sup>139</sup> If the risk assessment is specific, then data is collected on specific units of the army and police (the Leahy Law in the US).
- 6) Information about licenses is publicly available (Spain, Sweden).
- 7) Information is collected from other states that have exported to that country in the past (Wassenaar, EU, OSCE).
- 8) Exports are denied when there is a clear risk of IHL or human rights violations and risks are not weighed against other interests (the UK).<sup>140</sup>
- 9) States parties should clearly include, in their national export regulations, references to the gender provisions of the ATT and make it mandatory for all stakeholders to apply these provisions (the UK).
- 10) States should continue to monitor exports after they have left the country, including through confirmation of delivery and site inspections (the US).

# Guidelines for assessing the risk of gender-based violence

This section provides tools and guidelines for assessing the risk of gender-based violence under the Arms Trade Treaty. It provides examples of: 1) how different items covered under the ATT can facilitate GBV; 2) how different intended end-users, including the police and military, commit GBV; 3) how GBV can occur in all destination countries, including outside of armed conflict; 4) how GBV falls under the provisions of Article 6 and Article 7 of the ATT; 5) indicators of GBV that can help guide an assessment; and 6) sources of information. Each of these sub-sections are meant to help guide risk assessments on GBV and provide examples of sources of information that export officials can consult.

Export officials should consult “Section: About Gender” of this report for definitions of gender and GBV.

## The items: how conventional arms can facilitate gender-based violence

All conventional arms and ammunition covered under the ATT and UNPoA can be used to commit or facilitate acts of gender-based violence. These are:

- Battle tanks (ATT Art. 2(a))
- Armoured combat vehicles (Art. 2(b))
- Large-calibre artillery systems (Art. 2(c))
- Combat aircraft (Art. 2(d))
- Attack helicopters (Art. 2(e))
- Warships (Art. 2(f))
- Missiles and missile launchers (Art. 2(g))
- Small arms and light weapons (Art 2(h) and UNPoA)
- Ammunition/munitions (ATT Art. 3)

Export officials must conduct a risk assessment on GBV for every single arms export license application. The two sections below provides some examples of a) how weapons are used to commit acts of GBV against women, girls, men, boys, and others; and b) how the use of weapons can have specific gendered impacts. It is meant to provide illustrations and is by no means exhaustive.

## How weapons are used to commit acts of GBV

### *Sexual violence*

For several years, the UN Secretary General has highlighted the link between gender and small arms and light weapons (SALW) in his annual report on small arms to the Security Council. In his 2015 report, he noted that the absence of effective government institutions can lead to endemic GBV at gunpoint.<sup>141</sup> “Sexual and gender-based crimes are often perpetrated by armed individuals. Increased military or armed group activity can bring a greater risk of attack. The victimization of women and children through gender-based violence, including rape, violence in the home and sexual exploitation, is an important and still underrecorded consequence of armed violence.”<sup>142</sup>

A 2012 report on violence against women in Nairobi showed that half of the survivors of rape





Credit: UN Photo/Martine Perret

- Are there surveys showing that sexual violence is not considered a serious crime?
- Are there laws and regulations against sexual violence and are these enforced?
- Are LGBT rights respected by society and police?
- What is the culture of violence towards LGBT people within the recipient country?

### ***Domestic violence***

Small arms facilitate and aggravate domestic violence. Domestic homicides are the only category of homicides for which women outnumber men as victims.<sup>149</sup> In countries with low rates of female homicide, most killings of women occur in the home, and intimate partners account for the majority, sometimes over 60%, of perpetrators.<sup>150</sup> The presence of a firearm in the home is an important risk factor for female homicide or serious injury.<sup>151</sup>

Domestic violence at gunpoint includes threats, intimidation, beatings, and rape, in addition to homicide and serious injury. Research shows that most firearms used in domestic homicides are legal.<sup>152</sup> In Israel, between 2002 and 2013, at least 18 women and at least 15 men were killed with the firearms of private security firms stored in guards' homes.<sup>153</sup> Israel enacted directives in July 2013 prohibiting storage of most guards' guns in their homes. Since then, there have been no additional deaths caused by security firms' firearms in homes,<sup>154</sup> although the directives were partly lifted in November 2014.<sup>155</sup>

The Human Rights Council in UNHRC 26/16, "Human Rights and the regulation of civilian acquisition, possession and use of firearms," was adopted in June 2014. It acknowledges that domestic regulations on the possession of firearms have an impact on human rights. It mentions the impact of widespread possession of firearms on rates of inter-partner violence.

Guns are not the only type of weapon that can be used to commit sexual violence. In Syria, there have been reports of women being forced to walk naked as shields around battle tanks. Um Firas, a woman who escaped Homs, reported to *The Guardian*, "I saw maybe 100 women stripped naked and used as human shields, forced to walk on all sides of the army tanks during the fighting. When their tanks rolled back into the Alawite neighbourhood, the women disappeared with them."<sup>147</sup>

Relevant questions<sup>148</sup> include:

- Have there been reports of sexual violence being facilitated by the weapons listed in the application, or with other weapons in the recipient country or end destination country?
- Have there been reports of widespread sexual violence in the recipient country?
- Do victims of GBV in the recipient country have access to healthcare, support systems, and complaint mechanisms?



Relevant questions include:

- What is the rate of female homicide in the destination country? How does it compare to the rates in other countries?
- What is the percentage of domestic homicides in the destination country committed with a gun?
- Is there evidence of high levels of armed violence in the home?
- Does the destination country have laws on domestic violence? Do these laws include provisions on gun control, including for protective orders?
- Does the destination country have laws on femicide or female homicide?
- Are police and private security officers allowed to bring firearms home?
- Are there laws on safe storage of firearms?

### ***Using sex as a signifier in targeting attacks and/or conducting post-strike analysis***

Lack of transparency around many military and “targeted killing” operations makes it difficult to know what standards are used to determine how individuals come to constitute a target for strikes, particularly in the eyes of armed drone users. Yet there are some indications that the United States uses maleness as a signifier of militancy.<sup>156</sup> The blanket categorisation of adult men as militants, “even if bounded to certain geographical areas and even if sex is not the only component of a ‘signature’ used to determine a strike ... constitutes a form of gender-based violence and has broader implications in the reinforcement of gender essentialisms and problematic associations of masculinity with violence.”<sup>157</sup>

Drone strikes or other targeting killing operations are not necessarily targeting individuals only based on their sex. But those executing the strikes appear to be using sex in order to assess whether or not to target a subject, to allow a strike (for example, by taking

into account the sex of others in the vicinity of the strike), and/or to determine the impact of a strike.<sup>158</sup> The sex of the subject “is being used as one proxy for another identity—militant—which in turn provides the motivation. If people are targeted, or considered to be militants when proximate to other targets, on the basis of their sex, then this constitutes a form of GBV.”<sup>159</sup>

Relevant questions include:

- Are there indications that the end-user uses sex as a signifier in targeting attacks or post-strike casualty recording?

