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High Commissioner's report highlights need to address gendered impact of arms transfers

The Women's International League for Peace and Freedom (WILPF) welcomes the report of UN High Commissioner for Human Rights on the gendered impact of diverted, illicit or unregulated arms transfers¹ submitted to the 44th session of the Human Rights Council (HRC).

WILPF's submission to the report² highlighted that despite the focus on women and girls in the call for submissions by the Office of the High Commissioner for Human Rights (OHCHR), it is essential to look at the specific gendered impacts on men and boys, and persons of diverse and marginalised sexual orientations, gender identities and expressions, and sex characteristics, and also the role of violent masculinities in facilitating violence and militarism. The report picks up on these points in several paragraphs, as well as in the context of one of its recommendations, which is significant and a first in High Commissioner's reports on this topic.

The focus of this High Commissioner's report correlates with the growth of interest and political support to both acknowledge and address the gender dimensions of armed violence, arms transfers, and the use of weapons that is occurring in many disarmament and arms control forums.³ For example, gender and gender-based violence was a topic of focus for Arms Trade Treaty (ATT) states parties throughout their 2019 meeting cycle, culminating in a series of recommendations adopted at the Fifth Conference of States Parties to the ATT.⁴ The report provides an important reinforcement from the UN human rights community to those and other commitments made by states in the context of disarmament and arms control forums.

The inclusion of a recommendation in the report that, while creating national control systems, states should account for "principles of due diligence and the responsibility for aiding or assisting in the commission of an internationally wrongful act, while also taking into account international standards of corporate responsibility, in particular the Guiding Principles on Business and Human Rights"⁵ is

¹ Impact of arms transfers on human rights, Report of the United Nations High Commissioner for Human Rights, 19 June 2020, UN Index: A/HRC/44/29, available at: <https://undocs.org/en/A/HRC/44/29>.

² WILPF, Submission to the UN Office of the High Commissioner for Human Rights on the impact of the diversion of arms and unregulated or illicit arms transfers on the human rights of women and girls, April 2020, https://www.wilpf.org/wp-content/uploads/2020/04/WILPF_OHCHR_submission_April2020_Final.pdf

³ See for instance, Ray Acheson, The gender and weapons nexus recognized; feminism need apply in 2019 and beyond, Forum on the Arms Trade, 19 December 2018, <https://www.forumarmstrade.org/blog/the-gender-and-weapons-nexus-recognized-feminism-need-apply-in-2019-and-beyond>.

⁴ Arms Trade Treaty Fifth Conference of States Parties, Final report, 30 August 2019, ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/att/csp5/documents/csp5-final-report.pdf>.

⁵ UN Index: A/HRC/44/29, paragraph 42 (d).

significant. This is because the nexus between the arms industry and business and human rights frameworks remains a substantial gap, which deserves further attention by the Human Rights Council and its mechanisms. In this context, WILPF has recommended to the Working Group on Business and Human Rights that it consider and address this gap including as part of its current project on “business in conflict and post-conflict contexts.”⁶

WILPF also welcomes that the report illustrates the multiple forms of gender-based violence and that it considers research on the gendered impacts of explosive weapons in populated areas (EWIPA). Moreover, the report recalls relevant recommendations of human rights mechanisms such as the Universal Periodic Review (UPR), the CEDAW Committee, the Human Rights Committee, and UN thematic and country Special Rapporteurs. It outlines clearly how specific human rights are impacted by illicit and diverted arms, including inadvertently and through “ripple effects.” However, the report should have given greater prominence to the analysis carried out by investigative mechanisms of the HRC, in particular by the Fact-Finding Mission on Myanmar,⁷ the Commission of Inquiry on Syria,⁸ and the Group of Eminent Experts on Yemen.⁹

Where the report should have gone further, in WILPF’s view, would have been to stress that a focus on illicit or diverted weapons should not be used to distract from the irresponsible legal arms transfers and to emphasise the importance of ammunition control. Moreover, the attention given in the report to the need for better disaggregated data in order to understand, and address, the gendered impacts of arms transfers, is important but could have been made clearer. The recommendation to states to “systematically collect and share data, disaggregated by relevant factors”¹⁰ should have been more explicit by specifying, for example, sex or gender-disaggregated data. These, in addition to the above-mentioned nexus between the arms industry and business and human rights frameworks, are areas for further research or action.

⁶ See WILPF submission to the Working Group on Business and Human Rights for its project on Project on Business, Human Rights and Conflict-Affected Contexts, available at : https://www.wilpf.org/wilpf_statements/submission-to-the-un-working-group-on-business-and-human-rights-project-on-business-human-rights-and-conflict-affected-contexts/ . More information on the project is available at:

<https://www.ohchr.org/EN/Issues/Business/Pages/ConflictPostConflict.aspx>.

⁷ The economic interests of the Myanmar military, Independent International Fact-Finding Mission on Myanmar, 5 August 2019, A/HRC/42/CRP.3, available at:

<https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>.

