

# THE ARMS TRADE TREATY: AN IMPORTANT OPPORTUNITY TO PREVENT GENDER BASED VIOLENCE AT GUNPOINT

## Why?

Discussions towards the creation of the Arms Trade Treaty (ATT) present an important opportunity to better regulate the international trade in the conventional arms and ammunition. Of these, it is most often small arms and light weapons (SALW) that are used to facilitate and commit various forms of violence and crimes against women, both during and outside of armed conflict. These forms of violence violate international human rights law and international humanitarian law.<sup>1</sup>

There are different understandings and interpretations of gender-based violence and it often becomes a synonym for violence against women. What needs to be made clear is that gender-based violence affects, and can be aimed at, both men and women. For example, sexual violence against men is also now increasingly acknowledged as means of gender-based violence against men, which occurs in times of conflict and peace. However, the focus of this paper is gender-based violence against women as defined by the UN Committee on the Elimination of Discrimination against Women (CEDAW) as being “directed against a woman because she is a woman or that affects women disproportionately.”

If the Arms Trade Treaty (ATT) is to be an effective legal instrument in regulating the international arms trade, recognition of the specific potential impacts of international transfers on women and their rights should be included. Such an approach would be consistent with broader UN practice of the inclusion of a gender perspective. It would also ensure that the international standards within the ATT to regulate conventional arms comprehensively addresses the full range of potential risks associated with trading and transfers.

The United Nations (UN) has progressively recognised

<sup>1</sup>For example, the International Covenant on Civil and Political Rights (ICCPR) guarantees women the right to life, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to security of person. Rape and sexual abuse are prohibited at all times, including during armed conflict: see for example, Fourth Geneva Convention, Art 27, Geneva Conventions Additional Protocol I, Article 76(1). In 1998, the Rome Statute of the International Criminal Court recognized that acts of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity committed in a situation of armed conflict can constitute a war crime and a serious violation of the Four Geneva Conventions in its Article 8(2bxxii and 2evi), or a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack, in its Article 7(1g). States Parties to CEDAW must take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women (Article 6).

the need to acknowledge and address the distinct rights of women. UN frameworks and initiatives accept the importance of mainstreaming a gender perspective into all areas of its policy and activities. Increasingly there is recognition that peace and security initiatives must be foregrounded by the recognition of women’s rights and participation in such processes. For example, the UN Security Council has developed an overall women, peace and security framework that is progressively being integrated into all of the Council’s work.<sup>2</sup>

The Council also has recognised the need for more systematic attention to women, peace and security commitments in its own work and expressed willingness to ensure that measures are taken to enhance women’s engagement in conflict prevention, conflict resolution and peacebuilding.

*“The causes and consequences of armed violence are highly gendered. (...) Recognition of the gendered nature of armed violence must inform policy and programmatic responses. If the gendered aspects of armed violence — including the male social roles that often shape armed violence and the structural subordination of women and girls in larger society — are not addressed, some of the key root causes of armed violence and its various impacts on girls, boys, women and men might be neglected.”* UN Security Council, S/2011/255, 2011

The General Assembly has on numerous occasions expressed its concerns about the pervasiveness of violence against women in all its different forms and manifestations worldwide, noting that such violence seriously impaired or nullified women’s enjoyment of all human rights and fundamental freedoms.<sup>3</sup>

64,000 women and girls are estimated to have suffered war-related sexual violence in Sierra Leone’s civil war between 1991 and 2002. Testimonies of women explain how the assaults were endured at gunpoint. ‘They put their guns to our throats and stomachs to make sure that we followed their orders,’ one woman reported.

<sup>2</sup>United Nations Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), and 1960 (2010). Resolution 1325 was a milestone in addressing violence against women in situations of armed conflict.

<sup>3</sup>See, for example General Assembly resolutions on the elimination of all forms of violence against women (A/RES/59/167, A/RES/57/181, A/RES/55/68), and resolution on eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and related situations (A/RES/62/134).



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## How?

1. The preamble should recognise that the absence of absence of commonly agreed international standards for the transfer of conventional arms and their diversion to the illicit market are contributory factors to armed conflict, serious violations of international human rights law and international humanitarian law and gender-based violence;
2. The criteria of the ATT should require States not to transfer arms internationally where there is a substantial risk that they will be used to perpetuate or facilitate a pattern of gender-based violence, in order to ensure that the transfer decision making process includes a risk assessment of the specific risks of a potential transfer on the rights of women.
3. The criteria of the ATT should also require States not to transfer arms internationally where there is a substantial risk that they will be used to commit or facilitate serious violations of international human rights law or international humanitarian law. Where this is the case, the transfer authorisation should be denied until there is clear evidence that any risks have been mitigated.
4. In scope, the ATT should include the control of all weapons including small arms and light weapons and ammunition.
5. In order for the ATT to be strong and effective, it should require robust regulation of licensing systems. This includes, for example, mechanisms for (a) prior risk assessment and authorisation; (b) the use of end use assurances where necessary; and (c) brokering controls.

6. The ATT should require that all States keep records of the international arms transfers that the national authorities have provided formal authorisation and received clearance from customs officials.
7. The Treaty should oblige States Parties to publish accurate, comprehensive, timely and public national reports on international transfers of conventional arms and steps taken to implement the Treaty, in order to ensure transparency and accountability, build confidence among States' Parties, and enable relevant actors, including civil society and women's groups, to assess implementation, access information and raise public awareness on these issues.
8. States should incorporate the knowledge and experience of different civil society groups, including women's organisations, in exchanges and training programmes and initiate a more systematic approach to the gathering of sex- and age disaggregated data.
9. An independent Treaty institution, such as an ATT Implementation Support Unit (ISU), should be established. In addition to other roles suggested, the ISU should:

- Conduct gender-inclusive outreach and engage civil society to increase awareness of the Treaty regime and to promote the universality of the Treaty, and;
- Promote civil society engagement and contributions to implementation of the Treaty.

A strong and effective ATT will also reduce the diversion of conventional weapons to the illicit market, specifically small arms and light weapons (SALW) and should therefore complement and reinforce the UN Programme of Action on Small Arms (PoA)

### *Relevant international and regional human rights instruments include:*

- Convention on the Elimination of All Forms of Discrimination against Women [CEDAW];
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention on the Prevention and Punishment of Crime of Genocide, 1948
- Beijing Declaration and Platform of Action, Fourth World Conference on Women, 1995;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others;
- Declaration on the Elimination of Violence against Women;
- Rome Statute of the International Criminal Court (ICC) 1998
- Outcome document of the twenty-third special session of the UN General Assembly, Women 2000
- Four Geneva Conventions of 1949, and additional protocols
- UN SC Resolutions 1325, 1820, 1888, 1889 and 1960
- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

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