

The Impact of Germany's Arms Transfers on Women

Germany's Extraterritorial Obligations under CEDAW

Joint Shadow Report
CEDAW Committee, 66th Session



EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS



WOMEN'S INTERNATIONAL LEAGUE FOR
PEACE & FREEDOM

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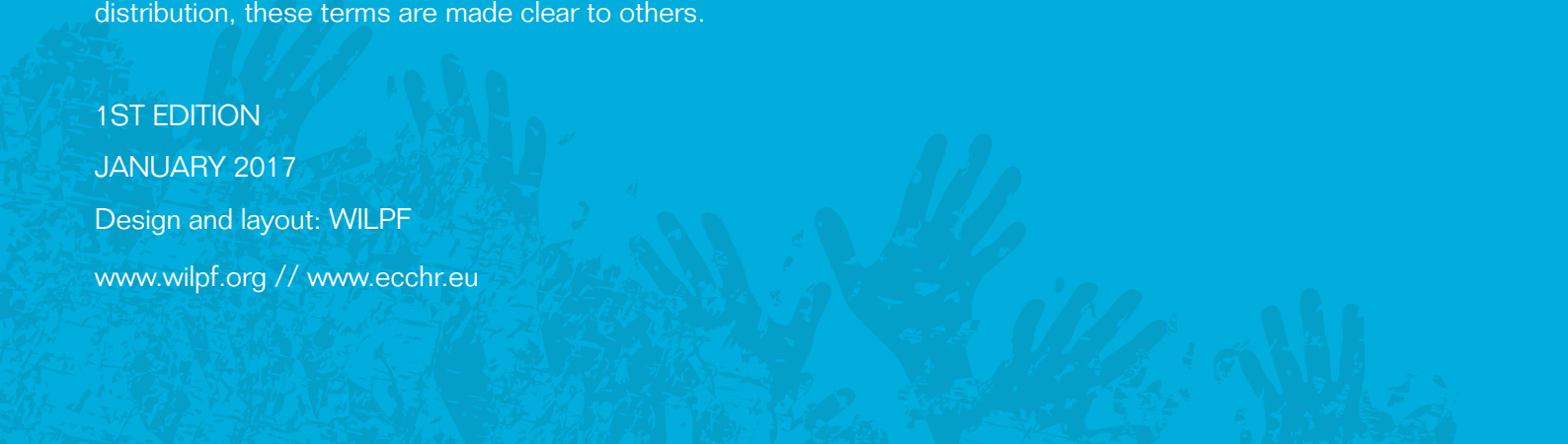
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Shadow report to the 66th session of the CEDAW Committee

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Introduction¹

Arms transfers can have serious consequences for the rights and safety of women in the countries that receive them as well as in places where they are not meant to go, especially in the case of small arms and light weapons. The proliferation of small arms and light weapons, both in wartime and non-conflict situations with significant political tensions and systemic gendered discrimination, may disproportionately affect women.² Furthermore, the use of weapons of indiscriminate effect, such as explosives, may have particular implications for women who may be affected by the destruction of infrastructure or the burden of caring for the wounded, particularly in a context of inequality.

While arms themselves may not always be directly implicated in gender-based violence, they are correlated with an increase in gendered inequality and a generalized culture of violence, against women in particular. Furthermore, the proliferation of arms has a negative impact on women's equality and bargaining power within the household, their mobility, and their political participation. Widespread possession and use of weapons tend to prevent women from fully participating in public and political life, and to hinder their access to and use of resources, business and employment opportunities.³ Arms' accessibility and availability can facilitate or exacerbate violence against women, not only in situations of armed conflict but also in non-conflict situations, such as in countries that experience high rates of firearm-related deaths, including femicides, as well as high levels of impunity and insecurity.⁴

The CEDAW Committee and the Human Rights Council are among the human rights bodies that have expressed concerns about the specific negative consequences of arms transfers on the rights of women and girls. The Human Rights Council has adopted resolutions that recognize the link between the arms trade and gender-based violence;⁵ the latest of these

¹ Note: Web addresses cited in the footnotes of this document were last accessed on 17 January 2017.

² See, for example, Chinkin, C. (2016), "Gender and the Arms Trade Treaty: a legal overview", available at: <http://wilpf.org/wp-content/uploads/2013/02/Gender-and-the-Arms-Trade-Treaty-a-legal-overview.pdf>; WILPF (2013), "Promoting gender equality in the implementation of the UN Arms Trade Treaty", available at: <http://wilpf.org/wp-content/uploads/2013/12/ATT-Implementation.pdf> ; WILPF (2015), "Gender-based violence and the ATT", available at: http://wilpf.org/wilpf_publications/gender-based-violence-and-the-arms-trade-treaty/; WILPF (2016), "Preventing gender-based violence through arms control", available at: <http://www.reachingcriticalwill.org/news/latest-news/10793-new-publication-preventing-gender-based-violence-through-arms-control>; Butler, D. M. (2012), "Gender and the ATT", Saferworld, available at: <http://www.saferworld.org.uk/news-and-views/comment/29-gender-and-the-att> .