### **How the use of weapons can have specific impacts on women and girls**

#### ***The use of explosive weapons in populated areas***

Explosive weapons—bombs, mortars, rockets, artillery, or improvised devices—are used in most armed conflicts. When used in populated areas, explosive weapons result in civilian deaths and injuries, destroy infrastructure and livelihoods, and cause displacement.<sup>160</sup> The damage and destruction caused by explosive weapons can affect women and men differently. In many societies and cultures, women have different experiences in conflicts compared to men because they are afforded a different status and place in family and public structures.<sup>161</sup> For example, explosive weapon attacks aimed at residential areas and markets disproportionately affect women, as they often have primary responsibility for buying food and household goods at markets. “(W)ho do you usually find at markets during daytime? Women. Who do you find at playgrounds? Mothers and their children.”<sup>162</sup>

Sometimes women are specifically targeted by explosive weapon use. In South Ossetia, Georgia, in Novyi Tbeti, a village of about nine



Credit: UN Photo/Sophia Paris

houses on the outskirts of Tskhinvali, only women and elderly were present when the village was almost completely destroyed by Georgian artillery and tank fire.<sup>163</sup> In Tamarasheni, Russian soldiers entered houses, checked for armed men, and left, before firing on the houses. 65-year-old Luiza Nasuashvili told Human Rights Watch, “All of a sudden I heard a big explosion and a big hole appeared in my house. I think it was tank fire. Debris fell on my head as I lay down on the floor.”<sup>164</sup>

Indirect impacts of explosive weapons use, in such forms as forced displacement, eroded social capital, and destruction of necessary infrastructure, can also have different effects on women than on men. In particular, “pre-existing inequality between genders may increase due to the severe damage to relevant infrastructure and disruption of daily life, which can affect women and men differently due to their different social roles.”<sup>165</sup>

If women tend to be less active as combatants, the sex of victims of armed attacks can suggest whether or not attacks distinguish civilians from combatants.<sup>166</sup> Thus, the relative proportion of females amongst civilian casualties can be a direct indicator that those ordering the attacks either make no effort, or are unable, to limit the effects of weapons to intended targets. Large numbers of women being killed and injured by explosive weapons despite them being identifiable as civilians “can therefore illustrate either an intention to target such groups, or an inability to target weapons effectively.”<sup>167</sup>

Relevant questions include:

- Have there been reports of attacks on populated areas in the recipient country?
- Have explosive weapons been used in populated areas in the recipient country?
- Has the end-user attacked populated areas anywhere in the world?

- Has the end-user trained its personnel on IHL and targeting?
- What is the government's orientation toward the development of a political commitment to end the use of explosive weapons in populated areas?

### ***Impact on girls' education***

In many countries, armed forces and armed groups have used schools and other education institutions for military purposes, stacked assault rifles in hallways, hidden grenades under desks, and parked armoured vehicles in gymnasiums.<sup>168</sup> Girls are particularly negatively affected.<sup>169</sup> In some countries, armed groups have specifically targeted girls' education as part of their military campaigns.<sup>170</sup>

In Northern Uganda, data shows that armed conflict had little impact on the educational opportunities of boys from the wealthiest one-fifth of households, but nearly doubled the risk of drop-out for girls from the poorest households.<sup>171</sup> According to Human Rights Watch, Yemen's military use of schools resulted in girls dropping out in disproportionately higher numbers and missing greater portions of the school year than boys, because parents preferred to remove daughters from school rather than allow them to study alongside boy students or armed men.<sup>172</sup> Enrolment fell at Asal al-Wadi Girls School, in Sanaa, Yemen, once students were displaced to a companion boys' school, Asal Haddah, after troops from the First Armoured Division took over the girls' school to use it for their barracks and a field hospital.<sup>173</sup> When soldiers used Asal Haddah School, also in Sanaa, they displaced more than 1,000 girls.<sup>174</sup> At Asmaa Girls School soldiers from the First Armoured Division occasionally detained individuals. A 13-year-old girl student said, "when they tortured the old man here, we got

very scared. They beat him [and] electrocuted him right in the courtyard of the school. It was during recess."<sup>175</sup>

In Thailand, where armed groups have occupied schools, one father of a nine-year-old student said: "If my daughter were much younger, it would not be too bad, but now I am worried. I am not comfortable at all to have my daughter surrounded by men—especially armed men. Because of that, I am very strict with my daughter: she has to keep distance [from the soldiers]."<sup>176</sup>

In Syria, schools have been used as barracks for government forces, with tanks at the school gates and snipers posted on the rooftops.<sup>177</sup> Tiba, 36, a primary school teacher in Aleppo, Syria, was at the Abd al-Latif Barakat School, where she taught five- and six-year-olds, when it was damaged by shelling from helicopters in April 2012. Bombings often prevented her from traveling to work at the prescribed time and students stopped attending either due to displacement or fear. "People were paranoid when they heard airplanes and bombs," she said. "Students were very afraid, so they didn't leave their houses."<sup>178</sup>

In Somalia, from April to July 2007, Ethiopian government forces and al-Shabaab militants used schools in Mogadishu as a strategic position from which to fire rockets, artillery, and mortars on opposition forces.<sup>179</sup> Many students dropped out of school. Human Rights Watch quoted a 15-year-old student explaining the drop-outs from his class: "In my class there were 40 students, and when I left there were only 13 and no girls. There were no girls in the whole school by December 2010."<sup>180</sup>

In Colombia, army helicopters have used school playgrounds as sites for landing, and the unloading of personnel, supplies, and weapons.<sup>181</sup>

In January 2006, members of the People's Liberation Army in Nepal temporarily occupied a school in Syangja district with 130 students and teachers present. The Royal Nepalese Army fired at the school from a helicopter and dropped a bomb nearby.<sup>182</sup>

State armed forces were reported as using schools from 2005–2012 in Afghanistan, Burma/Myanmar, Central African Republic, Chad, Colombia, Côte d'Ivoire, Democratic Republic of the Congo, Georgia, India, Iraq, Israel/Occupied Palestinian Territory, Libya, Mali, Nepal, Pakistan, Philippines, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Thailand, Uganda, and Yemen.<sup>183</sup> Some countries, including Colombia, India, and the Philippines, have complete bans on the practice, suggesting that other countries should do the same.<sup>184</sup> Attacks involving sexual violence against teachers and girls in educational facilities or during the journey to or from them have been reported in the Democratic Republic of the Congo, El Salvador, Haiti, Indonesia, Iraq, Mali, Myanmar, the Philippines and Syria.<sup>185</sup>

In its General Recommendation no. 30 (2013), the CEDAW Committee noted that in conflict affected areas "schools are closed owing to insecurity, occupied by State and non-State armed groups or destroyed, all of which impede girls' access to school."<sup>186</sup> The Safe Schools Declaration was developed through state consultations led by Norway and Argentina in Geneva throughout the first half of 2015. It is aimed at preventing states from using schools or universities for any purpose in military operations. The Declaration notes that attacks

on schools and universities have been used to further gender discrimination by preventing the education of girls.

Relevant questions include:

- Has the recipient country banned military use of schools (e.g. by signing the Safe Schools Declaration)?
- Have there been reports of the end-user using schools for strategic purposes?
- Have schools been attacked in the recipient country?
- Have there been reports of the end-user attacking schools?
- Have there been reports of sexual violence against students by soldiers or armed fighters?

### ***Impact on women's reproductive health***

The proliferation of weapons also disproportionately affects women's access to healthcare. Iraq, one of the top five countries most heavily affected by explosive weapons, has a maternal mortality rate of 84 female deaths per 100,000 live births, one of the highest in the Middle East.<sup>187</sup> According to the United Nations Assistance Mission for Iraq (UNAMI), 80% of these deaths could be prevented by better access to health care during pregnancy, childbirth, and the postpartum period.<sup>188</sup> Over 40% of Iraqi women highlighted the difficulty in accessing health services as being the main factor for lack of appropriate health care.<sup>189</sup> The US-led invasion and occupation of Iraq between 2003 and 2011 resulted in 628 health care professionals reported killed and 18,000 of 34,000 doctors fleeing the country.<sup>190</sup>

Relevant questions include:

- What is the maternal mortality rate in the recipient country?
- Is there easy access to healthcare services, particularly for women?

- Have there been reports of healthcare professionals being killed?
- Has the end-user ever attacked healthcare facilities?

