PREVENTING GENDER-BASED VIOLENCE THROUGH EFFECTIVE ARMS TRADE TREATY IMPLEMENTATION
This briefing paper is a summarised version of the report published by WILPF in 2016 prepared by Rebecca Gerome entitled Preventing gender-based violence through arms control: tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action, which is available at http://www.reachingcriticalwill.org/images/documents/Publications/preventing-gbv.pdf.

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The Arms Trade Treaty (ATT) is the first international agreement to recognise the link between the arms trade and gender-based violence (GBV). All conventional weapons can be 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.

Including a GBV-prevention provision in the ATT, as found in Article 7(4), makes excluding GBV 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 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.

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.¹

GBV is severely underreported and under-documented, which means that it is often overlooked in arms transfer risk assessments, or that the officials making the risk assessment are unsure what indicators to look at or credible sources to consider.

This is why the Women’s International League for Peace and Freedom (WILPF) has prepared this resource. It is extracted from an earlier publication, Preventing gender-based violence through arms control, released in 2016.² This brief does not include a survey of current practice in this area or an examination of implementation of the UN Programme of Action on small arms and light weapons (SALW), which the full-length report does, but rather aims to identify key questions to consider when making a risk assessment. We encourage all states to view the full report.

GBV is violence that is directed at a person based on discriminating norms and practices relating to her or his specific sex or gender identity. It is linked to the gendered perceptions or norms of being a woman, man, intersex, transsexual, transgendered, gay, lesbian, etc. The term GBV recognises that violence takes place as a result of unequal power relations and discrimination in society on the basis of these identities or orientations. 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 criteria

The risk of GBV must be assessed for all arms transfer destination countries, whether or not they are in situations of conflict, and whether or not they are considered partners or “developed” countries. There is a misconception that most GBV happens in conflict situations.

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.

Article 6: Prohibitions

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)). Article 6(3) requires assessing if 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. What does that look like in practice?

Genocide

GBV 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.

Relevant questions for export officials to ask during risk assessment processes include:

- Has GBV 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?

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”.

Crimes against humanity

GBV 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, murder, and torture—are crimes against humanity.

Relevant questions for export officials to ask during risk assessment processes 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**

GBV, 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.” Additional Protocols I and II to the Geneva Conventions prohibit humiliating and degrading treatment, enforced prostitution, any form of indecent assault, and rape. 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. 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.

Relevant questions for export officials to ask during risk assessment processes include:

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

**Article 7: Risk assessment**

If the arms export is not prohibited under Article 6, exporting states must undertake a risk assessment under Article 7. The following subsections 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.

Relevant questions for export officials to ask during risk assessment processes include:

- Is there an armed conflict in the recipient country?
- 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, international human rights law protects civilians both in war and in peacetime. Gender-based violence, including rape and sexual violence, is a serious violation of international human rights law. 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.8

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.9 Patterns of GBV can be difficult to document and it is important to take every single report seriously.

Relevant questions for export officials to ask during risk assessment processes include:

- Have there been reports of domestic violence and/or 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/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?
• 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. Furthermore, levels of GBV are higher during and after conflict. If there are reports of high levels of GBV, it is likely that arms exports would contribute to undermining peace and security.

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.” Human Rights Watch emphasised that its findings suggested a much larger problem.

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

GBV can also be a form of terrorism. For example, 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.

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.”

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

Human trafficking, often facilitated by transnational criminal networks, is also a form of GBV. It is a problem in every country. Between 2010 and 2012, victims were identified in 124 countries and had 152 different citizenships. The stationing of troops, peacekeepers, and stabilisation forces (including those operating under the UN flag) in conflict and post-conflict zones may have fuelled the demand for girls and young women trafficked for sexual exploitation.
4. Fourth Geneva Convention, Article 27(2).
5. Additional Protocol I, Article 75(2) (adopted by consensus); Additional Protocol II, Article 4(2) (adopted by consensus).
6. Art. 8(b)(xxii), Art. 8(e)(vi).
7. ICTR Statute, Article 4(e) (ibid., § 1577); Statute of the Special Court for Sierra Leone, Article 3(e).
10. Hannah Wright and Minna Lyytikainen, Gender and Conflict Early Warning, Saferworld, May 2014, p. 6
Sources of information

Exporting states should not limit their assessment to government sources. 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;
- Implementation of UN Security Council resolution 1325 and related resolutions, including NGO shadow reports;
- Human rights reports by states and 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 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;
- Reports from the International Committee of the Red Cross;
- Reports from NGOs such as Human Rights Watch, Amnesty International, and 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;
- Crime statistics on weekly incidents of crimes, including rape, with annual and monthly comparisons).
Reaching Critical Will is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest women's peace organisation 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.

We monitor and analyse international processes and work in coalitions with other civil society groups to achieve change, provide timely and accurate reporting on all relevant conferences and initiatives so that those unable to attend can stay informed, and to maintain a comprehensive online archive of all statements, resolutions, and other primary documents on disarmament.

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