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Submission to the call for inputs for the High Commissioner's report to the Human Rights Council, pursuant to UN Human Rights Council resolution 53/15 (13 July 2023)

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I. Introduction

In light of an overall alarming context of increased militarisation, including spiking military spending¹ and an overall decrease in transparency in arms transfers around the world,² WILPF welcomes that this year's OHCHR report will focus on the role of access to information in preventing, mitigating and responding to the negative human rights impact of arms transfers.³ We recall that multilateral

¹Stockholm International Peace Research Institute (SIPRI), "World military expenditure reaches new record high as European spending surges", 24 April 2023, available at: <[https://www.sipri.org/media/press-release/2023/world-military-expenditure-reaches-new-record-high-european-spending-surges#:~:text=World%20military%20expenditure%20reaches%20new%20record%20high%20as%20European%20spending%20surges,-24%20April%202023&text=\(Stockholm%2C%2024%20April%202023\),new%20high%20of%20%242240%20billion](https://www.sipri.org/media/press-release/2023/world-military-expenditure-reaches-new-record-high-european-spending-surges#:~:text=World%20military%20expenditure%20reaches%20new%20record%20high%20as%20European%20spending%20surges,-24%20April%202023&text=(Stockholm%2C%2024%20April%202023),new%20high%20of%20%242240%20billion)>.

² Arms Controls Association, "The Case for Strengthening Transparency in Conventional Arms Transfers", November 2022, available at: <<https://www.armscontrol.org/act/2022-11/features/case-strengthening-transparency-conventional-arms-transfers#endnote01>>

³ See UN Human Rights Council, Resolution "Impact of arms transfers on human rights" UN DOC A/HRC/RES/53/15 13 July 2023, which "Requests the Office of the High Commissioner to prepare, in consultation with States, United Nations agencies and other relevant stakeholders, an analytical report on the impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfers, on the enjoyment of human rights, with a focus on the role of access to information in preventing, mitigating and responding to the negative human rights impact thereof, and to present the report to the Human Rights Council at its fifty-sixth session."

instruments such as the UN Register of Conventional Arms (UNROCA)⁴ and the Arms Trade Treaty (ATT)⁵ were premised on the principles that transparency in arms transfers can increase confidence among countries, and provide some warning if excessive or destabilising accumulations of arms are taking place. Therefore, transparency can contribute to strengthening regional and international peace and security, while the ultimate goal should remain total universal disarmament.

In 1980, the UN General Assembly established a reporting mechanism to which all UN member states could voluntarily provide data on their military expenditures. This is now known as the UN Report on Military Expenditures (UNMilEx).⁶ While this mechanism was a first step towards heeding repeated calls by the UN Secretary-General for States to move away from overly securitized and militarised approaches to peace and to reduce military expenditures,⁷ the reporting rate has regrettably remained low “averaging around 40 state submissions per year. For the year 2022, UNMilEx received 59 submissions. This remained lower than the peak of reporting contributions in 2001, when 81 states participated.”⁸

Furthermore, while standards and international frameworks on transparency in arms transfers have been developed over the past 30 years, research by various actors points to a decrease in the quality of reporting over the past decade, including by the biggest producers and exporters of weapons in the world.⁹ This trend can in part, be explained by “geostrategic” and “national security” concerns advanced by States providing military aid, including through supplies of arms, to Ukraine¹⁰ and Israel¹¹ in the context of current armed conflicts, while the absence of transparency on arms

⁴ UN General Assembly, UN DOC A/RES/46/36, 6 December 1991, Para.4. “Considering that increased openness and transparency in the field of armaments could enhance confidence, ease tensions, strengthen regional and international peace and security and contribute to restraint in military production and the transfer of arms”; Para. 5: “Realizing the urgent need to resolve underlying conflicts, to diminish tensions and to accelerate efforts towards general and complete disarmament under strict and effective international control with a view to maintaining regional and international peace and security in a world free from the scourge of war and the burden of armaments”

⁵ Arms Trade Treaty, article 1 cites as one of the purposes: “Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.”

⁶ UN MILEX Instrument, <<https://disarmament.unoda.org/convarms/milex/>>

⁷ See, for example, Report of the Secretary-General, “Objective information on military matters, including transparency of military expenditures,” UN Doc A/78/158, 11 July 2023, paragraph 2, available at: <<https://digitallibrary.un.org/record/4020966?ln=en>>.

⁸ See United Nations Office for Disarmament Affairs (UNODA), “Workshops about reporting on annual military expenditures aim to enhance transparency and build trust”, <<https://disarmament.unoda.org/ar/update/workshops-about-reporting-on-annual-military-expenditures-aim-to-enhance-transparency-and-build-trust/>>.

⁹ Arms Controls Association, “The Case for Strengthening Transparency in Conventional Arms Transfers”, November 2022, available at: <<https://www.armscontrol.org/act/2022-11/features/case-strengthening-transparency-conventional-arms-transfers#endnote01>>.

¹⁰ Stimson Center, “Arms Trade Transparency in Conflict: ATT Reporting on Arms Transfers to Ukraine, August 2023, available at: <<https://www.stimson.org/2023/arms-trade-transparency-in-conflict-att-reporting-on-arms-transfers-to-ukraine/>>.

¹¹ The Washington Post, “Senate Democrats press Biden for more oversight over civilian deaths in Gaza”, 6 December 2023, available at: <<https://www.washingtonpost.com/politics/2023/12/06/us-weapons-transfers-israel/>>; The Intercept, “U.S. weapons transfers to Israel shrouded in secrecy — burn not Ukraine”, 7 November 2023, available at:

reporting relating to other countries such as China, Iran, Russia, Saudi Arabia and the United Arab Emirates (UAE) is longstanding.¹² Transparency and regular reporting by major arms exporters on their transfers is essential to identify and address trends that could be problematic and to pursue accountability where such transfers cause or contribute to human rights violations and violations of international humanitarian law (IHL). In this regard, WILPF is extremely concerned by the United States (US) Administration's recent actions to restrict transparency and democratic controls by Congress, and to fast-track arms sales and shipments to Israel while having full knowledge of the risks of complicity in serious violations of international human rights law (IHRL) and International Humanitarian Law (IHL) in Gaza.¹³

The arms trade is deeply political. It relates to how States conceptualise security in militarised ways, and to how the arms industry brings in huge profits for the State and sometimes even underpins a war economy. The UN Working Group on Business and Human Rights, the arms trade is also characterised by a form of "symbiotic"¹⁴ collusion of interests between the arms industry and the State, including with the military and security apparatus, which explains the persistent levels of opacity over this sector. In the case of Russia, for example, arms exports are closely controlled by the government through a single state-controlled special exporter named Rosoboronexport. According to its website, in 2011 Rosoboronexport was converted into an "open joint-stock-company (OJSC), keeping the functions of the only state-controlled intermediary in carrying out foreign trade operations with respect to the entire range of military goods."¹⁵ Its operations are overseen by, among others, the President and the government of the Russian Federation.¹⁶ According to its

<<https://theintercept.com/2023/11/07/israel-us-weapons-secret/>>; White House Requests "Unprecedented" Loophole That Would Obscure Arms Sales to Israel, 2 November 2023, available at:

<<https://inthesetimes.com/article/senate-israel-aid-supplemental-transparency-waivers>>.

¹² SIPRI, SIPRI Insights on Peace and Security, No. 2020/10 October 2020, "Transparency in arms procurement: limitations and opportunities or assessing global armament developments", pages 13-14, available at:

<<https://www.sipri.org/publications/2020/sipri-insights-peace-and-security/transparency-arms-procurement-limitations-and-opportunities-assessing-global-armament-developments>>.

