



Preventing gender-based violence through arms control - case study

THE SWEDISH ARMS TRADE AND RISK ASSESSMENTS: DOES A FEMINIST FOREIGN POLICY MAKE A DIFFERENCE?

WOMEN'S INTERNATIONAL LEAGUE FOR
PEACE & FREEDOM



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Introduction

In 2014 the Swedish defense industry exported military equipment worth just under SEK 8 billion.¹ According to the SIPRI Arms Transfers Database, Sweden was the 11th largest arms exporter for the period 2010-2014, accounting for 2% of world deliveries.² Approximately 78% of Swedish exports went to European Union countries and what Swedish export control authorities refer to as “traditional partner countries” such as Canada, South Africa, and the United States. 22% of the total export value went to some other 20 countries, of which Thailand, India, and Saudi Arabia were the three largest export destinations. In 2014, the five largest export destinations for Swedish military equipment were the United States, Norway, Thailand, the United Kingdom, and India.³

This paper provides a brief overview of the Swedish arms industry and trade focusing on national law and using the 2013 Arms Trade Treaty and 2001 UN Programme of Action on small arms and light weapons as benchmarks. Sweden is an interesting case because it is a major arms exporter, but prides itself on its “feminist foreign policy.”⁴ In its action plan to implement this policy, the government highlights as a priority for 2016 “strengthening the human rights of women and girls in humanitarian settings and combating gender-based and sexual violence in conflict and post-conflict situations.”⁵ Thus this paper will reflect on Sweden’s arms trade in light of this foreign policy goal and the Arms Trade Treaty’s legally-binding provision on preventing gender-based violence.



Swedish arms industry: production and trade

History

Sweden's policy of neutrality to a large extent shaped the foreign policy and strategic decisions taken by Sweden after World War II, which in turn has had an impact on the Swedish arms industry. The government considered it necessary to have a large and advanced arms industry in order to avoid depending on other states, which in times of crises could jeopardise the country's then neutral status.⁶ The government made a policy of supporting Swedish arms companies, almost exclusively purchasing military equipment from Swedish suppliers. In the 1960s, as much as 90% of all military-related equipment was developed and produced within Sweden. But as the country's military budget decreased over the years, exporting arms became a way of financing the development and production of arms in Sweden. This has created a special relationship between the arms industry and Swedish government, in which the government contributes to facilitate arms exports to uphold the national industry and for other security reasons that are rarely motivated in any detail. In 2000 the Swedish Defence and Security Export Agency was established by the government with the primary aim of promoting Swedish arms exports abroad. It was phased out in 2015, with some of its tasks and resources being transferred to the Swedish Defence Materiel Administration.

Today the majority of all arms produced in Sweden are exported. Weapons constitute approximately 1% of overall exports from Sweden. In the 1990s, many of the previously Swedish-owned arms-producing companies were sold to foreign companies.⁷ Nevertheless, the

dominant actor in the market is the still Swedish-owned SAAB, holding almost 50% of the market shares.⁸ Other prominent actors are BAE Systems Bofors, BAE Systems Hägglunds, and Nammo Sweden.

In accordance with a decision taken by parliament in 2004, Swedish arms production focuses on five sectors: aerospace weapons, armoured vehicles, network-centric capabilities, communications, and short-range weapons.⁹ The aerospace sector has historically had a prominent position in the Swedish arms industry and today remains one of the most important sectors. Between 2008 and 2012 the export in aircraft amounted to 51% of the total Swedish arms exports. Proportionately, the manufacturing and transfer of small arms and light weapons are smaller than other weapon types. Nevertheless, the Small Arms Survey classified Sweden as a "major exporter", documented to have transferred these arms for a value of 50–99 USD million at least once between 2001 and 2008.¹⁰

National laws, regulations, and institutions

Current national export regulations consist of the Swedish Military Equipment Act (1992) and corresponding Military Equipment Ordinance (1992), which both entered into force in 1993. There are also national guidelines that have to be applied in combination with these laws. None of these documents include gender provisions.

