

The Arms Trade Treaty: Securing Women's Rights and Gender Equality

A united call to explicitly include gender-based violence in the criteria (June 2012)



"On Saturday [18 December 2010] they took me and five other women into a room. It was in the morning. There were three of them. They told us to undress. I refused. One of them hit me with his knife. I told him it was not human. He said: 'We will see about that'. He took his gun out and I was obliged to yield. The three men raped us, they wore masks. Afterwards, they left and we were kept in the house until Wednesday [22 December]. Every day, a gendarme brought us something to eat. They returned on Monday [20 December]. It was the same men; I suppose it was the same men. It was late in the afternoon and they raped us again. On the evening of 22 December towards 5pm, they released us. I have not dared to go to see a doctor since then."¹

1. Introduction

Irresponsible transfers of weaponry, munitions, armaments and related equipment across borders have resulted in the loss of millions of lives and livelihoods and the violation of fundamental human rights. In particular, the widespread availability of small arms and light weapons increases the risk to both men and women's security, and impedes their enjoyment of their civil, political, social and economic rights in different ways. There is a gender dimension to the trade whereby women are disproportionately affected by armed gender-based violence.

July 2012 presents a historic opportunity as Member States of the United Nations (UN) gather to negotiate an Arms Trade Treaty (ATT) meant to establish common international standards for the import, export and transfer of conventional arms.² Achieving an effective ATT is an urgent necessity. The ATT will require States to authorize international transfers of conventional arms in conformity with an agreed list of clear criteria that assess a range of potential risks stemming from such transfers. A key issue for the July negotiations is which criteria will be included.

A criterion in the Arms Trade Treaty should require States not to allow an international transfer of conventional arms where there is a substantial risk that the arms under consideration are likely to be used to perpetrate or facilitate acts of gender-based violence, including rape and other forms of sexual violence.

There are specific gender dimensions and impacts of the arms trade, and therefore it is critical that the ATT directly and appropriately address this. Accordingly, there should be strong references to gender in the treaty text and the criteria in the treaty should address risks of gender-based armed violence.

This paper will briefly outline why **the ATT should require States not to allow an international transfer of conventional arms where there is a substantial risk that the arms under consideration are likely to be used to perpetrate or facilitate acts of gender-based violence, including rape and other forms of sexual violence.** Some key questions in the risk assessment process should include whether there is an effective regulatory system to control arms and prevent such violence, and whether there is evidence of acts or patterns of gender-based violence.

¹As told to Amnesty International in March 2011. Amnesty International documented numerous cases of rape committed by security forces loyal to Laurent Gbagbo in Abidjan from December 2010 before the arrest of the outgoing President in April 2011, see *Côte d'Ivoire Briefing to the UN Committee on The Elimination Of Discrimination against Women 50th Session October 2011*, Amnesty International, Index: AFR 31/009/2011.

²A/Res/64/48

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2. Why include gender in the criteria of the ATT?

The arms trade has specific gender dimensions and direct links to discrimination and gender-based violence. Emboldened by weapons, power and status, both State and non-State parties often perpetrate gender-based violence, disproportionately affecting women with impunity. This has far-reaching implications for efforts to consolidate peace, security, gender equality and secure development.

To be consistent with the broader UN practice of mainstreaming gender by paying attention to differing impacts on women and men in all frameworks, policies and programmes, the ATT should recognise the specific impact of irresponsible international arms transfers on women and their rights. Member States and the UN have progressively recognised and addressed the distinct rights of women in their work. Specifically relating to peace and security initiatives, Member States have called for the inclusion of women's rights and the participation of women in these processes. The Women, Peace and Security agenda in the UN Security Council³ includes commitments calling for women's rights and engagement to be systematically addressed and enhanced in conflict prevention, conflict resolution and peace building. The General Assembly, has on numerous occasions expressed its concerns about the pervasiveness of violence against women in all its different forms and manifestations worldwide, noting that such violence seriously impairs or denies women's ability to exercise their fundamental human rights and freedoms.⁴ In the ATT, Member States must build on their Human Rights and protection commitments and include specific criteria on gender-based violence.

3. The gendered effects of the arms trade

The arms trade affects everyone – men, women, boys and girls – in different ways. The following are some examples of how the arms trade perpetrates or facilitates the perpetration of gender-based violence against women both in times of conflict and peace. Including gender-based violence in the criteria of an ATT would acknowledge that both exporting and importing countries would have a joint, though different, responsibility to prevent these crimes.