¹³ The Hill, "Senate Democrats scoff at Biden's Israel arms sale", 3 January 2024, available at:

<<https://thehill.com/homenews/administration/4387824-senate-democrats-scoff-at-bidens-israel-arms-sale/>>; The Guardian, "Gaza war puts US's extensive weapons stockpile in Israel under scrutiny", 27 December 2023, available at:

<<https://www.theguardian.com/world/2023/dec/27/gaza-war-puts-us-extensive-weapons-stockpile-in-israel-under-scrutiny>>; The Washington Post, "Senate Democrats press Biden for more oversight over civilian deaths in Gaza", 6 December 2023, available at: <<https://www.washingtonpost.com/politics/2023/12/06/us-weapons-transfers-israel/>>;

The Intercept, "U.S. weapons transfers to Israel shrouded in secrecy — but not Ukraine", 7 November 2023, available at:

<<https://theintercept.com/2023/11/07/israel-us-weapons-secret/>>; White House Requests "Unprecedented" Loophole That Would Obscure Arms Sales to Israel, 2 November 2023, available at:

<<https://inthesetimes.com/article/senate-israel-aid-supplemental-transparency-waivers>>.

¹⁴ Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights, Information Note by the UN Working Group on Business and Human Rights, available at:

<<https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>>.

¹⁵ More information on Rosoboronexport history at: <<http://roe.ru/eng/rosoboronexport/history/>>. (last accessed on 2 April 2023). See also WILPF, Submission for the UPR of Russia, 5 April 2023, available at

<https://www.wilpf.org/advocacy_documents/submission-for-the-upr-of-russia/>.

¹⁶ More information on Rosoboronexport at: <<http://roe.ru/eng/rosoboronexport/status/>>. (last accessed on 2 April 2023).

corporate strategy, Rosoboronexport’s “activities are aimed at the consolidation of Russia’s military and political foothold in various regions across the globe, preservation of the country’s position among global exporters of MG;” and it “uses targeted marketing efforts in order to expand its geography, enlarge its portfolio and increase export volumes of Russian military and double-purpose products.”¹⁷

In this context of “symbiotic” relationship between the arms industry and the State, it is essential that the right of access to information, which is an essential component of the right to freedom of expression, as enshrined in IHRL and in some regional human rights instruments and national laws, be fully respected by weapons importer and exporter States, as well as by private companies. This is not only a matter of contributing to trust-building between States through some level of transparency but also of ensuring some public oversight of government and military decisions. It is also instrumental to strengthening victims’ access to justice including their right to know the truth in cases of human rights violations caused or facilitated by arms.

However, it is clear that States’ use of restrictions to the right of access to information in the context of the arms trade is increasing, including on grounds of national security and commercial secrecy grounds. Essential to the enjoyment of the right of access to information is the imperative to ensure the protection of the rights of civil society, journalists, activists, lawyers, whistle-blowers, workers and trade unions, and of all those who document and make known how weapons fuel conflict and rights violations. In addition, given the significance of the right of access to information as a gateway right for the enjoyment of many other human rights, we will answer questions taking a broad approach to this issue, rather than a narrow technical consideration of the right of access to information. Our submission and responses will focus on questions 1, 2 and 9.

II. Reply to question 1

“Please identify the impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfers on the enjoyment of human rights.”

Please refer to WILPF’s written submissions to previous OHCHR reports on “The negative human rights impact of the civilian acquisition, possession and use of firearms, pursuant to HRC resolution 50/12” — which had a focus on the arms industry —,¹⁸ the “Impact of the civilian acquisition,

¹⁷ More information on Rosoboronexport strategy at: <<http://roe.ru/eng/rosoboronexport/strategy/>>. (last accessed on 2 April 2023)

¹⁸ WILPF, “Submission to the UN Office of the High Commissioner for Human Rights (OHCHR) for the 2023 report on the negative human rights impact of the civilian acquisition, possession and use of firearms, pursuant to HRC resolution 50/12”, 8 February 2023, available at: <https://www.wilpf.org/advocacy_documents/submission-to-ohchr-on-the-negative-impacts-of-firearms-and-the-role-of-the-business-sector/>. See also WILPF’s written statement to the HRC 54th session titled “Disarm the Enablers: End the impunity of the Firearms Industry and its Helpers”, 23 August 2023, available at <https://www.wilpf.org/advocacy_documents/hrc54-written-statement-on-the-ohchr-report-on-firearms/>

possession, and use of firearms by children and youth”,¹⁹ on the “Impact of civilian acquisition, possession, and use of firearms on civil, political, economic, social and cultural rights”,²⁰ on “Impact of arms transfers on human rights”,²¹ and on “the impact of the diversion of arms and unregulated and illicit arms transfers on the human rights of women and girls.”²² Please also see our publications on arms transfers and gender-based violence,²³ and arms transfers and economic, social, and cultural rights.²⁴

WILPF also regularly brings to the attention of human rights mechanisms, including treaty bodies, the human rights impact of arms transfers, arms proliferation, military spending, militarisation,

¹⁹ WILPF, “Submission to the Office of the High Commissioner for Human Rights for the report on civilian acquisition, possession and use of firearms by children and youth mandated by Human Rights Council resolution 45/13”, 19 October 2021, available at: <https://www.wilpf.org/advocacy_documents/report-on-civilian-acquisition-position-and-use-of-firearms-by-children-and-youth/>; See also our Statement to the 49th regular session of the UN Human Rights Council on OHCHR report on firearms, 16 March 2022, available at: <https://www.wilpf.org/advocacy_documents/statement-on-the-ohchr-report-on-firearms/>.

²⁰ WILPF, “Submission from the Women’s International League for Peace and Freedom to the Office of the High Commissioner for Human Rights of civilian acquisition, possession and use of firearms on civil, political, economic, social and cultural rights”, 19 February 2019, available at: <https://www.wilpf.org/advocacy_documents/submission-to-a-report-on-the-impact-of-firearms-on-human-rights/>; WILPF, “Statement to UN Human Rights Council 42nd session on the OHCHR report on firearms”, 13 September 2019, available at: <https://www.wilpf.org/advocacy_documents/hrc42-statement-on-the-ohchr-report-on-firearms/>; LIMPAL, “Submission from the Women’s International League for Peace and Freedom, national section of Colombia, to the Office of the High Commissioner for Human Rights of civilian acquisition, possession and use of firearms on civil, political, economic, social and cultural rights”, 19 February 2019, available at: <https://www.wilpf.org/advocacy_documents/submission-of-limpal-to-the-ohchr-on-civilian-acquisition-possession-and-use-of-firearms-on-civil-political-economic-social-and-cultural-rights/>.

²¹ WILPF, “Submission to UN Office of the High Commissioner for Human Rights (OHCHR) for the 2022 report on the impact of arms transfers on human rights” 31 May 2022, available at: <https://www.wilpf.org/advocacy_documents/submission-to-the-ohchr-report-on-the-impact-of-arms-transfers-on-human-rights/>; WILPF, “Statement to the 51st Session of the Human Rights Council on the OHCHR report on the Impact of arms transfers on human rights”, 21 December 2022, available at: <https://www.wilpf.org/advocacy_documents/hrc51-statement-on-arms-transfers/>; WILPF, “Written statement to the 45th session of the Human Rights Council on the OHCHR Report on Arms Transfers”, 19 August 2022, available at: <https://www.wilpf.org/advocacy_documents/hrc45-written-statement-on-the-gendered-impact-of-arms/>.

²² 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, available at: <https://www.wilpf.org/advocacy_documents/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/>.

²³ Preventing gender-based violence through arms control: tools and guidelines to implement the Arms Trade Treaty and UN Programme of Action, WILPF, April 2016, available at: <<https://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>>; Gender-based violence and the Arms Trade Treaty, WILPF, April 2015, available at: <<https://www.reachingcriticalwill.org/resources/publications-and-research/publications/10112-gender-based-violence-and-the-arms-trade-treaty>>.