The Swedish Inspectorate for Strategic Products (ISP) is the agency responsible for implementing controls on arms export.¹¹ Responsibility to

conduct export assessments was transferred from the government to the ISP in 1996. The ISP is an independent authority under the Swedish Ministry for Foreign Affairs (MFA). The MFA provides overall policy guidance; but the ISP is independently responsible for individual licensing decisions. The government (or a minister) is not allowed to influence decision-making in individual cases. This limitation is constitutionally enshrined and intended to ensure impartial application of the law. The work of the ISP is done in close co-operation with other authorities such as Swedish Customs. The Swedish Police are responsible for authorisation of transfers of civilian firearms and ammunition within the European Union.¹²

All export matters are reported to the Export Control Council (ECC), which is a parliamentary advisory body consisting of twelve members appointed by the government. The Moderate and Social Democratic parties have three members each, while the other parties have one member each. Cases in which the ISP needs advice prior to taking positions, for example concerning new recipient countries or countries where developments require a new assessment, are referred to the ECC. The ISP can then request non-binding advice from the council. The chairperson of the ECC is the ISP Director-General, and representatives of the Swedish MFA and the Ministry of Defence also participate at ECC meetings.¹³

The ISP is staffed with about 25 people, some of whom are international law experts and have expertise in international human rights and international humanitarian law.¹⁴ ISP's current

Director-General, Christer Ahlstrom, is an Associate Professor of International Law at Uppsala University.¹⁵ However, there are no specialists on gender or on development. If there is a case involving a developing country, according to Ahlstrom "that would normally go to the Export Control Council, and in that setting, the Ministry of Foreign Affairs, which of course has expertise in gender and development, would participate in the discussions."¹⁶

The Arms Trade Treaty (ATT) and the UN Programme of Action on small arms and light weapons (UNPoA) have a number of institutional requirements necessary for the effective control of the arms trade and cooperation between states. The ATT requires states to establish a national point of contact and a national coordination agency that maintains national records of export of issuance of authorisation and submits reports.¹⁷ Similarly the UNPoA recommends that states designate a national point of contact as well as establish a national coordination agency providing policy guidance, conducting research, and monitoring the efforts of preventing illicit arms trade.¹⁸ Sweden does have a national point of contact, an individual at the MFA, fulfilling the provisions of both the ATT and the UNPoA. With the ISP it also has an agency responsible for export and import controls. However, there is no existing body that would fulfil the recommendation of the UNPoA providing policy guidance, conducting research, and monitoring efforts of preventing illicit arms trade.

Export licensing and risk assessments

Licensing

A licence is required by Swedish law for all exports of military material. “Export” is a broad concept that encompasses not only sales, but also discontinuation, demonstrations, destructive testing, display purposes, corrective measures, returns, other intentions, replacements/additions, other temporary exports, extensions of delivery time, and transit.¹⁹ Under the Swedish Military Equipment Act, a license to export military material, or other cooperation arrangements with someone abroad regarding military equipment, should be permitted only if such exports or cooperation is considered necessary to meet Swedish “defence needs,” otherwise desirable in terms of security policy, and not in conflict with the principles and objectives of Swedish foreign policy (see section on risk assessment for more details).²⁰

Exports of spare parts and ammunition for previously delivered systems as well as deliveries related to previous exports are counted as follow-on deliveries. Under current guidelines, such follow-on deliveries should be approved unless international obligations require otherwise, such as an embargo imposed by the European Union (EU), Organisation for Security and Cooperation in Europe (OSCE), or the United Nations (UN).

According to the Swedish Military Equipment Act, the ISP has the authority to revoke a granted license permanently or for a specific period of time. The ISP can revoke a granted license if a licensee does not fulfill the requirements stipulated in the legislation, requirements stipulated in a specific license, or

if there are any other particular reason to revoke a granted license.²¹

Sweden uses its licensing procedures to fulfil the requirements in the ATT and UNPoA on regulating brokering, preventing diversion of arms transfers, and taking action against illegal manufacturing or export of arms. Anyone possessing a weapon in Sweden, or engaging professionally with arms through trade, production, or reparation, is required to have a licence issued by the police.²² Under the Military Equipment Act, military equipment may not be manufactured without permission. ISP has the authority to regulate manufacturing and takes human rights and international law into account. For example, if a company were to apply for a license to manufacture landmines, that license would be denied because Sweden is a state party to the Mine Ban Treaty.²³

The UNPoA commits states to ensure that the bodies that are allowed to hold arms adhere to a standard with regard to management the security of their arms. It also recommends states mark weapons in order for them to be more recognisable and to allow for tracing.²⁴ In Sweden, manufacturers are required to keep records of their activities, including information such as the quantity of small arms and light weapons, type, models, markings applied, and transactions for a minimum of three years. All arms must be marked with the Swedish coat of arms, a specific ID number, and a production marking. To produce or transfer arms without permission is a criminal act. Some measures are also taken to prevent forgery of documents such as special imprinted papers.