## The intended end-user

There is a common misconception that most armed GBV is committed with diverted weapons and by non-state armed groups. While this is a critical problem, particularly with groups such as

Daesh or Boko Haram, state-sanctioned forces are often the ones responsible for GBV. For example, since the outbreak of the Syrian revolution five years ago, the Syrian regime has been responsible for 91% of women and girls' deaths, and has arbitrarily detained fourteen times more women than Daesh, and nine times more than armed opposition groups.<sup>191</sup>

The 2015 annual report of the UN Secretary-General on conflict-related sexual violence highlighted harrowing accounts of rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence of comparable gravity in 19 different countries against both men and women.<sup>192</sup> Perpetrators included members of the Afghan National Police, the Afghan National Security Forces, the Colombian armed forces, DRC government security forces, including the armed forces of the Democratic Republic of the Congo (Forces armées de la République démocratique du Congo), the national police, the national intelligence agency, the Forces armées maliennes, the Myanmar armed forces, Somali national army and Somali police force, the Forces républicaines de Côte d'Ivoire (FRCI), and the armed forces of the Syrian Arab Republic.<sup>193</sup> The report also documented sexual torture of women and men in Iraqi detention facilities.<sup>194</sup>

## Police

Human Rights Watch has documented a wide range of police abuses against women engaging in sex work in China, including arbitrary arrests and detentions, physical violence, and other ill treatment.<sup>195</sup> In northern British Columbia, Canada, Human Rights Watch documented police violations of the rights of indigenous women and girls and heard disturbing allegations of rape and sexual assault by police officers.<sup>196</sup> Rape and sexual assault are excluded from the mandate of the British Columbia Independent Investigations Office, leaving victims without a place to turn.<sup>197</sup>

In a recent report on post-election violence in Kenya, Amnesty International reported cases of women now living with HIV who had been raped by police officers. One woman said she knew the police officer who had raped her and that he was still working in a nearby police station.<sup>198</sup>

In Papua New Guinea, Alice, a mother of four, said her police officer husband became abusive several months after they married in 2011, when she began working outside the home. In an incident in 2013, he dragged her behind a car, hit her with a car jack, and hit her on the head with the butt of his service pistol. The first three times she went to the police, police officers did not take her complaint and instead called her husband. They took a complaint the fourth time, but never arrested him.<sup>199</sup>

Relevant questions include:

- Are police allowed to bring their service weapons home?
- Do victims of police abuses have access to an effective complaint mechanism? Does its mandate include sexual violence?
- Have there been reports of police specifically targeting women or LGBT people?



## State armed forces

Sexual abuse committed within armed forces against men and women is increasingly being documented. For example, a 2014 survey within the United States military found that 4.3% of female personnel and 0.9% of male personnel had experienced “unwanted sexual contact” in the past year.<sup>200</sup> The British armed forces’ military police reportedly referred for prosecution 53 allegations of rape and 106 allegations of sexual assault during 2012 and 2013, and sexual abuse occurs on mission and around bases at home and abroad.<sup>201</sup> A study of sexual violence in the French military also revealed 86 cases over 14 months and noted that there are no official and reliable statistics on the matter.<sup>202</sup>

Military personnel stationed abroad also commit egregious acts of sexual violence. Sexual slavery and forced prostitution have been committed by forces as wide ranging as Japanese soldiers during World War II to soldiers fighting in the Balkans to US soldiers and contractors in post-war situations. During World War II, the U.S. military worked to “create racialized military prostitution systems,” including by setting up racially segregated brothels in Hawaii, Germany, postwar Korea, postwar Japan, and post-invasion Normandy, France; these systems continued after WWII in Japan, Philippines, and Korea.<sup>203</sup> Racialized prostitution has been a “constant throughout the American military’s conduct of the Korean War, the Vietnam War, and its globally diffuse post-9/11 ‘war on terror’.”<sup>204</sup>

Forces stationed abroad also commit acts of sexual violence against the local population. In Okinawa, Japan, US soldiers committed at least 350 rapes, sexual assaults, and other crimes against Okinawan women and girls between 1945 and 2011.<sup>205</sup> State forces also commit acts

of sexual violence against detainees or prisoners of war, from the US military and other government officials at Abu Ghraib<sup>206</sup> to Syrian forces its detention centres against male and female detainees.<sup>207</sup>

Relevant questions include:

- Does the military have a code of conduct and/or action plan on sexual violence?<sup>208</sup>
- Does the military have a zero tolerance policy on sexual violence?<sup>209</sup>
- Does the military have advisers to fight sexual violence?<sup>210</sup>
- Is there a large displacement problem in the destination country due to people fleeing state-sanctioned violence?
- What is the state forces’ behaviour abroad at foreign military bases or in foreign deployment?
- How do state forces treat prisoners of war or detainees?
- Are soldiers or other military or government personnel prosecuted or held accountable for crimes of sexual violence within their own forces or toward the local population?

## Peacekeepers

Peacekeepers have abused their positions for exploitative or abusive relationships with local women, men, girls and boys, including through paying for sex.<sup>211</sup> UN and NATO peacekeepers in the Balkans in the late 1990s and early 2000s were involved in sexual violence and trafficking women as sex slaves.<sup>212</sup> AMISOM soldiers, deployed to Somalia since 2007, have committed acts of rape and other forms of sexual abuse, as well as sexual exploitation of women and girls as young as 12.<sup>213</sup> Sexual exploitation has also taken place within official AMISOM housing, suggesting that the exploitation and abuse is organised and even tolerated by senior officials.<sup>214</sup> The African Union Commission’s Reviewed Code of Conduct, with which



AMISOM troop-contributing countries must comply, prohibits sexual exploitation and abuse.<sup>215</sup>

Relevant questions include:

- Are allegations of gender-based violence and abuse by peacekeepers taken seriously and investigated?
- Are there independent investigative units attached to the missions?
- Do the peacekeeping operations have the resources to pursue investigations and prosecutions?
- Are there trained investigators and prosecutors?
- Are survivors adequately supported?
- Are forces systematically vetted to ensure those implicated in sexual exploitation and abuse in the past are not deployed?
- Are perpetrators of GBV prosecuted, and if so, under the law of which country?
- Who is responsible for prosecuting peacekeepers for GBV?

## Private military and security corporations

In recent years, states and international organisations—including the UN—have been increasing their use of private military and security companies to support a wide range of military and security activities. “The privatization of military operations has led to numerous reports wherein employees of some of these companies perpetrate serious crimes and human rights abuses, including human trafficking, sexual exploitation, and rape.”<sup>216</sup> The accountability mechanisms for private military companies are weak and go unenforced, producing a culture of impunity.<sup>217</sup>

Relevant questions include:

- Is the end-user employing any private military or security contractors?

- What are the guidelines and mechanisms for accountability and potential prosecution of such contractors?
- What are the contractors’ guidelines and policies on gender equality, discrimination, sexual harassment or abuse, etc?

## The destination country

The risk of GBV must be assessed for all destination countries, whether or not they are in situations of conflict, and whether or not they are partners or developed countries. There is a misconception that most GBV happens in conflict situations. Of the 25 countries with the highest rates of women killed by armed violence, only Colombia, the Philippines, and Russia are currently affected by conflict.<sup>218</sup>

Two countries, El Salvador and Honduras, have rates of more than ten female homicides per 100,000 women.<sup>219</sup> The level of lethal violence affecting women in El Salvador is such that it surpasses the overall rate of male and female homicides in some of the 40 countries with the highest rates worldwide, such as Ecuador, Nicaragua, and Tanzania.<sup>220</sup>

Armed GBV often occurs in the home in countries that are not at conflict. One study on homicide-suicide events in the United States found that more than 1,300 people died in such circumstances in 2011 alone, that more than 90% of cases involved the use of a gun, and that 94% of the victims were women.<sup>221</sup> According to several studies on firearm-related homicides in Switzerland, firearms were used in 80% of the cases in which homicides were followed by the suicide of the perpetrator,<sup>222</sup> and the majority of persons who were killed were women.<sup>223</sup> Military firearms were the most frequently used types of weapons in these cases.<sup>224</sup> Multiple research studies confirm that the increased availability of

guns during and after conflict means more dangerous forms of violence in the home.<sup>225</sup>

Relevant questions include:

- What is the rate of female homicide in the destination country? How does it compare to the rates in other countries?
- What is the percentage of domestic homicides in the destination country committed with a gun?
- Is there evidence of high levels of armed violence in the home?
- Does the destination country have laws on domestic violence? Do these laws include provisions on gun control, including for protective orders?
- Does the destination country have laws on femicide or female homicide?

## The criteria: applying Article 6 and Article 7 of the ATT

Importing and exporting states must work together to ensure that items transferred under the ATT are not used to commit or facilitate gender-based violence or diverted to uses that would violate Articles 6 or 7. Acts of GBV are covered both under Article 6 (prohibitions) and Article 7 (risk assessment). Article 7(4) should therefore be interpreted as a recognition that GBV is a cross-cutting issue that must be analysed under each sub-section of both Article 6 and Article 7.

Article 11 on diversion only explicitly references conventional arms covered under Article 2, but the meaning and purpose of the ATT would be undermined if ammunition were not included.

