



# GENDER-BASED VIOLENCE AND THE ARMS TRADE TREATY



A PROGRAMME OF  
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# Gender-based violence and the Arms Trade Treaty (ATT)

The ATT is the first ever legally-binding regime that recognises the link between gender-based violence (GBV) and the international arms trade. Under the ATT it is illegal to transfer weapons if there is a risk that the weapons will be used to facilitate GBV (article 7(4)). In practice, this means that those conducting risk assessment processes for the export and import of weapons will have to take into account legislative and normative factors

around GBV in the recipient countries. Effective implementation of this provision will help prevent GBV. It will also help build understanding about risks and dangers in potential recipient countries and about the links between the international arms trade and GBV more broadly. This in turn will enable more effective protection of human rights and prevention of armed violence.

## 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.

# UN gender mainstreaming and armed conflict

Most UN strategies have focused only on women and only in special isolated fora away from the organisation's everyday work, e.g. in the Commission on the Status of Women (CSW), open debates about UN Security Council resolution 1325, and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).

- The fourth UN World Conference on Women in 1995 produced the Beijing Platform for Action, which included the effects of armed conflict on women as one of the areas of concern where action on national and international levels is required.
- UNSCR 1325 recognises the situation of women in armed conflict as often being precarious and calls upon all states to allow an increased participation of women on all decision-making levels concerning international peace and security.
- UNSCR 1889 emphasises some socioeconomic aspects and acknowledges that the lack of security undermines women's social, political, and economic participation in the life a community.
- UNSCR 2117 recognises that the illicit transfer, destabilising accumulation, and misuse of small arms and light weapons exacerbate sexual and gender-based violence.
- UNSCR 2122 says the Council is "looking forward to the important contribution that implementation of the Arms Trade Treaty can make to reducing violence perpetrated against women and girls in armed conflict and post-conflict situations."

The "women, peace and security" (WPS) agenda needs to be better incorporated into discussions, programmes, policies, and legislation related to weapons and the arms trade in order to guarantee equal security for all and gender diversity in terms of participation. The traditionally androcentric approach to international humanitarian law and the depiction of women as passive actors in law and politics has had a devastating impact in particular on women's security and ability to participate fully and equitably in a wide spectrum of roles and responsibilities.

## Why a separate provision on preventing GBV?

Even if serious violations of international human rights law or international humanitarian law, covered by the ATT's article 7(1), would include serious acts of GBV or violence against women and children, it is important to have the GBV criterion included specifically, as this form of violence is often overlooked because it disproportionately affects women, who are in a disadvantaged position compared to men when it comes to highlighting and confronting human rights abuses. Including this provision in the Treaty underlines the need for prevention of GBV explicitly and makes its exclusion from risk assessments more difficult. It further highlights that arms trade, possession, and use have specific gender and power dimensions that need to be further examined and 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.

This briefing paper aims to provide some background on the terminology around GBV and to highlight questions that will be relevant for risk assessments under article 6 and 7.

## 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.

Conceptions of gender provide a way of structuring relations of power, whether in families, societies, or even in international relations. For example, in the family these structures are often visible in the traditional role of men as a protector and provider and women as a caretaker as well as the one responsible for the household. However, all these socially constructed roles are not innate or constant; they can alter and change over time.

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” is not a homogeneous social category, including when it comes to experiences of war and armed conflict.

Recognising the diversity of experiences, interests, and agencies of all actors is necessary to ensure that any approach to addressing the challenges of armed violence and conflict are applied in the most effective, integrated way possible.

## 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 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 sterilisation, 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. Here, the root cause of violence lays in the unequal power-relation between men and women and it cuts across age, race, ethnicity, religion, sexuality, income levels, and geographic location.

## Why also include a reference to gender-based violence and not just to women and children?

It was important to include the reference to GBV in addition to the reference to violence against women and children for two main reasons:

1. GBV includes any act of violence against anyone on the basis of their sex or gender. The arms trade affects everyone—women, men, girls, and boys—differently. Women and girls are disproportionately affected by GBV carried out by men. Using the term GBV acknowledges these power and structural dimensions of armed violence, from the perspective of both perpetrators and victims.

2. Grouping women and children in one category undermines women's agency as adult participants of society and implies that women, like children, are powerless victims in need of help and protection. This is incorrect and unhelpful for identifying obstacles and resources for combatting armed violence. It is therefore vital to make the distinction between women and children to ensure both that each group is given the specific attention it requires and is enabled to make the contributions of which it is capable. All relevant actors must take care to highlight women's key roles in preventing gender-based violence and in participating in arms control and disarmament negotiations and initiatives, conflict prevention and resolution, and peace-building, in accordance with the UN Security Council resolutions on women, peace and security (1325 and its follow-on resolutions) and UN General Assembly resolution 69/61 on "Women, disarmament, non-proliferation, and arms control".