²⁴ Explosive weapons and the right to health, education, and adequate housing, WILPF, May 2016, available at: <<https://www.reachingcriticalwill.org/resources/publications-and-research/publications/10914-explosive-weapons-and-the-right-to-health-education-and-adequate-housing>>.

nuclear weapons, and surveillance technology. Relevant WILPF submissions and statements can be found on the WILPF Advocacy Documents database.²⁵

Impacts on the environment

In assessing the human rights impacts of weapons, we urge OHCHR to highlight the impacts of weapons on the right to a clean, healthy and sustainable environment, and to urge for more detailed assessments and increased transparency of these impacts since currently, little publicly available data exists. There are detrimental environmental impacts in a weapon's full lifecycle, from its production to its transfer, its use, and its disposal.

The **production** of weapons emits significant amounts of greenhouse gases, exacerbating the climate crisis. For example, the extraction of raw materials such as copper, uranium, and nickel, required for arms production, have been linked to devastating ecological and human rights impacts.²⁶

Furthermore, there are significant and wide-ranging environmental impacts caused by the **use or testing** of different types of weapons. The United Nations Environmental Programme (UNEP) has highlighted the environmental impacts of explosive weapons in populated areas,²⁷ while the Food and Agriculture Organisation (FAO) has provided detailed evidence of conventional weapons' impacts on soil, including land mines and improvised explosive devices, incendiary weapons containing white phosphorus. It describes in detail how heavy metals as well as plastic fragments and explosives residues leach into soil, with detrimental environmental impacts over many decades.²⁸ Moreover, the diversion of or illicit arms transfers can facilitate increased hunting and poaching of wildlife, upsetting delicate ecosystems upon which communities depend.²⁹

A 2021 report by the Conflict and Environment Observatory³⁰ finds that environmental corporate social responsibility reporting of some of the world's biggest arms companies is lacking any

²⁵ Database available at: <https://www.wilpf.org/knowledge-hub/read/?jsf=epro-loop-builder&tax=resource_topic:1596&_gl=1*nduhb9*_up*MQ..*_ga*NDcwOTE5MTQwLjE3MDQ5OTM5ODQ.*_ga_F02L4N7KKH*MTcwNDk5Mzk4My4xLjAuMTcwNDk5Mzk4My4wLjAuMA..*_ga_MOMETNSX3T*MTcwNDk5Mzk4My4xLjAuMTcwNDk5Mzk4My4wLjAuMA..>. To narrow the search to documents on arms-related issues, enter the keyword "arms."

²⁶ See for example Amnesty International, Democratic Republic of the Congo: Industrial mining of cobalt and copper for rechargeable batteries is leading to grievous human rights abuses, 12 September 2023, available at:

<<https://www.amnesty.org/en/latest/news/2023/09/drc-cobalt-and-copper-mining-for-batteries-leading-to-human-rights-abuses/#:~:text=The%20expansion%20of%20industrial%2Dscale,sexual%20assault%2C%20arson%20and%20beatings>>.

Business & Human Rights Resource Centre, Manufacturing of electric vehicle batteries riddled by human rights violations, 10 May 2023, available at: <<https://www.business-humanrights.org/en/from-us/media-centre/manufacturing-of-electric-vehicle-batteries-riddled-by-human-rights-violations/>>.

²⁷ See Environmental legacy of Explosive Weapons in Populated Areas, UNEP, 5 November 2021, available at: <<https://www.unep.org/news-and-stories/story/environmental-legacy-explosive-weapons-populated-areas>>.

²⁸ FAO, Global Assessment of Soil Pollution, 2021, available at: <<https://www.fao.org/3/cb4894en/online/cb4894en.html>>.

²⁹ Wildlife decimated by the surge in conflicts in the Sahara and the Sahel, 9 May 2018, Mongabay, available at: <<https://news.mongabay.com/2018/05/wildlife-decimated-by-the-surge-in-conflicts-in-the-sahara-and-the-sahel/>>.

³⁰ Environmental CSR reporting by the arms industry, December 2021, available at: <<https://ceobs.org/environmental-csr-reporting-by-the-arms-industry/#2>>.

information about environmental problems associated with raw materials in supply chains and does not offer consistent reporting for energy, water and waste. The report finds that requirements for arms companies to disclose greenhouse gas emissions and their scope (e.g., direct emissions generated by the company; or indirect emissions occurring through a company's value chain) depend on their jurisdiction of registration.

States and arms companies do not appear to consider the ecological impacts of the use of weapons they are selling. For example, in 2019, the UK Ministry of Defence was asked for its assessment of the environmental impact of weapons manufactured and sold by the UK. It responded that “any environmental impacts resulting from their use would be the ultimate responsibility of the end user.”³¹

WILPF welcomes that discussions on the impacts of conflict and militarism on the climate crisis are increasingly taking place, including at COP28.³² We stress the importance for States and companies to assess the potential ecological impacts of their weapons production, including supply chains, as well as ecological impacts arising from their use, and to share information about these assessments. With regard to access to information and environmental law, we also note that the 2023 publication “A human rights perspective on arms export licencing and access to information” by Vredesactie and the International Peace Information Service (IPIS),³³ — which we cite in other parts of this submission—, refers to the Aarhus Convention as being rather relevant to this issue.

III. Reply to Question 2

“Please explain whether, and if so, how access to information prevents, mitigates and responds to the negative human rights impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfers. In particular, please elaborate on how access to information can support efforts aimed at ensuring the prevention and cessation of, and accountability for, violations and abuses of international human rights law and violations of international humanitarian law resulting from arms transfers, including the diversion of arms and unregulated or illicit arms transfers.”

³¹ Molly Antigone Hall, UK arms exports are fuelling global climate breakdown, Declassified UK, 17 July 2023, available at: <<https://www.declassifieduk.org/uk-arms-exports-are-fueling-global-climate-breakdown/>>.

³² 2023 United Nations Climate Change Conference or Conference of the Parties of the UNFCCC, more commonly known as COP28.

³³ Vredesactie and International Peace Information Service (IPIS), “A human rights perspective on arms export licencing and access to information”, January 2023, available at: <https://ipisresearch.be/wp-content/uploads/2023/02/20230206_Vredesactie_IPIS_a-human-rights-perspective-on-arms-export-licencing-and-access-to-information.pdf>.

A. Preliminary reflections about the role of civil society in the exercise of the right to access information:

The right to seek and receive information is a right in and of itself and one of the rights upon which free and democratic societies depend, as the Special Rapporteur on freedom of expression has noted.³⁴ Access to information is also essential for individuals seeking to give effect to other human rights, including the right to life. Civil society, including journalists, researchers, activists, academics, lawyers, NGOs, whistle-blowers, and workers (particularly those involved in the shipping of weapons), can play a crucial role in sharing critical information about the arms trade, as well as regarding human rights violations deriving from the use of weapons. Their work is essential to ensure public oversight over arms exports and the arms industry. In fact, due to the patchy, incomplete and sometimes incoherent State reporting on arms transfers, research carried out by civil society is essential to understanding their scale and impacts, especially at a time of increased military spending and armament developments in many regions.

In a 2013 report to the General Assembly, the UN Special Rapporteur on Freedom of Expression noted that Article 6 of the UN Declaration on Human Rights Defenders³⁵ expressly provides for access to information on human rights, stating that everyone has the right, individually and in association with others, (a) to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how these rights and freedoms are given effect in domestic legislative, judicial or administrative systems; and (b) as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.³⁶

The UN Human Rights Council resolution on women human rights defenders in armed conflict also underlined the role of civil society in documenting the impacts of weapons.³⁷ In this regard, WILPF is concerned about the repression and criminalisation of members of civil society who work on the arms trade, and more generally who make known practices of States, businesses and other actors related to weapons, as well as to their negative human rights impacts.

