

**Submission from the Women’s International League for Peace and Freedom to
the Office of the High Commissioner for Human Rights
on the impact of arms transfers on human rights**

3 February 2017

The Women’s International League for Peace and Freedom (WILPF) welcomes the Human Rights Council’s growing attention to the relationship between arms transfers and human rights violations; starting with resolution 24/35 in 2013 on the impact of arms transfers on human rights in armed conflicts, followed by resolutions 26/16 (2014) and 29/10 (2015), and the most recent resolution 32/12 (2016) on the impact of arms transfers on human rights.

Our submission reflects our long history of work in the areas of disarmament, human rights, and women, peace and security. While we have responded to all questions outlined here, we have in some places deliberately focused on the relationship between arms transfers and gender-based violence in order to provide a greater level of detail on an aspect of arms transfer assessments that is often under-explored.

1. Please identify the ways that arms transfers impact on the enjoyment of human rights. Are there rights that are particularly affected? Are there groups of rights-holders that are particularly affected?

Arms transfers have a well-documented and multi-faceted impact on human rights. They facilitate the movement of the very same weapons – or ammunition – that are used to curtail human rights in direct and specific ways by militaries, paramilitaries, law enforcement groups, criminals and gangs. This impact includes, but is not limited to, extrajudicial killings, forced disappearances, illegal detention, torture, gender-based and sexual violence and the recruitment of child soldiers. Weapons are used to stop the freedom of expression and of assembly, both through their actual use and as a tool of intimidation, and also to directly and repress minority populations.

More broadly, arms transfers can also deepen, exacerbate, and/or prolong existing violence or conflict, which, in turn, has secondary effects on human rights. Conflict can, for example, render access to education impossible through the physical destruction of schools, learning materials or the existence of related departments and entities. It can further impair socio-economic development, the provision of and access to medical care or humanitarian aid, which impedes enjoyment of other human rights.

Human rights mechanisms have made some recognition of this. For example, the Special Rapporteur on the human rights of internally displaced persons has recommended that the international community, humanitarian actors in Syria, and donors restrict arms transfers to counter further militarization of the conflict and resulting displacement.¹ Recognizing the impact of arms on the enjoyment of economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights has recommended that the United Kingdom (UK) “conduct thorough risk assessments prior to granting licenses for arms exports and refuse or suspend such licenses when there is a risk that arms could be used to violate human rights, including economic, social and cultural rights”.² WILPF has submitted shadow reports to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee and the Committee on Economic, Social and Cultural Rights highlighting the

¹ “Protection of and assistance to internally displaced persons: situation of internally displaced persons in the Syrian Arab Republic”, A/67/931.

² Concluding Observations on the UK, E/C.12/GBR/CO/6 (2016), paragraph 12(c).

effects of arms transfers on human rights in the context of the use of explosive weapons in populated areas.³

Groups of rights-holders are each affected differently by arms transfers. For example, United Nations (UN) experts have long recognized the strong link between child soldiers and the small arms trade. In 2008, the Special Representative of the Secretary General (SRSG) on Children and Armed Conflict, stated that “it is argued by many that it is the proliferation of small arms that has actually contributed to this rise [of the phenomenon of child soldiers] - the ready availability of small arms in the period 1970 – 2000 led to the rise and the phenomenon of child soldiers as we know it today.”⁴ A clear message from the SRSG continues to be that “any strategy to counter the recruitment of children must therefore contain initiatives to better control arms that fuel conflicts.”⁵ The Committee on the Rights of the Child has regularly addressed the connection between child soldiers and small arms trade in its concluding observations. The Committee has, in particular, recommended: 1) adoption of domestic legislation explicitly prohibiting the trade and export of small arms and light weapons to countries where children are known to have been or are involved in armed conflict;⁶ and 2) measures to address the proliferation of small arms and other weapons within the country.⁷

WILPF has taken a particular look at the impact of arms transfers on women and girls, but also its gendered impact more broadly as encompassing men and boys and others, understanding gender-based violence (GBV) to entail violence against a person based on their sex, sexuality, or gender identity. While arms themselves may not always be directly implicated in acts of gender-based violence, they are correlated with an increase in gendered inequality and a generalized culture of violence, against women in particular, as well as against LGBTQIA people.