³ See, for example, WILPF (2015), "Gender-based violence and the ATT", available at: <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/10112-gender-based-violence-and-the-arms-trade-treaty>.

⁴ See, for example, WILPF (2016), "The impact of firearms on women", available at: <http://wilpf.org/the-impact-of-firearms-on-women/>.

⁵ HRC Resolution 24/35 (2013): "Impact of arms transfers on human rights in armed conflicts"; HRC

resolutions “notes with alarm that ... arms transfers can have a seriously negative impact on the human rights of women and girls, who may be disproportionately affected by the widespread availability of arms, as it may increase the risk of sexual and gender-based violence, and of violence against children.”⁶

In its General Recommendation 30, the CEDAW Committee has restated its concerns that “the proliferation of conventional arms, especially small arms, including diverted arms from the legal trade, can have a direct or indirect effect on women as victims of conflict-related gender-based violence, as victims of domestic violence and also as protestors or actors in resistance movements.”⁷ The Committee has also affirmed that States parties are required to focus on the prevention of conflict and all forms of violence, including by having “a robust and effective regulation of the arms trade, in addition to appropriate control over the circulation of existing and often illicit conventional arms, including small arms, to prevent their use to commit or facilitate serious acts of gender-based violence.”⁸

The CEDAW Committee has also recommended that State parties address the gendered impact of international transfers of arms including through the ratification and implementation of the Arms Trade Treaty (the ATT). Article 7 (4) of the ATT requires that States shall, prior to authorization of the export of arms under its jurisdiction, in an objective and non-discriminatory manner, take into account the risk of conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women. This is a ground-breaking provision as it represents the first time that gender-based violence is a criterion to be considered as part of responsible arms control.

With respect to the Arms Trade Treaty, it is important to underscore that risk assessments assess just that – the *risk* that the arms in question will be used in any of the ways prohibited by the Treaty. It is not necessary to establish the direct presence of a transferred item as having been used in a specific act in order to prevent future transfers of the same item. If the risk alone is high enough, the transfer must be denied.⁹

The CEDAW Committee has addressed the gendered impact of international transfers of arms its concluding observations on Sweden and France. It has recommended that Sweden “uphold its due diligence obligations to ensure that companies under its jurisdiction or control respect, protect and fulfill women’s human rights when operating abroad ” and that it “ensure that the new legislation to regulate export of arms includes a strong and robust

Resolution 26/16 (2014): “Human rights and the regulation of civilian acquisition, possession and use of firearms”; HRC Resolution 29/10 (2015): “Human rights and the regulation of civilian acquisition, possession and use of firearms”; and HRC Resolution 32/12 (2016): “Impact of arms transfers on human rights”.

⁶ HRC Resolution 32/12 (2016): “Impact of arms transfer on human rights, operative paragraph 2.

⁷ General Recommendation 30, CEDAW/C/GC/30, paragraph 32.

⁸ General Recommendation 30, CEDAW/C/GC/30, paragraph 29.

⁹ The ATT Monitor Report, 2016 http://armstreatymonitor.org/en/wp-content/uploads/2016/08/ATT-ENGLISH-Monitor_16_CHAPTER-2.1.pdf.

gender-specific perspective.”¹⁰ With regard to France, the Committee has recommended that it integrate “a gender dimension in its strategic dialogues with the countries purchasing French arms and continue conducting rigorous, transparent and gender sensitive risk assessments, in accordance with the Arms Trade Treaty (2013).”¹¹ In relation to Germany specifically, the Committee has addressed arms exports in its list of issues for this review (please see later in the text).¹²

Germany and the Arms Trade Treaty

Germany is a State Party to the Arms Trade Treaty.¹³ It supported the call for the inclusion of provisions around gender-based violence during the drafting of the Treaty.¹⁴ It is further bound by the European Union’s Code of Conduct on Arms Sales.¹⁵ Germany’s arms export control is based on the German war weapons export control law and the foreign trade law in conjunction with the “Political Principles of the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment”.¹⁶ This normative basis takes into account, among other aspects, the following criteria for arms export: the situation of human rights in the country of destination, the risk that the weapons might facilitate regional instability and the possibility that the weapons can be a factor to exacerbate violence in the country of destination. According to Germany’s submission to the ATT Baseline Assessment Project, acts of gender-based violence form part of the additional criteria considered prior to authorizing a transfer.¹⁷ In its submission Germany also outlined that “the preservation of human rights is of particular importance for every export decision, irrespective of the envisaged recipient country. Military equipment exports are therefore fundamentally not approved where there is “sufficient suspicion” of the involved military equipment’s misuse for internal repression or other ongoing and systematic violations of human rights. The human rights situation in the consignee country plays an important role in connection with this question”.¹⁸ Germany finally stated that the German Principles are,

¹⁰ Concluding Observations on Sweden, CEDAW/C/SWE/CO/7, paragraph 35.

¹¹ Concluding observations on France, CEDAW/C/FRA/CO/7-8, paragraph 22.

