

NAP 1325 – External implementation and arms transfers

Preventing conflict is an essential aspect of implementing the Women, Peace and Security (WPS) Agenda. As part of the prevention pillar in its National Action Plan (NAP) Germany aims to “more strongly integrate a gender perspective into planning and carrying out disarmament and arms control projects”.¹ The NAP clearly addresses women's important role in disarmament efforts and recognizes arms as a risk to women's security.

As per UPR II 124.62, Germany committed to continue to work in the field of human rights worldwide; and per UPR II 124.42, it accepted to align its national legislation with international human rights standards. Fulfilling those commitments and the NAP's pledges, as well as realizing holistic action on the Women, Peace and Security Agenda, requires a thorough revision of Germany's defence and security policy, including its practices on arms exports and the risk of increased sexual and gender-based violence in importing countries.

In 2013, Germany was the world's third top exporter of small arms and light weapons.² Germany's arms exports almost doubled in 2015 to their highest level since the beginning of this century.³ From January 2017 to June 2017, the government granted export licenses of small arms and light weapons worth 31.7 million euros, almost three times as much than in the same period in 2016. India was the second-largest receiver of German arms in the first half of 2017.⁴

Germany does have well-developed export control standards⁵ and offers substantive financial and technical support to other governments to develop and improve their arms control standards. This has to be positively noted.

However, a lack of transparency is inherent in the decision-making process for granting export licenses. The Bundessicherheitsrat (German Federal Security Council), composed of a selected board of the German federal government, is the competent institution for granting complex or doubtful export licenses. The decision-making process is kept secret and parliamentarians and the public are

¹ Germany's NAP1325 from 2017-2020, page 13. Available at: http://www.auswaertiges-amt.de/cae/servlet/contentblob/756004/publicationFile/223409/170111_Aktionsplan_1325.pdf

² “In 2013, the top exporters of small arms and light weapons (those with annual exports of at least USD 100 million) were (in descending order) the United States, Italy, Germany, Brazil, Austria, South Korea, Turkey, the Russian Federation, the Czech Republic, Israel, Belgium, Croatia, China, Switzerland, Japan, and Spain.” Pavesi, I. (2016), “Trade update 2016 - Transfers and transparency” Small Arms Survey, available at <http://www.smallarmssurvey.org/fileadmin/docs/S-Trade-Update/SAS-Trade-Update.pdf>.

³ Reuters (2016), “German arms exports almost doubled in 2015: report, available at: <http://www.reuters.com/article/us-germany-arms-idUSKCN0ZL23R>. See Military Equipment Export Reports: The total amount doubled from €3,3 billion in 2002 (http://ruestungsexport-info.de/fileadmin/media/Dokumente/Zahlen___Fakten/Jahresbericht_BReg/ruestungsexportbericht2002.pdf, p. 3) to €7,86 billion in 2015 (http://ruestungsexport-info.de/fileadmin/media/Dokumente/Zahlen___Fakten/Jahresbericht_BReg/Ruestungsexportbericht-2015.pdf, p. 2).

⁴ “Deutsche Firmen liefern wieder mehr Kleinwaffen“, Tobias Schulze, TAZ (Die Tageszeitung), Article in the printed edition, 5 September 2017.

⁵ For more information, see page 4 of WILPF and ECCHR (2017), The Impact of Germany's Arms Transfers on Women. Germany's Extraterritorial Obligations under CEDAW. Available at http://wilpf.org/wp-content/uploads/2017/02/CEDAW-Shadow-Report-on-Germany_20170130.pdf

often notified only after decisions have been taken. Information about arms exports can be accessed in the annual arms exports report. These reports lack specificity, and are published after decisions have been taken, which may lead to a “de-politicisation” of the topic and removes any potential for public debate.⁶ Further information may only be released to the parliament if individual parliamentarians ask for specific information. On 21 October 2014, a judgment of the German Constitutional Court⁷ spelled out the limits of access to information about decisions by the Bundessicherheitsrat. The Court decided that the parliament has a right to information, yet only *after* decisions have been taken, and only when such information “does not harm the public weal”. That decision is to be taken by the federal government alone.⁸

Whilst Germany continues to approve arms exports to countries with dubious human rights records, Heckler & Koch, German weapons manufacturer, whose weapons were linked to the mass disappearance of students in Mexico in 2014,⁹ has adopted a new export policy. Since 2016, the company has pledged to no longer sell arms into warzones or to countries that violate corruption and democracy standards, including Saudi Arabia, Israel, Egypt, the United Arab Emirates, Turkey, Malaysia, Indonesia, or any African countries. Whilst it remains to be seen if implementation follows these pledges, “the move makes Heckler & Koch the first arms company to have a more ethical export control policy than its own government”.¹⁰

UN Security Council Resolution 2106 specifically notes that all exporting states should consider the risk of arms being used to perpetrate gender-based violence.¹¹ This is in line with requirements of the Arms Trade Treaty (ATT), which was adopted in 2013, particularly under articles 6 and 7,¹² to which Germany is a party.