Furthermore, the proliferation of arms tends to have 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 tends 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.⁸ The use of weapons of indiscriminate effect, such as explosives,

³ See, for example, WILPF (2017), *The impact of Germany’s arms transfers on women*, available at: <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/11368-the-impact-of-germany-s-arms-transfers-on-women>; and WILPF (2016), “Explosive weapons and the right to health, education and adequate housing in France, Sweden, and the United Kingdom,” available at: <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/10914-explosive-weapons-and-the-right-to-health-education-and-adequate-housing>.

⁴ <http://www.un.org/apps/news/story.asp?NewsID=27382#.WJRXs7GZNOs>

⁵ <https://childrenandarmedconflict.un.org/effects-of-conflict/small-arms-landmines-and-unexploded-ordnance/>

⁶ See, for example, concluding observations on Ukraine, CRC/C/OPAC/UKR/CO/1 (2011), Tunisia CRC/C/OPAC/TUN/CO/1 (2009), Turkmenistan CRC/C/OPAC/TKM/CO/1 (2015); Montenegro CRC/C/OPAC/MNE/CO/1 (2010); Belgium, CRC/C/OPAC/BEL/CO/1 (2006); Moldova, CRC/C/OPAC/MDA/CO/1 (2009); China CRC/C/OPAC/CHN/CO/1 (2013); Kirgizstan, CRC/C/OPAC/KGZ/CO/1 (2007); Hungary, CRC/C/OPAC/HUN/CO/1 (2014); Italy, CRC/C/ITA/CO/3-4 (2011); Australia, CRC/C/OPAC/AUS/CO/1 (2012); Singapore, CRC/C/OPAC/SGP/CO/1 (2014); USA, CRC/C/OPAC/USA/CO/2 (2013); Czech Republic, CRC/C/OPAC/CZE/CO/1 (2006); Egypt CRC/C/OPAC/EGY/CO/1 (2011); Belarus, CRC/C/OPAC/BLR/CO/1 (2011), Bosnia and Herzegovina, CRC/C/OPAC/BIH/CO/1 (2010); The Former Yugoslav Republic of Macedonia, CRC/C/OPAC/MKD/CO/1 (2011); India, CRC/C/OPAC/IND/CO/1 (2014); Slovenia, CRC/C/OPAC/SVN/CO/1 (2009); Canada, CRC/C/OPAC/CAN/CO/1 (2006); Tanzania, CRC/C/OPAC/TZA/CO/1 (2008)

⁷ See, for example, concluding observations on Sudan, CRC/C/SDN/CO/3-4 (2010); Sri Lanka CRC/C/OPAC/LKA/CO/1 (2010); Philippines, CRC/C/OPAC/PHL/CO/1 (2008)

⁸ See, for example, WILPF (2015), “Gender-based violence and the ATT”, available at: <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/10112-gender->

can have particular implications for women with regard to how the destruction of infrastructure or the burden of caring for the wounded may affect them, particularly in a context of inequality.⁹

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.¹⁰

The gendered impacts of arms transfers have been recognised in Security Council, Resolution 2117 (2013). The Human Rights Council has recognised the link between the arms trade and gender-based violence in the resolutions mentioned in our introduction. The CEDAW Committee has expressed concerns about the specific negative consequences of arms transfers on the rights of women and girls on several occasions. For example, in its General Recommendation 30 on women in conflict prevention, conflict and post-conflict situations, the 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.”¹¹

Therefore, arms transfers can be viewed as an enabling action that empower and equip those who commit violations of human rights through providing them the means with which to do so. This is why a rigorous assessment of the end use of any arms transfer that includes considerations of human rights law should take place in order to determine the risk of this occurring. For example, the CEDAW Committee has 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.”¹²

The CEDAW Committee has made similar recommendations in 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 gender-specific perspective.”¹³ 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).”¹⁴ In its List of Issues for Germany, the Committee requested information steps taken to “(a) integrate a gender dimension into strategic dialogues with countries purchasing German arms; (b) to conduct gender-sensitive risk assessments, in accordance with the Arms Trade Treaty, in order to mitigate the potentially negative impact on women’s rights of arms transfers to countries marked by armed conflict or at risk of such conflict”.¹⁵

basedviolence-and-the-arms-trade-treaty.