¹² List of issues on Germany, CEDAW/C/DEU/Q/7-8, paragraph 5.

¹³ Ratification on 2 April 2014.

¹⁴ For the list of states that called for the term of gender-based violence to be included in the Arms Trade Treaty see: <http://reachingcriticalwill.org/images/documents/Disarmament-fora/att/negotiating-conference/att-gbv.pdf> .

¹⁵ https://www.armscontrol.org/act/1998_05/wb2my98 .

¹⁶ Arms Trade Treaty – Baseline Assessment Project, “Country Profiles: Germany”, available at <http://www.armstrade.info/countryprofile/germany/> .

¹⁷ Arms Trade Treaty – Baseline Assessment Project, “Risk Assessment”, available at: <http://www.armstrade.info/countryprofile/germany/> .

¹⁸ Ibid.

legally, more restrictive than both the European Union's Common Position and the Arms Trade Treaty.¹⁹

In its response to the CEDAW Committee's list of issues, Germany has stated that:

"16. Decisions on arms export control are strictly taken on a differentiated case-by-case basis. Therefore, no strategic dialogue on arms exports exists. However, political decisions on export controls always involve examining the risk of abuses in connection with human rights violations, including gender-related violence. Applications for exporting goods are not approved if there is a risk of them being used to trigger, extend or intensify internal conflicts."²⁰

In March 2015, Germany adopted its "Small Arms Principles" governing the export of small arms and light weapons, corresponding ammunition, and production equipment to third countries.²¹ Nowhere in these principles do the issues of gender-based violence (ATT Article 7.4 on export assessments) or human suffering more generally (ATT Article 1, stated purpose of the Treaty) feature as an explicit reason to deny an export license.

In spite of what is required by the Arms Trade Treaty, the EU Code of Conduct and its own national export law, Germany has not established a specific mechanism to prevent arms sales from having an impact on gender-based violence in the recipient countries.²² While the facilitation of gender-based violence is said to be taken into account as part of an overall arms export assessment, the method by which this happens has not yet been made clear.

Germany's arms transfers and gender-based violence

Despite Germany's self-proclaimed strong legal framework for arms export control, the Gemeinsame Konferenz Kirche und Entwicklung (GKKE)²³ has noted that "while government policy allows exports to third countries in regions of crisis and conflict only in justified individual cases, the data show otherwise."²⁴

Germany's arms exports almost doubled in 2015 to their highest level since the beginning of this century.²⁵ It is now the world's third-largest arms supplier, after the USA and Russia. In

¹⁹ Ibid.

²⁰ Germany's Reply to list of issues, CEDAW/C/DEU/Q/7-8/Add.1, paragraph 16.

²¹ Federal Republic of Germany (n.d.), "Initial Report on Measures undertaken to implement the Arms Trade Treaty, in accordance with its Article 13(1), available at: http://thearmstradetreaty.org/images/ATT_Initial_Report_Germany.pdf .

²³ Catholic-Protestant Joint Conference on Church and Development (GKKE).

²⁴ "Catholic, Protestant Churches condemn arms sales", available at: <http://cathnews.com/cathnews/27994-german-catholic-protestant-churches-condemn-arms-sales> .

²⁵ Reuters (2016), "German arms exports almost doubled in 2015: report, available at: <http://www.reuters.com/article/us-germany-arms-idUSKCN0ZL23R>. See Military Equipment Export Reports: The total amount doubled from €3,3 billion in 2002 (http://ruestungsexport-info.de/fileadmin/media/Dokumente/Zahlen_Fakten/Jahresbericht_BReg/ruestungsexportbericht2002.pdf, p. 3) to €7,86 billion in 2015 (<http://ruestungsexport->

2013, Germany was the world's third top exporter of small arms and light weapons.²⁶

This section highlights some of Germany's arms exports that undermine Germany's international legal obligations, including under CEDAW. Since 2009,²⁷ Germany has exported arms and military equipment to countries such as India, Iraq, Mexico, Qatar and Saudi Arabia, which this report will now look at in greater detail.²⁸

India

In 2015, Germany approved €153.6 million worth of export licenses (356 in total) for military equipment to India. This was higher than Germany's exports to any other developing country, and over four times as much as the second highest, Indonesia (€36.5 million). Exports covered submachine guns, hunting weapons, revolvers, pistols, smoothbore weapons, and ammunition. The licenses to India include 8 individual licenses for submachine guns and submachine gun parts worth a total of €638,959. This accounts for 239 submachine guns. In 2013, Germany reported 100 submachine guns to India, and in 2012, a startling 12957. The total sum includes other licenses for hunting weapons, revolvers, pistols, smoothbore weapons, and ammunition. There were 2 denials of final exports worth €121,286 but it is unclear whether this is in addition to or included in the total of 356 licenses.²⁹

India has become the world's largest arms importer, although as of late 2016 it may have been overtaken by Saudi Arabia. The weapons it acquires cover a range of items and equipment but the transfer of firearms such as those from Germany are particularly of concern because of their use in domestic crime. According to India's National Crime Records Bureau (NCRB), gun-related deaths increased from 3,063 to 3,655 between 2010 and 2014.³⁰ Research from the Small Arms survey estimates that India is second only to the United States in terms of numbers of civilians that own firearms. These figures are loosely corroborated by statistics from the website GunPolicy.org.³¹

info.de/fileadmin/media/Dokumente/Zahlen_Fakten/Jahresbericht_BReg/Ruestungsexportbericht-2015.pdf, p. 2).