The risk of diversion is always present. A broad risk assessment should include what would happen if the arms and ammunition were to be diverted.

## Article 6: Prohibitions

### *Step 1: Is it prohibited under Article 6(3)?*

States parties must first check that the arms transfer would not violate UN Security Council resolutions and arms embargoes, or international agreements, in particular those relating to illicit trafficking (Article 6(1) and Article 6(2)). Arms exports are prohibited under Article 6 if an exporting state knows that weapons will be used to commit acts of GBV that constitute genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, or other war crimes. The following sub-sections provide guidance on the circumstances under which acts of GBV may constitute, or be an indicator of genocide, crimes against humanity, and war crimes. (Article 6(3)).

### ***Genocide: Will the weapons be used to commit GBV with specific intent to destroy, in whole or in part, a national, ethnic, racial, or religious group?***

Gender-based violence can constitute genocide if committed with the specific intent to destroy, in whole or in part, a particular group. Genocide can include not only killing, but also other acts, such as causing serious bodily or mental harm, imposing measures intended to prevent births, and forcibly transferring children. It does not require the presence of armed conflict. The key element is the intent to destroy in whole or in part, a national, ethnical, racial, or religious group.<sup>226</sup>

The International Criminal Tribunal for Rwanda (ICTR) underscored in the *Akayesu* case that rape and sexual violence constituted genocide “in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular

group.”<sup>227</sup> The Chamber explained that rape and sexual violence “certainly constitute infliction of serious bodily harm on the victims—and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm.”<sup>228</sup> The Chamber noted that Tutsi women were systematically raped, often in public, often by more than one assailant, and often in the presence of “policemen armed with guns.”<sup>229</sup> “These rapes resulted in physical and psychological destruction of Tutsi women, their families, and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.”<sup>230</sup> Propaganda presenting Tutsi women as sexual objects indicated a specific intent to destroy the Tutsi group”.<sup>231</sup>

Relevant questions include:

- Has gender-based violence been committed by the end-user against a particular national, ethnic, racial, or religious group?
- Has propaganda been disseminated by the end-user or in the recipient country presenting members of a particular national, ethnic, racial, or religious group as sexual objects?
- Have there been reports of GBV being committed in public in the presence of the intended end-user?
- Has the intended end-user expressed an intent to destroy a particular national, ethnic, racial, or religious group?





***Crimes against humanity: Will the weapons be used to commit GBV as part of a widespread or systematic attack directed against a civilian population?***

Gender-based violence can also constitute a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. For example, the Rome Statute specifies in Article 7 that rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, any other form of sexual violence of comparable gravity, persecution against any identifiable group on gender grounds,<sup>232</sup> murder, and torture, - are crimes against humanity. Courts have required that acts be perpetrated according to an organisational policy. In the case of *The Prosecutor v. Bosco Ntaganda*, the ICC Pre-Trial Chamber confirmed the charges of rape as a crime against humanity and as a war crime, for sexual violence committed by soldiers at gunpoint.<sup>233</sup> It found that forces of the Union of Congolese Patriots (UPC) raped non-Hema women,<sup>234</sup> and that UPC and Forces Patriotiques pour la Libération du Congo (FPLC) soldiers raped and kept women as sex slaves.<sup>235</sup> The policy in that case was attacking non-Hema civilians.<sup>236</sup> The attack was widespread because it involved a large number of civilian victims and a broad geographical area, and was committed over a long period.<sup>237</sup> It was systematic because it followed a pattern.<sup>238</sup>

Relevant questions include:

- Have there been reports of GBV committed against a civilian population?
- Have there been reports of an organisational policy to attack a civilian population?
- Have attacks involved a large number of civilian victims?
- Have attacks involved a broad geographical area?

- Have attacks been committed over a long period of time?
- Have attacks followed a pattern?

***War crimes: Will the items be used in an armed conflict to commit acts of GBV against a civilian population?***

Gender-based violence, when committed during armed conflict against civilian population, is a war crime under customary international law applicable both in international and non-international armed conflicts. Common Article 3 of the Geneva Conventions does not explicitly mention gender-based violence, but prohibits “violence to life and person” including cruel treatment and torture and “outrages upon personal dignity.” The Fourth Geneva Convention obliges parties to a conflict to protect women and children from “attacks on their honour, especially rape.”<sup>239</sup> Additional Protocols I and II to the Geneva Conventions prohibit humiliating and degrading treatment, enforced prostitution, any form of indecent assault, and rape.<sup>240</sup> The Rome Statute of the International Criminal Court explicitly includes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, when directed against a civilian population, as war crimes.<sup>241</sup> Rape, enforced prostitution, and any form of indecent assault are also war crimes under the Statutes of the International Criminal Tribunal for Rwanda (ICTR) and Special Court on Sierra Leone.<sup>242</sup>

Relevant questions include:

- Will the weapons be used in armed conflict?
- Have there been reports of acts of GBV committed against a civilian population?

If the exporting state party knows that the arms exported will be used to commit genocide, a

crime against humanity, or a war crime, the arms export is prohibited under Article 6 of the ATT.

## **Article 7: Risk assessment**

### ***Step 2: Conduct export risk assessment***

If the arms export is not prohibited under Article 6, exporting states must undertake a risk assessment under Article 7. The following sub-sections provide guidance on the circumstances under which acts of GBV may constitute, or be an indicator of, international humanitarian law violations, international human rights law violations, threats to peace and security, terrorism, and transnational organised crime.

#### ***Article 7 (b)(i): Could the weapons be used to commit or facilitate a serious violation of international humanitarian law?***

International humanitarian law (IHL) includes breaches of the Geneva Conventions and additional protocols, war crimes defined under the Rome Statute, and customary IHL. Serious violations of IHL include rape. The main principles of IHL are “distinction,” “proportionality,” and “precaution.” The use of GBV in armed conflict violates all of these principles.

IHL differs from international criminal law in that no specific intent is needed and it applies for the most part in situations of armed conflict.<sup>243</sup> The Inter-American Court of Human Rights has explained that what is decisive is whether a violation has occurred with the support or acquiescence of the government, or whether the state has allowed the act to take place without taking measures to prevent it or to punish those responsible.<sup>244</sup> The International Committee of the Red Cross (ICRC) advises looking for a

discernible pattern of violations or failure by the recipient stated to take appropriate steps to put an end to violations and prevent recurrence.<sup>245</sup>

Relevant questions include:

- Is there an armed conflict in the recipient country?<sup>246</sup>
- Have there been reports of GBV committed by any of the actors in the conflict?
- Has the government taken measures to prevent or punish acts of GBV?
- Have government measures against GBV been effective?
- Have there been reports of widespread impunity for acts of GBV in armed conflict?

#### ***Article 7(b)(ii): Could the weapons be used to commit or facilitate a serious violation of international human rights law?***

While IHL applies to armed conflict (with a few exceptions) international human rights law protects civilians both in war and in peacetime.

Gender-based violence, including rape and sexual violence,<sup>247</sup> is a serious violation of international human rights law.<sup>248</sup> If any of the above rights are intentionally undermined on the basis sex, sexual orientation, or gender norms, this would be an act of GBV.

Civil and political rights protect individuals’ freedom from infringement by governments, social organizations and private individuals, and ensure one’s ability to participate in the civil and political life of the society and state without discrimination or repression. Civil rights include ensuring peoples’ physical and mental integrity, life, and safety; protection from discrimination on the basis of gender, nationality, colour, sexual orientation, ethnicity, religion, or disability; and freedom of expression, thought, assembly and

movement,. Political rights include due process and participation in civil society and politics.

The ATT's language suggests that "serious violations of international human rights law" include social, cultural, and economic rights. In the preamble, states parties recognise "the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms;" recall "Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources;" acknowledge that "peace and security, development and human rights are pillars of the United Nations system and foundations for collective security;" and recognise that "development, peace and security and human rights are interlinked and mutually reinforcing." Social, cultural, and

economic rights include among other things the right to health, education, housing, adequate standard of living, each of which can be violated with the aid of weapons.