▪ **Sexual violence is often widely and systematically employed against civilians during armed conflict**, though the scale on which it occurs is largely underestimated⁵ and its links to the proliferation of arms is rarely examined. Margot Wallström, UN Special Representative on Sexual Violence in Conflict, made this point in her official Statement to the UN Security Council, “conflict-related sexual violence is not specific to one country or continent: it is a global risk” (February 2012). In Côte d'Ivoire for example, gender-based violence against women, perpetrated by diverse actors including state security forces and armed opposition groups, has been greatly intensified by the proliferation of small arms imports into the country. Prior to the belated UN arms embargo, several Eastern European countries supplied large consignments of arms to the Government of Côte d'Ivoire, notwithstanding its forces' involvement in serious human rights violations. Moreover, small arms continue to circulate in the country and international arms brokers and traffickers threaten further deliveries of small arms and larger conventional weapons.⁶

Gender-based violence is violence related to social expectations and positions based on gender and can be committed by and aimed at both men and women. However, most gender-based violence is committed by men, and is directed against women and girls and linked to discrimination.

Gender-based violence is defined by the UN Committee on the Elimination of Discrimination against Women (CEDAW) in General Recommendation 19 as being “directed against a woman because she is a woman or that affects women disproportionately.”

Sexual violence includes rape, sexual slavery, forced prostitution, forced pregnancy or forced abortion, enforced sterilization, indecent assault, trafficking, inappropriate medical examinations, strip searches and sexual harassment.

³See United Nations Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), and 1960 (2010). See www.peacewomen.org

⁴See, for example General Assembly resolutions on the elimination of all forms of violence against women (A/RES/59/167, A/RES/57/181, A/RES/55/68), and resolution on eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and related situations (A/RES/62/134).

⁵See for example, Côte D'Ivoire Briefing to the UN Committee On The Elimination Of Discrimination Against Women 50th Session October 2011, Index: AFR 31/009/2011.

⁶See for example a case study on Cote d'Ivoire in Amnesty International, *Blood at the Crossroads: Making the Case for an Arms Trade Treaty*, 17 September 2008 (ACT: 30/011/2008).

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▪ **Weapons are used to facilitate repression and state violence.** On Monday 28 September 2009, Guinean security forces inflicted acts of excessive force and unlawful violence, including sexual violence, and other gross violations of human rights against a group of unarmed civil society organisations and political parties peacefully protesting at the Conakry Stadium. One woman told Amnesty International, “I tried to climb onto a wall but a ‘red beret’ saw me and hit me with his truncheon while another one shot me in the legs. Three of them took me towards the toilets, dragging me along the ground. One of them raped me while another ‘red beret’ pointed his gun at my head...”⁷ Evidence suggested that Guinea's security forces continued to receive international supplies of small arms ammunition despite their repeated use of small arms for unlawful killings, sexual violence and the violent suppression of peaceful demonstrations.⁸

▪ In some states, **women are disproportionately affected by high levels of firearms-related homicides and domestic violence.** Research carried out in Guatemala by the Human Rights Ombudsman's Office shows that for all murder cases, 69 per cent of women are killed with firearms.⁹ The lack of investigation into murders and the low rate of convictions have contributed to a culture of impunity for such crimes. Violence against women is especially widespread in Guatemala: in 2010, according to police, at least 695 women were murdered, bringing the total number of women killed since 2004 to at least 4,400. Many of the bodies of those killed showed signs of sexual violence and other forms of torture.¹⁰ The lack of police response to cases of missing women raises questions about state acceptance given the high murder rate of women and the dismal conviction rate. In spite of the high levels of small arms circulating nationally, Guatemala continues to import large numbers of small arms and ammunition, typically pistols and revolvers.¹¹ The Czech Republic, the Republic of Korea, Argentina, Slovakia and Germany exported a total of US\$3,716,666 worth of pistols and revolvers to Guatemala between 2004 and 2006.¹² These small arms transfers from several foreign countries exacerbate a pervasive pattern of violent crime and gender-based violence in a country with existing high levels of small arms availability. The failure of the Government of Guatemala to exercise due diligence when small arms are being so widely misused by private persons and illegal armed criminal groups, presents a substantial risk that future small arms transfers are likely to exacerbate violent crime and gender-based violence in Guatemala.¹³

A criterion specific to gender-based armed violence in the ATT would help limit arms transfers to perpetrators of such violence, and thereby help secure women's rights and gender equality.

4. Applying a gender-based violence criterion

The ATT should require States to not allow an international transfer of conventional arms where there is a substantial risk that the arms under consideration are likely to be used to perpetrate or facilitate acts of gender-based violence, including rape and other forms of sexual violence. To apply this criterion, States must conduct a meaningful assessment of that risk – in other words, they must act with all due diligence when assessing an arms transfer application. To meet the due diligence standard, States should determine

⁷Amnesty International, *Guinea: They Ripped off my Clothes with Their Knives and Left Me Completely Naked*” *Voices of Women and Girls Victims of Sexual Violence*, February 2010, AFR 29/002/2010.