⁸ See, for example, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic A/HRC/42/51, 15 August 2019, paragraphs 99 (g); Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/34/64, paragraph 106 (b); Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016- 28 February 2017; Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/CPR.3, paragraph 117 (a).

⁹ Situation of human rights in Yemen, including violations and abuses since September 2014, Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen (GEE report on Yemen), 3 September 2019, A/HRC/42/17, paragraph 92, https://www.ohchr.org/Documents/HRBodies/HRCouncil/GEE-Yemen/A_HRC_42_CRP_1.PDF.

¹⁰ UN Index: A/HRC/44/29, paragraph 42 (a).

Recommendations

WILPF urges all states to:

Links between legal and illegal or diverted transfers

- Recognise the symbiotic relationship between legal transfers and the illicit or unregulated trade in weapons and shape policies that address both.
- Whether an export, import, or transshipment state, comply with guidelines and laws that seek to reduce the likelihood of diversion, including participating in regular information exchange and participating in marking, tracing, and record-keeping activities as recommended by the UN Programme of Action on small arms and light weapons and the International Tracing instrument.

Ammunition

- Strengthen and implement ammunition controls in the recognition that they are as vitally important as arms control and disarmament measures.

Risk assessment

- Fully implement the legally-binding provision to assess the risk of gender-based violence contained in the Article 7.4 of the Arms Trade Treaty. This is not an optional aspect of the risk assessment process and deserves equal treatment alongside other considerations. It is important to underscore that the risk assessments assess just that—the “risk” that the arms in question will be used in any of the ways prohibited by the Treaty.
- Ensure that authorities with gender, human rights development expertise be included in the licensing process and provide the basis for export assessments for arms exports.
- Include in assessments on arms exports the recipient countries’ national implementation of UN Security Council Resolution 1325 (2000) and subsequent related resolutions, including NGO reports assessing such implementation; reports and recommendations from international and regional human rights bodies, such as by the Special Rapporteur on violence against women; countries’ reports and NGO shadow reports to the CEDAW Committee and other treaty bodies; reports from relevant UN agencies.
- Ensure transparency regarding how decisions are made by the country’s licensing authority to enable an examination of how human rights and other key national criteria are assessed and prioritised in authorisations of arms transfers, including through issuing public explanations for licensing decisions as soon as they are made.

Data collection and information sharing

- Implement commitments on disaggregated data collection and enhance efforts to collect gender and sex disaggregated data in relation to the proliferation, possession, use, and impact of weapons in communities.
- Include information, including disaggregated data, about the gendered impacts of diversion, and unregulated and illicit arms transfers and in their reports to human rights treaty bodies and the Universal Periodic Review, and on steps taken to prevent and address those.

Participation

- Include women, transgender, non-binary, and others in policy planning and arms control and prevention diversion measures.

Arms producing companies

WILPF urges the Human Rights Council to:

- Ensure that for countries in conflict, post conflict-situations, country resolutions and investigative mechanisms established by the Human Rights Council consistently address the impacts of arms transfers on human rights and the responsibility of States and arms companies in violations of international human rights and humanitarian law.
- Ensure that the nexus between business and human rights and the arms trade be further researched and integrated in the work of the HRC on business and human rights including in the work of the UN Working Group on human rights and the issue of transnational corporations and other business enterprises (also known as the Working Group on Business and Human Rights) as well as in the work of the OHCHR.

WILPF urges all states to:

- Ensure that National Action Plans on Business and Human Rights include a requirement that arms companies in their territory or jurisdiction conduct human rights due diligence in their global operations, supply chains, including in business activities with foreign subsidiaries or other types of business relationships and in relation to the use and impact of their products and services.
- Adopt mandatory due diligence laws that include the arms sector, or include mandatory human rights due diligence into the licensing process of arms exports in order to compel arms companies in their territory or jurisdiction to conduct human rights due diligence in their global operations, supply chains, including in business activities with foreign subsidiaries or other types of business relationships and in relation to the use and impacts of their products and services by third parties.
- Take additional steps to protect against human rights abuses by arms companies that are owned or controlled by the state, or that receive substantial support and services from state agencies, including by putting in place human rights due diligence as a condition of bidding for procurement contracts, by withdrawing or prohibiting export credit guarantees for arms exports, or by withdrawing public investment.
- Increase transparency in reporting about export licenses, transfers of weapons, parts and components, in particular by providing regular, timely and detailed information on the exact product for which a license was received, the date of the actual export, and the specific end-use of the product, as well as by ensuring democratic oversight of the authorisation process including through independent parliamentary committees or by national human rights institutions.
- Facilitate the judicial review of arms licensing and arms transfer decisions in administrative courts by:
 - Establishing legal standing for NGOs or other victims' representatives;
 - Adopting measures to limit the exclusion of relevant information from judicial review due to confidentiality based on foreign policy or national security grounds.
- Adopt clear legally binding provisions imposing transparent and robust human rights impact assessments of arms transfers, on which plaintiffs can rely on to challenge the legality of state authorisations.