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# The Arms Trade Treaty's Gender-Based Violence Risk Assessment:

A QUESTIONNAIRE FOR INFORMATION SOURCES

The Stimson Center and International Human Rights Clinic  
at Harvard Law School

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# GLOSSARY

- ▶ **Arms Trade Treaty (ATT):** an international treaty that establishes standards for regulating the international trade in conventional arms.<sup>1</sup> ATT Article 7(4) mandates that exporting States Parties consider the risk of proposed exports being used to commit or facilitate gender-based violence (GBV).<sup>2</sup>
- ▶ **Conventional arms:** a term used in ATT Article 2(1) to refer to the following categories: battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons.<sup>3</sup> The term also encompasses parts and components that “provide the capability to assemble” conventional arms (Article 4). National control lists may include additional items. Conventional arms are distinguishable from weapons of mass destruction.<sup>4</sup>
- ▶ **End user:** the intended ultimate recipient of internationally transferred weapons, whether that recipient receives the weapon(s) directly or indirectly. End users are commonly national governments, national military forces, or other national authorities such as police, customs, or paramilitary forces, or subsets of these groups.<sup>5</sup> “End use” refers to the ultimate application of internationally transferred weapons.<sup>6</sup>
- ▶ **Exporter:** the entity submitting a proposed export for review by a licensing officer, such as a manufacturer of conventional arms.
- ▶ **Gender-based violence (GBV):** violence directed against a person on the basis of gender or sex.<sup>7</sup> GBV includes acts of physical, sexual, psychological, and socioeconomic violence.<sup>8</sup>
- ▶ **Human rights due diligence:** the duty of a State to use regulation, oversight, and other tools to protect against human rights abuses committed by other actors, including arms exporters, private individuals, and end users who are not State actors.<sup>9</sup> Human rights due diligence also refers to a process that businesses must undertake to “identify, prevent, mitigate and account for how they address their impacts on human rights.”<sup>10</sup>

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<sup>1</sup> Arms Trade Treaty, art. 1.

<sup>2</sup> Arms Trade Treaty, art. 7(4).

<sup>3</sup> Arms Trade Treaty, art. 2(1).

<sup>4</sup> “Conventional Weapons,” International Committee of the Red Cross, accessed 27 Oct. 2020, <https://casebook.icrc.org/glossary/conventional-weapons>.

<sup>5</sup> Wassenaar Arrangement Plenary, “Introduction to End User/End Use Controls for Exports of Military-List Equipment,” 3 July 2014, p. 1, <https://www.wassenaar.org/app/uploads/2019/consolidated/End-User-Use-Controls-Export-ML-Equipment.pdf>.

<sup>6</sup> “End Use,” Weapons Law Encyclopedia, Geneva Academy, accessed 28 Oct. 2020, <http://www.weaponslaw.org/glossary/end-use>.

<sup>7</sup> Committee on the Elimination of Violence Against Women, “General Recommendation No. 19: Violence Against Women,” 1992, para. 6, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3731\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf); UN General Assembly, “Declaration on the Elimination of Violence Against Women,” Res. 48/104, 20 Dec. 1993, [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21\\_declaration%20elimination%20vaw.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.21_declaration%20elimination%20vaw.pdf); Control Arms, “How to Use the Arms Trade Treaty to Address Gender-Based Violence: A Practical Guide for Risk Assessment,” Aug. 2018, p. 4, [https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide\\_ONLINE.pdf](https://controlarms.org/wp-content/uploads/2018/08/GBV-practical-guide_ONLINE.pdf).

<sup>8</sup> Women’s International League for Peace and Freedom (WILPF), “Preventing Gender-Based Violence Through Arms Control,” Apr. 2016, p. 10, <https://www.reachingcriticalwill.org/images/documents/Publications/preventing-gbv.pdf>.

<sup>9</sup> UN Human Rights Committee, “General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 8.

<sup>10</sup> UN Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights,” principle 15(c), [https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf).

- ▶ **Information source:** an individual who provides information to a licensing officer to assist in the completion of the GBV risk assessment under ATT Article 7(4). Information sources are ordinarily other government officials, such as embassy staff and officials in foreign and trade ministries. In some cases, they may be officials in other governments or intergovernmental organizations.
  
- ▶ **International humanitarian law:** a set of international rules that governs how armed force may be used in armed conflicts.<sup>11</sup> It is intended, in times of armed conflict, to protect persons who are not or are no longer taking part in the hostilities, and establishes other restrictions on the means and methods of warfare.<sup>12</sup>
  
- ▶ **International human rights law:** a set of international rules on the basis of which individuals or groups can expect and claim certain rights that must be respected and protected by States.<sup>13</sup>
  
- ▶ **Licensing officer:** a government official, group of officials, or government body with primary responsibility for evaluating a proposed export's compliance with the ATT and other applicable law.
  
- ▶ **Recipient State:** the country where the end user is located.
  
- ▶ **Risk assessment:** used here to refer to an evaluation required by ATT Article 7(4) to determine the risk of a proposed export being used to commit or facilitate GBV.<sup>14</sup>
  
- ▶ **Small arms and light weapons (SALW):** a category of conventional arms that includes weapons designed for individual use and weapons designed for use by two or three persons serving as a crew.<sup>15</sup> Common examples include revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles, and light machine guns.<sup>16</sup>

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<sup>11</sup> "International Humanitarian Law," Max Planck Encyclopedia of Public International Law, last updated Dec. 2015, <https://opil-ouplaw-com.ezp-prod1.hul.harvard.edu/view/10.1093/law:epil/9780199231690/law-9780199231690-e488?rskey=iBoIQm&result=1&prd=MPIL>.

<sup>12</sup> International Committee of the Red Cross, "Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria – A Practical Guide," 10 June 2020, p. 8, <https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>.

<sup>13</sup> "Human Rights," Max Planck Encyclopedia of Public International Law, last updated Mar. 2007, <https://opil-ouplaw-com.ezp-prod1.hul.harvard.edu/view/10.1093/law:epil/9780199231690/law-9780199231690-e810?rskey=Hf9NqN&result=1&prd=MPIL>; ICRC Arms Transfer Decisions Guide, p. 9.

<sup>14</sup> Arms Trade Treaty, art. 7(4).

<sup>15</sup> International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, <https://www.unodc.org/documents/organized-crime/Firearms/ITI.pdf>; Report of the Panel of Governmental Experts on Small Arms, UN Doc. A/52/298, 27 Aug. 1997, § 24, <https://undocs.org/A/52/298>.

<sup>16</sup> "Small Arms," Weapons Law Encyclopedia, Geneva Academy, accessed 28 Oct. 2020, <http://www.weaponslaw.org/glossary/small-arms>.



## RATIONALE

As part of its regulation of international arms transfers, the Arms Trade Treaty (ATT) requires States Parties to consider the risk that an arms export could be used to commit or facilitate gender-based violence (GBV), a form of violence perpetrated against individuals because of their gender or sex, which takes place in every part of the world. To undertake this risk assessment, licensing officers — government officials charged with implementing the ATT and other international and domestic obligations in export control processes — rely on information held by their own departments, publicly available information, and information from “information sources.” Information sources may be officials in a licensing officer’s own government, including country-desk officers and embassy officials in foreign ministries, or, in some cases, officials in intergovernmental organizations or allied governments. This paper outlines key questions that licensing officers should ask of their information sources. Its goal is to assist licensing officers in obtaining the best information relevant to the GBV risk assessment, thereby enabling them to make well-informed and ATT-compliant decisions on export applications.