³⁴UN General assembly, Sixty-eighth session 'Promotion and protection of the right to freedom of opinion and expression' UN DOC A/68/362, 4 September 2013, para. 18. Available at: <<https://digitallibrary.un.org/record/768352?ln=en>>.

³⁵ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (known as the Declaration on Human Rights Defenders), adopted by the General Assembly in resolution 53/144.

³⁶ UN General assembly, Sixty-eighth session 'Promotion and protection of the right to freedom of opinion and expression' UN DOC A/68/362, 4 September 2013, para. 22. Available at: <<https://digitallibrary.un.org/record/768352?ln=en>>.

³⁷ UN Human Rights Council, Forty-ninth session, Resolution 49/18 'Recognizing the contribution of human rights defenders, including women human rights defenders, in conflict and post-conflict situations, to the enjoyment and realization of human rights', preambular paragraph 21, (8 April 2022) UN DOC A/HRC/RES/49/18, available at: <<https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FRES%2F49%2F18&Language=E&DeviceType=Desktop&LangRequested=False>>.

For example, in Russia, journalists who share information on the Russian army or arms deals can be criminalised under the Criminal Code for 'state treason' for sharing 'state secrets', and for 'the public discrediting of the army of the Russian Federation'.³⁸ A reporter was convicted in September 2022 to a 22-year jail sentence for treason for sharing 'state secrets' about Russia's arms sales in the Middle East.³⁹

In September 2023 in France, a journalist from Disclose and co-author of a series of investigations into French arms sales abroad was taken into police custody for questioning for allegedly compromising national defence secrets; her home was searched by intelligence services. In 2021, she had published an article uncovering how France, by providing intelligence to Egypt, facilitated repression and bombardments of its population, and how French forces may have been involved in at least 19 bombings of civilians between 2016 and 2018 (so-called 'Sirli' military operation).⁴⁰ Since 2019, she has also written five articles on French arms sales abroad.⁴¹ According to Disclose, the aim of the above-mentioned detention of one of their journalists, which Disclose describes as the latest episode of intimidation against its journalists is clear: "to identify our sources who helped reveal the Sirli military operation in Egypt."⁴²

In this regard, we recall that in its General Comment 34 on Article 19: Freedoms of opinion and expression, the Human Rights Committee stated that:

Extreme care must be taken by States parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of paragraph 3. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute

³⁸ Russian Criminal Code article 275 and 280.3.

See UN Human Rights Committee 'Concluding observations on the eighth periodic report of the Russian Federation' (1 December 2022) UN Doc CCPR/C/RUS/CO/8, paragraph 28. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FRUS%2FCO%2F8&Lang=en>; See also Meduza, 'Tapping Article 275 Russia's Attorney General says providing 'assistance to foreign States' constitutes treason. What does this mean for anti-war advocates?' (2 March 2022). Available at: <<https://meduza.io/en/feature/2022/03/02/tapping-article-275>>; See also Masha Gessen, 'How Putin Criminalized Journalism in Russia' (The New Yorker, 7 April 2023). Available at: <<https://www.newyorker.com/news/our-columnists/how-putin-criminalized-journalism-in-russia>>; And Matthew Luxmoore, 'Russia turns to treason law as Putin extends crackdown' (The Wall Street Journal, 19 April 2023). Available at: <<https://www.wsj.com/articles/russia-turns-to-treason-laws-as-putin-extends-crackdown-ba8321b6>>.

³⁹ Reuters, 'Russian ex-defence reporter's treason appeal rejected' (7 December 2022). Available at: <<https://www.reuters.com/world/russian-court-rejects-appeal-former-journalist-safronov-2022-12-07/>>.

⁴⁰ Disclose, 'Operation Sirli' (21 November 2021). Available at: <<https://egypt-papers.disclose.ngo/en/chapter/operation-sirli>>.

⁴¹ Disclose, 'Vente d'armes: la traque de nos sources (20 September 2023). Available at: <<https://disclose.ngo/fr/investigations/vente-darmes-letat-francais-traque-nos-sources>>

⁴² <https://disclose.ngo/fr/article/secret-des-sources-une-journaliste-de-disclose-placee-en-garde-a-vue>

journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information.⁴³

We also underline that the Special Rapporteur on Freedom of Expression has noted that:

Other individuals, including journalists, other media personnel and civil society representatives, who receive, possess or disseminate classified information because they believe that it is in the public interest, should not be subject to liability unless they place persons in an imminent situation of serious harm.⁴⁴

The Tshwane Principles on national security and the right to information, which were developed by civil society organisations, governments, former security officials, human rights defenders and academics in 2013, provide important guidance on the protection of journalists disclosing classified information in the public interest, which is relevant to consider in the context of the arms trade.⁴⁵ These principles are also relevant regarding the protection of whistle-blowers such as, public officials who act in the public interest to expose government abuses.⁴⁶

Finally, NGOs working on disarmament and research on armaments increasingly face shortages in funding to do their work. In conflict-affected areas, human rights defenders who monitor and document human rights violations and violations of IHL, including through the use of weapons such as explosive weapons, face additional challenges. For instance, the recurrent use of telecommunications blackouts and Internet shutdowns makes documentation of violations more challenging if not impossible and is a very serious violation of the right of access to information.⁴⁷ We are also alarmed at the increasing trend of killings of journalists and media workers working in conflict zones; as the deadliest conflict for journalists in decades, Gaza is a stark example of this.⁴⁸

⁴³ General comment No.34 on Article 19: Freedoms of opinion and expression, UN Doc CCPR/C/GC/34, 29 July 2011, para.30. Available at: <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no34-article-19-freedoms-opinion-and>>.

⁴⁴ UN General assembly, Sixty-eighth session 'Promotion and protection of the right to freedom of opinion and expression' UN DOC A/68/362, 4 September 2013, recommendation 76. Available at: <<https://digitallibrary.un.org/record/768352?ln=en>>.

⁴⁵ Open Society Justice Initiative, The Global Principles on National Security and the Right to Information (The Tshwane principles), see principles 47,48 and 49. Available at: <https://www.justiceinitiative.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>; International Commission of Jurists, "New global principles on the right to information launched", 12 June 2013. Available at: <<https://www.icj.org/new-global-principles-on-the-right-to-information-launched/>>

⁴⁶ Open Society Justice Initiative, The Global Principles on National Security and the Right to Information (The Tshwane principles), see page 49. Available at: <<https://www.justiceinitiative.org/publications/global-principles-national-security-and-freedom-information-tshwane-principles>>.

⁴⁷ Access Now, 'Weapons of control, shields of impunity: internet shutdowns in 2022' (February 2023) available at: <<https://www.accessnow.org/wp-content/uploads/2023/05/2022-KIO-Report-final.pdf>>. See also <<https://www.accessnow.org/campaign/keepiton/>>.

⁴⁸ Committee to Protect Journalists, "Journalist casualties in the Israel-Gaza war", 18 January 2024, available at: <<https://cpj.org/2024/01/journalist-casualties-in-the-israel-gaza-conflict/>>; NPR, "Gaza war is deadliest conflict for journalists in over 30 years, press advocates say", 3 December 2023, available at: <https://www.npr.org/2023/12/03/1215798409/palestinian-journalists-killed-gaza-israel-hamas-war>.