### **When is it serious?**

No single factor determines whether a human rights violation is serious. According to Amnesty International, violations of international human rights law engage the ATT machinery when committed by state agents or by persons acting with the authorisation, support, or acquiescence of the state or when the state fails to act with due diligence to prevent violence by non-state actors and/or fails to effectively investigate and prosecute cases and provide reparations to victims.<sup>249</sup> While a single violation of human rights can be severe enough to pose a very significant risk if further arms and munitions are exported, "the gravity is more usually manifest



Credit: UN Photo/Jean-Marc Ferré



in a recurring and foreseeable pattern of violations, or in the institutional nature of violations that are condoned by the authorities.”<sup>250</sup>

Patterns of GBV can be difficult to document and it is important to take every single report seriously. In its report on sexual violence committed by AMISOM troops, Human Rights Watch did not assess the scale or prevalence of the abuse because of “the particularly complex and sensitive nature of this research topic, security concerns, as well as the profound reluctance of survivors and witnesses to speak out about their experience.”<sup>251</sup> Human Rights Watch emphasized that its findings suggested a much larger problem.”<sup>252</sup> In cases where there is uncertainty about the risk, or prevalence of violence, states should seek more information. There should be a presumption against transferring weapons.

The safety of human rights defenders is a good indication of a state’s commitment to upholding human rights. On 3 March, Berta Cáceres, one of the leaders and founders of the National Council of Peoples and Indigenous Organizations of Honduras (COPINH), was shot and killed. Her murder was carried out by those objecting to her resistance against the coup d’etat in Honduras, her environmental activism, and her defence of human rights.<sup>253</sup>

Relevant questions include:

- Have there been reports of domestic violence?
- Have there been reports of rape?
- Are there high levels of homicides of women or LGBT people?
- Are there reports of suppression of protestors or persecution or murder of human rights defenders?

- Are members of the police and armed forces allowed to take their weapons home?
- Are there measures in the recipient state to prevent ownership of weapons for people with a history of domestic violence?
- Is there information suggesting a pattern of acts of GBV?
- Is there information suggesting that GBV is widespread or systematic?
- Has the recipient country taken measures to support victims of GBV?
- Has the end-user taken measures to prevent GBV, for example by systematically vetting applicants to ensure those implicated in GBV are not provided with weapons, or deployed?
- Are allegations of abuse taken seriously and investigated?
- Is there a state of impunity with regard to those suspected of criminal responsibility for such violations?

#### ***Article 7(a): Could the export undermine peace and security?***

GBV is a form of violent conflict in itself and is therefore an indicator that conflict is already occurring.<sup>254</sup> Furthermore, levels of GBV are higher during and after conflict.<sup>255</sup> If there are reports of high levels of GBV, it is likely that arms exports would contribute to undermining peace and security. In November 2013, the CEDAW Committee adopted a general recommendation (30) on women in conflict prevention, conflict, and postconflict situations. The CEDAW Committee noted,

“There is a correlation between the increased prevalence of gender-based violence and discrimination and the outbreak of conflict. For example, rapid increases in the prevalence of sexual violence can serve as an early warning of conflict. Accordingly, efforts to eliminate gender-based violations also contribute in the

long term to preventing conflict, its escalation and the recurrence of violence in the post-conflict phase.”<sup>256</sup>

***Article 7(b)(iii): Could the export contribute to terrorism?***

GBV can also be a form of terrorism. The 2015 report of the UN Secretary-General on conflict-related sexual violence highlights the use of sexual violence by extremist groups and its roots in discrimination against women and girls:

Sexual violence by extremist groups arises from discrimination and dehumanization based on gender, sexual orientation, ethnic and political or religious identity, in particular the subordination of women and girls. Indeed, the same ideology and objectives that motivate Boko Haram to abduct women and girls in Nigeria also spur ISIL to enslave women and girls in the Syrian Arab Republic and Iraq. Common to such cases is the assault on women's rights and bodies that presages the advance of extremist groups.<sup>257</sup>

The Secretary-General concludes that countering terrorism “must include efforts to empower women and address the spectrum of crimes of sexual violence that extremist groups propagate.”<sup>258</sup>

***Article 7(b)(iv): Could the export contribute to transnational organised crime?***

Human trafficking is also a form of GBV. 169 states are party to the United Nations Convention against Transnational Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which entered into force on 25 December 2003.<sup>259</sup> 72% of convicted traffickers are men, and 28% are women.<sup>260</sup> 49% of detected victims are adult

women.<sup>261</sup> 21% are girls, 12% boys, and 18% men.<sup>262</sup> Human trafficking is a problem in every country. Between 2010 and 2012, victims were identified in 124 countries and had 152 different citizenships.<sup>263</sup> The stationing of troops, peacekeepers, and stabilisation forces (including those operating under the United Nations flag) in conflict and post-conflict zones may have fuelled the demand for girls and young women trafficked for sexual exploitation in some parts of the world.<sup>264</sup>



# Indicators of gender-based violence

The following section provides indicators to help guide arms export officials' assessment of the risk of GBV. A number of studies have found a strong statistical correlation between levels of violence and levels of gender equality.<sup>265</sup> A report by the Women's Refugee Commission identifies key factors that make women vulnerable to GBV: impunity; lack of legal rights; insufficient rations; financial dependence and lack of economic opportunities; shifts in power dynamics; social and cultural norms; and the need for firewood or a safe cooking fuel.<sup>266</sup> The Inter-Agency Standing Committee on GBV also emphasizes that gender equality programming is critical to any long-term efforts to address GBV and should be initiated from the start of any humanitarian intervention.<sup>267</sup> The UN Secretary-General also emphasizes in his 2015 report on conflict-related sexual violence the common point across all contexts is structural gender-based discrimination.<sup>268</sup> For example, in countries where conflict-related sexual violence is most prevalent, safe abortion is inaccessible or illegal and survivors face the risk of becoming victims of "honour" or "morality" crimes, as well as economic marginalisation.<sup>269</sup>

Thus, "gender-sensitive risk assessments require an analysis of the sex-based division of labour and access and control of resources within society; an understanding of the gender relations in the country and their implications for the risk of GBV; statistics on the situation of GBV committed in the recipient country; as well as a review of the social, economic, and political power dynamics."<sup>270</sup>

## Indicators suggesting prevalence of GBV in the recipient country

- Reports from UN, governments, and NGOs:
  - o Is there evidence of acts or patterns of GBV, including but not limited to sexual violence or domestic violence, in the recipient country?
  - o Have there been reports of women being compelled to marry the perpetrator of sexual violence as a form of traditional settlement?
  - o Have there been reports of crimes in the name of honour?
  - o Have there been reports of early marriage?
  - o Is there resistance to women's participation in peace processes?
  - o Is there a lack of presence of women in civil society organisations?
  - o Are there reports of high levels of sexually transmitted diseases?
  - o Are there reports of sexual abuse by security officers?
  - o Are there reports of threats to politically active women?
  - o Is there avoidance of markets or cross-border trade by women due to fear?
  - o Are there increased reports of prostitution and sex work?
  - o Have there been changes in school enrolment by women or girls?
- Statistics (government, UN, World Bank and other international financial institutions, and NGOs)
  - o Male/female life expectancy at birth
  - o Gender ratio at birth
  - o Maternal mortality rate
  - o Child mortality of girls and boys

- o Percentage of adult women with HIV/AIDS
- o Percentage of women in parliament
- o Percentage of women in government
- o Gender training in the military
- o Levels of domestic violence
- o Prevalence of sexual violence
- o Impunity of perpetrators of violence against women
- o Prevalence of female genital mutilation
- o Existence of hotlines or crisis centres to support women and men
- o Number of unemployed men in the population
- o Percentage of women in the formal labour force
- o Percentage of women landowners
- o Average level of female education vs. male education
- o Female vs. male literacy rate
- o Male/female expected years of schooling
- o Primary/secondary school enrollment for boys/girls
- o Percentage of female participants in disarmament, demobilisation, and reintegration (DDR) programmes
- o Military spending vs. education and health spending
- o Incidents of rape and domestic violence
- o Presence of military bases (linked to increased human trafficking, prostitution, sexual harassment)
- o Levels of displacement
- o Gender-specific killings
- o Sex-specific unemployment

### **Indicators regarding recipient country's response to GBV**

#### *Legislation*

- Are there laws, policies, and implementation mechanisms in the importing states designed to prevent GBV?
  - o Are there laws on rape?
  - o Are there laws on marital rape?
  - o Are there laws on domestic violence?
  - o Are there laws on female genital mutilation?
  - o Are there laws on femicide?
  - o Are there laws on human trafficking?
- Is there national legislation in place prohibiting and punishing GBV?
  - o What are the statute(s) of limitations?
  - o Are these laws and policies implemented?
  - o Are the implementation mechanisms effective?
  - o What is needed to make a complaint?
  - o Is there protection of survivor and witnesses?
  - o Is the victim or state responsible for pressing charges in criminal proceedings?