Various human rights bodies have expressed concern about specific negative consequences of arms transfers on the rights of women and girls in arms-importing countries. These include the Human Rights Council,¹³ the CEDAW

⁶ https://www.bicc.de/uploads/tx_bicctools/Studie_Ruestungsexportkontrolle.pdf

⁷ Parliamentarians from the Left and Green party sued the German Federal Security Council at the Constitutional Court, based on the claim that according to the Grundgesetz (Basic Law), the government is to decide on arms exports, and not only a selection of ministry officials.

⁸ See also page 13 of WILPF and ECCHR (2017), *The Impact of Germany’s Arms Transfers on Women. Germany’s Extraterritorial Obligations under CEDAW*. Available at http://wilpf.org/wp-content/uploads/2017/02/CEDAW-Shadow-Report-on-Germany_20170130.pdf

⁹ <http://www.dw.com/en/german-arms-maker-heckler-koch-illegally-exported-rifles-to-mexico/a-18437977>

¹⁰ <https://www.theguardian.com/global-development/2017/sep/08/germany-deadliest-company-stop-selling-guns-crisis-regions-heckler-and-koch>

¹¹ Furthermore, UNSCRs 1888, 1960 and 2106 focus particularly on the prevention of sexual and gender-based violence in armed conflict.

¹² see here for the text of the Arms Trade Treaty: <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>. Article 7 (4) requires that States shall, prior to authorization of the export of arms under its jurisdiction, in an objective and non-discriminatory manner, take into account the risk of conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women.

¹³ HRC Resolution 24/35 (2013): “Impact of arms transfers on human rights in armed conflicts”; HRC Resolution 26/16 (2014): “Human rights and the regulation of civilian acquisition, possession and use of firearms”; HRC Resolution 29/10 (2015): “Human rights and the regulation of civilian acquisition, possession and use of firearms”; and HRC Resolution 32/12 (2016): “Impact of arms transfers on human rights”.

Committee's General Recommendations 30¹⁴ and 3;¹⁵ the Special Rapporteur on extrajudicial, summary or arbitrary executions;¹⁶ and the UN High Commissioner for Human Rights.¹⁷ Specifically, the CEDAW Committee has included concerns and recommendations concerning German arms transfers in its 2017 Concluding Observations.¹⁸

In a joint submission with the European Center for Constitutional and Human Rights (ECCHR) for the CEDAW Committee's review of Germany in early 2017,¹⁹ we used examples of German arms transfers that violate its international legal obligations, including under CEDAW. These include transfers to India, Iraq, Mexico, Qatar, and Saudi Arabia.²⁰

It is important to stress that under the ATT, only the identification of a *risk* of committing or facilitating serious violations of international humanitarian law or human rights law triggers the obligation for State Parties to deny arms exports.²¹

In spite of what is required by the Arms Trade Treaty, the EU Common Position on Arms Exports, and its own national export law, Germany has not established a

¹⁴ General Recommendation 30, CEDAW/C/GC/30: The CEDAW 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." (paragraph 32.). The Committee has also 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." (paragraph 29).

¹⁵ General Recommendation 35, CEDAW/C/GC/35 In its most recent General Recommendation 35 the CEDAW Committee has recognized that accessibility and availability of firearms, including their exportation, as evidenced in militarisation, heighten women's risk of exposure to serious forms of gender-based violence; the CEDAW Committee affirmed state obligations to address gender-based violence by state and non-state actors, including around extraterritorial state military action.

¹⁶ Report to the UN Human Rights Council, UN Index: A/HRC/35/23, 6 June 2017: In addressing gender-based acts of violence and killing, the Special Rapporteur has recently recommended that states "develop mechanisms to analyse whether any arms being assessed for approval for transfer, as well as the granting of licenses on production, will facilitate or contribute to gender-based violence or violence against women by the recipient, in accordance with the obligation on risk assessment processes of the Arms Trade Treaty.", paragraph 116

¹⁷ UN Index A/HRC/35/8, 3 May 2017. Report the 35th regular session of the Human Rights Council, requested by the Human Rights Council with resolution 31/12, 1 July 2016. The report stresses that, to be effective, human rights risk assessments need to "be carried out on a case-by- case basis and take full account of the gender dimension of arms transfers", paragraph 49

¹⁸ "27. The Committee commends the State party on its commitment to the implementation of Security Council resolution 1325 (2000), on the launch of its first national action plan on women and peace and security in 2013 and on the adoption of its small arms principles in 2015. The Committee is nevertheless concerned about the use of arms exported by the State party, including in conflict zones, and the inadequate monitoring by arms-producing corporations of the use of their arms in the context of violence against women, in line with its obligations under the Arms Trade Treaty. It is also concerned that the small arms principles do not mention gender-based violence as a ground for denying an export licence.