B. Access to information on arms transfers is essential to prevention

(i) **Information on arms transfers is essential to prevent serious violations of human rights and of international humanitarian law resulting from weapons. This includes:**

- Information that enables individuals to see how governments have assessed and weighed human rights impacts and other interests, and that is sufficient to scrutinise such decision-making and challenge it in court when it is flawed and risks violating IHRL and/or IHL;⁴⁹
- Information about the existence of the licence and the risk assessment made by licensing authorities must be made available in due time to be able to exert *a priori* controls. At the minimum, information about the concerned material, end user and envisaged end use(s), and possible resale, re-export of the material and commitments by the end-user in this regard are essential to determine the level of risk.⁵⁰ There are reports of an increased use of general arms export licences, which increases opacity since information on general licences does not provide details regarding the type of equipment they cover, and they cover several years, etc.);⁵¹
- Information on the risk assessment made by the administrative authority is also paramount, including the factual, contextual elements taken into consideration to analyse risks of violations of IHRL and IHL. However, access to information is often denied on the grounds of “national security,” a foreign policy act of the government, and sometimes commercially sensitive information.⁵² Such restrictions cannot be absolute and must meet the standards of necessity and proportionality. In its General Comment 34, the Human Rights Committee has stated that: “When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁵³ In its guidance note on the arms sector, the UN Working Group on Business and Human Rights

⁴⁹ Vredesactie, “A human rights perspective on arms export licencing and access to information”, page 21, January 2023, available at: <https://ipisresearch.be/wp-content/uploads/2023/02/20230206_Vredesactie_IPIS_a-human-rights-perspective-on-arms-export-licensing-and-access-to-information.pdf>.

⁵⁰ Vredesactie, “A human rights perspective on arms export licencing and access to information”, page 22, January 2023, available at: <https://ipisresearch.be/wp-content/uploads/2023/02/20230206_Vredesactie_IPIS_a-human-rights-perspective-on-arms-export-licensing-and-access-to-information.pdf>.

⁵¹ Campaign against the Arms Trade, UK export licence data, available at: <<https://caat.org.uk/data/exports-uk/faq>>.

⁵² ASSEMBLÉE NATIONALE, RAPPORT D’INFORMATION DÉPOSÉ en application de l’article 145 du Règlement PAR LA COMMISSION DES AFFAIRES ÉTRANGÈRES en conclusion des travaux d’une mission d’information constituée le 31 octobre 2018 sur le contrôle des exportations d’armement, No 3581, page 70, available at: <https://www.assemblee-nationale.fr/dyn/15/dossiers/alt/controle_des_exportations_darmement>.

European Center for Constitutional and Human Rights, “Arms trade and corporate responsibility”, pages 10-11, available at: <<https://www.ecchr.eu/en/publication/arms-trade-and-corporate-responsibility/>>.

⁵³ UN Doc CCPR/C/GC/34, para. 35

recommended to States to “Publicly communicate information about risk assessments in export licence approval decisions.”⁵⁴

- As such, limiting access to information such as prices, personal data notably for commercial confidentiality reasons, and to some information that is classified on national security grounds can in some cases be legitimate. However, the complete denial of access to the entire risk assessment is disproportionate and cannot be justified as necessary. In addition, such restrictions effectively deny the right of access to information, thus often the possibility of *ex-ante* controls of arms export licences, including through legal challenges;⁵⁵
- Finally, access to information on physical deliveries, actual exports, and transports of materiel (including in transit countries) is important including for checking the risks of diversion and compliance with export licence end destinations.

(ii) Which information must be provided for effective controls?

Beyond the mere access to information, it is also important to consider the quality and type of information provided on arms exports, particularly to public bodies in charge of oversight. WILPF has raised in various submissions to UN human rights mechanisms issues related to the lack of qualitative information and clear information on arms exports provided to national parliaments, which can play an important role in controls.

For instance, a 2018 joint submission by WILPF and the European Center for Constitutional and Human Rights (ECCHR) indicated that in Germany, information about potential licences meant to be provided is restricted to the type of goods, volume of the deal and the receiving State. Information on reasons for granting or rejecting a licence is in principle never provided, which renders control of export decisions including on human rights grounds virtually impossible.⁵⁶

In submissions to human rights bodies, such as in one to the Committee on Economic, Social and Cultural Rights submitted jointly with ECCHR in August 2022,⁵⁷ WILPF has highlighted that Italy is one

⁵⁴ Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights, Information Note by the UN Working Group on Business and Human Rights, available at: <<https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>>.

⁵⁵ European Center for Constitutional and Human Rights, “Arms trade and corporate responsibility”, pages 10-11, available at: <<https://www.ecchr.eu/en/publication/arms-trade-and-corporate-responsibility/>>; Vredesactie, “A human rights perspective on arms export licencing and access to information”, pages 22-23, January 2023, available at: <https://ipisresearch.be/wp-content/uploads/2023/02/20230206_Vredesactie_IPIS_a-human-rights-perspective-on-arms-export-licencing-and-access-to-information.pdf>.

⁵⁶ For more information, see WILPF, the European Center for Constitutional and Human Rights, joint submission to the Committee on Economic, Social and Economic Rights, *The impact of Germany’s arms transfers on economic, social and cultural rights*, September 2018: <https://www.wilpf.org/wp-content/uploads/2018/09/CESCR_Germany_-Jt-ECCHR-WIPLF-submission-.pdf>.

⁵⁷ For more informatiSee also: Human Rights Watch, “Italy Should Stop Arms Transfer to Egypt, Deal Contravenes EU Pledge, Risks Facilitating Further Abuses,” June 2020, available at: <<https://www.hrw.org/news/2020/06/16/italy-should-stop-arms-transfer-egypt>>; “Italy Charges Egyptian Security Forces in Giulio Regeni’s Murder. EU, International Pressure Necessary to Break Cycle of Impunity”, December 2020, available at: <<https://www.hrw.org/news/2020/12/11/italy-charges-egyptian-security-forces-giulio-regeni-murder>>; and the

of the least transparent countries in the European Union in fulfilling the reporting requirements under the Arms Trade Treaty.⁵⁸ The report to the Parliament by Italy's arms licensing authority (UAMA) does not include essential information needed to ensure that the Parliament can exercise its supervisory role and ascertain whether the authorisations issued by UAMA are in line with the prohibitions laid down in Italy's own legislation.⁵⁹

In December 2020, despite strong condemnation by human rights groups,⁶⁰ a first instalment of an Italian arms deal with Egypt (known as the "order of the century"⁶¹) went ahead. This was done without any official communication to Parliament, thus, preventing it from exercising the oversight role required by Italy's own legislation.

In a statement of October 2023, the *Rete Italiana Pace e Disarmo* (Italian Peace and Disarmament Network) voiced concerns about proposals by the Italian government for amendments to Law 185/90 on military exports. It noted a move towards a less stringent control especially at the level of licensing and consequently, greater facilitation of military arms exports globally, and towards a shift of the decision-making powers regarding criteria and bans on arms exports to the fully political sphere.⁶² A detailed joint analysis of the proposed amendments (Bill No. 855) by the *Rete Italiana Pace e Disarmo* and OPAL⁶³ highlights the continued diminished transparency which has become increasingly evident in recent years, and which undermines a control that is fundamental for, *inter alia*, Italy's responsibility in armed conflicts and for being able to truly aspire to the promotion of peace at an

campaign #StopArmiEgitto <<https://www.amnesty.it/stoparmiegitto-fermiamo-linvio-di-armamenti/>> and <<https://www.disarmo.org/rete/a/47776.html>>.

on, see WILPF, the European Center for Constitutional and Human Rights, joint submission to the Committee on Economic, Social and Economic Rights, The impact of Germany's arms transfers on economic, social and cultural rights, September 2018: <https://www.wilpf.org/advocacy_documents/joint-submission-to-cescr-for-the-review-of-italy/>.

⁵⁸ Export di armi, l'Italia tra i meno trasparenti in Ue. Da quattro anni non comunica all'Onu i Paesi a cui vende armamenti e mezzi militari (Arms exports, Italy among the least transparent in the EU. For four years it has failed to inform the United Nations of the countries to which it sells arms and military equipment). Available at: <<https://www.ilfattoquotidiano.it/2020/07/31/export-di-armi-litalia-tra-i-meno-trasparenti-in-ue-da-quattro-anni-non-comunica-allonu-i-paesi-a-cui-vende-armamenti-e-mezzi-militari/5885177/>>.