In Part One, the paper provides a short questionnaire for information sources. The questionnaire contains three sets of interrelated questions on:

- ▶ the human rights records of the exporter, end user, and their associates,
- ▶ GBV in the recipient State, and
- ▶ the connection between the export and GBV risks.

Part Two breaks down each question’s relevance through contextualized examples and provides background information on the concepts addressed in each set of questions. Part Three annexes questions licensing officers can use to help them interpret and apply the answers received from information sources.

# METHODOLOGY

The Stimson Center and the International Human Rights Clinic at Harvard Law School undertook primary and secondary research for this paper starting in January 2020. Researchers interviewed licensing officers from seven countries and received written descriptions of export control processes from three others. Interviews explored how licensing officers approached compliance with ATT Articles 6 (prohibitions) and 7 (export and export assessment) both in general and in relation to GBV risks specifically. Interviews also covered the overall arms export control process, decision-making structures, and relevant laws and policies in the State in question. In addition, researchers reviewed relevant literature on GBV and conventional arms. Additionally, researchers hosted a private virtual workshop on 16 November 2020 with civil society experts and government officials to discuss the paper's focus and approach, and to solicit input and advice.



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## INTRODUCTION

**A**lthough many countries have export control processes that encompass human rights considerations, interviews conducted for this paper with licensing officers from a variety of ATT States Parties indicate that GBV risks are rarely given regular, separate, and detailed consideration. This may be the case even when an ATT State Party has demonstrated significant political will to implement Article 7(4) – which requires States Parties to consider the risk of GBV when making arms export decisions – and licensing officers themselves are committed to incorporating GBV risks into their analyses. Without detailed and separate analysis of GBV risks, elements of concern that may not be captured in a more general human rights analysis can remain consistently overlooked or minimized.

### Article 7(4) of the Arms Trade Treaty

*The exporting State Party, in making this [export] assessment, shall take into account the risk of the conventional arms [covered under the ATT, as well as their parts and components] being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.*

While every government structures its export control process differently, the gap in implementation is common and arises as a result of at least four factors that can appear together or in isolation.

▶ **First**, licensing officers or information sources may have misperceptions about GBV and how it is perpetrated, such as the view that GBV is synonymous with domestic violence and exclusively relates to women or that only exports of small arms create GBV risks. In fact, all types of conventional arms covered by the ATT could be used to commit or facilitate GBV and any individual can be subjected to violence based on their gender or sex, inside or outside the context of domestic violence. Similarly, GBV can take place within or outside armed conflict, and risks should be assessed whether or not a conflict is taking place in the recipient State.

▶ **Second**, licensing officers, even if they are well-informed and diligent, may struggle to access information that enables them to undertake a thorough GBV risk assessment in a timely manner. This challenge is compounded when institutional resources have not been internally directed toward analyzing GBV risks specifically, as it becomes hard for licensing officers to justify spending extra time conducting their own research.

▶ **Third**, licensing officers or information sources may consider that a standard, general human rights or country-conditions analysis will implicitly cover GBV and not see value in analyzing GBV risks separately.

▶ **Fourth**, licensing officers may not have a clear sense of the types of information to seek from information sources on GBV, who in turn may struggle to understand how they can best contribute to a GBV risk assessment.

This paper responds to all of these connected challenges: the questionnaire is designed to elicit answers that provide licensing officers with relevant information relating to specific export applications, and aims to create a regular practice inside government machinery of asking and answering questions about the GBV risks an export may pose. Normalizing this practice as part of everyday export control processes would not only build up individual officials' knowledge of arms and GBV risks, but also create lasting institutional memory. While there may be many exports that would not entail GBV risks, establishing such a regular practice would ensure that GBV risks receive the attention they merit in each and every case.

More generally, giving specific attention to GBV risks within export control processes will enable States Parties to better fulfill the ATT's commitment to reducing human suffering and protect human rights — goals that all States Parties share.<sup>17</sup> GBV has been recognized as a human rights violation.<sup>18</sup> It is a form of unlawful discrimination<sup>19</sup> and inhibits “all human rights and fundamental freedoms” of the individuals who experience it.<sup>20</sup>

## GBV and the ATT

Article 7(4) of the ATT instructs States Parties to consider the risk of the export “being used to commit or facilitate serious acts of gender-based violence.” Article 7(4) appears in the context of the larger Article 7 export assessment requirement to: “assess the potential” that the export could be used to “contribute to or undermine peace and security” or “commit or facilitate a serious violation” of international human rights law or international humanitarian law, among other things; consider possible measures to mitigate any identified harms; and deny an export if the risk of

While systematic and/or widespread human rights violations may “underline the seriousness of the human rights situation,” “violations do not have to be systematic or widespread”<sup>21</sup> to be serious. Likewise, while the most obvious examples of GBV are those that are systematic and widespread, or perpetrated by the State directly, there is a growing

In some cases, acts of GBV may amount to war crimes, crimes against humanity, or other violations outlined in ATT Article 6(3). In these cases, the ATT prohibits transfers, including exports, if the State Party “has knowledge at the time of the authorization that the arms or items would

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<sup>17</sup> Arms Trade Treaty, preamble.

<sup>18</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), “General Recommendation No. 19: Violence against Women,” 1992, para. 1, 7; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, 18 Dec. 1979; Control Arms and International Human Rights Clinic at Harvard Law School, “Interpreting the Arms Trade Treaty,” Apr. 2019, pp. 3-4, <https://hrp.law.harvard.edu/wp-content/uploads/2019/04/Interpreting-the-Arms-Trade-Treaty.pdf>.

<sup>19</sup> CEDAW General Recommendation No. 19, para. 1, 7; G.A. Res. 34/180.

<sup>20</sup> Commission on the Status of Women, 57th Session, March 2013, “Agreed conclusions on elimination and prevention of all forms of violence against women and girls,” E/CN.6/2013/11, 18 March 2013, para.10.

<sup>21</sup> Council of the European Union, “User’s Guide to Council Common Position 2008/944/CFSP Defining Common Rules Governing the Control of Exports of Military Technology and Equipment,” 16 Sept. 2019, p. 47, <https://www.consilium.europa.eu/media/40659/st12189-en19.pdf>.

<sup>22</sup> Amnesty International, “Applying the Arms Trade Treaty to Ensure the Protection of Human Rights,” p. 13, <https://www.amnesty.org/download/Documents/ACT3000032015ENGLISH.PDF>.

<sup>23</sup> Arms Trade Treaty, Art. 6(3).



## PART ONE: QUESTIONNAIRE FOR INFORMATION SOURCES

The questionnaire is designed as a general resource for individuals working as information sources, and some information sources may be better placed to answer particular questions more than others. As a result, although the questionnaire is most useful when it is approached holistically, licensing officers could decide to extract sets of questions depending on the information source's role and subject-matter expertise. Such an approach may also be warranted in countries where information sources have fewer resources or less access to information than in larger export control systems. In any case, relevant aspects of Part Two and the glossary to this paper should be provided alongside the questionnaire to ensure that information sources know how to provide useful answers and understand the ways in which those answers will inform the GBV risk assessment.

In some cases, it may become rapidly apparent that an export should be denied, and information sources may not need to answer all questions; in other cases, a detailed analysis may be required. Based on their own assessments of the time necessary to complete all or part of the questionnaire, licensing officers might consider indicating to the information source how much time the questionnaire will take to complete. Most questions assume an information source is within the licensing officer's own government, but some questions could also appropriately be posed to officials in other governments or within intergovernmental organizations. The questionnaire is not designed for information sources who are officials of the recipient State.