²⁶ "In 2013, the top exporters of small arms and light weapons (those with annual exports of at least USD 100 million) were (in descending order) the United States, Italy, Germany, Brazil, Austria, South Korea, Turkey, the Russian Federation, the Czech Republic, Israel, Belgium, Croatia, China, Switzerland, Japan, and Spain." Pavesi, I. (2016), "Trade update 2016 - Transfers and transparency" Small Arms Survey, available at <http://www.smallarmssurvey.org/fileadmin/docs/S-Trade-Update/SAS-Trade-Update.pdf>.

²⁷ Year of the CEDAW Committee's previous review of Germany.

²⁸ Report by the Government of the Federal Republic of Germany on Its Policy on Exports of Conventional Military Equipment 2009-2015.

²⁹ Sources: [German Federal Ministry for Economic Affairs and Energy, 2015 Military Equipment Export Report](#); [UN Register of Conventional Arms report](#); [EU Annual Reports on arms exports](#).

³⁰ <http://ncrb.gov.in>.

³¹ Small Arms Survey (2011), Research Note #9: Estimating Civilian Owned Firearms: http://www.smallarmssurvey.org/fileadmin/docs/H-Research_Notes/SAS-Research-Note-9.pdf GunPolicy.org

The NCRB also reports that “assault on women with intent to outrage her modesty” (previously categorized as “molestation”) constitutes the second most reported crime against women.³² In over 337,992 crimes against women reported in 2014, over 82,000 related to this charge.³³

Research has found that men who had used weapons were far more likely to participate in (non-partner) rape, and gang rape. Evidence has demonstrated that owning a gun makes someone more, not less vulnerable to a lethal attack, particularly within the home, the most common site of violence against women. While men are much more likely to perpetrate and fall victim to gun violence, many more women than men are killed injured and intimidated by firearms in the context of domestic violence. This evidence suggests that the increase private gun ownership is likely to result in more frequent, and more lethal violence against women.³⁴

Violence against women in India is rooted in gendered social structures rather than in individual or random acts. Problems include underreporting and access to justice. The violence often takes the form of direct, physical violence, including sexual assault and femicide.³⁵ The CEDAW Committee has expressed its deep concern about the reported high level of violence in India, “including rape and other forms of sexual violence, enforced disappearance, killings and acts of torture and ill-treatment, against women in conflict-affected regions (Kashmir, the North-east, Chhattisgarh, Odisha and Andhrapradesh).³⁶ The Committee expressed particular concern “about the: (e) Limited regulation of the arms trade and the proliferation of small arms and light weapons and their impact on the security of women.”³⁷ Along the same lines, the 2014 report by the UN Special Rapporteur on Violence against Women draws attention to instances of mass rape allegedly committed by members of the state security forces as well as acts of enforced disappearance, killings, and acts of torture and ill-treatment in militarized regions such as Jammu and Kashmir and the north-

³² <http://www.indiaspend.com/cover-story/crimes-against-women-reported-every-two-minutes-84240>

³³ K.S. Venkatachalam, “Why Women in India still feel unsafe” 14 January 2017 <http://www.cafonline.org/articles.php?event=det&id=127> .

³⁴ See WILPF India (2014) Caught between arms. The State of Women’s Rights in India. Shadow Report to CEDAW 58th Session, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_NGO_Ind_17514_E.pdf.

³⁵ Small Arms Survey (2015), “Unheard and Uncounted: Violence against Women in India”, available at: <http://www.smallarmssurvey.org/fileadmin/docs/G-Issue-briefs/IAVA-IB5-unheard-and-uncounted.pdf>; WILPF India (2014), “Caught between Arms - The State of Women’s Rights in India”, Shadow Report to CEDAW 58th Session, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_NGO_Ind_17514_E.pdf; <http://www.iansa-women.org/node/837>; ACUNS (2013), “Femicide: a global issue that demands action”, available at: http://www.genevadeclaration.org/fileadmin/docs/Co-publications/Femicide_A%20Gobal%20Issue%20that%20demands%20Action.pdf.

³⁶ Concluding Observations on the combined fourth and fifth periodic reports of India, CEDAW/C/IND/CO/4-5, paragraph 12.

³⁷ Ibid., paragraph 12, sub-paragraph (e).

eastern states.³⁸ “Testimonies also highlight the impact of that situation on women’s health, including psychological disorders such as post-traumatic stress disorder, fear psychosis and severe anxiety, with such conditions having a negative impact on women’s physical well-being,” notes the report.³⁹

Iraq

Iraq is a context of concern because of its deep instability and the potential for arms to be diverted away from the intended user, as well as misused.