⁹ See, for example, WILPF (2014), *Women and Explosive Weapons*, available at:

<http://www.reachingcriticalwill.org/news/latest-news/8630-new-publication-women-and-explosive-weapons>.

¹⁰ See, for example, WILPF (2016), “The impact of firearms on women”, available at <http://wilpf.org/the-impactof-firearms-on-women/>

¹¹ General Recommendation 30, CEDAW/C/GC/30, paragraph 32.

¹² General Recommendation 30, CEDAW/C/GC/30, paragraph 29.

¹³ Concluding Observations on Sweden, CEDAW/C/SWE/CO/7, paragraph 35.

¹⁴ Concluding Observations on France, CEDAW/C/FRA/CO/7-8, paragraph 22.

¹⁵ List of issues on Germany, CEDAW/C/DEU/Q/7-8, paragraph 5.

It is worth noting that this is a responsibility that goes beyond arms exporters alone. Those allowing arms to transit through their country – which is most often the time when arms are diverted from their original destination – or to be imported, also have roles to play in ensuring accountability.¹⁶

2. Are you aware of assessments by governments of the impact that arms transfers may have on the enjoyment of human rights. If possible, please specify what considerations are taken into account when making these assessments, including national procedures and/or laws and international obligations and standards. On what information and/or sources of information are these assessments by governments based?

Yes, there are established assessment processes at national, regional and global levels. They each vary slightly, which is one of the reasons why the Arms Trade Treaty (ATT) was established, in order to harmonize existing law and practice through a single universal standard.

Below are some examples of these assessment practices and the considerations that they take into account. Note that these apply only to conventional weapons transfers and it is certainly not exhaustive, particularly of national practice. We offer these examples as illustrations of how different countries approach this.

National export laws

Germany is one of the world's largest arms exporters and has put in place a system to assess and approve the transfers that it makes, as well as a control list for items, as have other major exporters.

Germany's arms export control is based on the "Political Principles of the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment".¹⁷ This takes into account the following criteria: 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. Germany has stated 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 However, Germany has not established a specific mechanism to prevent arms sales from having an impact on gender-based violence in the recipient countries. 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. On the occasion of the release of a report on Germany's arms transfers the *Gemeinsame Konferenz Kirche und Entwicklung* (GKKE), a faith based group, emphasized that "while government policy allows exports to third countries in regions of crisis and conflict only in justified individual cases, the

¹⁶ Bromley, Mark Elli Kytömäki, Paul Holtom "Implementing the Arms Trade Treaty: Reporting International Arms Transfers" <http://www.unidir.org/files/medias/pdfs/background-paper-implementing-the-arms-trade-treaty-reporting-international-arms-transfers-elli-kytoemaeki-paul-holtom-and-mark-bromley-eng-0-258.pdf>

¹⁷ <http://www.wassenaar.org/wp-content/uploads/2015/07/gerprinarms.pdf>

¹⁸ ATT Baseline Assessment Project "Risk Assessment"
<http://www.armstrade.info/countryprofile/germany/>

data show otherwise.”¹⁹ In our submission to the upcoming CEDAW review of Germany, WILPF has highlighted that some of Germany’s arms exports that undermine Germany’s international legal obligations, including under CEDAW.²⁰

Although not one of the largest arms producers, **Sweden** is an interesting example because it prides itself on its “feminist foreign policy” which is sometimes at odds with its transfer decisions. 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.²¹ The production of aircraft dominates the domestic industry, although small arms and light weapons (SALW) also constitute a portion of it.²²

The Swedish Inspectorate for Strategic Products (ISP) is the agency responsible for implementing controls on arms export. 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.²³ 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. Beyond that, Sweden uses an assessment that includes other factors and conditions and stresses that it tries to make an overall assessment of the situation in the destination country, rather than an assessment of how the specific shipment will be used.²⁴

One of the objectives of Sweden’s feminist foreign 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 includes a mandate for 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. To some extent this has been successful. 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. However, Sweden has gone forward with licensing the transfer of arms and ammunition to India, Indonesia, Kazakhstan, Namibia as well as surveillance equipment to the United Arab Emirates – countries where there is evidence of human rights and international humanitarian law violations, including gender-based violence.²⁵

As with the two previous examples, **Spain** must also comply with national law, the EU Code of Conduct and the Arms Trade Treaty. Spain is a main supplier of weapons to some of the

¹⁹ “Catholic, Protestant Churches condemn arms sales”, available at:

<http://cathnews.com/cathnews/27994-german-catholic-protestant-churches-condemn-arms-sales> .