⁵⁹ See, for example, Export di armamenti: tutto quello che il Governo non dice. (Arms exports: everything the government doesn't say) 23 May 2020, available at: <<https://www.unimondo.org/Notizie/Export-di-armamenti-tutto-quello-che-il-Governo-non-dice-196608>>.

⁶⁰ See for example, "Italy Should Stop Arms Transfer to Egypt, Deal Contravenes EU Pledge, Risks Facilitating Further Abuses," Human Rights Watch, June 2020 <<https://www.hrw.org/news/2020/06/16/italy-should-stop-arms-transfer-egypt>>; and Italy "Charges Egyptian Security Forces in Giulio Regeni's Murder. EU, International Pressure Necessary to Break Cycle of Impunity," Human Rights Watch, December 2020 <<https://www.hrw.org/news/2020/12/11/italy-charges-egyptian-security-forces-giulio-regeni-murder>>; and the campaign #StopArmiEgitto <<https://www.amnesty.it/stoparmiegitto-fermiamo-linvio-di-armamenti/>> and <<https://www.disarmo.org/rete/a/47776.html>>.

⁶¹ "L'affare del secolo con l'Egitto (The deal of the century with Egypt)," 9 January 2021, Available at: <<https://comune-info.net/perche-continuiamo-ad-armarli/>>.

⁶² Rete Pace Disarmo: "Preoccupazione per proposte di modifica a legge su export di armi, si rischia di mettere gli affari armati prima dei diritti", 4 October 2023, available at: <<https://retepacedisarmo.org/export-armi/2023/10/rete-pace-disarmo-preoccupazione-per-proposte-di-modifica-a-legge-su-export-di-armi-si-rischia-di-mettere-gli-affari-armati-prima-dei-diritti/>>.

⁶³ Osservatorio Permanente sulle Armi Leggere e le Politiche di Sicurezza e Difesa (Permanent Observatory on Light Weapons and the Policies of Security and Defense, OPAL)

international level. The analysis also notes that “One of the less transparent aspects that has occurred in recent years concerns the lack of parliamentary control over data on Italian military export, which makes impossible evaluations on the choices made (...) at the basis of the control mechanisms of the current legislation.”⁶⁴ It further emphasises as essential that parliamentary scrutiny of the data provided by the government and an articulate and in-depth debate on the latter be effectively guaranteed.

A 2021 joint submission by WILPF and ECCHR to the Human Rights Committee underlines gaps in information provided to the French Parliament.⁶⁵ In particular, the submission notes that:

In November 2020, a report of the fact-finding mission on arms export control established by the Foreign Affairs Committee of the French National Assembly in December 2018 called for more information to the Parliament on French arms exports and made recommendations to enable meaningful legislative oversight. The fact-finding mission noted that the Government’s annual report to Parliament “does not provide Parliament with real information beyond a statistical approach and the general information it contains. It therefore needs to be improved in a number of ways, even if it means better defining the scope of national defence secrecy, which is sometimes interpreted in an unnecessarily broad manner”. It further noted that the information provided by the Government “does not allow Parliament to form a reliable opinion with regard to the export contexts that are currently the subject of public debate.”⁶⁶

(iii) Access to information held by arms companies

States’ obligations to respect freedoms of opinion and expression, including the right of access to information, include the requirement for “States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.”⁶⁷ As such, restrictions on arms exports-related information held by private companies withheld on the basis of sensitive commercial information should also be narrowly interpreted and meet the strict standards of necessity and proportionality. The enjoyment of the right of access to information in the context of the arms trade is also essential for the effective

⁶⁴ (Unofficial translation). See original in Italian in Giorgio Beretta (Osservatorio permanente sulle armi leggere e le politiche di sicurezza e difesa – OPAL) Francesco Vignarca (Coordinatore delle Campagne, Rete Italiana Pace e Disarmo), “Documento Riassuntivo delle Considerazioni e delle Proposte, Ufficio di Presidenza della III Commissione Affari esteri e difesa del Senato della Repubblica”, sul disegno di legge n. 855 (modifiche legge 185/90 su controllo import-export materiali di armamento)(17 October 2023) (available only Italian) <<https://retepacedisarmo.org/export-armi/wp-content/uploads/sites/2/2023/10/RIPD-Opal-Audizione-Commissione-III-su-DDL-modifica-legge185-export-armi-low.pdf>>.

⁶⁵ WILPF and the European Center for Constitutional and Human Rights, “France’s extraterritorial obligations under the International Covenant on Civil and Political Rights”, pages 22-24, available at: <https://www.ecchr.eu/fileadmin/Juristische_Dokumente/ECCHR_WILPF_FRANCE_ICCPR.pdf>.

⁶⁶ WILPF and the European Center for Constitutional and Human Rights, “France’s extraterritorial obligations under the International Covenant on Civil and Political Rights”, paragraph 61, available at: <https://www.ecchr.eu/fileadmin/Juristische_Dokumente/ECCHR_WILPF_FRANCE_ICCPR.pdf>.

⁶⁷ UN DOC CCPR/C/GC/34, para. 7.

protection of the right to life. The UN Human Rights Committee has stated in its General Comment 36 on the Right to Life that “States parties must take appropriate measures to protect individuals against deprivation of life by other States, international organizations and foreign corporations operating within their territory or in other areas subject to their jurisdiction.”⁶⁸

Under the UN Guiding Principles on Business and Human Rights and increasingly also under national/regional human rights due diligence legal frameworks (which exist in a number of major arms exporting countries such as France and Germany and will also soon enter into force within the European Union⁶⁹), businesses of all sectors are required to make public information about their human rights due diligence assessments, including about the risks that their products and services pose. The UN Working Group on Business and Human Rights in its guidance on the arms sector has made clear that such due diligence obligations should fully apply to the arms industry and also recommended that businesses in the arms sector “publicly communicate information about HRDD and human rights risk assessments in relation to the sale and export of arms equipment and products.”⁷⁰

Fulfilment of the right of access to information is crucial as part of preventing violations related to arms transfers, including violations of the right to life. In this regard, as part of fulfilling their obligations regarding both the right of access to information and the right to life, States must take all possible measures to strictly regulate the arms industry, ensure that the business operating in this sector are fully transparent about risk assessments, and provide all necessary information for victims’ access to justice.

C. Access to information is essential to stop violations related to ongoing arms transfers

The armed conflict in Yemen triggered several legal challenges in Europe in particular, including through litigation introduced by NGOs and victims, to arms transfers from third-party States such as France and the UK (which were major providers of arms to countries involved in the Saudi-led coalition in Yemen). While several of these cases constituted important precedents to strengthen jurisprudence on States’ and corporations’ obligations under IHL, IHRL, and disarmament law, these cases also showed major obstacles in seeking judicial review of arms transfer decisions.⁷¹

⁶⁸ UN Human Rights Committee, ‘General Comment No 36, Article 6 Right to life’ UN DOC CCPR/C/GC/36, 3 September 2019, para. 22. Available at:

<<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrdB0H1I5979OVGGB%2BWPAXhNI9e0rX3cJImWwe%2FGBLmVrGmT01On6KBOqgmXPNjrlLdefuuQjJN19BgOr%2FS93rKPWbCbgoJ4dRgDoh%2FXgwn>>.

⁶⁹ European Parliament, “Corporate due diligence rules agreed to safeguard human rights and environment”, 14 December 2023. Available at: <<https://www.europarl.europa.eu/news/en/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>>.

⁷⁰ Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights, Information Note by the UN Working Group on Business and Human Rights, available at: <<https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>>.