28. The Committee recommends that legislation regulating arms export control be harmonized in line with article 7 (4) of the Arms Trade Treaty and the Council Common Position 2008/944/CFSP of the European Union. It also recommends that, before export licences are granted, comprehensive and transparent assessments be conducted of the impact that the misuse of small arms and light weapons has on women, including those living in conflict zones.". UN Index: CEDAW/C/DEU/CO/7-8, paragraphs 27 and 28 (3 March 2017).

¹⁹ WILPF and ECCHR (2017), The Impact of Germany's Arms Transfers on Women. Germany's Extraterritorial Obligations under CEDAW. Available at http://wilpf.org/wp-content/uploads/2017/02/CEDAW-Shadow-Report-on-Germany_20170130.pdf

²⁰ http://wilpf.org/wp-content/uploads/2017/02/CEDAW-Shadow-Report-on-Germany_20170130.pdf

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 accounted for as part of an overall arms export assessment, the method by which this happens has not yet been made clear and constitutes a significant gap in the German control system.²²

The CEDAW Committee has therefore recommended to Germany “that legislation regulating arms export control be harmonized” and that “before export licenses are granted, comprehensive and transparent assessments should be conducted on the impact that the misuse of small arms and light weapons have on women, including in conflict zones.”²³

Recommendations

- Proceed with a review of the existing laws and guidelines regulating the control of arms export in Germany and adopt a single and harmonized law on arms export control by 2019;
- Develop and include, in the above harmonized law, specific criteria for analysing whether any arms transfers being assessed as well as the granting of licenses on production facilities will facilitate or contribute to gender-based violence or violence against women by the recipient;
- And to that end, provide a more robust assessment of the risk of gender-based violence in Germany’s next submission to the ATT Baseline Assessment Project.²⁴
- Provide training for export control officials about how to assess for the risk of gender-based violence, and what indicators and sources to utilise.
- Improve overall transparency around arms transfer decisions, including the rationale for allowing transfers to states with poor human rights records, and create opportunities for public debate and input as well as possibilities for judicial review of export licenses;

²² In 2015, Germany adopted its “Small Arms Principles”. Nowhere in these principles do the issues of gender-based violence feature as an explicit reason to deny an export license. Germany’s NHRI, the German Women Lawyers Association with the German Women Security Council have also addressed this deficiency. For further information on the weaknesses in Germany’s arms regulations, see page 13 and 14 of WILPF and ECCHR (2017), *The Impact of Germany’s Arms Transfers on Women. Germany’s Extraterritorial Obligations under CEDAW*. Available at http://wilpf.org/wp-content/uploads/2017/02/CEDAW-Shadow-Report-on-Germany_20170130.pdf

²³ Concluding Observations on Germany CEDAW/C/DEU/CO/7-8, paragraph 28. The CEDAW Committee also recommended stronger regulation of arms transfers in its concluding observations to Switzerland, Netherlands, Sweden, France. Concluding observations on Sweden, CEDAW/C/SWE/CO/8-9, paragraph 26 and 27; France, CEDAW/C/FRA/CO/7-8, paragraph 22; Switzerland, CEDAW/C/CHE/CO/4-5, paragraph 17c); Germany,; Netherlands, CEDAW/C/NLD/CO/6, paragraph 30a)

²⁴ <http://www.armstrade.info/countryprofile/germany/>

WILPF has issued recommended guidelines for assessing the risk of gender-based violence. They are available in “Preventing gender-based violence through arms control: tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action.” (2016), Available at: <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/10792-preventing-gender-based-violence-through-arms-control-tools-and-guidelines-to-implement-the-arms-trade-treaty-and-un-programme-of-action>.

- To that end, Germany should provide transparent, comprehensive, and timely reports of their arms export decisions, and for better public input to such decisions.
- Align Germany's defense and security policies, as well as the foreign ministry's and economic ministry's policies with the Women, Peace and Security Agenda and Germany's own NAP, including through strengthening policy coherence on SDG implementation around SDG Goals 5, 16, and 17;
- Strengthen holistic gender frameworks of policies and legislation to address prevention as a key gap area, including by addressing preventive diplomacy, disarmament and gender-sensitive regulation of the arms trade in line with the Arms Trade Treaty (ATT).