In 2015, Germany approved licenses for second hand anti-tank missiles and armoured vehicles to Iraq. The stated purpose was for use by the Kurdish Regional Government (KRG) in the fight against the ISIS.⁴⁰

Germany had suspended its shipments to Iraq in January 2016 out of concerns regarding diversion. Following assurances from the KRG that efforts would be renewed to prevent the arms from getting into the hands of any third parties, transfers resumed.⁴¹ The most recent shipment in 2016 included 1,500 rifles, one million rounds of ammunition, three armored vehicles and 100 Milan guided missiles. Milan missile systems designed to act against tanks are expected to be used by Kurdish Peshmerga forces against ISIS suicide truck bombers.⁴²

Germany reported the following small arms and light weapons exports/brokerage to Iraq to the UN Register of Conventional Arms in 2015: 5,005 assault rifles (for KRG); 10 light machine guns (for KRG); 243 portable anti-tank missile launchers and rocket systems (KRG); 40 revolvers and self-loading pistols (KRG).⁴³

Amnesty International has recently reported that paramilitary militias nominally operating as part of the Iraqi armed forces in the fight against ISIS are using “arms from Iraqi military stockpiles, provided by the USA, Europe, Russia and Iran, to commit war crimes, revenge attacks and other atrocities”.⁴⁴ It has also expressed concerns that “Iraq has become an emblematic case of the dangers of arms proliferation and irresponsible arms transfers. Successive attempts by Iraq and other states to solve security crises have flooded the country with small arms and light weapons, mortars, artillery systems, armoured fighting

³⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashid Manjoo (2014), A/HRC/26/28/Add. 1, April 2014.

³⁹ Ibid., paragraph 23.

⁴⁰ SIPRI Arms Transfers Database <https://www.sipri.org/databases/armstransfers> .

⁴¹ “Germany resumes arms supplies to Iraqi Kurds” Deutsche Welle, 17 August 2016, <http://www.dw.com/en/germany-resumes-weapons-shipments-to-iraqi-kurds/a-19481159> .

⁴² Ibid.

⁴³ Iraq: Turning a blind eye: The arming of the popular mobilization units, Amnesty International, 5 January 2017, <https://www.amnesty.org/en/documents/mde14/5386/2017/en/>, page 31.

⁴⁴ <https://www.amnesty.org/en/latest/news/2017/01/iraq-end-irresponsible-arms-transfers-fuelling-militia-war-crimes/> .

vehicles and larger conventional weapons. Mismanagement of weapons stockpiles, unauthorized arms transfers and direct Iraqi and Iranian state support have led to the growth of well-armed paramilitary militias, many of which are committing serious violations of international human rights and humanitarian law with complete impunity, exacerbating sectarian tensions and undermining the rule of law.”⁴⁵

These militias, as well as ISIS have had a direct impact on the rights and safety of women. For example, women who are fleeing violence, whether more generally or as specific targets, are unable to access NGO-run shelters because those shelters are themselves targeted, often subject to police raids and violent threats.⁴⁶ Under the ISIS militants, Iraqi women and girls have become increasingly vulnerable to sexual slavery and to forced prostitution.

It is clear that this is a highly unstable situation and the influx of new arms and ammunition to any parties only exacerbate the existing crisis, discrimination against women and other human rights violations.

Mexico

Since 2010, the German Bundessicherheitsrat stopped granting licenses for arms transfers to Mexico. The government has not announced an official position or its reasons for doing so ever since. Nevertheless, as also highlighted by WILPF in its statement to the CEDAW pre-session working group on Germany, arms exports to Mexico continued since the Committee last reviewed Germany in 2009.⁴⁷ According to the Norwegian Small Arms Transfers Database, in 2015 these largely included small arms, light weapons, pistols and revolvers.⁴⁸ In addition, other military equipment continued to be exported, including ammunition. The SIPRI arms transfer database cites the provision of 25 trainer aircrafts in 2015.

In 2015, it was revealed that German arms manufacturer Heckler & Koch had been selling German G36 firearms illegally to Mexico from 2006-2008.⁴⁹ These arms were eventually used by police in the forced disappearance of 43 Ayotzinapa students in 2015.⁵⁰ The process through which this transaction occurred is complex and is believed to have circumvented

⁴⁵ Iraq: Turning a blind eye: The arming of the popular mobilization units, Amnesty International, 5 January 2017, <https://www.amnesty.org/en/documents/mde14/5386/2017/en/>.

⁴⁶ The Organization of Women's Freedom in Iraq, Seeking Accountability and Demanding Change: A Report on Women's Rights Violations in Iraq, 2015. <http://www.law.cuny.edu/academics/clinics/hrgj/publications/Seeking-Accountability-and-Demanding-Change.pdf>.

⁴⁷ These licenses have been granted directly by the ministry of economics or the Bundesausfuhramt without involvement of the Bundessicherheitsrat.

⁴⁸ <http://nisat.prio.org/Trade-Database/Researchers-Database/>.