⁷¹ European Center for Constitutional and Human Rights, “Arms trade and corporate responsibility”, pages 10-11, available at: <<https://www.ecchr.eu/en/publication/arms-trade-and-corporate-responsibility/>>;

These challenges touch upon various issues but the issue of access to information remains one of the biggest barriers. For instance, for plaintiffs to be able to challenge exports, they need to have precise information about the existence and content of an arms export licence (items covered, end user, end uses, etc.). In addition, where plaintiffs seek injunctive relief, such as the quick suspension of arms export licences, the speed at which information is provided (when provided) is often too slow to respond to the urgency of the situation and to prevent further harm.

Finally, the provision of information on physical exports, including on transit countries, is also important to be able to exercise legal recourse or other forms of actions⁷² to contribute to stopping ongoing violations resulting from arms exports. In this regard, the release of information from customs is also extremely important. According to the report by Vredesactie and the International Peace Information Service (IPIS) mentioned earlier in this submission, in the EU, customs documents are in principle not disclosed due to the confidentiality obligation in Article 12 of the Union Customs Code (Regulation /EU) 952/2013).⁷³ The report also underlines that such general confidentiality obligation is disproportional compared to the public interest in transparency over arms transfers and the risks they pose.⁷⁴ This is also inconsistent with the fact that specific pieces of EU legislation already impose transparency obligations over the supply chain of businesses, including regarding customs-related information for timber and conflict minerals.⁷⁵ Finally, according to Vredesactie and IPIS, customs information is made available in the US, which shows that arguments over risks of distortion of competition and regarding commercial confidentiality may be disproportionate when it comes to releasing customs information about arms transfers in the EU.

D. Access to information is a prerequisite for accountability and access to justice and remedy

There has historically been hardly any accountability for human rights violations and violations of IHL related to the arms trade, whether for States or businesses.⁷⁶ Such impunity continues due to some

⁷² See for example, Labor Notes, “Unionists Around the World Block Weapons Bound for Israel”, 13 December 2023, available at:

<<https://labornotes.org/2023/12/unionists-around-world-block-weapons-bound-israel>>.

⁷³ Vredesactie and International Peace Information Service (IPIS), “A human rights perspective on arms export licencing and access to information”, pages 22-23, January 2023, available at: <https://ipisresearch.be/wp-content/uploads/2023/02/20230206_Vredesactie_IPIS_a-human-rights-perspective-on-arms-export-licencing-and-access-to-information.pdf>.

⁷⁴ Vredesactie and International Peace Information Service (IPIS), “A human rights perspective on arms export licencing and access to information”, pages 22-23, January 2023, available at: <https://ipisresearch.be/wp-content/uploads/2023/02/20230206_Vredesactie_IPIS_a-human-rights-perspective-on-arms-export-licencing-and-access-to-information.pdf>.

⁷⁵ Vredesactie and International Peace Information Service (IPIS), “A human rights perspective on arms export licencing and access to information”, pages 22-23, January 2023, available at: <https://ipisresearch.be/wp-content/uploads/2023/02/20230206_Vredesactie_IPIS_a-human-rights-perspective-on-arms-export-licencing-and-access-to-information.pdf>.

⁷⁶ European Center for Constitutional and Human Rights, “Arms trade and corporate responsibility”, page 28, available at: <<https://www.ecchr.eu/en/publication/arms-trade-and-corporate-responsibility/>>.

of the barriers highlighted above, which prevent access to information that is crucial to pursue legal accountability of States and corporations. We underline below some of the specific obstacles to accountability deriving from issues with the right of access to information.

(i) Lack of transparency over arms export licensing makes it hard to challenge it

WILPF brings to the attention of OHCHR the report entitled “Domestic accountability for international arms transfers: Law, policy and practice” published in August 2021 for the ATT Expert Group.⁷⁷ This report analyses litigation in various jurisdictions seeking to challenge arms exports to States parties to the conflict in Yemen. Access to information and issues with transparency are a recurring obstacle in cases seeking to challenge arms exports in various jurisdictions, such as:

- in Spain: issues are mainly related to the secrecy of arms export-related decisions under Law 9/1968 on Official Secrets,⁷⁸
- in France: one of the main challenges is that arms transfers are considered as an “act of government” or in other terms, a purely political matter that cannot be reviewed by the judiciary,⁷⁹
- in the Netherlands: information about sales is only available in the periodic aggregated reports to the Parliament, which are not sufficient for NGOs to initiate legal challenges against these licences,⁸⁰
- and in the United Kingdom⁸¹: in the case of the Coalition against the Arms Trade (CAAT) against the UK Secretary of State, CAAT was not able to participate in closed sessions of the proceedings where classified information was analysed, which hindered their ability to prove that the risk assessment process was inadequate.⁸²

This report also notes that:

The various obstacles and barriers faced by those seeking access to justice in the surveyed domestic jurisdictions clearly attest to the absence or shortage of effective means to trigger judicial oversight for decisions relating to arms transfers. The lack of transparency or availability of a bare-minimum level of information about the reasoning behind decisions granting licences and allowing materiel exports has been a structural entry-level hurdle that has, for instance, blocked NGOs from filing any proceedings in Spain, and which resulted in repeated filings in several other jurisdictions. In some jurisdictions, such as Belgium or France, NGOs that file a claim do so without proper information regarding the scope and duration of arms sales and export licences.⁸³

⁷⁷ ATT Expert Group, “Domestic accountability for international arms transfers: Law, policy and practice”, Briefing No 8, August 2021, available at: <<https://www.saferworld-global.org/resources/publications/1366-domestic-accountability-for-international-arms-transfers-law-policy-and-practice>>.

⁷⁸ *Ibid* ATT Expert Group 2021 1, pages 33-34,

⁷⁹ *Ibid* ATT Expert Group 2021 page 29.

⁸⁰ *Ibid* ATT Expert Group 2021, page 13.

⁸¹ *Ibid* ATT Expert Group 2021, page 18.

⁸² *Ibid* ATT Expert Group 2021, page 48.

⁸³ *Ibid* ATT Expert Group 2021, page 50.

(ii) Limits to access to information based on national security concerns should not be absolute and must be narrowly construed

A recurring issue hampering access to information on arms transfers is the use of the broad ground of national security, State security, public safety or foreign policy-related concerns to justify secrecy. The above-mentioned 2013 report to the General Assembly by the UN Special Rapporteur on Freedom of Expression underlined that:

The recurrent use of national security concerns as a justification for the denial of access to various types of information predicates a need to study carefully the promotion of confidentiality on such grounds. Widespread secrecy justified on national security grounds is particularly problematic in the context of investigations of human rights violations because it may represent one of the main obstacles to the clarification of responsibilities and consequences of serious violations, ultimately becoming a barrier to the promotion of justice and reparation.

Although national security is a legitimate State concern, one of the main challenges faced when information is classified on national security grounds has frequently been the lack of transparency of the process as a whole. In cases of human rights violations, the situation may occur whereby those who decide to classify such information could belong or be linked to the entities allegedly responsible for the violations. The persistent denial of information on human rights violations potentially involving national security bodies often weakens public trust in these institutions, ultimately reversing the alleged justification for secrecy.⁸⁴

A 2023 study “Access to Justice for Gun Violence Seeking Accountability for European Arms Exports” by the University of Amsterdam Law Clinics & Asser Institute for International and European Law found that:

The extent of oversight over arms export licenses varies among countries. Unfortunately, the majority of governments’ management of arms transfers has led to an opaque system with little public accountability. In many jurisdictions, export licensing processes are covered by secrecy under the guise of national security or foreign policy exceptions. The resulting lack of transparency shields arms exports from any public oversight. In such jurisdictions where parliamentary oversight is particularly lacking, exports to conflict and at-risk zones continue to take place. Another significant issue is the difficulty to initiate judicial challenges against licensing decisions. Secrecy exceptions and restrictive procedural requirements effectively shield them from judicial scrutiny that could potentially suspend or prevent the transfers from occurring in the first place. These aspects hinder the right to remedy for victims of gun violence, which, in practice, remains alarmingly deficient across Europe.⁸⁵

⁸⁴ UN General assembly, Sixty-eighth session ‘Promotion and protection of the right to freedom of opinion and expression’ UN DOC A/68/362, 4 September 2013, para. 57 and 58. Available at: <<https://digitallibrary.un.org/record/768352?ln=en>>.