Risk assessment

As noted above, Swedish regulations state that arms transfers should only be authorised if there is a security or defence policy reason justifying the transfer and when the transfer is not contrary to Swedish foreign policy.²⁵ A risk assessment is always required, though Swedish legislation and guidelines contain a positive presumption in certain cases (e.g. exports to Nordic countries or EU member states, intra-EU trade). According to the national guidelines, positive presumptions do not obviate the requirement for an assessment and they are void if a situation covered by the ATT (or the equivalent in the 2008 EU Common Position or the Swedish national guidelines) is encountered.²⁶

Export assessments are conducted by the ISP. Assessments of significant new cases are conducted in collaboration with the Export Control Council (ECC).²⁷ The ISP visits companies that are subject to compliance. During these visits, the ISP checks that the company is aware of current regulations, which products are subject to export controls, and that such knowledge is incorporated in the company's work process.²⁸

The ISP considers three different sets of criteria in its risk assessment process: the national Swedish guidelines, the EU Code of Conduct, and the ATT. The latter two are legally-binding on Sweden,²⁹ though according to Ahlstrom, the national guidelines are the strictest. "We start with our domestic guidelines, move on to the EU Common Position and end with the ATT."³⁰ He adds, "In most situations where we decline exports, we make it on an overall assessment. It's also very often based on our domestic guidelines because they refer to the general human rights situation in the country, which is

not the case with the EU Common Position and is not the case with the ATT."³¹

National guidelines

The guidelines emphasise in particular the importance which, when assessing each export application from a foreign policy point of view, should be attached to respect for human rights in the recipient country. The human rights criterion must always be taken into consideration, even in cases involving the export of materiel which in itself cannot be used to violate human rights. The broadening of the concept of military equipment was accompanied in 1993 by the classification of materiel into two categories. For the category military equipment for combat purposes, the government should not issue an export permit to a state that is involved in armed conflict with another state, a state involved in an international conflict that is feared may lead to armed conflict, a state in which internal armed disturbances are taking place, or a state in which extensive and grave violations of human rights occur. The rules are less strict for licenses concerning other forms of military equipment (classified as "other military equipment" in the national guidelines). Authorisations should be granted for this kind of equipment given that there are not widespread and grave violations of human rights in the recipient state; that the state is not in armed conflict with another state; and that the state is not experiencing internal armed tension/instability. No export of "other military equipment" should be authorized if there are unconditional obstacles, such as an arms embargo against the recipient state.

The national guidelines provide a number of situations when a transfer should always be denied, also known as unconditional factors. To a certain extent these correspond to the ATT

and include situations where an arms transfer is contrary to international law, an arms embargo, a decision by the UN Security Council, or international obligations applicable to neutral states. There is no provision in the Swedish legislation expressly prohibiting transfers if the arms are used in the commission of international crimes or grave violations of the Geneva Convention, as required by the ATT; however it is likely that it would be included when considering whether the transfer is contrary to international law.

When there is no unconditional factor preventing an arms transfer, the ISP will consider a number of conditional factors found in the guidelines. The ISP will then make an assessment taking into account all relevant factors, and weigh the risks of these occurring with the possible benefits for security and defence. In a 2014 report the ISP stressed that it makes the decision based on the overall situation, prioritising the best interest of Sweden. The national Swedish guidelines are not material specific, which means that unlike the ATT or EU Common Position, the ISP is supposed to look at the situation in the recipient state on a general scale, not at which specific weapons could be used for at a specific time.³²

Factors that are taken into account include whether there is extensive and grave violations of human rights, if the receiving state is involved in an armed conflict, or if there is risk of such activities. The guidelines provide that respect for human rights should be a central condition for authorising a transfer license. The term “extensive and grave international human rights” is given a very strict interpretation by the ISP. In its 2014 report it states that for this criterion to be fulfilled the situation in the country would both have to be systematic as well as of a very serious nature. Although each case must be

assessed individually, indications have been made that the extensive and grave human rights violation is synonymous with extra judicial killings, systematic torture, enforced disappearances, and politically motivated killings.³³

EU Code of Conduct

The ISP also assesses the case on the basis of the 1998 EU Code of Conduct on Arms Exports. This Code consists of the following criteria: international obligations and commitments (e.g. arms embargoes); human rights; internal situation in the country; regional peace, security, and stability; national security for member states and allies; buyer country’s compliance with international law; risk of diversion; and socioeconomic factors in the buyer country. If what are known as unconditional obstacles are present, such as embargoes by the UN, EU, or OSCE, exports may not take place.³⁴

ATT

The international standard on export assessment is set out in two articles in the ATT. Firstly, the ATT obligates states to prevent the export of arms to another country if the transfer would be contrary to an arms embargo, other international law, or if the item would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Convention.³⁵ Secondly, the ATT provides that states shall carry out export assessments and refuse to export if there is an overriding risk of undermining peace and security, commit serious violations of international humanitarian law, international human rights law or transnational crimes.³⁶ States are expressly required to take into account serious violations of gender-based violence or acts of violence against women when making the assessment.³⁷