²⁰ “The impact of Germany’s Arms Transfers on Women”, Shadow report on to the 66th session of the CEDAW Committee, WILPF, January 2017.

<http://www.reachingcriticalwill.org/resources/publications-and-research/publications/11368-the-impact-of-germany-s-arms-transfers-on-women>

²¹ The top 20 arms exporters, 2010–2014, SIPRI Arms Transfers Database, 2015, http://www.sipri.org/googlemaps/2015_of_at_top_20_exp_map.html

²² WILPF, *The Swedish arms trade and risk assessments: does a feminist foreign policy make a difference?*, May 2016, p 4.

<http://www.reachingcriticalwill.org/images/documents/Publications/swedish-arms-trade.pdf>

²³ Ibid, p 7.

²⁴ Ibid, p 10.

²⁵ For greater detail on these transfers and related human rights concerns, specifically on gender-based violence, see pages 14-17 of *The Swedish arms trade and risk assessments: does a feminist foreign policy make a difference?*

world's biggest importers, including Saudi Arabia, Australia, Turkey, and Viet Nam. It also supplies 19 per cent of Mexico's weapons.²⁶

Spain's risk assessment process does not look only at the destination country, but the end user, down to the exact unit of the army, whether it is the police or the armed forces. Spanish authorities also examine the type and quantity of the product, the risk of diversion, the intended end use, and denials by other countries.²⁷ If there is a denial by another country, it is not exactly mandatory, but it is almost certain to be denied. The risk assessment process covers arms and equipment for militaries, firearms for civil use, riot gear, and dual-use goods.²⁸ The licensing body uses reports from research institutes and non-governmental organizations. Spain does try to monitor exports after they have been approved in the most sensitive cases, which is generally considered to be good practice in arms export control systems.

However, civil society analysis and monitoring has uncovered arms transfers and operations that may have violated Spanish legislation, as well as regional and international agreements. During the first part of 2015, these involved arms exports or export licenses to countries such as Saudi Arabia, Bahrain, Brazil, Colombia, Egypt, Iraq, Israel, Mexico, Pakistan, Central African Republic, Tunisia, Turkey, and Ukraine.²⁹ In some of these – Brazil, Cameroon, Colombia, and Saudi Arabia – a demonstrated connection between the arms transfer and gender-based violence can be established.³⁰

Regional

The **European Union (EU) Code of Conduct on Arms Exports** is a politically binding instrument that seeks to create “high common standards” for all EU members to use when making arms export decisions and to increase transparency among EU states on arms exports. It is based on eight common criteria for assessing arms export licenses. These are (1) respect for the international obligations and commitments of EU Member States, particularly sanctions (including arms embargos) and international agreements; (2) respect for human rights and international humanitarian law by the recipient country; (3) the internal situation in the recipient country; (4) risks to regional peace, security and stability; (5) national security of the Member States as well of their friends and allies; (6) behaviour of the buyer country towards the international community, including its attitude to terrorism and respect for international law; (7) risk of diversion towards an unauthorised end-user or end-use; and (8) compatibility of the arms exports with sustainable development in the recipient country. The assessments are made on a case-by-case basis.³¹

Global

The 2013 **Arms Trade Treaty** prohibits the sale of weapons if they would violate arms embargoes or other international obligations, or be used to commit genocide, crimes against humanity, breaches of the Geneva Conventions, attacks against civilians or civilian objects, or other war crimes. It also requires that states take into account the risk of the weapons being used to undermine peace and security; violate international humanitarian law or human rights

²⁶ WILPF, *The Spanish Arms Trade and Risk Assessments*, July 2016, p 4,

http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/ATTCASESpain_Final.pdf

²⁷ *Ibid*, p 6.

²⁸ *Ibid*.

²⁹ *Ibid*, p 4.

³⁰ This is detailed extensively in our report, *The Spanish Arms Trade and Risk Assessments* on pages 8-13.

