

Guidelines for the conducting of an arms export risk assessment of gender-based violence

Provided by the European Center for Constitutional and Human Rights (ECCHR) and the Women's International League for Peace and Freedom (WILPF)

The Arms Trade Treaty (ATT) is the first multilateral treaty to recognize the link between the international arms trade and gender-based violence (GBV). Under Article 7(4) of the Treaty, state parties are under an explicit obligation to take into account the risk of GBV prior to authorizing an arms transfer.

This document, prepared by WILPF and ECCHR, seeks to provide a number of guidelines to be followed when conducting this assessment. After first mentioning a few important facts to take into account, this document will list several relevant questions to take into consideration, when determining whether or not an arms transfer would result in the commission of gender-based violence. These questions are divided into the following three categories: (i) the prevalence of GBV, (ii) laws and regulations in place to eradicate GBV, and (iii) the effective implementation of said laws and regulations. Finally, a brief list of potential sources of information to be consulted during this evaluation will be provided. For a more detailed explanation of these and other recommended guidelines, please see the report *Preventing Gender-Based Violence through Arms Control (2016)*, which can be found here:

<http://www.reachingcriticalwill.org/images/documents/Publications/preventing-gbv.pdf>.

By providing these guidelines, ECCHR and WILPF request the German Foreign Office to comply with its duties under the ATT, by carefully considering the risk of GBV in importing countries - including through diversion - and by taking measures to prevent that its arms transfers will facilitate or exacerbate such violence. In this regard, a more robust assessment of the risk of GBV is expected in Germany's next submission to the ATT Baseline Assessment Project.

Important facts to keep in mind:

- ❖ GBV constitutes any form of violence directed at a person based on his or her specific sex or gender role in society. GBV may refer to sexual and other forms of physical violence, emotional and psychological violence, or socioeconomic violence. While it can be directed against any person, the most prevalent form of GBV is violence against women and girls.
- ❖ GBV can occur both in times of conflict and outside of conflict. There can also be a pattern of GBV in the absence of other indicators of human rights violations; the absence of generalized 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 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 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.
- ❖ While laws and regulations aimed to eliminate GBV are essential, further assessment is needed into whether these are effectively implemented.

Recommended guidelines for assessing the risk of GBV:

1. *Relevant questions to ask regarding the prevalence of GBV*

- ❖ What information is there to demonstrate the current and past record of the intended end-user in relation to the perpetration of GBV? Is the evidence reliable and credible?
- ❖ Have there been reports of GBV being facilitated by the weapons listed in the application, or with other weapons in the recipient country or end destination country?
- ❖ Are there reports of sexual abuse by security officers?
- ❖ Have there been reports of widespread GBV in the recipient country?
- ❖ Have there been reports of rape?
- ❖ 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 honor?
- ❖ Have there been reports of domestic violence? Is there evidence of high levels of armed violence within the home? What is the percentage of domestic homicides in the destination country committed with a gun?
- ❖ What is the rate of female homicide in the destination country? How does it compare to the rates in other countries?
- ❖ Have there been reports of police specifically targeting women or LGBT people?
- ❖ Are there reports of suppression of protesters or persecution or murder of women human rights defenders?
- ❖ Is there resistance to women's participation in peace processes?

2. *Relevant questions to ask regarding the existence of laws and regulations to eradicate GBV:*

- ❖ Are there laws, policies and implementation mechanisms in the importing states designed to prevent GBV? Is there national legislation in place prohibiting and punishing GBV?
- ❖ Are the recipient country's national laws to protect women's and girls' human rights in line with international standards, for example the CEDAW Convention?
- ❖ Does the destination country have laws on domestic violence? Do these laws include provisions on gun control, including for protective orders?
- ❖ Are members of security services (including police, military and private security companies) allowed to bring their service weapon home?
- ❖ Does the destination country have laws on femicide or female homicide?
- ❖ Does the military have a code of conduct and/or action plan on sexual violence?
- ❖ Does the military have a zero tolerance policy on sexual violence?

3. *Relevant questions to ask regarding the effective implementation the abovementioned laws and regulations:*

- ❖ What has the government's response been to past incidents of GBV?
- ❖ 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?
- ❖ Do victims of GBV in the recipient country have access to health care, support systems, and complaint mechanisms?
- ❖ Is there a state of impunity with regard to those suspected of criminal responsibility for such violations?

- ❖ Does the recipient country educate and train its military officers, soldiers and police in the prevention of sexual and GBV?
- ❖ Do victims of police abuses have access to an effective complaint mechanism? Does its mandate include sexual violence? Are allegations of abuse taken seriously and investigated?
- ❖ Has information about and prohibition of sexual and GBV been incorporated in military doctrines, military and law enforcement manuals, rules of engagements, instructions and orders?
- ❖ Are soldiers or other military or government personnel prosecuted or held accountable for crimes of sexual and GBV within their own forces or towards the local population?
- ❖ Have requirements been put in place for military commanders to prevent and suppress sexual and GBV and to take action against those under their control who have committed acts of sexual and GBV?
- ❖ Have mechanisms, including complaint mechanism and disciplinary and penal sanctions, been put in place to ensure accountability for acts of sexual and GBV committed by the armed forces and other arms bearers?
- ❖ Have there been complaints to international human rights monitoring bodies about the importing countries non-compliance with international standards on the prevention of GBV?

Sources of information to be consulted:

Information used for a GBV risk assessment should not be limited 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;
- ❖ 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;¹
- ❖ 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).

¹ Developed by the Intergovernmental Authority on Development (IGAD), a regional organization which brings together seven countries of the Horn of Africa: Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda. CEWARN receives and shares information on the basis of indicators that monitor potential points of tension, many of which are gender-responsive and enable effective gender sensitive early warning to take place.