Assessment questions

Some of the questions the ISP considers in its risk assessment process include:

- What is the necessity from a Swedish security policy perspective (exports are conceived as supporting the maintenance of a defence industry geared to Swedish needs)?
- What is the compatibility with the goals and principles of Swedish foreign policy (blanket formulation to cover relevant factors whether or not they are explicitly mentioned in the guidelines)?
- Is the end user a government, a government authority, or a government authorised recipient?
- Has an acceptable end-user assurance (or own-production declaration) been received?
- Has the recipient state respected previous end-user assurances or rectified problems in this area? (Otherwise no further exports are permitted.)
- Does the export consist of spare parts, components, or consumables for previously exported systems? (There is a positive presumption for such cases, but not in situations covered by 6.A.i-iii.)
- Is the recipient a Nordic country or EU member state? (There is a positive presumption for such cases, but not in situations covered by 6.A.i-iii.)
- Is the equipment in question lethal or non-lethal? (There is a more positive presumption for non-lethal equipment, but not in situations covered by 6.A.i-iii.)
- What is the compatibility of the export with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defense needs with the least diversion of human and economic resources for armaments?³⁸

Other specific considerations

Gender-based violence (GBV). Staff at the ISP have indicated that GBV is considered in the risk assessment process.³⁹ “When it comes to assessments, we look at the overall situation in the recipient country,” said ISP Director-General Ahlstrom. “If it is a country which is having internal disturbance or armed conflict, that would not qualify as a recipient for Swedish arms exports.”⁴⁰ According to Ahlstrom, the risk of human rights and international humanitarian law violations are usually taken care of with the fact that Sweden does not export to countries that are in armed conflict.⁴¹ “I think that GBV is a cross-cutting issue. It relates to different areas of international law, international humanitarian law, and human rights. The ATT has put a special focus on gender-based violence with its specific reference to GBV, which was not really outspoken prior to the ATT, even though of course elements of what would be considered GBV are present in the Geneva Conventions of 1945. I think you could say that we looked at these elements before.”⁴²

Social and economic rights. A parliamentary committee appointed to investigate the future of Swedish export controls regulations recently found the interpretation of grave and widespread human rights violations has been very narrow, focusing on physical security and civil and political rights, but not economic and social rights. The committee argued that the regulatory framework should continue to maintain the principle that a prospective recipient state's compliance of human rights in the broadest sense should be considered.⁴³ The committee drew the conclusion that the term “grave and widespread violations” has come to mean, in practice, violations concerning people's physical security. The committee is critical of this, pointing out that grave and widespread

violations of human rights can include violations of all human rights, including civil and political as well as socioeconomic rights and cultural rights. The committee also suggested that women's rights should be analysed specifically and with extra consideration when a possible buyer state's democratic status is being analysed. This should include, for example, analysis into whether or not women have the possibility to participate in governing the society, have the right to take public office, and have the right to "self determination" in general.⁴⁴

Diversion. If a case of diversion is established—for example, if weapons are found to have been retransferred in violation of the recipient's end-user agreement—an official request will be made to the recipient government to determine the cause of the diversion and report back on measures taken to avoid any recurrence. If satisfactory answers are not obtained, the Swedish guidelines prescribe that all exports to the country be curtailed (including follow-on deliveries of spare parts and consumables to equipment already transferred) until the situation has been resolved to the satisfaction of Sweden.⁴⁵ Sweden does share information about diversion. Information is primarily exchanged plurilaterally, within EU and the Wassenaar arrangement. Bilateral exchange between national intelligence authorities also occurs.⁴⁶ However despite these provisions regarding diversion, Swedish weapons have been found in northern Myanmar, with rebel forces in Libya and Syria, with FARC in Colombia, with al-Shabaab in Somalia, as well as with government forces in Iraq and Lebanon.⁴⁷

Sources of information and problematic practices

The ISP mainly uses information from the Swedish MFA, including Swedish human rights

reports.⁴⁸ The ISP also looks at UN sources for development indices, as well as Amnesty International reports.⁴⁹ But the ISP first and foremost follows Swedish foreign policy set by the MFA.⁵⁰ For example, when it comes to sustainable development, the ISP has indicated that it looks at World Bank statistics but that it has never stopped a deal due to those figures if there is no compelling argument from a Swedish policy standpoint to do so.⁵¹