⁴⁹ Carlos Perez Ricart, Deutsche in Mexiko: Der Fall des exports von Heckler & Koch G36 Gewehren nach Mexiko, Februar 2014, <http://mexicoviabernlin.org/wp-content/uploads/2014/02/MVB-AG-2014-002.pdf> (in German).

⁵⁰ Martin Reischke, "How German Firearms Ended Up at the Mexico Student Massacre" 5 February 2016 <http://www.insightcrime.org/news-analysis/how-german-firearms-ended-up-at-the-mexico-student-massacre>.

German export law and processes which in turn, exposed loopholes in the system. Criminal investigations against employees of the company for the violation of German export law are ongoing at the Landgericht Stuttgart.⁵¹

Mexico ranks the 23rd in cases of femicide in the world. With respect to cases of femicide perpetrated with firearms, Mexico ranks 10th.⁵² In recent years, the highest rates of femicide have been registered in the States of Chihuahua, Guerrero, Baja California and State of Mexico. A study by UN Women and the National Institute of Women about femicide in Mexico points out that one of the main concerns is the increase of the use of firearms to commit homicide against women in the country, which doubled between the years 2004 and 2010. Furthermore, the study underlines that killings of women with firearms have been perpetrated both in the home as in public spaces. The study concludes that women are at higher risk if their families and communities are armed.⁵³

The control system and the regulation of weapons in Mexico are not effective to assure that these cannot facilitate or be used to commit serious acts of violence against women. For example, in Mexico gender-based violence is not taken into account in the procedures for the granting of licenses to bear firearms. There is also a significant black market of firearms, evidence that control systems are not enough to prevent diversion.

In its 2015 report “Women victims of armed violence and presence of firearms in Mexico”, the Observatorio Nacional de Violencia Armada y Género (OVAG) emphasizes that “the proliferation of firearms has an impact on women’s lives, both on the street and at home. This pairing makes it necessary to respond not only to the entry of illegal weapons into the country but also to the domestic context in which legal weapons, which are given under lax parameters that ignore the environment at home.”⁵⁴ OVAG further stresses that “[it] is time to question the assumption that legal weapons will be used only against an external enemy and in crime-related instances”.⁵⁵

It is important and, it goes without saying, that Germany should give greater consideration to the role that firearms and other legally obtained weapons play in violence against women when assessing future transfers of these items to Mexico.

⁵¹ Press release, Landgericht Stuttgart (2016), http://www.landgericht-stuttgart.de/pb/_Lde/Startseite/Aktuelles/Akkreditierung+im+Wasserwerfer_Verfahren/?LISTPAGE=1195716.

⁵² Geneva Declaration on Armed Violence and Development (2015), “Global Burden of Armed Violence: Every Body Counts”, available at: <http://www.genevadeclaration.org/measurability/global-burden-of-armed-violence/global-burden-of-armed-violence-2015.html>.

⁵³ ONU Mujeres México et al. (2016), “La violencia feminicida en México, Aproximaciones y Tendencias 1985-2014”, available at: <http://mexico.unwomen.org/es/digiteca/publicaciones/2016/01/violencia-feminicida-mexico-2016>.

⁵⁴ Desarma et al. (2014), “Mujeres víctimas de violencia armada y presencia de armas de fuego en México”, page 37. Report available at: http://www.casade.org/PublicacionesCasade/Documento_Resultados_OVAG_2015_Versión_FINAL.pdf.

⁵⁵ Ibid., page 37.

Qatar and Saudi Arabia

Since 25 March 2015, a Saudi Arabia-led coalition of countries that include Qatar have been involved in the Yemen conflict. There has been heavy scrutiny of German transfers to Saudi Arabia and Qatar, particularly in 2016 and specifically linked to concern for human rights,⁵⁶ including women's rights.

In 2015, Germany approved €1,6 billion worth of export licenses to Qatar.⁵⁷ The exported weapons did not entail small arms. Germany has also approved € 270 million worth of export licenses to Saudi-Arabia.

Germany has also approved licenses for and delivered Leopard tanks to Qatar.⁵⁸ Earlier approvals were for armoured vehicles and personnel carriers, which are believed to have not been delivered. Qatar further purchased ammunition and heavy artillery from Germany in 2015, for a combined total of nearly \$1.8 billion.⁵⁹

In early 2015, after initially reporting that Germany had made a decision to halt all arms exports to Saudi Arabia, the civil society group Control Arms clarified that there had been no obvious change to German policy.⁶⁰ In January 2016, it was reported that German naval shipyard Lürssen had started construction of the 15 patrol vessels for Saudi Arabia under a €1.5 billion contract despite talks about cancelling the deal amidst Saudi Arabia's public mass executions of 2 January 2016.⁶¹

In June 2016, the German government reported: "a large proportion of the value of licenses for exports to Saudi Arabia cited in the statistics refers to such joint programs or component supplies, such as the delivery of chassis for unarmed transport vehicles to France, which are subsequently exported to Saudi Arabia under a French export licence." ⁶²

⁵⁶See also the Resolution by the European Parliament of 25 February 2016 on the humanitarian situation in Yemen (2016/2515(RSP). Here, the Parliament emphasized that some EU Members have continued to authorize transfers of weapons and related items to Saudi Arabia since the war started; and that such transfers are in violation of Common Position 2008/944/CFSP on arms export control, which explicitly rules out the authorizing of arms licenses by Member States if there is a clear risk that the military technology or equipment to be exported might be used to commit serious violations of international humanitarian law and to undermine regional peace, security and stability.