## Questionnaire for Information Sources: GBV Risks of a Proposed Arms Export

You are receiving this questionnaire because a licensing officer has identified you as an information source whose answers to the following questions will assist them to assess the risk of conventional arms in a proposed export being used to commit or facilitate gender-based violence (GBV). Your answers to the following questions will help licensing officers to implement your country's international obligation to undertake such an assessment of GBV risks. GBV is one of the most prevalent forms of violence in the world and the regulation of arms exports has an important role to play in addressing and preventing GBV.

To assist licensing officers, you should give detailed answers, including contextual information where available. The answers to some questions may overlap with others (or with other analyses you are undertaking with respect to this export), and the questionnaire need not be approached sequentially. If you have incomplete or inadequate information in response to certain questions, please indicate that this is the case and suggest other possible information sources.

### A. Exporter and End User Human Rights Record

*Undertaking an initial evaluation of the human rights records of the exporter and end user can help licensing officers to make a preliminary determination about the level of scrutiny an application merits. Here, "human rights record" means record of compliance with international human rights law and, in situations of armed conflict, international humanitarian law.*

1. To your knowledge, has any government denied an export license because of the human rights record of this exporter or this end user, or any close associate of either? If so, why?
2. Is there public information or information held by your department on the human rights record of this exporter or end user? If so, how does the available information demonstrate that the exporter or end user complies or does not comply with its obligations to uphold human rights?
3. Is there public information or information held by your department on the human rights record of any close associate of this exporter or end user? If so, how does the available information demonstrate that the associate complies or does not comply with its obligations to uphold human rights?

## B. GBV in the Recipient State

*GBV may take a variety of forms, broadly classified under four headings: physical, sexual, psychological, and socioeconomic. The answers to these questions will assist licensing officers in understanding conditions in the recipient State relevant to GBV.*

- 1.** What is the extent and severity of GBV, prior and current, in the recipient State? Consider acts of physical, sexual, psychological, and socioeconomic GBV.
- 2.** Given that underreporting of GBV is prevalent and, in some cases, reliable statistics or other indicators may not be available, what factors in the recipient State could contribute to underreporting or issues with GBV statistics?
- 3.** What role does the recipient State itself play in the commission and facilitation of GBV by State and non-State actors? For example, is there a strong legal framework aimed at preventing GBV that is robustly implemented, or is there a culture of impunity for GBV?

## C. Connection between this Export and GBV Risks

*The answers to these questions will help licensing officers to assess the likelihood of the export itself being used to commit or facilitate GBV in the recipient State, given the general country conditions outlined in the previous section.*

- 1.** Has the type of conventional arms in the proposed export been used to commit or facilitate physical, sexual, psychological, or socioeconomic GBV in the recipient State? For example, if the exporter has applied to export battle tanks, consider how battle tanks have been implicated in GBV in the recipient State.
- 2.** Is there information that links the end user to the prior or current commission or facilitation of any type of GBV? If so, has the specific type of conventional arms in the export been linked to the commission or facilitation of GBV by the end user?
- 3.** What relationships does the end user have with known perpetrators of GBV in the recipient State? Are there risks that the export could end up in the hands of these perpetrators?
- 4.** Is there any other information that in your view increases or decreases the likelihood that the export could be used to commit or facilitate GBV in the recipient State? For example, recent military leadership changes, planned trainings, shifts in the political landscape, etc.



## PART TWO: EXPLANATORY GUIDE

**P**art Two contains an explanatory guide to the questionnaire in Part One. It is primarily directed at information sources, but licensing officers and other officials may also find it useful. Part Two is divided into sections A, B, and C (as above). Each section begins with an overview of the section's relevance to the GBV risk assessment, and a restatement of the relevant questions from the questionnaire. Every question is followed by an example (or several examples) of information that an information source might provide in response to the question, and an explanation of how the information would be useful for the licensing officer. Next, each section explains terms and concepts relevant to the questions. States whose foreign ministries regularly produce country-specific human rights reports are encouraged to use information on GBV risks that is obtained or compiled through completing the questionnaire in those regular country-specific reports. They may also wish to use aspects of the questionnaire as a template for reporting on GBV risks in those reports.

### A: Exporter and End User Human Rights Record

The purpose of the questions in this section is to provide licensing officers with information that enables them to form an initial view of the export application and whether it warrants a heightened level of scrutiny. Patterns revealed may include a track record of respect for human rights, or alternatively a disregard for human rights. For example, an exporter or end user that has routinely been denied exports on human rights grounds should be subject to increased scrutiny because there is reason to think that its practices may not include a sufficiently robust evaluation of the human rights ramifications of its operations.

The answers to the questions in this section should inform and be informed by the general human rights and (where relevant) international humanitarian law assessment that the licensing officer or information source undertakes to comply with ATT Articles 6 and 7 more broadly. Importantly, the information provided in response to these questions and in the more general assessment should be current, to the extent

possible. In relation to Question One in particular, information sources outside the licensing officer's own country may be best placed to provide information on an exporter or end user's denial record. To the extent feasible, countries should consider sharing denial records with each other's licensing officers to facilitate completion of this section's questions.

## Questions and Examples

**Question One:** To your knowledge, has any government denied an export license because of the human rights record of this exporter or this end user, or any close associate of either? If so, why?

**Example:** A company currently seeking to export machine guns to Country B had an export request to Country A denied two years ago because the company was intending to send the weapons to a part of Country A's military with a notorious record of perpetrating sexual violence.

- ▶ This record is relevant because the company sought to export conventional arms to a well-known perpetrator of human rights violations.
- ▶ The fact the denial was in the recent past is also relevant. Institutional change takes time.
- ▶ With this information, the licensing officer could ask the exporter for evidence of steps it has taken in the past two years to improve its adherence to human rights standards.

**Question Two:** Is there public information or information held by your department on the human rights record of this exporter or end user? If so, how does the available information demonstrate that the exporter or end user complies or does not comply with its obligations to uphold human rights?

**Example:** The end user, a regional police force, has made public statements about its commitment to ending violence against women and has announced the introduction of an internal compliance program to ensure that the arms it imports do not contribute to such violence. Official reports suggest that it has honored this promise.

- ▶ In this example, the end user is a specific regional police force. To the greatest extent possible, it is important to establish what part of the police or security forces will receive an export.<sup>24</sup>
- ▶ A public commitment to respecting human rights, backed up with action, illustrates good will on the part of this end user and a comprehensive plan demonstrates intention and conscientiousness that the police force has carefully considered its responsibilities.

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<sup>24</sup> Council of the European Union, "User's Guide," p. 49.

- ▶ In addition to official reports, the information source should search for other information to verify whether the police force is upholding its commitment to ending violence against women.

**Question Three:** Is there public information or information held by your department on the human rights record of any close associate of this exporter or end user? If so, how does the available information demonstrate that the associate complies or does not comply with its obligations to uphold human rights?

**Example:** The exporter has a joint venture with Company B in countries around the world. Company B has previously been implicated in sending weapons to a military unit that forced women into sexual slavery.

- ▶ Company B's record is relevant because an associated company may be closely linked to an exporter such that adherence to human rights principles, or lack thereof, may be shared between companies.
- ▶ Even if an exporter has a good human rights record, if one of its close associates has a poor record, the information source should investigate the nexus between the two entities further.
- ▶ In this case, the information source should investigate the connection between the exporter and Company B to evaluate further if the exporter's operations are sufficiently distanced from Company B, or if Company B has taken steps to rectify its poor human rights record, or if the exporter has used its leverage to mitigate the human rights impact of Company B's operations.<sup>25</sup>

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<sup>25</sup> UNGP, National Action Plans on Business and Human Rights, Guiding Principle 13, <https://globalnaps.org/ungp/guiding-principle-13/>.



