

Executive summary

This report is about the effective implementation of the 2013 Arms Trade Treaty (ATT) and the 2001 UN Programme of Action on the illicit trade in small arms and light weapons (UNPoA) in regards to preventing gender-based violence (GBV) and gender discrimination in disarmament and arms control processes. The objective of this report is to provide tools and guidelines for effective implementation of the ATT and the UNPoA, including how to conduct an export risk assessment on GBV and how to enhance gender mainstreaming in disarmament and arms control.

The report provides an introduction to the concepts of gender and GBV, placing them in the context of conventional weapons, the ATT, and the UNPoA. It then provides an overview of current practices in export licensing, including applications and documentations, risk assessments, information sharing, monitoring, and transparency. Based on the analysis of current practice, the report then offers guidelines for assessing the risk of GBV. It covers items, intended end users, destination countries, criteria, and indicators relevant for assessing whether or not an arms transfer could result in GBV. It also provides informative guidelines for preventing GBV through arms control measures, such as legislation, national commissions, disarmament, demobilization and reintegration processes, data collection, and international aid. Finally, the report offers recommendation and resources to guide export officials in their responsibilities.

The executive summary provides a brief snapshot of each chapter; details, explanations, and resources can be found in the full report.

About gender

The ATT is the first international agreement to recognise the link between the arms trade and GBV. The UNPoA does not explicitly make the connection at all. But the connection is real, and it is not new. All conventional weapons can—and have been—used to inflict violence on people based on discriminating norms and practices relating to their specific sex or gender role in society. GBV is a human rights violation and, when carried out during armed conflict, is a violation of international humanitarian law.

Yet because it is severely underreported and underdocumented, GBV is often overlooked in arms transfer risk assessments. Including a GBV-prevention provision in the ATT makes its exclusion from risk assessments more difficult. It also highlights that arms trade, possession, and use have specific gender and power dimensions that need to be addressed. The inclusion of the GBV criterion also serves as a reminder that in accordance with UN gender mainstreaming practice, the impact on all people of all policies and programmes needs to be taken into account and power structures that might be amplified by the presence of arms need to be further examined.

The report highlights some key facts that are critical to understanding the relationship between GBV and the international arms trade and illicit trafficking in weapons:

- GBV can occur both in times of conflict and outside of conflict. There can be a pattern of GBV in the absence of other indicators of human rights violations. The absence of

generalised violence does not mean that there is no risk of GBV.

- GBV is often invisible. Patterns are difficult to establish. Even a few reports of GBV can suggest that there are patterns and can be a cause of concern, especially if combined with government acquiescence.
- All weapons covered under the ATT and UNPoA can be used to facilitate or commit GBV.
- All end users, including the army, the police, and state security services, can commit GBV. The risk of this occurring must always be assessed, as must the risk of diversion.
- GBV is a cross-cutting issue: it is always a violation of international human rights, and, depending on the circumstances, can be a violation of international humanitarian law or constitute an act of terrorism, transnational organised crime, a war crime, a crime against humanity, or genocide. It is therefore covered under both Article 6 and Article 7 of the ATT.
- GBV goes hand in hand with a lack of gender equality. Indicators on gender equality, even if not explicitly linked to arms transfers, are therefore useful in assessing the risk of GBV, especially when information on GBV is not available.
- ATT and UNPoA implementation go hand in hand. Both instruments apply to exporting and importing states. Exporting states must ensure that importing states are implementing the UNPoA and mainstreaming gender in arms control and disarmament and must also make the same efforts themselves.

Current practice

Different countries have different requirements for applications and end-use/r documentation, but most require some form of application to the government by a company in order for an arms deal to take place. It is at this stage that export officials must conduct a risk assessment process to determine the risk that the transfer would violate the ATT or UNPoA.

Currently, no countries explicitly include GBV in their required end-use/r documentation. Some countries or regional groups include language on human rights more broadly, particularly when it comes to the export of small arms and light weapons.

The responsibility for processing an application and deciding whether to grant or deny a transfer can lie with different governments agencies. Sometimes the process is dealt with differently if it is a commercial license or a government-to-government transfer. In some countries, there is an independent specialised export authorization agency. In other countries, decisions are made in inter-ministerial and interagency groups, with members of different ministries, such as defence, economy, and foreign affairs. Most export control officers do not have specialised expertise in gender, but can consult with gender experts. Often, they have general knowledge of international law.

Once the application is shared among relevant authorities, the advisors look at the license application against national, regional, and international criteria. Most arms export

authorities look at how the equipment will be used, rather than just the equipment itself. Arms export authorities also examine who the end user is intended to be, and whether that end user is of concern. Generally the risk assessment includes whether the end user and the end-user destination is considered “legitimate” and “credible” and whether there is no likelihood of diversion. Some countries have time limits on the risk assessment process, which can impede the process’ robustness.

81% of respondents to the Arms Trade Treaty baseline assessment survey, which includes 63 countries, stated that they already conduct risk assessments on GBV. 12% do not assess the risk of GBV, and 7% did not know whether they do. For those considering that they already account for GBV in their risk assessment processes, it seems to be accounted for in terms of violations of IHL or human rights. To assess the risk of GBV, most export officials use their Ministry of Foreign Affairs’ human rights reports. Many export officials also examine information from UN reports, NGO reports, and media reports.

None of the export officials interviewed for this study were aware of any denial based on GBV specifically. Export licensing officials interviewed here emphasised that the risk of GBV must be specifically linked to the weapons under consideration and to the end user. On paper, Sweden appears to be an exception. Its legislation requires a general assessment of the situation in the recipient country and does not require a specific link between the weapons under consideration and the risk of GBV or other violations of IHL or human rights. However, this does not always seem to be true in practice.

