

The Extraterritorial Obligations of States Towards Human Rights

Statement by the Women's International League for Peace and Freedom

Pre-session Review of Germany

CEDAW Committee

Germany must prevent arms exports by companies within its jurisdiction that may facilitate or aggravate generalised violence against women and femicide in importing states.

Arms exports can have serious consequences on the rights and human security of women in importing states, in particular in the case of exports of small arms and light weapons. For that reason, the Committee has pointed out in its General Recommendation 30 that States must have a solid and effective regulation of arms trade, as well as an adequate control of the arms flows to prevent that their use may facilitate or perpetrate grave acts of gender-based violence. [1]

Furthermore, the Committee in its General Recommendation 28 has established that the obligations of States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise also extend to acts of national corporations operating extraterritorially[2].

The Arms Trade Treaty in its article 7 (4) establishes that States must, prior to authorization of the export of arms under its jurisdiction shall, in an objective and non-discriminatory manner, take into account the risk of the conventional arms being used to commit or facilitate serious acts of genderbased violence or serious acts of violence against women. [3]

After closely analysing the Report sent by Germany to the Committee for its 66th periodic review, WILPF has not identified any information on the control by German government of its extraterritorial obligations, in particular in relation to arms exports and its gendered impact.

Being aware that Germany is committed towards gender equality is part of the group of friends of the UNSC Res. 1325, and has implemented a National Action Plan since. WILPF notices that gender impact analysis on the impact of arms trade is however missing. Additionally WILPF wonders how under this lacking pre-conditions the German Federal Parliament finds itself able to decide upon weapon trade to foreign countries in general and especially to Mexico.

We would like to recommend that the CEDAW Committee addresses this question in the periodic review of Germany. With that aim, we will submit a report in due time to show the impact of arms exports from German companies on women's human rights in importing countries with high levels of generalised violence against women. As an example we will use the case study of firearms exports to Mexico.

Germany and arms trade

Germany is the world's third arms exporter. Its arms export control is regulated by the "Policy Principles of the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment"[4]. This policy takes into account the following criteria to export arms to countries such as Mexico: the situation of human rights in the country of destination, the risk that the weapons might facilitate regional instability and the possibility that the weapons can be a factor to exacerbate violence in the country of destination. In the case of small arms and light weapons or firearms, in 2015 Germany adopted a complementary policy of principles to establish that small arms will not be sold to private persons, or non State actors and that sales to States will be conditioned to the obligation to destroy the weapons that the imported weapons will be replacing.[5] In spite to what has been established in the Arms Trade Treaty, Germany has not established a specific mechanism to prevent arms sales from having an impact on gender-based violence in the recipient countries.[6] Since the last review of the Committee in 2009, Germany has continued to sell small arms and light weapons to Mexico until 2010 and military equipment until today.[7]

Situation of generalised violence and human rights crisis in Mexico / Armed violence and its impact on the human rights of women in Mexico

Divers mechanisms of protection of human rights both of the UN system and the regional system have warned that Mexico is in a serious human rights crisis and that there is a situation of generalised violence, probably fueled by the "war on drugs" initiated in 2006. In this context, different forms of violence have been spread in the country including enforced disappearances, torture, murders, kidnapping, extrajudicial executions of men, women, children, migrants, human rights defenders and journalists. The Inter American Commission on Human Rights pointed out that this problem is linked to complex phenomena such as: the high militarisation of the country and the presence of criminal structures. The proliferation and easy access to firearms constitute for the Commission one of the main factors for the aggravation of violence in Mexico.[8] The crimes with firearms increased by 55% between 2013 and September 2014.[9]

Reality of femicide violence with firearms in Mexico

Mexico ranks the 23rd in cases of femicide in the world. In cases of cases of femicide perpetrated with firearms they are in 10th position.[10] In the last six years, the highest rates of femicide have been registered in the States of Chihuahua, Guerrero, Baja California and State of Mexico.