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# Terms and Concepts

## *End users' human rights obligations*

End users are frequently military actors, police, or other entities with links to these groups. When the end user is a State actor, it carries with it the human rights obligations of that State. Significant human rights treaties include: The International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of the Child. In the context of an armed conflict, State and non-State parties to the conflict must also abide by international humanitarian law.

As well as having a direct responsibility for ensuring State actors' respect for human rights, States have a due diligence obligation to use regulation, oversight, and other tools to protect against abuses committed by other actors, including arms exporters and end users who are not State actors.<sup>26</sup> Notably, as part of its obligation to protect human rights, each State should require businesses operating in its territory to exercise human rights due diligence.<sup>27</sup>

## *Exporters' human rights obligations*

Businesses have a responsibility to respect human rights. Under the UN Guiding Principles on Business and Human Rights, they “must avoid causing or contributing to human rights abuses through their business activities, including the use of their products, even if the businesses have not contributed to those impacts.”<sup>28</sup> However, available evidence suggests that few arms exporters demonstrate this human rights due diligence in practice.<sup>29</sup> Businesses also have a responsibility to “seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”<sup>30</sup>

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<sup>26</sup> UN Human Rights Committee, “General Comment 31,” para. 8.

<sup>27</sup> UN Committee on Economic, Social and Cultural Rights, “General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities,” UN Doc. E/C.12/GC/24; A/HRC/32/19 and A/HRC/32/19/Add.1; UN Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” UN Doc. HR/PUB/11/04, 2011 (UNGPs).

<sup>28</sup> UN Guiding Principles on Business and Human Rights, Guiding Principle 13; Organization for Economic Cooperation and Development, “OECD Guidelines for Multinational Enterprises,” <http://dx.doi.org/10.1787/9789264115415-en>; UNGP 26.

<sup>29</sup> Amnesty International, “Outsourcing Responsibility,” ACT 30/0893/2019, p. 5, <https://www.amnesty.org/download/Documents/ACT3008932019ENGLISH.PDF> (there is an “enormous gap between the very real human rights risks the defense sector often runs — particularly in relation to the supply of weapons to countries affected by conflict or upheaval where human rights compliance is poor — and the measures taken to address these clear risks”).

<sup>30</sup> UN Guiding Principles on Business and Human Rights, Guiding Principle 13.



## B: GBV in the Recipient State

Understanding the prevalence of the four different types of GBV in the recipient State is essential for a licensing officer to make reasonable predictions about potential future GBV linked to the proposed export. Question One is designed to provide the licensing officer with background information about the extent and severity of GBV in the recipient State. Importantly, because GBV is prevalent but systematically underreported, its true extent is almost always greater than reported statistics suggest. The answer to Question Two will assist the licensing officer to comprehend the degree of GBV underreporting in the recipient State and to make a more realistic prediction about potential future GBV related to the proposed export. Question Three speaks to the role the State plays in setting general legal and cultural frameworks around GBV.

Some information identified by the questions in this section may be relevant to the information source's responses to Section C ("Connection Between this Export and GBV Risks"). In responding to the questions in this section, however, the information source should provide information on all GBV, whether or not linked to conventional arms. Though a certain type of GBV may be more prevalent in one context than another — for example, rates of physical GBV may be higher in emergencies/conflict situations<sup>31</sup> — information sources should describe GBV perpetrated in any context and by any actor, State or non-State. When the information source possesses contextual information about GBV incidence in the recipient State alongside numeric or statistical information, the information source should provide that contextual information to the licensing officer. Contextual information is useful not only to illustrate how GBV occurs in the recipient State, but also how it might be linked to the proposed export (see Section C below).

Information sources may have access to regularly updated human rights analyses of the recipient State. If an information source relies on such an analysis in providing answers to this questionnaire, the information source should first ensure that the analysis is as up to date as possible. Even when an analysis has recently been updated, however, the information source should verify that the analysis adequately accounts for GBV. Human rights analyses at a general level may inadvertently fail to give consideration to GBV concerns at the level of granularity the ATT risk assessment requires. Nevertheless, information gathered in answer to the questions in this section may overlap with and should complement the general human rights assessment an information source or licensing officer undertakes regarding the export in question.

<sup>31</sup> Council of the European Union, "User's Guide," p. 54.

# Questions and Examples

**Question One:** What is the extent and severity of GBV, prior and current, in the recipient State? Consider acts of physical, sexual, psychological, and socioeconomic GBV.

## Physical GBV can include:

physical abuse, homicide, assault, torture, domestic violence, human trafficking, forced labor, slavery, honor killings, targeted physical attacks.<sup>32</sup>

## Example:

Honor killings are widely known to be a serious problem in the recipient State.

- ▶ Honor killings are a form of physical GBV because they are physical violence targeting women.<sup>33</sup>
- ▶ The information source should provide contextual information alongside strictly numeric statistics.<sup>34</sup> For example, an information source might detail who the agents of honor killings are, their relationship to the victims, and how the government and legal system responds to honor killings.<sup>35</sup> This information will assist the licensing officer to determine the scenarios in which honor killings take place.

<sup>32</sup> Control Arms, “How to Use the Arms Trade Treaty to Address Gender-Based Violence,” pp. 4, 16.

<sup>33</sup> Amnesty International, “Culture of Discrimination: A Fact Sheet on ‘Honor Killings,’” [https://www.amnestyusa.org/files/pdfs/honor\\_killings\\_fact\\_sheet\\_final\\_2012.doc](https://www.amnestyusa.org/files/pdfs/honor_killings_fact_sheet_final_2012.doc).

<sup>34</sup> Centralized statistics, such as those published by the World Bank or in national surveys, may be scarce or nonexistent in a particular recipient State. Where centralized statistics are not available, the information source should strive to provide surrogates for such statistics. Local human rights bodies often publish reports on incidents of violence as they occur. For example, the Human Rights Commission of Pakistan regularly reports on honor killings throughout the country. The information source should consider such information in the aggregate and, where possible, provide overview analyses to licensing officers in lieu of traditional statistics.

<sup>35</sup> In 2018, for example, the Supreme Court of India ruled in *Shakti Vahini v. Union of India* that honor killings not only are criminal, but also violate Indian citizens’ constitutional rights to a dignified life and to freedom of expression. The Court went on to suggest several preventive measures for State governments to take in their efforts to combat honor killings. This ruling, as well as its implementation, constitute potentially useful contextual information for a licensing officer.



### **Sexual GBV can include:**

rape (intimate, occasional, and systematic), sexual slavery, unwanted sexual advances, sexual harassment, sexual assault, sexual exploitation, forced marriage, child marriage, forced prostitution, forced pregnancy or denial of the use of contraceptives or other measures to prevent against sexually transmitted diseases, forced abortion, enforced sterilization, female genital mutilation, obligatory inspections for virginity, honor crimes, and threats of any of the foregoing acts.<sup>36</sup>

### **Example:**

A government agency in the recipient State has published a study that details rampant sexual violence against boys by local police.

- ▶ Statistics on rates of rape and sexual assault in the recipient State help the licensing officer to evaluate the prevalence of the issue in the country.<sup>37</sup>
- ▶ Any available contextual information should accompany the statistics. If possible, the information source should describe who the main perpetrators of rape and sexual assault are, who the victims are, and whether there are any regional or local patterns in rape and sexual assault. Contextual information helps the licensing officer to understand who and what cause rape and sexual assault in the recipient State.

<sup>36</sup> United Nations Secretary-General, Report on Conflict-Related Sexual Violence, UN Doc. S/2015/203, 23 March 2015, ¶¶ 1-2, 82-83; WILPF, Preventing Gender-Based Violence, pp. 10, 42; World Health Organization, “World Report on Violence and Health,” 3 Oct. 2002, pp. 149-50.