Most countries do not conduct any post-export monitoring of equipment. Some monitor various

end users through their embassies abroad or commercial entities involved in the transfer. Many exporting states publish an annual report on their arms exports. However, there is resistance to publishing “too much” information.

Guidelines for assessing the risk of GBV

All conventional arms and ammunition covered under the ATT and UNPoA can be used to commit or facilitate acts of GBV. Export officials must conduct a risk assessment on GBV for every single arms export license application. They must assess the risk of sexual violence, domestic violence, impact on girls’ education, impact on women’s reproductive health, or the use of sex as a signifier in targeting attacks or conducting post-strike analyses. Different weapon systems can be used in different ways to inflict GBV related to the above, including small arms and light weapons, battle tanks, explosive weapons, or armed drones.

All intended end users can and have inflicted GBV, including national militaries, police, peacekeepers, private military and security companies, and armed groups. The risk of GBV must be assessed for all destination countries, whether or not they are in situations of conflict, and whether or not they are partners or developed countries. There is a misconception that most GBV happens in conflict situations. Of the 25 countries with the highest rates of women killed by armed violence, only Colombia, the Philippines, and the Russian Federation are currently affected by conflict.

Importing and exporting states must work together to ensure that items transferred under the ATT are not used to commit or facilitate GBV or diverted to uses that would violate Articles 6 or 7. Acts of GBV are covered both under

Article 6 (prohibitions) and Article 7 (risk assessment). Article 7(4) should therefore be interpreted as a recognition that GBV is a cross-cutting issue that must be analysed under each sub-section of both Article 6 and Article 7. GBV can constitute genocide, a crime against humanity, a war crime, a violation of IHL, or a violation of international human rights law. It can undermine peace and security and contribute to terrorism or organised crime.

There are a number of indicators to mark the risk of GBV for which those conducting risk assessment processes should look. These are listed in full in the report. Some of these include:

- Is there evidence of acts or patterns of GBV, including but not limited to sexual violence or domestic violence, in the recipient country?
- Have there been reports of women being compelled to marry the perpetrator of sexual violence as a form of traditional settlement?
- Have there been reports of crimes in the name of honour?
- Have there been reports of early marriage?
- Is there resistance to women's participation in peace processes?
- Is there a lack of presence of women in civil society organisations?
- Are there reports of high levels of sexually transmitted diseases?
- Are there reports of sexual abuse by security officers?
- Are there reports of threats to politically active women?
- Is there avoidance of markets or cross-border trade by women due to fear?
- Are there increased reports of prostitution and sex work?
- Have there been changes in school enrolment by women or girls?

For information, officials need to examine reports from the UN, governments, NGOs, and

the World Bank or other financial institutions. They also need to look at the recipient country's legislation, initiatives, police and military practices and training, and statistics on GBV as well as equality of women and LGBT people.

Implementing the UNPoA to prevent GBV

The legal arms trade fuels the illicit trade in small arms and light weapons. ATT and UNPoA implementation must form part of an integrated approach to prevent GBV. Importing states must strengthen both import controls and national small arms control efforts, while exporting states must assess importing states' implementation of the UNPoA in their risk assessment under the ATT. Effective implementation of the UNPoA will reduce the availability of guns and therefore help prevent GBV.

While the UNPoA itself makes no mention of gender, and references women only once in the preamble, it does commit states to make "greater efforts to address problems related to human and sustainable development" and to promote conflict prevention and address its root causes, which should include promoting gender equality and preventing GBV. Gender mainstreaming is crucial to these efforts.

Gender mainstreaming refers to the process of:

- Assessing the implications for women and men of any planned action, including legislations, policies or programs in all areas and at all levels; and
- Making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.

The UN Security Council and the UN Secretary-General have emphasised the need for gender mainstreaming in small arms control for several years. The Global Study on the implementation of UN Security Council resolution (UNSCR) 1325, commissioned by the UN Secretary-General and published in 2015, emphasises the importance of measures dealing with the proliferation of small arms and violent masculinities. A gender-sensitive approach requires the recognition that small arms possession is linked to violent masculinities and that women are not just victims, but also perpetrators of armed violence as well as members of gangs, terrorist groups, and armed forces.

Experts on GBV prevention emphasise that interventions must deal with GBV's roots in gender discrimination and promote long-term social and cultural change towards gender equality, including through ensuring leadership and active engagement of women and girls and conducting advocacy to promote the rights of all affected populations. Data on conflict and violence prevention also show that a gender-sensitive approach makes conflict prevention interventions more effective.

To ensure effective gender mainstreaming in the implication of the UNPoA, legislators and governments must:

- Consult with women's groups and LGBT rights groups when drafting laws on gun control, the security forces, and GBV;
- Ensure that the government, judiciary, and law enforcement are given adequate training and resources;

- Consult with women's and LGBT rights groups and women ex-combatants in designing disarmament, demobilisation, and reintegration (DDR) programmes;
- Include women's and LGBT rights groups in national commissions on SALW;
- Promote and support data collection on gender and the use and trade in SALW; and
- Increase funding for gender-sensitive SALW control.

Conclusion

The ATT has been called "ground breaking" for its recognition of the link between the international arms trade and GBV. However there remain many gaps in the Treaty's implementation, partly due to time limits, export officials' dual role as regulators and promoters of the arms industry, and lack of data and information linking GBV to specific weapons and/or end users. Embassies, country human rights teams, human rights organisations, NGOs, and UN entities must pay attention to the links between weapons, armed actors, and GBV.

In the end, it is up to licensing and export officials, as well as relevant government ministries, to make the call as to whether or not weapons will be transferred. These entities must include the prevention of GBV in their assessments in order to be in compliance with the ATT. This report aims to provide such officials with the relevant questions, resources, and tools necessary to fulfil their obligations.