This can be problematic. For example, while the ISP uses the MFA's human rights reports and adds input from defence agencies, it does not add input from development agencies. The Swedish International Development Cooperation Agency (SIDA) does not give input to these reports. Sometimes the MFA's human rights reports will include some development aspects, but overall the departments and agencies within the government remain traditionally separate. "All issues related to export controls have been put into a defence and 'hard security' bowl, with very little interaction with the development side," notes a peace and women's rights activist Sofia Tuvestad. "It also means issues of gender are not front and centre in risk assessments either," she notes. "We have asked the government to encourage ISP to change its practices so that it has a clearer picture of possible risks and factors, including by asking SIDA and other agencies that work on peace and security to submit analysis before any assessment."⁵²

Transparency

The Swedish government's annual report to parliament on exports of military equipment and dual use goods is also translated into English. Both Swedish and English versions are made available on the internet.⁵³ However the public does not have access to how the ISP reviewed

risks and pros and cons of each transfer.⁵⁴ The Public Access to Information and Secrecy Act (2009:400) and the Freedom of the Press Act (1949:105) regulate under what conditions public access can be limited. The initial presumption is always full access. Examples of factors that can justify redacting or withholding documents are: national security; Sweden's relations with a foreign state or an international organisation; inspection, control, or other supervisory activities of a public authority; public economic interest; or the protection of the personal or economic circumstances of a private individual.

There are also concerns about corporate transparency and misconduct around international arms sales in Sweden. In 2011 Saab was forced to admit paying bribes in connection with the sale of jets to South Africa. In 2007 Swedish television had disclosed that Saab and its British partner BAE had also used bribes to sell JAS Gripen fighter aircraft to the Czech Republic, Hungary, and South Africa. Furthermore, an investigation in 2001 revealed that the state-owned Swedish Space Corporation tried to sell surveillance systems to Muammar Qaddafi's Libya. Undercover film showed a representative of the company explaining to the Libyan trade minister how "we can help you control the refugee situation along the borders and in the Mediterranean."⁵⁵

"Balancing interests"

While human rights violations must be "grave and widespread," security and defence interests are not clearly defined and there is no threshold built into the system through the regulations.⁵⁶ In practice, this means that ISP can always justify an arms export unless there are unconditional obstacles such as an arms embargo. "Of course, it always comes back to the interest of keeping a Swedish arms industry for our armed

forces and of other forms of security cooperation," explains Tuvestad. "So basically the argument has been that they have to sell weapons in order to finance our own industry, so that the industry can provide for our armed forces. That has been the traditional argument. Today we also hear arguments relating to other security interests such as international industry cooperation and other forms of cooperation. In addition to this, even if it appears to be against national regulations, Sweden's former Prime Minister also justified the export by saying that it's needed in order to keep Swedish jobs."⁵⁷

Proposal for new export regulations

In 2011 the Swedish parliament decided that the government needed to review current arms export control regulations with the explicit purpose to sharpen export controls against non-democratic states.⁵⁸ This led the government in 2012 to set up a parliamentary committee. The committee consisted of representatives from the eight political parties. In June 2015 the result of the investigations was released in which the committee suggested a number of amendments. It recommended that the overall structure should remain the same, with a general ban on arms transfers and manufacturing.⁵⁹ The security, defence, and foreign policy considerations should also in the future remain the priority when making decisions.

The committee also recommended the introduction of a "democracy criterion," which would be the first of its kind. The proposal is based on the idea that transferring arms to non-democracies is a way of legitimising that non-democratic government. This in turn would be contrary to the foreign policy goal of Sweden to promote democracy and human rights. The transfer decision would be made based on a

number of factors, including whether the state has democratic institutions and how well these work in reality, the participation in national elections of the representatives, and that at least a degree of separation of power exists. Additional factors would include the existence of different political parties, to what extent the media is independent and free, and respect for human rights and fundamental freedoms.

The committee also considered the human rights criterion and suggested expanding the criteria which are to be considered. The committee rightly noted that the current criteria are exceptionally high.⁶⁰ The committee proposes to amend the law from “extensive and grave” to “extensive and serious” in order to lower the threshold.⁶¹

It is questionable if these amendments, if adopted and implemented, will have an effect on the Swedish arms trade and assessments made by the ISP. WILPF Sweden (IKFF), Swedish Peace and Arbitration Society, and the Swedish

Fellowship of Reconciliation jointly submitted a comment on the proposal that highlighted a number of flaws.⁶² The most serious concern introduced by these NGOs, as well as by other Swedish human rights and peace organisations, is that the proposed criteria concerning human rights and democracy are too vague. They do not clearly formulate an unconditional ban on arms transfers to non-democratic states or to other states with serious and/or widespread violations of human rights. The NGOs thus fear that the proposed criteria would not ensure that such transfers are denied, but that it might rather enable for sales to continue based on “defence and security interests”. The submitted comment by WILPF Sweden (IKFF), Swedish Peace and Arbitration Society, and the Swedish Fellowship of Reconciliation also criticises the committee's proposal for being too weak and vague with regards to sustainable development, as well as failing to introduce substantial proposals for prevention of corruption and increased transparency and accountability.