³¹ <https://epthinktank.eu/2015/12/14/eu-rules-on-control-of-arms-exports/>

law (including gender-based violence); or commit acts of terrorism or transnational organised crime.³²

3. *What considerations should be taken into account by governments when assessing the impact an arms transfer may have on human rights, including national procedures and/or laws and international obligations and standards? On what information and/or sources of information should such assessments be based?*

Applying human rights law to arms transfer decisions is necessary in order to prevent human rights violations or abuses. A preventative approach would aim to stop arms transfers where there is a clear risk that a particular group will use those arms for serious violations or abuses of human rights.

In order for human rights criteria to be applied in an effective and fair manner, the assessment process for arms transfer decisions must:

- apply to all transfer authorizations to all countries, without distinction;
- include a case-by-case assessment of each application for an arms transfer decision;
- use objective, verifiable, and detailed information from credible and reliable sources on the nature of the arms/ammunition, the intended recipient, the likely uses, the route, all those involved in the transfer; and the risk of diversion;
- use up to date information on human rights standards and violations; and
- include an assessment of the recipient state's respect for international human rights law in relation to those rights likely to be impacted, taking into account the following indicators:
 - the formal commitments made by a state to relevant international and regional human rights instruments;
 - the implementation record of the state of its human rights obligations through national policy and practices;
 - state's legal, judicial, and administrative measures necessary for the respect and promotion of its human rights obligations;
 - the state's governmental infrastructure and its capacity to implement and ensure respect for human rights obligations and to bring human rights violators to justice and provide remedy and reparation to victims; and
 - the degree of the state's cooperation with international and regional human rights mechanisms.³³

While WILPF has done research and advocacy concerning all aspects of arms transfer decision-making, we wish to focus some of our response to this question on the gender-based violence criterion in the ATT, as found in Article 7(4). This provision stipulates that the exporting state party, in making its export risk assessment, "shall take into account the risk of the conventional arms covered under Article 2(1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children". The inclusion of gender-based violence in Article 7(4) is ground-breaking in its recognition that acts of gender-based violence can be facilitated by the international arms trade and its requirement of assessing the risk of gender-based violence as a distinct violation of international human rights law (IHRL) or international humanitarian law (IHL).

³² WILPF, *Trading arms, bombing towns*, 2015, p4

<http://www.reachingcriticalwill.org/images/documents/Publications/trading-arms-bombing-towns.pdf>

³³ WILPF "WILPF's position on the international arms trade treaty"

<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/WILPF-ATT-position.pdf>

This is one area of the Treaty where there has been less work done with states to clarify what the assessment process should include and which resources to consider.

WILPF put forward in 2012 the following (non-exhaustive) list of key risk assessment questions to consider with respect to gender-based violence³⁴:

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

Sources of information to make an assessment can include:

- Documentation from the importing state on the controls under law, policy and extent of implementation, as well as similar information from national and international civil society.
- UN documentation and reports: Information in the report and the annex of the UN Secretary-General annual report on conflict-related sexual violence (pursuant to paragraph 18 of SCR 1960 (2010)). The Annex includes a list of parties (military forces, militia and other armed groups) responsible for patterns of sexual violence. Other information from the Office of the Special Representative on Sexual Violence in Conflict including the early warning matrix for sexual violence.
- Data and information related to national implementation of Security Council Resolution 1325 (2000) and related resolutions, including NGO shadow reports. Information from the global indicators to measure implementation of Resolution 1325 (listed in the Secretary General's Report S/2010/498) which are currently being operationalized by the UN and Member States.
- Human rights reports by States and shadow reports by NGOs under the CEDAW and other human rights treaties and recommendations from treaty monitoring bodies.
- Reports and recommendations from other UN or Regional human rights bodies and mechanisms.
- Human rights reports by NGOs.
- Open and closed source information from international agencies in the recipient State.
- Reports and information by research institutes focused on conventional arms and international trade.

³⁴ Amnesty International, Religions for Peace, IANSA Women's Network and WILPF, *The Arms Trade Treaty: Securing Women's Rights and Gender Equality A united call to explicitly include gender-based violence in the criteria*, June 2012. <http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/att/policypaper.pdf>; see also WILPF (2015), *Gender-based violence and the Arms Trade Treaty*, available at: http://www.reachingcriticalwill.org/images/documents/Publications/GBV_ATT-brief.pdf and WILPF (2016), *Preventing gender-based violence through arms control: tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action*, available at: <http://www.reachingcriticalwill.org/images/documents/Publications/preventing-gbv.pdf>.