<sup>37</sup> Gender Links for Equality and Justice, “The Gender Based Violence Indicators Study: Western Cape Province of South Africa,” Jan. 2014, <http://www.genderlinks.org.za/wp-content/uploads/2016/03/GBV-Indicators-Study-%E2%80%93-Western-Cape-Province-SA.pdf>.

## Psychological GBV can include:

abuse, humiliation, neglect, confinement, harassment, intimidation, bullying, coercion, defamation, and verbal insults.<sup>38</sup>

### Example:

A well-respected local NGO recently released a report about the common practice of soldiers harassing and humiliating male military recruits perceived to be overly effeminate.

- ▶ The practice described above is a form of psychological GBV as it is behavior that causes psychological harm to military recruits because of their noncompliance with societal expectations pertaining to their gender.
- ▶ In responding to this question, the information source should provide both numeric and contextual information. Contextual information relevant to this example could include the military branches or training locations that take part in the harassment, whether military leadership are aware of the practice, whether disciplinary proceedings have been instituted in response to such practice, etc.
- ▶ This contextual information will help the licensing officer to understand the general backdrop of GBV in the recipient State, as well as the risk of the proposed export being used to commit or facilitate more of the same.

<sup>38</sup> WILPF, "Preventing Gender-Based Violence," p. 10; European Institute for Gender Equality, "Glossary of Definitions of Rape, Femicide, and Intimate Partner Violence," Vilnius: European Institute for Gender Equality, p. 45, <https://eige.europa.eu/publications/glossary-definitions-rape-femicide-and-intimate-partner-violence>.



## Socioeconomic GBV can include:

limiting access to money; controlling access to society (including health care, employment, and education); exclusion from financial decision making; and discriminatory traditional laws on inheritance, property rights, and use of communal land.<sup>39</sup>

### Example:

The recipient State has estate laws that dispossess female children from inheriting a parent's estate by default. There is an active and popular legal reform movement to change these discriminatory laws, but the movement's progress is stifled by opposition from conservative political groups.

- ▶ The effects of this legal architecture amount to socioeconomic GBV because they deprive women of equal financial opportunities on the basis of their gender.
- ▶ The information source should report what they know about the country's legal system and the formal inequality that it establishes, as well as how the laws are enforced in practice.
- ▶ Useful contextual information could include who the political opponents of reform are and the means by which they express opposition.

<sup>39</sup> WILPF, "Preventing Gender-Based Violence," p. 10.



**Question Two:** Given that underreporting of GBV is prevalent and, in some cases, reliable statistics or other indicators may not be available, what factors in the recipient State could contribute to underreporting or issues with GBV statistics?

**Example:** The recipient State's ministry of justice reports yearly crime statistics. In those reports, the ministry reports the incidence of intimate partner violence. The underlying data show, however, that the figure used to represent the incidence of intimate partner violence actually refers to convictions for domestic abuse.

- ▶ In this example, the official figure likely severely underestimates the incidence of intimate partner violence because successful convictions are generally a small fragment of all violent incidents that actually take place.<sup>40</sup>
- ▶ Representations of GBV tend to diverge further and further from actual incidents as they proceed from disclosures of violence (for example, to police or in a survey), to violence reported in official sources, to charges brought for violent acts, to trials, and finally to successful convictions.
- ▶ Information sources should provide as much relevant information as possible on the disparity between reported GBV and the actual incidence of GBV so that licensing officers know the data's limitations.
- ▶ The information source should consider the societal, economic, cultural, or religious factors that might prevent a GBV victim from reporting, and how the particular source of the available data might misstate the extent of GBV.
- ▶ In addition, resource constraints and other limitations may make collecting representative statistics particularly challenging in some States, a factor information sources should take into account.

**Question Three:** What role does the recipient State itself play in the commission and facilitation of GBV? For example, is there a strong legal framework aimed at preventing GBV that is robustly implemented, or is there a culture of impunity for GBV?

**Example:** Ten years ago, an NGO in the recipient State released a report detailing a nationwide culture of rampant domestic abuse by policemen. Five years ago, the national legislature passed a law imposing stiff criminal penalties on policemen who perpetrate domestic violence and establishing a set of programs designed to change cultural attitudes about domestic violence. The same NGO released a report last year detailing the successes of the new legal regime.

- ▶ The culture of domestic abuse described in the NGO report constitutes GBV, and would be included in responses to prior questions in this section.

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<sup>40</sup> "Data Collection on Violence Against Women," European Institute for Gender Equality, accessed 22 Oct. 2020, <https://eige.europa.eu/gender-based-violence/data-collection>.

- ▶ The information source should also include information about the legal reforms instituted in the recipient State. Such changes are relevant to the licensing officer’s ultimate evaluation of the GBV situation in the recipient State, particularly because they have been documented as being successful.
- ▶ This example highlights the importance of evaluating not only the content of the law, but also the real-world effect of legal regimes relating to GBV. In this situation, law produced or accompanied cultural change, but this is often not the case.

## Terms and Concepts

### *Gender, sex, and GBV*

While “sex” refers to a set of biological attributes,<sup>41</sup> “gender” is a broader term that refers to the socially constructed characteristics of masculinity and femininity.<sup>42</sup> An individual’s internal gender identity and external gender expression may or may not align with societal expectations.<sup>43</sup> Socially constructed ideas and understandings of gender affect social roles, behavior, identity, and interpersonal relations. They can vary across time and among societies, and intersect with other factors, such as race, ethnicity, religion or belief, health, status, age, class, caste, sexual orientation, and gender identity.<sup>44</sup>

GBV is violence that is directed against a person on the basis of their gender or sex.<sup>45</sup> Though acts of violence against women are common examples of GBV, GBV includes violence against women, men, girls, and boys, as well as people who do not identify as men or women.<sup>46</sup> GBV may also include violence classified under other names, such as intimate partner violence and (some types of) internal repression.<sup>47</sup> Violence that is based on gender may occur at an individual level (such as between two people) or in a generalized sense, and anyone can commit or be the victim of GBV, which may be normalized and reproduced throughout a society, even in the absence of other conflict.

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<sup>41</sup> UN Committee on the Elimination of Discrimination Against Women, “General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women,” CEDAW/C/2010/47/GC.2, 19 Oct. 2010, <https://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>.

<sup>42</sup> Committee on the Elimination of Violence Against Women, “General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women,” 19 Oct. 2010, para. 5, <https://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-2010-47-GC2.pdf>; World Health Organization, “Gender and Health,” last visited 4 Nov. 2020, [https://www.who.int/health-topics/gender#tab=tab\\_1](https://www.who.int/health-topics/gender#tab=tab_1); Control Arms, “How to Use the Arms Trade Treaty,” p. 4. Globally, concepts of gender vary widely and include identities that do not map neatly onto Western conceptions of femininity and masculinity. U.N. General Assembly, “Report of the Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity,” UN Doc A/73/152, 12 July 2018, para. 3, <https://undocs.org/A/73/152>.

<sup>43</sup> UN OHCHR, “Born Free and Equal: Sexual Orientation, Gender Identity, and Sex Characteristics in Human Rights Law” (2d ed.), HR/PUB/12/06/Rev.1, 2019, p. 5, [https://www.ohchr.org/Documents/Publications/Born\\_Free\\_and\\_Equal\\_WEB.pdf](https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf).

<sup>44</sup> Control Arms, “How to Use the Arms Trade Treaty to Address GBV,” p. 4; CEDAW, General Recommendation No. 28.

<sup>45</sup> Control Arms, “How to Use the Arms Trade Treaty to Address GBV,” p. 4; Declaration on the Elimination of Violence against Women, A/RES/48/104, 23 Feb. 1994, art. 1.