- o Evidentiary requirements for different types of GBV crimes? Witness corroboration required?
  - o Sentencing? What is average sentence? Sentence likely to be carried out?
- Is there legislation allowing for cooperation with international investigations and tribunals?
- Are the recipient country's national laws to protect women's and girls' human rights in line with international standards—i.e. has the country ratified CEDAW?
- Are there vetting systems for the acquisition of firearms or the enrolment of private security companies and do they include background checks on GBV or psychological tests that would take into account risk of GBV?
- Is safe abortion legal? Under what circumstances?
  - o Evidence needed? Documentation required?
  - o Protection for doctors performing legal abortions
  - o Cost of abortion – who pays?
- Are there laws controlling women's sexuality and behaviour?
- Are there laws protecting LGTB rights? Conversely, is homosexuality illegal?
- Is it mandatory for health workers to report to police/security forces? Are others required to report?
- What is the age of marital consent and the conditions of consent?
- What legal provisions exist on:
  - o Property ownership rights of women
  - o Divorce, child custody, and child support
  - o Inheritance rights of women/widows/daughters

#### *Other state initiatives*

- What has the government's response been to past incidents of GBV?
- Has the government cooperated with other states, UN investigations, or the International Criminal Court in connection with criminal proceedings relating to GBV?
- Has the recipient country taken concrete steps to implement any of the UN Security Council resolutions on women, peace and security?
- Does the recipient country have a National Action Plan on UN Security Council resolution 1325 and does it mention arms control?
- Is there a coordination of policies and legislation on GBV and on the possession of firearms?
- Are there mandatory firearms (private or official) removals by justice and police officers for suspects of GBV if they possess a firearm?
- Does the recipient country educate and train its military officers, soldiers, and police in the prevention of GBV?
- Has information about and prohibition of GBV been incorporated into military doctrines, military and law enforcement manuals, rules of engagement, instructions, and orders?
- Are there legal advisors trained in human rights, especially women's rights, who advise the armed forces and the police?
- Have requirements been put in place for military commanders to prevent and suppress GBV and to take action against those under their control who have committed acts of GBV?
- Have mechanisms, including disciplinary and penal sanctions, been put in place to ensure accountability for acts of GBV committed by the armed forces and other arms bearers?



- Are there mechanisms in the armed forces or law enforcement to address instances of GBV?
- Are there independent commissions charged with investigating crimes?
- Is safe abortion accessible?
- Are there policies of forced birth control or virginity tests?
- Is there propaganda emphasising violent masculinity?
- Level, types of remuneration, and benefits (e.g. maternity leave) provided to male/female staff in state institutions
- Existence of vetting procedure that includes vetting for past perpetration of human rights violations against women, such as domestic violence or sexual assault
- National violence against women database established and collecting core data on incidents, victims, and perpetrators
- Existence of private interview rooms for receiving survivors and other infrastructure (transportation, temporary accommodation, etc)
- Existence of a multisectoral coordinated referral system
- Are there copies of current statutes in police stations/posts?
- Police officers able to read and apply the laws?
- Existence of internal oversight mechanisms/ bodies such as boards of inquiry or a conduct and discipline unit with a mandate to investigate gender issues within the police service such as discrimination, harassment and gender-based violence
- Existence of external oversight mechanisms/ bodies (such as ombudsoffices or human rights commissions) with a mandate to investigate gender issues within the police/military service such as discrimination, harassment and gender-based violence

### *Statistics*

- Number/percentage of security sector/law enforcement personnel trained in preventing and responding to violence against women (according to established protocols)
- Level of institutionalisation of gender training in security institutions (e.g. GBV training curriculum developed and in use; existence of gender training, such as specific training sessions on gender-awareness, sexual harassment, sexual exploitation, and abuse, domestic violence, sexual assault, or human trafficking)
- Level of awareness of gender-based violence prevention and response among male/female national security forces (police, military)
- Number/percentage women on government decision-making committees related to peace and security
- Number of gender advisers working in government agencies
- Number/percentage of government agencies with gender focal points
- Rates of attrition (drop out) for male vs. female personnel
- Number/percentage violations perpetrated by police or military that are reported, investigated and prosecuted
- Number/percentage violence against women cases reported to local police
- Percentage of reported violence against women cases investigated
- Number/percentage of state security units (army, police) following a nationally established protocol for handling complaints of violence against women and girls

- Number of referrals made by police stations each month/year (by agency/service referred to)
- Number/percentage of police stations with special (family/women) police units established or centres with integrated services to assist survivors

**Indicators regarding the end-user (UN, NGO, think tanks, government, embassies)**

- What information is there to demonstrate the current and past record of the proposed end-user in relation to the perpetration of GBV?
- Is the evidence of such violations reoccurring?
- Is the evidence reliable and credible?
- Is it documented in the state's own reports, or those of credible non-governmental or inter-governmental bodies?
- Are there laws, policies, and implementation mechanisms to strictly regulate the sale, transfer, and use of imported arms, including obligations to record, report, and document such acts?
- What is the recipient's capacity to ensure that the arms or equipment transferred are used in a manner consistent with international law relevant to women's rights and are not diverted or transferred to other destinations where they might be used for serious violations of this law?
- Are members of security services (including police, military, and private security companies) allowed to bring their service weapons home?
- Do the armed forces have complaint mechanisms?<sup>271</sup>
  - What sort of complaints do female and male personnel make?
  - Are all complaints fairly and effectively investigated?
  - Are complainants supported and protected from retaliation?
  - To what extent is complainants' confidentiality assured?
  - If there has been wrongdoing, are sanctions enforced and systemic changes made?
  - Are complaints mechanisms accessible to deployed personnel?
  - How are records kept about complaints?
  - How are complaints mechanisms themselves monitored?
- Is it permitted to be LGBT in the army?

# Sources of information

Exporting states should not limit their assessment to government sources. The ATT's language's emphasises the importance of civil society input in the preamble.<sup>272</sup> Potential sources of information include:

- Importing/exporting state law, policy, and extent of implementation, as well as similar information from national and international civil society;
- National implementation of UN Security Council resolution 1325 (2000) and related resolutions, including NGO shadow reports;
- Human rights reports by states and shadow reports by NGOs under the International Convention on the Elimination of Discrimination Against Women (CEDAW) and other human rights treaties and recommendations from treaty monitoring bodies;
- Concluding observations by the UN human rights treaty monitoring bodies, including the CEDAW Committee;
- Reports and recommendations from other UN or regional human rights bodies and mechanisms, such as UN Special Rapporteurs, including the UN Special Rapporteur on violence against women, its causes and consequences
- Reports from national diplomatic missions in the recipient states;
- Media reports;
- Open and closed source information from international agencies in the recipient state;
- Judgments and reports by the International Criminal Court, the International Court of Justice, ad hoc tribunals, regional human rights courts, and national courts;
- Military doctrines, manuals, and instructions;
- ICRC (International Committee of the Red Cross) reports;
- NGO reports (for example, Human Rights Watch, Amnesty International, the International Federation for Human Rights);
- Reports by research institutes on weapons/arms transfer issues (i.e. regarding illicit trafficking, national controls on arms and ammunition, etc.) (for example, Escola per la Pau of the Autonomous University of Barcelona, Conflicts Armament Research, Small Arms Survey, SIPRI, iTRACE);
- UN Programme of Action on small arms national reports;
- UN Secretary General annual reports on conflict related sexual violence (pursuant to paragraph 18 of UNSCR 1960 (2010)). The Annex includes a list of parties (military forces, militia and other armed groups) responsible for patterns of sexual violence; also includes on efforts to prevent and respond to violations;
- Other information from the Office of the Special Representative on Sexual Violence in Conflict, including the early warning matrix for sexual violence;
- Virtual Knowledge Center on violence against women and girls (VAWG);
- IGAD's Conflict Early Warning and Response (CEWARN) Mechanism;<sup>273</sup>
- Crime statistics (e.g. South African Police Service Crime Statistics Report, 2010; Botswana Police Service weekly crime report which records incidents of rape and number of people arrested; and New York City's CompStat (United States) on weekly incidents of crimes, including rape, with annual and monthly comparisons).