- Reports from national diplomatic missions in the recipient States.

4. *Are you aware of a refusal or refusals by government to authorize a proposed arms transfer or arms transfers on the basis that the arms transfer would impact on the enjoyment of human rights? If possible, please specify the factors that were taken into consideration in making this decision, and the nature of the human rights that would have been impacted by the proposed transfer.*

It can be difficult to obtain detailed data on arms transfer and licensing denials. Governments do sometimes report that a denial has taken place but the related reasons are not always provided. EU members are obligated to share information amongst each other about license denials as part of transparency and confidence building in the Common Position.

The Small Arms Survey has developed an annual Transparency Barometer that evaluates a government's overall transparency in small arms export decision-making. One of the variables they consider is the number of licenses refused by a government, which is determined by if an explanation of the refusal is provided, among other factors.³⁵

There was debate about including an obligation on states parties to the ATT to report on their transfer details, but this was ultimately not included in the final text. Some civil society monitoring efforts are being established, including to assist states in identifying good practice in making assessments. One of these is the Risk Watch methodology being developed by the ATT Monitor. The project seeks to synthesise and analyse credible information on arms transfer-related risks in contexts of concern to create "a more balanced knowledge base among states parties, and will be a guide both to their own comprehensive risk assessments, and to them and civil society in the analysis of licensing practice."³⁶

Some recent examples of transfer denials, as shared through media, are as follows:

- After significant pressure from the international community, China stopped transfers of arms and ammunition to South Sudan on the basis of the escalating conflict there in 2014.³⁷ Since then, detailed reports of widespread human rights abuses and the onset of genocide has generated support from half of UN Security Council members for an arms embargo on South Sudan, although this was ultimately blocked in December 2016.³⁸
- The United States blocked a purchase of Cobra combat helicopters to Nigeria in 2015, which were requested for support in their efforts against Boko Haram. They stated that they had helped the Nigerian government to the extent possible by law and accused the Nigerian security forces of human rights violations. However, the American envoy to Nigeria later denied this rationale.³⁹

³⁵ "The Transparency Barometer" <http://www.smallarmssurvey.org/weapons-and-markets/tools/the-transparency-barometer.html>

³⁶ Robert Perkins, "Launch of the 2016 ATT Monitor Report" August 2016 <http://controlarms.org/en/wp-content/uploads/sites/2/2016/08/Launch-of-the-ATT-Monitor-Annual-Report-2016.pdf>

³⁷ Ilya Gridniff, "China halts arms sales to South Sudan after Norinco Shipment" 30 September 2014 <https://www.bloomberg.com/news/articles/2014-09-29/china-halts-weapons-sales-to-south-sudan-after-norinco-shipment>

³⁸ "Outrage after UN blocks South Sudan Arms Embargo" 23 December 2017 <http://www.aljazeera.com/news/2016/12/outrage-blocks-south-sudan-arms-embargo-161223153844996.html>

³⁹ Cooper, Helene, "After Years of Distrust, U.S. Military Reconciles With Nigeria to Fight Boko Haram" *New York Times*, 15 May 2016, https://www.nytimes.com/2016/05/16/world/africa/boko-haram-nigeria-us-arms-sales-warplanes.html?_r=0

- In 2016, the Netherlands voted to stop all arms transfers to Saudi Arabia on the basis of its bombing campaign in Yemen and mass executions in its own borders.⁴⁰
- In 2016, the US decided to limit military support to Saudi Arabia's campaign in Yemen because of concerns over widespread civilian casualties.⁴¹

5. Are you aware of a refusal or refusals by a government to authorize a proposed arms transfer on the grounds of the risk of diversion of the arms?

While we can assume the risk of diversion to have been considered in some denials, we do not have sufficient evidence of this to highlight any examples in this report.

There is a process underway via the ATT framework to develop a reporting template that will be specific to how states parties are mitigating the risk of diversion. The government of Argentina began work on a template for this in 2016 but it has not progressed, although may be discussed in the ATT Working Group on Reporting and Transparency.

⁴⁰ <http://www.independent.co.uk/news/world/europe/netherlands-votes-to-ban-weapons-exports-to-saudi-arabia-a6933996.html>

⁴¹ <http://www.reuters.com/article/us-usa-saudi-arabia-yemen-exclusive-idUSKBN1421UK>