## Why does the ATT matter in relation to GBV?

Acts of GBV can occur in conflict or non-conflict settings both in the domestic and the public sphere. GBV is rooted in discriminatory social norms and power inequalities in social, economic, and political spheres of life. In a number of contexts involving armed conflict globally, rape, and sexual assault have been used as a tactic to humiliate, intimidate, displace, and traumatise communities. They have also been used by armed actors as "spoils of war".

The use of rape and sexual assault as a tactic or as spoils of war has a deep, tacit link with the acceptability of all forms of GBV during times of peace. During armed conflict, and in other humanitarian contexts, social norms are redrawn and acts that may not have been acceptable previously may become common place—especially in contexts where one social group is psychologically dehumanised by another. In that context, due to prevailing gender hierarchies, women and other groups that are already marginalised and discriminated against in peaceful times often find themselves increasingly targeted during armed conflicts.

While arms themselves may not always be directly implicated in such violence, they are correlated with an increase in gendered inequality and a generalised culture of violence against women in particular. Furthermore, the proliferation of arms has a negative impact on women's equality within the household, their mobility, and their political participation. Widespread possession and use of weapons tends to prevent women from fully participating in public and political life, and to hinder their economic empowerment, which also qualifies as GBV.

# How can officials conduct gender-sensitive risk assessments?

In order to ensure that gender-sensitive risk assessments are conducted prior to any authorisation of arms transfers, 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.

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; a review of everyone's priorities, practical needs, strategic interests, and ways to address them; as well as a review of the social, economic, and political power dynamics.

It is important to repeat in this context that acts of GBV occur before, during, and after conflict, in the domestic as well as in the public sphere.

Accordingly, states parties must assess the risk for GBV within as well as outside conflict situations, including domestic violence.

Some key questions that need to be addressed in the risk assessment include the following:

- Is there evidence of acts or patterns of GBV in the recipient country? 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 in the importing states designed to

prevent GBV and also to strictly regulate the sale, transfer, and use of such arms, including obligations to record, report, and document such acts? Are these laws and policies implemented? Are the implementation mechanisms effective? 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? Is there national legislation in place prohibiting and punishing GBV and 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? Has the recipient country taken concrete steps to implement any of the UN Security Council resolutions on women, peace and security?

- 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?
- 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?





UN Photo/Martine Perret

- 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 for women serving in the armed forces or law enforcement to address instances 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?

## **How can GBV risk assessments be institutionalised within human rights bodies?**

The ATT is the first international instrument that directly links arms transfers and human rights and makes human rights assessments mandatory in

making arms transfers decisions. This means a new flow of information has to be opened between the ATT Conference of States Parties and the United Nations human rights bodies.

Such a flow of information should be bidirectional and interactive. Human rights bodies can be useful as advisory bodies for elaborating assessments. Their information can also be used in the assessment of each specific country, as they can provide a human rights analysis regarding the use of weapons and can analyse the impact of the implementation of the ATT on human rights.

The Conference of States Parties must at the same time request this information from these bodies and provide feedback on how the information given is being used. The CSP and its implementation mechanisms should also provide information on implementation of the ATT and how it contributes to human rights. States parties should be committed and active in building these communications channels.

For instance, the Human Rights Council (HRC) has requested that the Office of the High Commissioner for Human Rights deliver a report at the 29th session on HRC resolution 29/10 regarding good practices on regulations of the possession of firearms and human rights. This report should be very useful to feed into the standards of assessment to allow export of firearms. Another example can be the analysis performed by the reports of treaty bodies, or by their General Recommendations/Comments. The Committee for the Elimination of Discrimination against Women, for example, addressed the linkages between firearms and widespread sexual violence in Democratic Republic of the Congo during the latest review of human rights in that country.



# Possible sources of information

- 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;
- Reports and recommendations from other UN or Regional human rights bodies and
- Mechanisms;
- 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, ad hoc tribunals, and national courts;
- Military doctrines, manuals, and instructions;
- Reports by research institutes on weapons/arms transfer issues (i.e. regarding illicit trafficking, national controls on arms and ammunition, etc);
- 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 1600 (2000)). The Annex includes a list of parties (military forces, militia and other armed groups) responsible for patterns of sexual violence;
- Other information from the Office of the Special Representative on Sexual Violence in Conflict, including the early warning matrix for sexual violence.



Reaching Critical Will is the disarmament programme of the Women's International League for Peace and Freedom (WILPF). Reaching Critical Will was created in 1999 in order to promote and facilitate engagement of non-governmental actors in UN processes related to disarmament. RCW was designed to increase the quality and quantity of civil society preparation and participation in UN disarmament processes and of NGO interaction with governments and the United Nations; to 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. RCW also produces research studies, reports, statements, fact sheets, and other publications on key issues relevant to disarmament, arms control, and militarism.



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