<sup>46</sup> Control Arms, “How to Use the Arms Trade Treaty to Address GBV,” p. 4.

<sup>47</sup> Council of the European Union, “User’s Guide,” p. 44.

## Types of GBV

There are four commonly recognized categories of GBV: physical, sexual, psychological, and socioeconomic.<sup>48</sup>

- ▶ Physical GBV includes any act that causes physical harm as a result of unlawful physical force.<sup>49</sup>
- ▶ Sexual GBV includes any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, in any setting.<sup>50</sup>
- ▶ Psychological GBV includes any act or behavior that causes psychological harm to the victim,<sup>51</sup> such as emotional abuse and controlling behavior.<sup>52</sup>
  - Acts of psychological violence may occur in conjunction with other types of violent acts. For example, torture is a form of physical violence that may inflict significant psychological harm, potentially also making it a form of psychological violence. Similarly, intimate partner violence often entails both physical and psychological violence.<sup>53</sup>
  - Acts of psychological violence may also occur independently of other types of violence, however.
- ▶ Socioeconomic GBV includes any act or behavior that causes economic harm to another.<sup>54</sup>
  - Socioeconomic violence may occur on a personal level, as when one abusive spouse limits the other spouse's financial resources to deny their independence or to cause economic hardship.<sup>55</sup> It may also occur at a systemic or societal level, as when a country or subnational government maintains laws that deny equal inheritance rights on the basis of gender or sex.
  - Acts of socioeconomic violence may operate directly or indirectly on their victims. A direct act of socioeconomic violence itself causes economic harm to the victim (a police commander directing his officers to extort women of a particular ethnic minority, for example).
  - Socioeconomic violence may also be perpetrated indirectly, however. A societal rule that mandates married women stay in the home is one example of indirect socioeconomic violence, as it prevents those women from obtaining employment outside the home.

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<sup>48</sup> WILPF, "Preventing Gender-Based Violence," p. 10; Commission on the Status of Women, "Elimination and Prevention of All Forms of Violence Against Women and Girls: Agreed Conclusions," E/CN.6/2013/11, 18 March 2013, para. 11.

<sup>49</sup> European Institute for Gender Equality, "Glossary," p. 44.

<sup>50</sup> World Health Organization, "World Report on Violence and Health," p. 149.

<sup>51</sup> European Institute for Gender Equality, "Understanding Intimate Partner Violence in the EU: The Role of Data," 12 June 2019, p. 2, <https://eige.europa.eu/publications/understanding-intimate-partner-violence-eu-role-data>.

<sup>52</sup> UN Statistics Division, "Guidelines on Producing Statistics on Violence Against Women," ST/ESA/STAT/SER.F/110, 2014, p. 16, [https://unstats.un.org/unsd/gender/docs/Guidelines\\_Statistics\\_VAW.pdf](https://unstats.un.org/unsd/gender/docs/Guidelines_Statistics_VAW.pdf); Istanbul Convention, art. 33 (defining psychological violence as "intentional conduct of seriously impairing a person's psychological integrity through coercion or threats").

<sup>53</sup> European Institute for Gender Equality, "Glossary," p. 45.

<sup>54</sup> UN Statistics Division, "Guidelines on Producing Statistics," p. 17.

<sup>55</sup> UN Statistics Division, "Guidelines on Producing Statistics," p. 17.

## Underreporting

GBV is systematically underreported across all regions of the world.<sup>56</sup> The term “underreporting” here refers both to informational inputs, such as reporting by victims to authorities, and to outputs, such as surveys and reports. On the input side, individuals may underreport for various reasons: inability to file complaints or to seek medical attention,<sup>57</sup> societal or cultural pressure,<sup>58</sup> fear of reprisals,<sup>59</sup> shame, guilt, or stigma,<sup>60</sup> concern about not being believed,<sup>61</sup> political reasons,<sup>62</sup> financial barriers,<sup>63</sup> perceived impunity for perpetrators,<sup>64</sup> threat of losing children,<sup>65</sup> and discriminatory attitudes toward victims in the medical or legal arena.<sup>66</sup>

On the output side, statistical data outputs may paint a misleading picture about the overall extent of GBV. For example, a report may characterize data on convictions for rape as representing the prevalence of rape in the country, while the actual prevalence is higher because not all rapes are reported to the police, or brought to trial, or charged, or result in convictions. For this reason, survey data<sup>67</sup> may present a fuller picture of the overall extent of GBV in the recipient State than do administrative or official data.<sup>68</sup> Relatedly, different entities collecting relevant data may classify and process them in an unsystematic way, resulting in inconsistent data.<sup>69</sup>

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<sup>56</sup> World Health Organization & Pan American Health Organization, “Understanding and Addressing Violence against Women: Sexual Violence,” WHO/RHR/12.37, 2012, p. 1; Claire McEvoy & Gergely Hideg, “Global Violent Deaths 2017,” *Small Arms Survey*, pp. 17, 73, <http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-Report-GVD2017.pdf> (noting the systematic underreporting of certain forms of lethal violence, including intimate partner violence); UN Women, “Progress of the World’s Women,” 2011, p. 51, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2011/progressoftheworldswomen-2011-en.pdf?la=en&vs=2835>; Anna Alvazzi del Frate, Gergely Hideg & Emile LeBrun, “Gender Counts: Assessing Global Armed Violence Datasets for Gender Relevance,” *Small Arms Survey*, 2020, <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Gender-Counts.pdf>; Tia Palermo et al., “Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries,” *American Journal of Epidemiology*, 2014, pp. 602, 603, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3927971/pdf/kwt295.pdf>.

<sup>57</sup> Victims of torture, for example, are often unable to access reporting mechanisms. World Health Organization, “World Report on Violence and Health,” p. 219.

<sup>58</sup> World Health Organization, “World Report on Violence and Health,” p. 11; Marsha E. Wolf, Uyen Ly, Margaret A. Hobart & Mary A. Kernic, “Barriers to Seeking Police Help for Intimate Partner Violence,” *Journal of Family Violence* 18, no. 2 (2003): 121-129.

<sup>59</sup> World Health Organization, “World Report on Violence and Health,” p. 11; Claudia García-Moreno, Henrica A.F.M. Jansen, Mary Ellsberg, Lori Heise & Charlotte Watts, “WHO Multi-Country Study on Women’s Health and Domestic Violence Against Women: Initial Results on Prevalence, Health Outcomes and Women’s Responses,” Geneva, Switzerland: World Health Organization, 2005, <https://www.who.int/reproductivehealth/publications/violence/24159358X/en/>.

<sup>60</sup> World Health Organization, “World Report on Violence and Health,” p. 154.

<sup>61</sup> World Health Organization, “World Report on Violence and Health,” p. 154.

<sup>62</sup> World Health Organization, “World Report on Violence and Health,” p. 189.

<sup>63</sup> International Center for Research on Women et al., “Strengthening Research and Action on Gender-Based Violence in Africa,” 2012, p. 16, [https://www.icrw.org/wp-content/uploads/2016/10/strengthening\\_research\\_and\\_action\\_africa.pdf](https://www.icrw.org/wp-content/uploads/2016/10/strengthening_research_and_action_africa.pdf).

<sup>64</sup> Réseau des Femmes pour un Développement Associatif et al., “Women’s Bodies as a Battleground: Sexual Violence Against Women and Girls During the War in the Democratic Republic of Congo,” 2005, p. 50, <https://repositories.lib.utexas.edu/bitstream/handle/2152/4949/4053.pdf>.

<sup>65</sup> García-Moreno et al., “WHO Multi-Country Study,” p. 75.