Feminist foreign policy and arms transfers

In 2015 the Swedish government declared it was developing a feminist foreign policy. It released a Foreign Service action plan for 2015–2018 to implement this policy, including focus areas for 2016.⁶³ The overall goal of the policy is to “help to achieve concrete results that enhance both gender equality and the full enjoyment of human rights by all women and girls”⁶⁴ and to help ensure that women and men “have the same power to shape society and their own lives.” This includes working towards an even distribution of power and influence, economic equality, an even division of unpaid housework and care work, and an end to men’s violence against women.”⁶⁵

One of the objectives of the policy is to contribute to all women’s and girl’s freedom from physical, psychological, and sexual violence. The focus for 2016 in terms of this objective is to “combat gender-based and sexual violence against women and girls in conflict and post-conflict situations and impunity for such crimes.”⁶⁶ The policy also lays out indicative measures envisaged to contribute to this focus area. One of these mandates the Swedish Foreign Service to actively highlight the link between the spread of weapons and sexual violence and to assist in the implementation of states parties’ obligations under the ATT. In addition, the Foreign Service “will actively pursue efforts to combat gender-based and sexual violence in armed conflicts at country and regional level, including as part of the implementation of UN Security Council Resolution 1325 on women, peace and security, and subsequent resolutions.”⁶⁷

in its focus of promoting women’s participation in peace processes and peace support operations, the foreign policy commits Sweden to working “to ensure the integration of a gender perspective in discussions, outcome documents and relevant disarmament and arms control resolutions, particularly in relation to the final document of the Sixth Biennial Meeting of States (BMS6) to be held in 2016 within the framework of the UN programme of action on the illicit trade in small arms and light weapons.”⁶⁸

The policy also includes a number of other focus areas for 2016, including strengthening the human rights of women and girls in humanitarian setting; promoting the economic empowerment of women and girls and their access to economic resources; and strengthening the sexual and reproductive rights of girls and young people. All of these are relevant for arms export decisions as weapons can be used to violate or undermine the achievement of these objectives.

Swedish arms transfers and gender-based violence

This section highlights some of Sweden's arms exports in 2014 that undermine its feminist foreign policy objectives and its national and international legal obligations specifically in relation to gender-based violence. As summarised in the Swedish Foreign Service action plan for feminist foreign policy 2015–2018, the feminist foreign policy aims to promote the rights of girls and women, including by combating all forms of violence and discrimination. It also aims to promote women's participation and influence in decision making, and to ensure that resources are allocated to promote gender equality and equal opportunities for all women and girls to enjoy human rights. This should imply a strict interpretation of Swedish export control regulations as well as Sweden's obligations under international law in this area.

India

In 2014, Sweden exported 468 million SEK in recoilless rifles, spare parts, training equipment, components, and ammunition to India, which was Sweden's fifth largest weapons export destination.⁶⁹

The UN Special Rapporteur on Violence against Women published a report on India in April 2014 drawing 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 militarised regions such as Jammu and Kashmir and the north-eastern states.⁷⁰ "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. "Additionally, the freedoms of movement, association and peaceful assembly are frequently restricted."⁷¹

The Special Rapporteur also expressed concern about violence against women in custodial settings in India.⁷² The report also included allegations of the right to life; sexual violence; arbitrary detention; torture and ill-treatment; violations of freedom of movement, expression, peaceful assembly and association; and violations of due process and equal protection before the law. There are no measures to ensure accountability. The Army Act of 1950 limits the scope for civil courts to consider allegations of violence against women living in the territories under the Armed Forces (Special Powers) Acts perpetrated by army officials, including killings and sexual violence.⁷³ The Special Rapporteur expressed concern about the independence of the National Commission for Women and in particular, its denial of reports of sexual violence by security forces.⁷⁴ The Special Rapporteur recommends that India repeal, as a matter of urgency, the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act and ensure that criminal prosecution of members of the Armed Forces is free from legal barriers.⁷⁵

India also exemplifies the need to consider sustainable development and social and

economic rights when potential impacts, direct or indirect, of arms transfers are being analysed. There has been a significant increase in Swedish arms exports to development countries during the last decade, sales to development countries accounted for about 30 % of total sales during 2013-2014.⁷⁶ India has been a big importer of Swedish arms for several years, and as reported by SIPRI, India's imports of major arms increased by 111 per cent between 2004–2008 and 2009–13, making it the world's largest importer.⁷⁷ At the same time, as the Swedish MFA's land report on India from 2015 notices, India fails to ensure enjoyment of basic social and economic right for many of its citizens. The MFA refers to statistics by the World Bank (2010) indicating that more than 1/3 of India's population live in poverty, and the MFA adds that poverty and inequality "does not rarely" affect India's women especially hard. Military and defence media is currently reporting that Sweden is trying to sell its fighter jet JAS Gripen to India.