# Implementing the UNPoA to prevent gender-based violence

The legal arms trade fuels the illicit trade in small arms and light weapons. ATT and UNPoA implementation must form part of an integrated approach to prevent GBV. Importing states must strengthen both import controls and national small arms control efforts, while exporting states must assess importing states' implementation of the UNPoA in their risk assessment under the ATT. Effective implementation of the UNPoA will reduce the availability of guns and therefore help prevent GBV.

While the UNPoA itself makes no mention of gender, and references women only once in the preamble, it does commit states to make "greater efforts to address problems related to human and sustainable development" (III. 17) and to promote conflict prevention and address its root causes (III.4), which should include promoting gender equality and preventing GBV.

Gender mainstreaming is crucial to these efforts. Gender mainstreaming refers to the process of:

- 1) Assessing the implications for women and men of any planned action, including legislations, policies or programs in all areas and at all levels; and
- 2) Making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so

that women and men benefit equally and inequality is not perpetuated.<sup>274</sup>

The UN Security Council and the UN Secretary-General have emphasised the need for gender mainstreaming in small arms control for several years.<sup>275</sup> The Global Study on the implementation of UN Security Council resolution (UNSCR) 1325, commissioned by the UN Secretary-General and published in 2015, emphasises the importance of measures dealing with the proliferation of small arms and violent masculinities.<sup>276</sup> A gender-sensitive approach requires the recognition that small arms possession is linked to violent masculinities and that women are not just victims, but also perpetrators of armed violence as well as members of gangs, terrorist groups, and armed forces.<sup>277</sup>

Experts on GBV prevention emphasise that interventions must deal with GBV's roots in gender discrimination and promote long-term social and cultural change towards gender equality, including through ensuring leadership and active engagement of women and girls and conducting advocacy to promote the rights of all affected populations.<sup>278</sup> Data on conflict and violence prevention also show that a gender-sensitive approach makes conflict prevention interventions more effective.<sup>279</sup>

In 2006, the UN Coordinating Action on Small Arms (CASA) issued the "Guidelines for gender mainstreaming for the effective implementation of the UNPoA." In 2010, UNODA/RDB and

IANSA jointly undertook to review and update the document with new developments, progress made, and lessons learned in the implementation of the UNPoA, as well as in the area of gender mainstreaming in peace and security.<sup>280</sup> These guidelines should be consulted in order to better implement the UNPoA. The following section focuses on five key areas of UNPoA implementation: 1. Legislation and policies; 2. National commissions on small arms; 3. DDR processes; 4. Data collection; and 5. International aid.

## Legislation and policies

### Relevant UNPoA commitments

- I. 22 (a) Strengthening or developing agreed norms and measures at the global, regional and national levels that would reinforce and further coordinate efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects;
- II. 2. To put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons.
- II. 17. To ensure, subject to the respective constitutional and legal systems of states, that the armed forces, police or any other body authorized to hold small arms and light weapons establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons.

Legislators must consult with women's groups and LGBTB rights groups when drafting laws on gun control, the security forces, and GBV. The following are examples of legislation and policies that can help control arms and prevent GBV. In order for laws to be effective, states must ensure that the government, judiciary, and law enforcement are given adequate training and resources.

### Legislation on violence against women, domestic or family violence

- **Protection orders** can include taking away an arms license or the confiscation of weapons in the home.<sup>281</sup> They can be provided for in the Penal Code or in laws on violence against women. A study in the U.S. found that laws restricting access to firearms by individuals subject to a restraining order are an effective way to reduce intimate partner violence.<sup>282</sup> Yet prohibiting possession of firearms without explicitly prohibiting firearm purchases as well appears to undermine the effectiveness of a restraining order law. The study suggests maintaining a registry of all firearm owners and designing methods for the accurate and real-time entry of court order data into computer systems and facilitating database sharing between courts and law enforcement agencies.<sup>283</sup>
- In Australia, a five-year minimum prohibition against owning guns exists for those who are subject to restraining orders or have been convicted of any violent offence. In some of the states this has been increased to up to ten years. South Africa has similar legislation.<sup>284</sup>

## Legislation and policies on the security forces

- **Limit the use of arms by government forces to their service times:** preventing police, military and others from carrying weapons outside of service would help prevent diversion and armed violence in the home.<sup>285</sup> In Argentina, the Ministry of National Security restricted the carrying and use of arms by security forces.<sup>286</sup> The regulation refers explicitly to legislation on violence against women and family violence and established that members of the security forces are not allowed to bring their weapons home.<sup>287</sup>

## Gun control legislation

- **Spousal notification** is an efficient mechanism to prevent armed domestic violence and gun acquisition by people with a history of committing acts of GBV, whether or not it resulted in a conviction. For example, Canada requires current and former spouses to be notified before a gun license may be issued.
- **Background and criminal record checks** must include verifying an applicant's past record related to family or partner violence.<sup>288</sup> In the US, federal law makes it a criminal offence to possess a gun while subject to an intimate partner violence restraining order and eleven U.S. states have laws that prevent individuals with a history of intimate partner violence from purchasing or possessing an arm.<sup>289</sup> In Antigua and Barbuda, anyone with a history of sexual violence is prohibited from possessing a firearm.<sup>290</sup> Chile has established legislation stating that any person sanctioned under the law on domestic violence will not have access to small arms.<sup>291</sup> In Nicaragua, the law states that people found guilty of domestic violence, human trafficking, and sexual violence will not have access to weapons.<sup>292</sup> In Panama, people

with a history of domestic violence cannot receive authorisation to carry small arms.<sup>293</sup>

- **Registration of firearms** is essential for police to be able to effectively remove guns in situations of intimate partner violence and enforce prohibition orders.<sup>294</sup>
- For all gun control laws, it is essential for legislators to consult women's groups and LGTB rights groups. The Philippines recently enacted new gun laws. Women's groups and NGOs submitted concrete proposals and worked hard to include provisions on gender and GBV in a review of the national gun laws. Yet their demands were ignored.<sup>295</sup> In a meeting with 500 participants to discuss the new provisions, only five women were present.<sup>296</sup>

## National action plans on 1325 and SALW control

- Argentina, Australia, Belgium, Denmark, the European Union, Liberia, Lithuania, the Netherlands, Norway, Portugal, Uganda and Switzerland have specifically made the link between small arms control and gender in their national and regional plans to implement UNSCR 1325.<sup>297</sup>

## Consult with women's and LGTB rights groups and women ex-combatants in designing disarmament, demobilisation, and reintegration (DDR) programmes

### Relevant UNPoA Commitments

II. 21. To develop and implement, where possible, effective disarmament, demobilization and reintegration programmes, including the effective collection, control, storage and destruction of small arms and light weapons, particularly in post-conflict situations.