<sup>66</sup> García-Moreno et al., “WHO Multi-Country Study,” p. 95.

<sup>67</sup> Bureau of Justice Statistics, “Data Collection: National Crime Victimization Survey,” accessed 29 Oct. 2020, <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=245>; European Union Agency for Fundamental Rights, “FRA Survey on Gender-Based Violence Against Women,” accessed 29 Oct. 2020, <https://fra.europa.eu/en/project/2012/fra-survey-gender-based-violence-against-women>; World Bank, “Country Profile on Gender-Based Violence in Sri Lanka,” 2018, [http://origin.searo.who.int/srilanka/documents/country\\_profile\\_on\\_gender-based\\_violence\\_in\\_sl.pdf](http://origin.searo.who.int/srilanka/documents/country_profile_on_gender-based_violence_in_sl.pdf).

<sup>68</sup> European Institute for Gender Equality, “Understanding Intimate Partner Violence,” p. 8.

<sup>69</sup> European Institute for Gender Equality, “Understanding Intimate Partner Violence,” p. 2.

## State involvement in GBV

The State's involvement in, and response to, GBV is an important component of understanding the overall GBV situation in the recipient State. The State itself may be the perpetrator of GBV, as when State officials carry out GBV in their official capacities. Information sources should be aware that information on GBV perpetrated directly by State actors may be limited or unavailable in relation to some States, and that the lack of accessible data does not imply that no State-perpetrated GBV has occurred.

Where the State is not the perpetrator of GBV, its intentional and inadvertent policies and regimes may still directly and indirectly affect the perpetration of GBV by others. International law obliges States not only to refrain from committing GBV through their agents, but also to meet a due diligence standard to prevent, investigate, and punish GBV by non-State actors.<sup>70</sup> A State's interventions to meet its due diligence obligation must be both responsive to the specific problem, as well as effective in impact. For these reasons, an information source responding to Question Three should examine both GBV committed by State agents *and* whether the State has failed to meet its due diligence obligation in preventing, investigating, and punishing GBV by private actors. A robust legal framework may indicate a commitment to preventing GBV, but if that framework is not well-implemented and in practice exists only on paper, it will have a limited effect on the GBV risks individuals within the State face.

### Researching GBV

Information sources may consult publicly available information as well as information that they possess or can access in an official capacity. A 2016 report from the Women's International League for Peace and Freedom identifies a number of potentially useful sources, including reports from:

- ▶ The government of the recipient State
- ▶ UN human rights bodies, such as the Human Rights Council and Special Procedures
- ▶ Local and international media
- ▶ The International Committee of the Red Cross
- ▶ Local and international NGOs<sup>71</sup>

A 2018 Control Arms report<sup>72</sup> and the 2019 EU User's Guide<sup>73</sup> on the Common Position list a number of additional sources that information sources may find useful.

<sup>70</sup> *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, E/CN.4/2006/61, January 20, 2006, (Report of the Special Rapporteur on violence against women, its causes and consequences), para. 30; UN Human Rights Committee, "General Comment 31," para. 8; *Velásquez Rodríguez v. Honduras*, *Inter-American Commission on Human Rights*, 29 July 1988, para. 172.

<sup>71</sup> Information sources are encouraged to consult the complete list at WILPF, "Preventing Gender-Based Violence," p. 47.

<sup>72</sup> Control Arms, "How to Use the Arms Trade Treaty to Address GBV," pp. 8-12.

<sup>73</sup> Council of the European Union, "User's Guide," p. 41.

## C: Connection between this Export and GBV Risks

The questions in this section address the likelihood of the export itself being used to commit or facilitate GBV in the recipient State, given the general country conditions outlined in the previous section. Question One aims to provide licensing officers with information on how the type of conventional arms in the export has been used to commit the four types of GBV discussed in the previous section.

Questions Two and Three concern the end user, and require an evaluation of their prior acts and potential relationships with known GBV perpetrators. Information sources should provide information on past practices by particular actors, including institutional and organizational actors, that are connected to the export, as well as contextual information that helps the licensing officer make an informed judgment about risk. In the case of State actors, information sources should consider all possible actors of a security apparatus that are capable of causing GBV.<sup>74</sup>

Question Four is a catch all that prompts the information source to consider whether there is any other information relevant to GBV risks. For example, if recent changes in a country's politics make future GBV more likely, this is relevant information for the licensing officer to know in concluding their evaluation of GBV risks.

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<sup>74</sup> Council of the European Union, "User's Guide," p. 49.



# Questions and Examples

**Question One:** Has the type of conventional arms in the proposed export been used to commit physical, sexual, psychological, or socioeconomic GBV in the recipient State? For example, if the exporter has applied to export battle tanks, consider how battle tanks have been implicated in GBV in the recipient State.

## **Physical GBV** can include:

physical abuse, homicide, assault, torture, domestic violence, human trafficking, forced labor, slavery, honor killings, targeted physical attacks.

## **Example:**

The export application concerns rifles and pistols. Intelligence reports state that Gendarmerie units in several regions of the recipient State are reported in regional media to use rifles and pistols to commit extrajudicial executions of women suspected of witchcraft.

- The pattern of extrajudicial killings described here is a form of physical GBV because it is behavior that causes physical harm to women on the basis of their gender or sex. More specifically, the reason for the killings is a gendered stereotype (witchcraft) about women.
- The information source should provide all available information about the GBV acts and the weapons used to facilitate them. This information will assist the licensing officer to determine how the proposed export might be used to commit or facilitate the same or similar GBV if it is approved.

## **Sexual GBV** can include:

rape (intimate, occasional, and systematic), sexual slavery, unwanted sexual advances, sexual harassment, sexual assault, sexual exploitation, forced marriage, child marriage, forced prostitution, forced pregnancy or denial of the use of contraceptives or other measures to prevent against sexually transmitted diseases, forced abortion, enforced sterilization, female genital mutilation, obligatory inspections for virginity, honor crimes, and threats of any of the foregoing acts.

### **Example:**

The export application covers armored combat vehicles. Intelligence reports state that armored combat vehicles are often used to transport female prisoners to a notorious detention facility where rape and other forms of sexual violence are known to be prevalent.

- ▶ In this example, armored combat vehicles are known to be used to transport women to a place where risks of rape or other sexual violence are high. As such, the vehicles are facilitating acts of sexual GBV.
- ▶ Information of this nature helps the licensing officer understand the role that the vehicles in the export could play in facilitating GBV.



## Psychological GBV can include:

emotional abuse, humiliation, neglect, confinement, harassment, intimidation, bullying, coercion, defamation, and verbal insults.

### Example:

The export application covers combat aircraft. A week ago, a local newspaper reported that a military unit used combat aircraft to fly low and drop leaflets over the neighborhood of a prominent female opposition politician who had recently voted against increased military spending. The leaflets included a number of offensive and gendered slurs directed at the politician.

- ▶ Criticism of a politician's policies rises to the level of psychological GBV when it causes psychological damage by deploying gendered slurs and stereotypes intended to cause harm.
- ▶ Here, the military unit used combat aircraft to perpetrate GBV. This example demonstrates that even when arms are not used in typical ways (for example, to cause physical harm in a conflict zone or for security purposes), they may nonetheless be used in other ways to carry out acts of GBV.
- ▶ The information source should include all available contextual information about this incident (or practice, if it is widespread). Doing so will enable the licensing officer to consider how the proposed export might be used to facilitate the same, or similar, acts of GBV in the future.

## **Socioeconomic GBV** can include:<sup>75</sup>

limiting access to money; controlling access to society (including health care, employment, and education); exclusion from financial decision making; and discriminatory traditional laws on inheritance, property rights, and use of communal land.