The lack of disaggregated data from the moment of registry of death of victims in Mexico, prevents us from having a well informed analysis of this phenomenon. A study by UN Women and the National Institute of Women about femicide in Mexico points out that one of the main concerns is the increase of the use of firearms to commit homicide against women in the country, doubled between the years 2004 and 2010. Furthermore, the investigation underlines that homicide of women with firearms have been perpetrated both in the home as in public spaces. The study concludes that women are at higher risk if their families and communities are armed.[11]

The control system and the regulation of weapons in Mexico are not effective to assure that these cannot facilitate or be used to commit serious acts of violence against women. For example, in Mexico the factor of gender-based violence is not part of the procedures to expedite licences to

carry firearms. Additionally, it is important to point out that in Mexico there is an important black market of firearms outside of the control of the State.

The use of firearms exported in Mexico

The case of G36 assault rifles made by the German company Heckler and Koch made clear that there are deficiencies in the system of control in Germany for the export of weapons. The attorney's office in Stuttgart has determined that in 2006 2,025 G36 assault rifles were exported to the National Defence Secretariat of Mexico. At the time, a condition was established for the export: that the assault rifles were not used or distributed to 4 States in Mexico: Chihuahua, Guerrero, Baja California and Chiapas, States with high levels of violence.

It has been determined that some of these German rifles were used by the State police in the State of Guerrero the night that the disappearance of the 43 students in Ayotzinapa. This evidences that German weapons can be used in the current context of human rights crisis in Mexico and more concretely in cases of femicide.

The Attorney's office in Stuttgart claims that the limitation regarding the distribution within Mexican territory was breached and that the rifles reached police bodies of the States outside the limits established by Germany with the knowledge and connivance of the German company Heckler and Koch. Currently the prosecution is being processed in the Court of Stuttgart.[12] In spite of this situation and the fact that Mexico did not comply with the requirements established by the government of Germany, the country sold to Mexico between 2006 and 2010: 8,692 rifles, 3,355 machine guns, 38,389 machine gun components and 207,821 rifle components.[13]

Not having found any information on this matter regarding arms exports by Germany and the risk of them being used in cases of gender-based violence, we suggest that the CEDAW Committee directs the following questions to Germany:

- Has Germany implemented a risk evaluation mechanism to ensure that arms exports carried out by German companies do not contribute to gender-based violence in the importing countries or abroad?
- Has Germany introduced legislation on arms exports that includes specific gender-sensitive criteria as a factor prior to authorising or refuse arms exports?
- What kind of information does Germany have on its importing countries to ensure that exported weapons will not facilitate or exacerbate gender-based violence against women?
- Have there been cases in which Germany has refused or cancelled export licences after risk assessment based on the potential use of the weapons to facilitate gender-based violence?

[1] Recomendación General del Comité CEDAW No. 30 relativa al las mujeres en la prevención de los conflictos, las situaciones de conflicto y postconflicto, 2013, párr. 29

[2] Recomendación General del Comité CEDAW No. 28, relativa al artículo 2 de la Convención sobre la eliminación de todas las formas de discriminación contra la mujer, 2010.

[3] Tratado sobre el Comercio de Armas, ratificado por Alemania en 2014.

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

[5] Political Principles adopted by the Government of the Federal Republic of Germany for the export of war weapons and other military equipment and Principles of the German Federal Government governing the export of small arms and light weapons ¹

[6] El Tratado sobre comercio de armas fue ratificado por Alemania en 2014.

[7] Report by the Government of the Federal Republic of Germany on Its Policy on Exports of Conventional Military Equipment 2009-2015

[8] Comisión Interamericana de Derechos Humanos, Informe de país: México, situación de derechos humanos, 2015

[9] Arriaga Carrasco Paulina y otras Mujeres víctimas de violencia armada y presencia de armas de fuego en México. Resultado a nivel nacional y estatal 2011-2014. Observatorio Nacional de Violencia armada y género. México D.F, 2015.

[10] Global Burden of Armed Violence : Every Body Counts, 2015

[11] Femicidio en México, aproximaciones, tendencias y cambios, ONU Mujeres México, Instituto Nacionales de las Mujeres, 2014.

[12] Pérez Ricart, Carlos A. ; México vía Berlín e.V. (Ed.): Armas alemanas en México: el caso de la exportación a México de los fusiles Heckler & Koch G36. Berlin, 2013.

[13] Report by the Government of the Federal Republic of Germany on Its Policy on Exports of Conventional Military Equipment 2006-20010.