⁵⁷ Bundesministerium fuer Wirtschaft und Energie (2016), "Report on Military Equipment Export of 2015", page 56, available at: http://ruestungsexport-info.de/fileadmin/media/Dokumente/Zahlen_Fakten/Jahresbericht_BReg/Ruestungsexportbericht-2015.pdf,

⁵⁸ SIPRI Arms Transfers Database.

⁵⁹ Telesur (2016), "German arms exports flooded conflict zones in Qatar and Saudi Arabia last year", available at: <http://www.telesurtv.net/english/news/Dirty-Dealing-German-Arms-Sales-Double-in-2015--20160703-0005.html>.

⁶⁰ Control Arms (2015), "Changing circumstances on German arms sales to Saudi Arabia", 6 February 2015, available at: <http://controlarms.org/en/news/changing-circumstances-on-german-arms-sales-to-saudi-arabia/>.

⁶¹ <http://navaltoday.com/2016/01/27/germany-not-stopping-patrol-boat-export-to-saudi-arabia/>.

⁶² <https://www.bmwi.de/English/Redaktion/Pdf/ruestungsexportbericht-2015,property=pdf,bereich=bmwi2012,sprache=en,rwb=true.pdf>.

Saudi Arabia is widely considered by human rights experts and activists to be one of the most repressive in the world. Violations include discrimination against women in law and in practice and inadequate protection against sexual and other violence.⁶³ On 2 January 2016, Saudi authorities carried out the largest mass execution in the country since 1980, putting 47 men to death.⁶⁴ Saudi Arabia's role and actions in leading the coalition intervention in Yemen is of particular concern with respect to arms transfers.

Since March 2015, more than 35,000 people have been killed and injured in fighting across Yemen. The UN Office for the Coordination of Humanitarian Affairs (OCHA) has reported that over 2.5 million people are internally displaced.⁶⁵

Parties often use heavy explosive weapons, including aircraft bombs, rockets and artillery, to carry out attacks in, on and around residential areas and civilian objects. Aerial munitions, frequently dropped in populated areas, including Sana'a, have been responsible for much human suffering.⁶⁶

There is increasing evidence of serious violations of international humanitarian law (IHL) and international human rights law (IHRL) by all parties. The UN Under-Secretary-General for Humanitarian Affairs has condemned coalition airstrikes as being "in clear contravention of international humanitarian law, and unacceptable."

In such context, women and girls often suffer gravely and disproportionately due to forced displacement, sexual violence, trafficking, lack of access to health care (including sexual and reproductive health) and to victim and survivor assistance.⁶⁷ Hospitals, schools, markets, and houses have been targeted by explosive weapons. The large destructive radius of such weapons means that even the striking of military targets within a populated area has caused the destruction or damaging of civilian infrastructure, such as health and education facilities and houses.⁶⁸ OCHA has reported that "conflict and displacement have increased the risks of gender-based violence, especially sexual violence, domestic violence, and early marriage. Reports indicate an upward trend in violence against women and girls with 70 per cent more

⁶³ Amnesty International (2016), "Saudi Arabia 2015/ 2016", available at: <https://www.amnesty.org/en/countries/middle-east-and-north-africa/saudi-arabia/report-saudi-arabia/>

⁶⁴ Human Rights Watch, <https://www.hrw.org/news/2016/01/04/saudi-arabia-mass-execution-largest-1980>

⁶⁵ Control Arms, Dealing in Double Standards, December 2016, <http://armstreatymonitor.org/en/wp-content/uploads/2016/02/ATT-Monitor-Case-Study-2-Saudi-Arabia-.pdf>.

⁶⁶ Ibid.

⁶⁷ "General Recommendation 30 on women in conflict prevention, conflict, and post conflict situations," Committee on the Elimination of Discrimination against Women, paragraphs 34-81.

⁶⁸ Saudi-led coalition forces in Yemen are thought to be making extensive use of JDAM and Paveway guided aircraft bombs, which weigh between 500lbs and 2000lbs. The largest of these bombs is believed to have a lethal radius of up to 360m, and can cause injury and damage as far as 800m from the point of detonation. See Wide Area Impact, Action on Armed Violence, March 2016, <https://aoav.org.uk/wp-content/uploads/2016/03/Wide-Area-Impact-explosive-weapons-in-populated-areas.pdf>, pp. 3-8.

incidents reported today against those reported prior to March 2015. Gender-based Violence disproportionately impacting women in Yemen, including those already facing elevated protection risks, such as Internally Displaced Persons (IDPs) and other vulnerable groups".⁶⁹

The case for stronger regulation of German arms exports

The 2016 Transparency Barometer, identifies Germany as one of the three most transparent major small arms exporters. Recent improvements on e.g. timeliness of the reporting have to be noted positively.⁷⁰ A lack of transparency, however, is inherent in the German decision making process for granting export licenses.