### **Example:**

The export application concerns battle tanks. During counterterrorism operations in one region, the national military's battle tanks destroy community homes for transgender individuals. In public speeches, the general responsible for the operation acknowledges his support for the destruction of transgender individuals' homes.

- ▶ Destruction of the community homes is a form of socioeconomic violence because it is a violent act that causes economic harm to the victims. This act of socioeconomic violence is also GBV because it targets the transgender victims on the basis of their nonconformity with societal roles and expectations related to their gender or sex.
- ▶ Information about this act (or pattern) of GBV will assist the licensing officer in making a determination about the risk that battle tanks could be used to commit or facilitate similar acts.

**Question Two:** Is there information that links the end user to the prior or current commission or facilitation of any type of GBV? If so, has the specific type of conventional arms in the export been linked to the commission or facilitation of GBV by the end user?

**Example:** The export application concerns mortars and the end user is the armed forces of the recipient State. A news report details how during an internal armed conflict five years ago, State forces used mortars to shell a civilian neighborhood in a rebel-held area at a time when mostly women and children were at home. State radio broadcasted that their intention was to frighten the women who supported the rebels into submission.

- ▶ The State forces committed GBV as they directed physical and psychological violence toward women because of their gender or sex.
- ▶ In this case, the export concerns the same type of arms that the end user is known to have used to commit GBV.

<sup>75</sup> WILPF, "Preventing Gender-Based Violence," p. 10.

- ▶ The information source should seek out information to help the licensing officer determine whether this incident was part of a larger pattern or was an isolated incident, and what bearing developments over the last five years may have on the analysis (such as whether the military unit in question still exists and if the incident has since been widely condemned within the country).

**Example:** The export application covers rifles and the end user is the army of the recipient State. In the recipient State, all men are required to undertake military service and each man is issued a rifle to store at home. Women infrequently work outside the home and doing so is stigmatized. When women do work, male heads of household commonly require them to surrender their salary, coercing them not to open a personal bank account. Various population surveys have noted the prevalence of this phenomenon.

- ▶ Forcing a woman to surrender her salary constitutes a form of socioeconomic violence because it maintains dependence and control. It is GBV because women are targeted based on their gender and related societal roles and expectations.
- ▶ In this example, the fear of a man using his State-issued rifle may be part of the reason why women surrender their salaries and remain financially dependent.
- ▶ The weapon is not being used to directly commit the violence in this example; instead, it is linked to the commission of the violence as it contributes to a fear of violence even without being used.

**Question Three:** What relationships does the end user have with known perpetrators of GBV in the recipient State? Are there risks that the export could end up in the hands of these perpetrators?

**Example:** The proposed export concerns assault rifles and the end user is the national military of the recipient State. The national military trains members of an armed militia on the proper use of assault rifles and permits militia members to borrow the rifles for practice. Militia members sometimes fail to return weapons after borrowing them. NGO reports describe how the militia, armed with assault rifles, has forced pregnant women in its ranks to have abortions.

- ▶ In this example, assault rifles intended for the national military end up in the hands of a militia, which uses them to facilitate forced abortion, a form of GBV. An export may facilitate GBV if it makes it easier for GBV to take place.
- ▶ This is also an example of diversion, illustrating the connection between GBV risks and diversion risks. ATT Article 11 obliges States Parties “involved in the transfer of conventional arms ... to take measure to prevent their diversion.”

**Question Four:** Is there any other information that in your view increases or decreases the likelihood that the export could be used to commit or facilitate GBV in the recipient State? For example, recent military leadership changes, planned trainings, shifts in the political landscape, etc.

**Example:** The export application concerns light weapons and the end user is the recipient State's military. While the military of this country generally has had a positive human rights record, a new political party recently won election, which resulted in most senior military officers resigning under pressure and being replaced with officers loyal to the new party. Prominent members of the party have publicly made misogynistic and homophobic statements, but are not implicated in past or current acts of GBV.

- ▶ This is an example of contextual information that helps a licensing officer make an overall assessment about future GBV.
- ▶ These facts in themselves would not be sufficient to deny an export on GBV grounds, but taken with other pieces of information, they could help build a picture that indicates whether the export poses GBV risks that are more likely than not to occur.

## Terms and Concepts

### *Commit or facilitate*

The most direct link between conventional arms and GBV exists when arms themselves are directly used to inflict harm. For example, conventional arms may be used to kill or injure individuals. When those individuals are targeted on the basis of their gender or sex, such violence constitutes GBV. However, arms can also be used to commit GBV without being discharged, such as the use of weapons to threaten, intimidate, or coerce individuals. "Facilitate" is a broader concept than commission. To facilitate GBV means to make an act of GBV easier to commit or occur.<sup>76</sup> Facilitation can encompass a wide range of acts, in some cases several steps removed from the harm itself.<sup>77</sup>

### *Assessing the potential for future GBV*

Determining whether future GBV could take place can be very challenging. Assessing risks will "depend on past behavior and evidence indicating likely future behavior."<sup>78</sup> Some indications of future risk will be more obvious than others: the outbreak of an armed conflict suggests higher risks of generalized violence in the future, including increases in risks of GBV, for example. Other indications will be subtler, such as a gradual decrease in reporting on and statistics relating to a particular type of GBV coupled with legal and institutional reforms designed to address that form of GBV.

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<sup>76</sup> Control Arms and International Human Rights Clinic, "Interpreting the Arms Trade Treaty," p. 7.

<sup>77</sup> Control Arms and International Human Rights Clinic, "Interpreting the Arms Trade Treaty," p. 7.

<sup>78</sup> Control Arms, "How to Use the Arms Trade Treaty to Address GBV," p. 15.

## PART THREE: QUESTIONS FOR LICENSING OFFICERS

Licensing officers may wish to consider the following questions, organized in parallel to the questions for information sources. These questions are intended to help licensing officers analyze information received from information sources, alongside information held in a licensing officer's own department, and publicly available sources. They aim to supplement existing guidance, such as *How to Use the Arms Trade Treaty to Address Gender-Based Violence: A Practical Guide for Risk Assessment (Control Arms)*<sup>79</sup> and *Preventing Gender-Based Violence through Arms Control (Women's International League for Peace and Freedom)*.<sup>80</sup>

### A: Exporter and End User Human Rights Record

- ▶ If a government has denied an export license because of the human rights record of this exporter, end user, or any close associate of either, how might the reasons for the denial be relevant to your evaluation of the proposed export?
- ▶ After evaluating the available information about the general human rights record of this exporter, end user, or any close associate of either, does this application warrant enhanced scrutiny?

### B: GBV in the Recipient State

- ▶ Accounting for underreporting, what does the information provided by the information source suggest is the extent and severity of all four types of GBV in the recipient State?

<sup>79</sup> Control Arms, "How to Use the Arms Trade Treaty to Address GBV."

<sup>80</sup> WILPF, "Preventing Gender-Based Violence Through Arms Control."

- ▶ How does the State play a role in GBV in the recipient State, whether by action or inaction?

## C: Connection between this Export and GBV Risks

- ▶ Considering country conditions and ways in which the type of conventional arms in the export have been or are being used to commit or facilitate GBV in the recipient State, what patterns or indications of possible future harm can be identified?
- ▶ What does past behavior by the end user and the larger country context indicate about the possibility of future GBV by that end user (or by another actor associated with the end user)?
- ▶ What other actors are relevant? Are there diversion risks that connect with the GBV risk assessment?
- ▶ Based on everything you have learned and your own analysis, what is your overall view on whether it is more likely than not that the export could be used to commit or facilitate GBV?





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