In 2006, the UN Department of Peacekeeping Operations (DPKO) launched the Integrated Disarmament, Demobilisation and Reintegration Standards (IDDRS), a comprehensive set of policies, guidelines, and procedures covering 24 areas of DDR. One of the 24 areas addressed in the IDDRS was “Women, Gender and DDR.”<sup>298</sup>

The lack of inclusion of women and girl combatants in DDR processes has been noted by a number of actors.<sup>299</sup> In Colombia, the government is currently in the process of negotiating a peace agreement with the FARC. It is estimated that over 40% of the FARC are women. Studies show that DDR programmes have not been very inclusive of women, despite the appearance of a gender perspective. Female interviewees criticised that gender in the Colombian DDR process is preoccupied with men and masculinities, maintaining the appearance of a gender-perspective while further marginalising women and increasing their invisibility.<sup>300</sup>

The involvement of women's groups in DDR processes has made DDR processes more effective. In 2003, the UN Mission in Liberia (UNMIL) led the process of disarming over 35,000 combatants. Women's organisations were not invited to participate because they were not considered “experts”. But when the process turned to chaos, UNMIL called in the Women in Peacebuilding Program (WIPNET) for support. Over 55 women volunteered and organised trips into rebel areas to disseminate information and spend time with community leaders to explain the DDR process.<sup>301</sup> Combatants responded positively and joined the DDR process and recognised and respected the work of women who knew the national context and were from their local communities.<sup>302</sup> Women also played a key role during Argentina's 2007-2008 gun buy-back scheme.<sup>303</sup> Though 95% of the gun owners in Argentina were men, 50% of the people who handed in guns were women.<sup>304</sup> The scheme resulted in the collection of 70,000 weapons and 450,000 rounds of



ammunition between July 2007 and January 2008.<sup>305</sup> Experts believe that women actively participated in order to protect their homes, but also to protect themselves.<sup>306</sup>

## Include women's and LGBT rights groups in national commissions on SALW control

### Relevant UNPoA commitments

II. 4. To establish, or designate as appropriate, national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects. This should include aspects of the illicit manufacture, control, trafficking, circulation, brokering and trade, as well as tracing, finance, collection and destruction of small arms and light weapons.

II. 5. To establish or designate, as appropriate, a national point of contact to act as liaison between states on matters relating to the implementation of the Programme of Action.

II. 40. To encourage the relevant international and regional organizations and states to facilitate the appropriate cooperation of civil society, including non-governmental organizations, in activities related to the prevention, combat and eradication of the illicit trade in small arms and light weapons in all its aspects, in view of the important role that civil society plays in this area.

II. 41. To promote dialogue and a culture of peace by encouraging, as appropriate, education and public awareness programmes on the problems of the illicit trade in small arms and light weapons in all its aspects, involving all sectors of society.

It is important that national commissions include all actors involved in human security, including ministries of women's affairs or gender, civil society, and women's groups.<sup>307</sup> The national commission can promote technical and financial support to women's groups working on disarmament and arms control.

In Kenya, for example, the 2014 country report on the UNPoA states that the Kenya National Focal Point works with civil society partners to promote information sharing.<sup>308</sup> Indeed, the local government in Wajir agreed to share information about their small arms inventory with women from the Frontier Indigenous Network. Women were also invited to join a committee that will lead programmes raising awareness on small arms control.<sup>309</sup> In its 2014 report, Kenya noted that it organised campaigns against small arms specifically promoting the role of women in the fight against illicit SALW proliferation.<sup>310</sup> It also noted that its involvement with civil society included research, training, and programmatic implementation.<sup>311</sup>

One study shows that women's absence in peace processes cannot be explained by their alleged lack of experience in conflict resolution or negotiations. Instead, there has been a lack of effort to integrate them in formal peace processes.<sup>312</sup> It is important to recognise that women have a great deal of expertise to share and their perspectives and input should actively be sought.

## Promote data collection on gender and SALW

### Relevant UNPoA Commitments

III. 18. States, regional and subregional and international organizations, research centres, health and medical institutions, the United Nations system, international financial institutions and civil society are urged, as appropriate, to develop and support action-oriented research aimed at facilitating greater awareness and better understanding of the nature and scope of the problems associated with the illicit trade in small arms and light weapons in all its aspects.

There is insufficient data on gender and gun violence. In some countries, homicide data is not disaggregated by sex. Furthermore, women have played a key role in data collection on illicit small arms and should be included in information gathering. Women in Cambodia played key roles during weapons collection programs because they had been in charge of keeping arms in hidden places and helped to map out the existence of weapons still hidden in the jungle.<sup>313</sup> Other studies show that women in Kosovo and Sierra Leone had valuable information about the accumulation of weapons, but had no channel for communicating this information to institutions that could respond.<sup>314</sup>

## Increase funding for gender-sensitive small arms control

### Relevant UNPoA Commitments

III. 4. States and international and regional organizations should, upon request by the affected states, consider assisting and promoting conflict prevention. Where requested by the parties concerned, in accordance with the principles of the Charter of the United Nations, states and international and regional organizations should consider promotion and assistance of the pursuit of negotiated solutions to conflicts, including by addressing their root causes.

III. 6. With a view to facilitating implementation of the Programme of Action, states and international and regional organizations should seriously consider assisting interested states, upon request, in building capacities in areas including the development of appropriate legislation and regulations, law enforcement, tracing and marking, stockpile management and security, destruction of small arms and light weapons and the collection and exchange of information.

There is very little funding for women's groups and programmes working on gender and small arms control.<sup>315</sup> The targets set by the *UN Strategic Results Framework on Women, Peace, and Security: 2011–2020* is that 75% of UN disarmament and arms control programmes mainstream gender by 2014 (100% by 2020) and that 50% of UN disarmament activities include and consult women leaders and groups by 2014 (75% by 2020).<sup>316</sup> The Global Study on the implementation of UNSCR 1325 highlighted the fact that aid to peace and security in fragile states and economies, particularly in the area of small arms control, lacked a focus on gender equality.<sup>317</sup>

# Conclusion

The ATT has been called “ground breaking” for its recognition of the link between the international arms trade and GBV.<sup>318</sup> Yet there remain many gaps in the Treaty’s implementation, partly due to time limits, export officials’ dual role as regulators and promoters of the arms industry, and lack of data and information linking GBV to specific weapons and/or end-users. Reports on human rights and gender-based violence often fail to pay attention to the weapons involved, and there is no centralized repository of information. Embassies, country human rights teams, human rights organisations, NGOs, and UN entities must pay attention to the links between weapons, armed actors, and GBV.

Researchers on women’s rights, LGBT rights, and GBV should attempt to take note and report when violence is facilitated or committed with conventional weapons. For example, Amnesty International’s recent report, *Taking Stock: The Arming of Islamic State* shows that IS fighters, who have perpetrated various forms of sexual and gender-based violence at gunpoint, are equipped with weapons from the US, China, Croatia, Germany, Belgium, Austria, Russia, and Iran.<sup>319</sup> Amnesty International documented a close match between the inventory of the Iraqi military and IS arsenals.<sup>320</sup> Over 30 countries have supplied the Iraqi army with further military equipment, despite the fragility of the Iraqi armed forces. The findings underscore the importance of ATT and UNPoA implementation in terms a need for better arms export and import controls, as well as stockpile management, marking, record-keeping. In addition, WILPF has begun tracing weapons used by all parties to the conflict in Syria to their

manufacturers.<sup>322</sup> WILPF also looks at the links between arms transfers and the use of explosive weapons in populated areas, including relevant gender effects.<sup>324</sup> The use of such weapons in populated areas underscores the need to ensure effective implementation of the ATT as well, in particular through robust risk assessment processes.

More resources need to be devoted to collecting and centralising available information on the links between weapons and GBV. The UN report on conflict-related sexual violence has noted that the increased presence of Women’s Protection Advisers in the field has made a tangible contribution to improving the quality of information and analysis received.<sup>325</sup> The 2015 Global Study on UNSCR 1325 highlighted the importance of HRC fact-finding bodies, and the need to continue to strengthen these bodies’ abilities to report on sexual and gender-based violence and expand the flow of information between these commissions, UN entities, and the Security Council.<sup>326</sup> International, national, and non-governmental organisations can take steps to document when GBV is committed or facilitated by weapons, including: Which weapons are being used? Who is committing this violence? Is it the police, the military, or other state security forces? Which unit(s) in particular?

In the end, it is up to licensing and export officials, as well as relevant government ministries, to make the call as to whether or not weapons will be transferred. These entities must include the prevention of GBV in their assessments in order to be in compliance with the ATT.







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Reaching Critical Will is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest women's peace organization in the world.

Reaching Critical Will works for disarmament and arms control of many different weapon systems, the reduction of global military spending and militarism, and the investigation of gendered aspects of the impact of weapons and of disarmament processes.

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