On 21 October 2014, a judgment of the German Constitutional Court spelled out the limits of access to information about decisions of the Bundessicherheitsrat- the competent institution for granting complex or doubtful export licenses- including from the German Parliament.⁷¹ As a result, information to be provided to parliament is restricted to the type of goods, volume of the deal, and the receiving state.⁷² Information on reasons for granting or rejecting a license is therefore in principle never provided, which renders control of export decisions virtually impossible. While the submission of Annual reports by ATT States Parties regarding their arms transfers may increase transparency, there is no obligation to report on the decision to grant or deny a license.

In addition, German rules on arms export control are codified unsystematically and fragmented in two different laws,⁷³ the determination of licensing processes and compliance with the binding EU common position on arms exports is regulated by non-binding political principles, and the Arms Trade Treaty cannot be reviewed by courts.⁷⁴ As already mentioned above, according to the political principles of the government regarding the export of war weapons and other military equipment, export licenses for war weapons will only be granted to third countries (non-EU or non- NATO countries) in individual cases on policy grounds. Legally, such licenses are the exception. In practice, however, 86% of war weapons have been exported to third countries in 2015.⁷⁵

The Minister for Economics announced in January 2016 his intentions to set up a commission of experts for a new and single harmonized law on arms export control.⁷⁶ This

⁶⁹ OCHA, Humanitarian Bulletin on Yemen, December 2016

http://reliefweb.int/sites/reliefweb.int/files/resources/november_hb_issue_18.pdf.

⁷⁰ See Amnesty International Germany's position on the impact of Germany's arms exports on human rights, Konsultationsprozess „Zukunft der Rüstungsexportkontrolle, 07.10.2016, page 5.

⁷¹ Judgment of the Constitutional Court, 2 be 5/11, 21.10.2014, Leitsatz 2.

⁷² Judgment of the Constitutional Court, 2 be 5/11, 21.10.2014, Leitsatz 2.

⁷³ Namely the Kriegswaffenkontrollgesetz and Außenwirtschaftsgesetz.

⁷⁴ GKKE, Rüstungsexportbericht 2016, page 15.

⁷⁵ GKKE, Rüstungsexportbericht 2016, page 47.

⁷⁶ Proposal of the German Green Party for a new law on arms export control, 16.02.2016, documents of the

initial proposal, however, has been watered down to a consultation process about the future of arms export control.⁷⁷

Recommendations

The proliferation of and easy access to weapons exacerbates the risk of gender-based violence and that, therefore, Germany has a duty to take measures to prevent arms transfers that may facilitate human rights violations, including gender-based violence, and negatively impact women.

Germany needs to:

- Take measures to prevent that the transfer of weapons facilitates or exacerbates gender-based violence or violence against women in other countries. In practical terms and as a prevention measure, Germany should develop and include specific criteria for analyzing whether any arms transfers being assessed as well as the granting of licenses on production facilities will facilitate or contribute to gender based violence or violence against women by the recipient;
- Ensure that the adoption of robust and effective arms policies be included in the list of legislative level measures to be taken to prohibit all forms of gender-based violence against women;
- Proceed with a review of the existing laws and guidelines regulating the control of arms export in Germany and adopt a single and harmonized law on arms export control. With a view to avoid facilitating gender-based violence in third countries, the new law should build upon the requirement under Article 7(4) of the ATT as well as further relevant criteria for assessing licenses under the provisions of the ATT, the political principles of the German government for the export of war weapons and other military equipment, the EU common position, and the guidelines on the export of small and light weapons and respective ammunition as adopted in 2015 by the German government;
- Improve transparency around arms transfer decisions, including the rationale for allowing transfers to states with poor human rights records, and creating opportunities for public debate and input as well as possibilities for judicial review of export licenses.

German parliament, Drucksache 18/7546.

⁷⁷ See webpage of ministry:
<http://www.bmwi.de/DE/Themen/Aussenwirtschaft/Ruestungsexportkontrolle/transparenz.html>

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Since our establishment in 1915, we have brought together women from around the world who are united in working for peace by non-violent means and promoting political, economic and social justice for all.

Our approach is always non-violent, and we use existing international legal and political frameworks to achieve fundamental change in the way states conceptualise and address issues of gender, militarism, peace and security.

Our strength lies in our ability to link the international and local levels. We are very proud to be one of the first organisations to gain consultative status (category B) with the United Nations, and the only women's anti-war organisation so recognised.



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The European Center for Constitutional and Human Rights (ECCHR) is an independent non-profit human rights organisation, registered in the municipality of Berlin-Charlottenburg (Germany) since 2007. By engaging in strategic litigation, ECCHR uses legal means to protect groups and individuals against systematic human rights violations, and hold state and non-state actors accountable for these egregious acts.



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