⁸⁵ University of Amsterdam Law Clinics & Asser Institute for International and European Law, “Access to Justice for Gun Violence. Seeking Accountability for European Arms Exports”, 2023, page 85, available at: <<https://www.asser.nl/about-the-asser-institute/news/new-report-finds-major-gaps-in-accountability-for-european-arms-exports/>>.

In its 2022 report on arms transfers, OHCHR has rightly stated that “information regarding alleged violations of human rights or violations of international humanitarian law in the destination State of arms transfers is subject to an overriding public interest in disclosure and cannot be withheld on grounds of national security.”⁸⁶

(iii) Access to information on the arms industry is also essential to accountability of these actors

Given issues with access to State-held information on arms transfers, access to information held by arms companies and other companies in the arms industry is crucial to other accountability avenues. As stated by the UN Working Group on Business and Human Rights in its information note on the arms sector,⁸⁷ arms companies should “Publicly communicate information about HRDD and human rights risk assessments in relation to the sale and export of arms equipment and products”. Access to such information is also essential to appreciate the level of knowledge and potentially negligent intent of corporate actors when assessing potential civil or criminal liability in litigation.

(iv) Fulfilling victims’ right to remedy including the right to truth

The right to truth derives from the right of access to information and is essential for justice, and accountability but also for sustainable peace. In the above-mentioned 2013 report to the General Assembly, the Special Rapporteur on Freedom of Expression indicated that:

At the national level, the right to truth can be characterized as the right to know, to be informed or to freedom of information. In resolution 12/12, its most recent on the right to truth, the Human Rights Council emphasized that the public and individuals were entitled to have access, to the fullest extent practicable, to information regarding the actions and decision-making processes of their Government.⁸⁸

(...), the right to truth affects and has many implications for other rights; for example, (a) it is in itself part of the reparation for the victims and their families, and it honours the memory of the victims; (b) it is the first step in eliminating impunity and striving towards the right to justice and reparation; (c) it is part of the guarantee of non-repetition; (d) it is essential for the individual and his or her social and mental health recovery; (e) it is part of the reconstruction of the social network of relationships, peaceful coexistence and reconciliation; and (f) it is part of the historical heritage of a nation and is,

⁸⁶ OHCHR report A/HRC/51/15, para. 27.

⁸⁷ Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights, Information Note by the UN Working Group on Business and Human Rights, available at: <<https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>>.

⁸⁸ UN General assembly, Sixty-eighth session ‘Promotion and protection of the right to freedom of opinion and expression’ UN DOC A/68/362, 4 September 2013, paragraph 14. Available at: <<https://digitallibrary.un.org/record/768352?ln=en>>.

therefore, open to academic research and investigative journalism. Only people who have the right to fully acknowledge their past can be truly free to define their future.⁸⁹

Arms transfers are often related to serious violations of IHRL and of IHL, as well as potentially also of international criminal law. Hence, the gravity of such violations must be prioritised and adequately weighed with grounds advanced by States and corporations to justify limiting access to information on arms exports and military support, including based on national security, commercial confidentiality, foreign policy interests, etc. With regard to withholding of information on gross human rights violations, the Special Rapporteur on the right to freedom of expression has noted that: Information regarding gross violations of human rights must not be withheld on national security grounds. When limitations are deemed absolutely necessary, the State has the burden of proof in demonstrating that the exceptions are compatible with international human rights law. Information regarding other violations of human rights must be subject to a high presumption of disclosure and, in any event, may not be withheld on national security grounds in a manner that would prevent accountability, or deprive a victim of access to an effective remedy.⁹⁰

In addition, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted by the General Assembly in resolution 60/147 provide that: “Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (...) (c) Access to relevant information concerning violations and reparation mechanisms.”⁹¹

These principles elaborate on the right of access to information on such violations in the following terms:

States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining

⁸⁹ UN General assembly, Sixty-eighth session ‘Promotion and protection of the right to freedom of opinion and expression’ UN DOC A/68/362, 4 September 2013, paragraph 36. Available at: <<https://digitallibrary.un.org/record/768352?ln=en>>.

⁹⁰ UN General assembly, Sixty-eighth session ‘Promotion and protection of the right to freedom of opinion and expression’ UN DOC A/68/362, 4 September 2013, paragraph 106. Available at: <<https://digitallibrary.un.org/record/768352?ln=en>>.

⁹¹ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, 15 December 2005, paragraph 11. Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>>.

to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.⁹²

(v) Conclusion: shifting the narrative on the legitimacy of the arms trade to realise victims' right to truth and to justice more broadly

States' narratives on war (particularly from arms exporting countries) that seek to legitimise the arms trade and the use of weapons often use the rhetoric of "necessary evil" to justify the use of indiscriminate weapons that kill scores of civilians and destroy civilian infrastructure. This rhetoric perpetuates injustice for victims and survivors of war and armed violence. Third States' silence and/double standards in the face of blatantly illegal and irresponsible arms transfers, including with regard to ongoing transfers by the US to Israel, completely undermine public trust in international law, as well as in those States that claim to abide by the "legal" arms trade.

Parallels can be made with nuclear weapon development and possession, wherein nuclear-armed States have consistently denied responsibility for human rights violations and environmental damage from nuclear weapon tests and use. For decades, nuclear-armed states have claimed the alleged "necessity" of nuclear weapons for security reasons and have concealed information as "classified" on national security grounds.⁹³ To this day, victims who are still alive struggle in seeking reparations and in obtaining truthful information about nuclear impacts.⁹⁴

Given these learnings and current trends with peaking militarisation globally, it is difficult to imagine that States and corporate actors involved in the arms trade will rise to their obligations under IHL and IHRL, including when it comes to ensuring the respect, protection and fulfilment of the right of access to information about the arms trade. As noted above, this is why the watchdog role of civil society at large, including journalists, activists, academics, lawyers, NGOs, unions, etc. is as crucial as ever over the arms trade. Information and analysis of IHRL and IHL violations related to the arms trade and the use of weapons by UN human rights bodies, regional and national human rights bodies, parliaments, and independent authorities is also key to support civil society work and to foster public scrutiny and some level of accountability.

Information about the responsibilities and potential violations committed/facilitated by arms providing States, as well as by corporate actors in the arms sector particularly in conflict and post-

⁹² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, 15 December 2005, paragraph 24. Available at: <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>>.

⁹³ PRIF report, 4/2021, Beyond the ban: a global agenda for nuclear justice, Jana Baldus, Caroline Fehl, Sasha Hach, page 9, available at: <https://www.hsfk.de/fileadmin/HSFK/hsfk_publikationen/PRIF_Report_0421_web.pdf>.

⁹⁴ PRIF report, 4/2021, Beyond the ban: a global agenda for nuclear justice, Jana Baldus, Caroline Fehl, Sasha Hach, page 9, available at: <https://www.hsfk.de/fileadmin/HSFK/hsfk_publikationen/PRIF_Report_0421_web.pdf>.

conflict settings should also be systematically considered, including by the UN system at large, in peace negotiations and agreements, transitional justice mechanisms (in legal proceedings but also in truth-oriented mechanisms), as well as in post-conflict disarmament/reconstruction operations, including with regard to weapons-clearing, environmental impacts of weapons and environmental remediation.

IV. Reply to question 9

“Please indicate how the transboundary nature of arms transfers affects or can affect the enjoyment of the right of access to information relating to such transfers.”

Please see annex to this submission.