Indonesia

In 2014 Sweden exported portable anti-tank weapons, including spare parts, training weapons, and components to Indonesia.

In 2013 Sweden's own report on human rights in Indonesia noted that in several regions, women are arrested if suspected of prostitution, limiting their freedom of movement. Some regional laws forbid women from going outside the home without the company of a husband or male family member. The Swedish report also noted that UN High Commissioner for Human Rights Navi Pillay visited Indonesia in November 2012 and then expressed concern over the lack of sexual and reproductive rights, especially for unmarried women; police violence reported used against LGBT people; and the lack of mechanisms to

impose accountability for former and current human rights violations.⁸¹

While Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), it has not ratified the Optional Protocol on individual complaints.⁸² LGBT people in Indonesia are frequently subjected to violence and abuse. Such was the case in Surabaya in November 2013 when the police, according to a video recorded by private persons, were present but did not intervene against the ongoing violence assault.⁸³ Trafficking occurs but is rarely reported and there are reports that Indonesian officials are involved, as well as police and military forces.⁸⁴

Human Rights Watch also has demonstrated that all branches of Indonesia's armed forces and police conduct virginity testing for candidates and on the fiancées of military officers.⁸⁵ These procedures have been recognised internationally as a violation of human rights, particularly the prohibition against cruel, inhuman, or degrading treatment under article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture, both of which Indonesia has ratified.⁸⁶ Finally, the Human Rights Committee expressed concern that corporal punishment by sharia police (Wilayatul Hisbah) disproportionately affects women (arts. 2, 3, 7 and 26).⁸⁷

As with India, the case of Indonesia also exemplifies the need to consider respect for and enjoyment of social and economic rights in the importing state. The Swedish embassy in Jakarta concludes, "The social sectors in the society (education and health care), as well as the country's infrastructure, are still strikingly neglected."⁸⁸ The Swedish MFA's report on human rights in Indonesia states that the national statistics on maternity and infant

mortality are the highest of all countries in Southeast Asia. The same report also concludes that while the Indonesian government had planned to establish a national general health insurance system in 2014, they declared in early 2013 that these reforms were to be postponed due to their costs.⁸⁹ However, the Indonesian government has nonetheless parallel to this decided on major increases in its military investments.⁹⁰

Namibia

In 2014, Sweden exported about 300,000 Kronor (around USD 34,000) worth of hunting ammunition to Namibia.⁹¹

Sweden's own human rights report on Namibia notes that abuse of women in the home is common (representing one-fifth of all violent crimes).⁹² This report does not make the connection with firearms, however. In contrast, a 2012 Canadian report on domestic violence in Namibia noted that the most common charges in relation to domestic violence against women are assault intent to do grievous bodily harm, followed by rape and murder with firearms or other weapons.⁹³ It quotes the Legal Assistance Center, stating that 50 percent of domestic violence victims also receive death threats from the perpetrator. According to police statistics, assault with intent to do grievous bodily harm is the most common charge, followed by rape and murder with firearms or other means.⁹⁴ Namibia has had many cases of crimes involving firearms especially by what has come to be termed "passion killings" whereby men often kill their girlfriends and wives and then turn the weapon on themselves when a romantic relationship turns sour.⁹⁵

The police estimate that 70% of all private firearm owners in Namibia are male.⁹⁶ According to a study on small arms possession in Namibia,

despite the common perception both inside and outside Namibia that it is a country of hunters and farmers, current trends in firearms possession suggest that self-protection may be a stronger motivation for acquiring a firearm than hunting and protection of livestock and property.⁹⁷ More than 68% of the overall sample population indicated that they required a firearm for reasons of "self-defense".⁹⁸

Kazakhstan

In 2014, Sweden exported about 400,000 Kronor worth of hunting ammunition to Kazakhstan.⁹⁹

The 2011 Swedish human rights report on Kazakhstan expressed concern about domestic violence and increased trafficking. It noted that Kazakhstan was number 67 of 138 countries on the UN's Gender Inequality Index and number 41 of 134 countries in the World Economic Forum's Gender Gap Index.¹⁰⁰ A 2014 study notes that every third case of family violence involves weapons.¹⁰¹