⁸Amnesty International, *Guinea: “You Did Not Want the Military, So Now We Are Going To Teach You A Lesson” The Events Of 28 September 2009 and Their Aftermath*, February 2010, AFR 29/001/2010.

⁹Informe de muertes violentas de mujeres 2005. Human Rights Ombudsman's Office. See Amnesty International, *Guatemala: No protection, no justice: killings of women (an update)*, 17 July 2006 (AMR 34/019/2006).

¹⁰See Amnesty International, *Guatemala: No protection, no justice: killings of women (an update)*, 18 July 2006, AI Index: AMR 34/019/2006, and Amnesty International, *Guatemala: No protection, no justice: killings of women*, 9 June 2005, AI Index: AMR 34/017/2005 and also other organisations: Concluding comments of CEDAW: Guatemala, 2 June 2006, CEDAW/C/GUA/CO/6; Report of the Special Rapporteur on Violence against women, its causes and consequences, Mission to Guatemala, 10 February 2005, E/CN.4/2005/72/Add.3.

¹¹Compared with other countries in Central America, Guatemala imports the largest value of arms under the UN category of ‘pistols and revolvers’ 89114. Guatemala imports \$4,295,161 under this category; Nicaragua \$1,919,774; and El Salvador \$1,537,718 for example. The table only shows the top five exporters to Guatemala.

¹²Based on the total value of exports to Guatemala using SITEC Rev 3 Code of UN Comtrade Database where entries have been reported by the exporter under code 89114 ‘Pistols and Revolvers (other than those of heading 891.31). It is worth noting that \$104,272 worth of pistols and revolvers in 2006 were supplied to Guatemala through Honduras without them being imported into Honduras. Honduras has no small arms manufacturing base (Omega Research Foundation database).

¹³See Amnesty International, *Blood at the Crossroads: Making the case for a global Arms Trade Treaty*, 17 September 2008, AI Index: ACT 30/011/2008

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whether it can be reasonably foreseen that the proposed end users are likely to use the arms to perpetuate patterns of abuse.

Including gender-based violence in the criteria of an ATT would acknowledge that both exporting and importing countries would have a joint, though different, responsibility to prevent these crimes. While all gender-based violence is unlawful and the primary legal responsibility of the importing State to address, it is when transfers of conventional arms are made where there is a substantial risk of violations, that the special machinery of the ATT should be engaged: that is, where a proposed end user of an export, import or international transfer of conventional arms is under consideration for engaging in harmful activity, or for failing in their duty to prevent persistent or pervasive violations resulting in gender-based violence through the use of arms.

To meet the due diligence standard, the ATT should require licensing authorities and government officials to review objective and verifiable sources of information, specifically addressing the risks of gender-based violence that may arise from a transfer of conventional arms. The substantial risk is, in part, evidenced by an effective regulatory system to control arms and prevent such violence, and by evidence of acts or patterns of gender-based violence. Three key assessment questions are listed here (note: not intended to be exhaustive list).

Key Risk Assessment Questions

1. Are there laws, policies and implementation mechanisms in the importing States designed to prevent gender-based violence and also to strictly regulate the sale, transfer and use of such arms, including obligations to record, report and document such acts? Are these law and policies implemented? Are the implementation mechanisms effective?
2. What information is there to demonstrate the current and past record of the proposed end user which indicates the perpetration of gender-based violence, using arms subject to the authorization process? Is the evidence of such violations occurring? Is the evidence reliable and credible? For instance, is it documented in the state's own reports, or those of credible non-governmental or inter-governmental bodies?
3. Are past trends of gender-based violence continuing or are new patterns emerging? Has the receiving government met its positive obligations to prevent the recurrence of such violations by this end user, and acted effectively to investigate and prosecute the perpetrators?

Some possible sources of information

- Documentation from the importing state on the controls under law, policy and extent of implementation, as well as similar information from national and international civil society.
- UN documentation and reports: Information in the report and the annex of the UN Secretary-General annual report on conflict-related sexual violence (pursuant to paragraph 18 of SCR 1960 (2010)). 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.
- Data and information related to national implementation of Security Council Resolution 1325 (2000) and related resolutions, including NGO shadow reports. Information from the global indicators to measure implementation of Resolution 1325 (listed in the Secretary General's Report S/2010/498) which are currently being operationalized by the UN and Member States.
- 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.
- Human rights reports by NGOs.
- Open and closed source information from international agencies in the recipient State.
- Reports and information by research institutes focused on conventional arms and international trade.
- Reports from national diplomatic missions in the recipient States.

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