In a 2009 survey conducted by the Open Society Institute, more than a quarter of respondents experienced acts of homophobic or transphobic physical aggression or assault and almost 10% of those experienced armed assault.¹⁰² In some cases, strangers in private establishments, such as cafés and restaurants, attack LGBT people. "The security guards and the owner of the café where I was sitting with my girlfriend dragged us into a side room near the café after we went out and started torturing us, threatening us with a gun, hitting, kicking and insulting us for three hours. Then they threw us out."¹⁰³ A 2015 Human Rights Watch report notes that violence against LGBT people continues to be pervasive in Kazakhstan and authorities continue the cycle of violence.¹⁰⁴

Saudi Arabia and the United Arab Emirates

In March 2015, Sweden announced that it would not be renewing its military cooperation agreement with Saudi Arabia. This decision came after Saudi Arabia blocked Swedish foreign minister Margot Wallström from speaking about human rights at a meeting of the Arab League.¹⁰⁵ The decision of the Swedish government in 2015 not to prolong the military cooperation agreement with Saudi Arabia was a very welcome step to respect and protect human rights. However, the decision does not imply an end to Swedish arms sales to Saudi Arabia. This would require a change in the national export control regulations.

It was announced in the autumn of 2015 that the Swedish arms company Saab signed a contract with the United Arab Emirates (UAE) to deliver a new airborne surveillance system with a new version of the Saab Erieye radar system. Erieye has also previously been exported to Saudi Arabia. While the Erieye system has not yet been transferred to the UAE, the signed deal indicates a strong expectation that the sale will go through.¹⁰⁶

The role of the UAE and Saudi Arabia in the on-going conflict in Yemen, where civilians bear the brunt of the violence, exemplifies the clear and unacceptable risks that come with authorising arms transfers to states where human rights are violated.¹⁰⁷ Swedish human rights organisations and media have reported that Erieye may have been used in Saudi Arabia-led attacks in Yemen

that have targeted civilians and civilian targets such as humanitarian supplies. A recent investigation by a UN panel into the Saudi-led attacks in Yemen uncovered “widespread and systematic” attacks on civilian targets in violation of international humanitarian law.¹⁰⁸

As well as causing the deaths and injuries of more than 2000 civilians, the conflict in Yemen has exacerbated an already severe humanitarian crisis and 80% of the population is in urgent need of humanitarian assistance. In such a context, women and girls often suffer disproportionately due to forced displacement, sexual violence, trafficking, lack of access to health care (including sexual and reproductive health) and lack of access to victim and survivor assistance. The UN Refugee Agency has expressed concern with sexual violence and abuse of refugee women fleeing to Europe from conflicts in the Middle East, including that in Yemen.¹⁰⁹

Recommendations

Sweden's laws and its stated commitment to international obligations under the Arms Trade Treaty and EU regulations, coupled with its feminist foreign policy, should provide a good framework for preventing arms exports that contribute to gender-based violence and other human rights abuses. Yet in some circumstances it appears that industry interests, based on financial, defence, or larger security concerns, have an inordinate influence over export decisions.

In order to ensure consistency between law and policy on the one hand and arms export decisions on the other, the Swedish government and the ISP should:

- **Define and implement stricter regulations against arms transfers that risk facilitating or contributing to the violation of human rights and IHL.** There should be no room for undefined "security interests" to trump respect for human rights by arming dictatorships and other regimes where there are serious and/or widespread violations of human rights, including women's rights.¹¹⁰ In this regard, the ISP must also define security and defence interests so it is clear what is being weighed against human rights violations.
- **Include binding provisions on sustainable development, with a clear gender perspective.** Sweden should not authorise arms exports to states that do not prioritise and meet the basic needs and rights of women and girls. States that invest large resources into military budgets while failing to ensure women and girls enjoy basic rights such as

health care and education, should not be recipients of military equipment from Sweden. Provisions on sustainable development should also include criteria in preventing corruption in arms affairs.

- **Increase and ensure public transparency about risk assessment processes for arms transfers, including specific agreements.** Decisions with grounds for denial or authorisations by the ISP should be made public, and so should the views of the members of the Export Control Council. Increased transparency in decision-making on export control would also most likely contribute to a more substantial debate on security interests, gender analysis, political priorities, etc.
- **Develop and implement provisions to prevent rather than just redress diversion.** To this end, risk assessment officers should review past instances of diversion within the region, taking into account ongoing political and socioeconomic factors, including armed conflicts in the area. Officials should also review past behaviour of recipient country as well as its relevant rules, regulations, and laws.
- **Make better use of external resources during risk assessments,** such as the UN Special Rapporteur on Violence against Women, which can provide valuable information on gender-based violence committed by armed forces, as well as the MFA's on human rights reports, which include sections on violence against women. In using these resources, the ISP need to make the link between firearms and gender-based violence in particular.

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