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# A WORKABLE HUMAN RIGHTS RULE FOR THE ARMS TRADE TREATY

Irresponsible arms transfers taking place across the world are destroying both lives and livelihoods. Hundreds of thousands of people are killed each year as a result of foreseeable patterns of armed violence fuelled by the poorly regulated global trade in conventional arms. This terror trade also contributes to hundreds of thousands more men, women and children being injured, raped, displaced, impoverished, and denied other rights – economic, social, cultural, civil and political – established in international law.

An effective Arms Trade Treaty (ATT) should be one that helps to protect lives, livelihoods and rights. The treaty should protect the ability of states to lawfully sell, acquire and possess arms for their security, law enforcement and self-defence, consistent with international law and best practice standards. But to ensure real security, it should also require states not to transfer arms internationally where there is a substantial risk that they will be used in serious violations of international humanitarian or human rights law, whose protection forms part of states' existing international obligations. An effective ATT should also prevent international arms transfers where there is a substantial risk that they will facilitate patterns of armed violence including terrorist attacks,

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gender-based violence, violent crime and organized crime; or that they will seriously impair poverty reduction or socio-economic development.

A small number of states are now seeking to undermine the inclusion of such rules based on international law and limit the types of conventional arms that should be included in the scope of the ATT. This jeopardizes the efforts of the majority of states to establish a treaty with rules that will contribute to real security.

This document focuses on a fundamental area of risk assessment: the risk that international transfers of conventional arms will be used for serious violations of international humanitarian and human rights law. It presents the voices and experiences of individuals and communities subject to grave, persistent and systematic human rights abuses and war crimes fuelled by the irresponsible supply of arms. It shows how rigorous risk assessments by arms-transferring states can in each case prevent arms from fuelling these abuses. And it illustrates the kinds of arms and equipment used in such abuses, which must be included in an ATT capable of delivering real security.

STATES SHOULD ENSURE, ON A CASE-BY-CASE BASIS, THAT AN INTERNATIONAL TRANSFER OF ARMS IS NOT PERMITTED IF THERE IS A **SUBSTANTIAL RISK** THAT THE ARMS WILL BE USED IN **SERIOUS VIOLATIONS** OF INTERNATIONAL HUMAN RIGHTS LAW OR INTERNATIONAL HUMANITARIAN I AW

## SERIOUS VIOLATIONS ARE CHARACTERIZED BY

### Scale and persistence

Is there a pattern of human rights violations, or evidence that violations are systematic or institutionalized? Do the violations affect many people, or are they less widespread?

or

### Character and pervasiveness

Is the proposed end user violating a significant spectrum of human rights established in international law (civil, cultural, economic, political or social rights) with arms of this kind?

## SUBSTANTIAL RISK

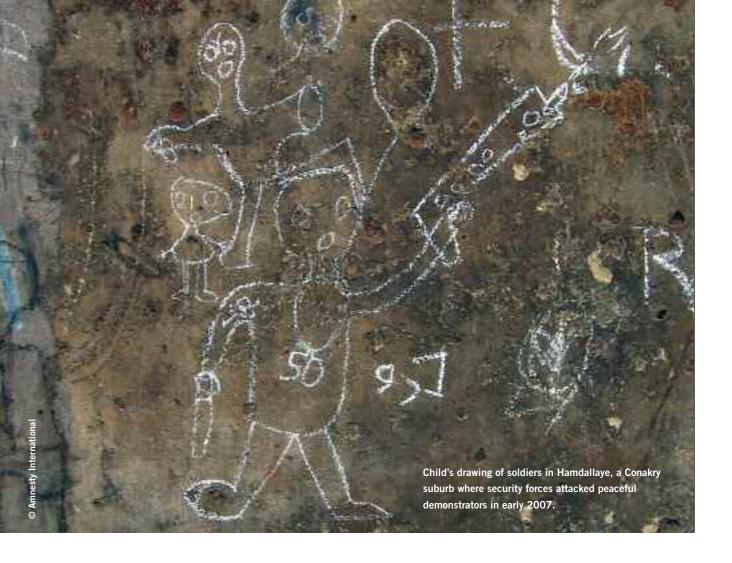
## **MEANS**

A level of risk below certainty, but beyond suspicion: where it can be reasonably foreseen that the proposed end users are likely to use the arms for serious violations or patterns of abuse.

It does not mean that such misuse is merely a "possibility", a standard which could impede legitimate arms transfers that enhance security.

## SOME KEY RISK ASSESSMENT QUESTIONS

- Does impartial and credible evidence about the current and past record of the proposed end user indicate their perpetration of serious violations of international humanitarian or human rights law using these kinds of arms? Is the evidence for such violations reliable and credible?
- Have such violations been isolated, or have they been widespread or systematic or pervasive (indicating the severity and extent of the problem and the end user's attitude towards its human rights obligations)?
- Are past or new trends of violations continuing? Has the government since taken feasible steps to prevent the recurrence of such violations by this end user, and acted effectively to investigate and prosecute the perpetrators?



# CASE 1/EXCESSIVE FORCE AND UNLAWFUL KILLINGS IN GUINEA

'I was with Kafala in front of our compound. Several children were playing. At around 5pm, some red berets went by in a Land Cruiser. The children shouted out, making fun of them. The vehicle drove at the children, who tried to escape. Kafala was hit by the vehicle and he fell to the ground. He was lying face down. A red beret took his firearm and shot the boy twice. He was hit between the shoulders and the hips. Another boy who was trying to escape was also hit by a bullet. Kafala's body was transported to Donka hospital.'

A relative recounts how 14-year-old Kafala Ba was shot and killed at point-blank range by a member of the Presidential Guard in Conakry on 23 February 2007

In January and February 2007, in response to demonstrations and strikes, Guinean armed forces attacked peaceful demonstrators in Conakry and elsewhere, continuing a decade-long pattern of violent repression. Demonstrators and bystanders, including children, were shot and killed, some at point-blank range. Amnesty International has documented that on one occasion in Conakry, Guinean security forces drove Mamba armoured vehicles into crowds of peaceful demonstrators, firing live ammunition and tear gas. Across Guinea, over 130 people were killed and several thousand injured. Security forces engaged in dozens of arbitrary arrests, sexual violence and looting.

According to UN customs data, between 2003 and 2006 nearly \$7 million-worth of small arms ammunition was supplied to Guinea from France, Portugal and Spain, although it is difficult to determine the end users of these ammunition supplies from this data alone. The armoured vehicles used in Conakry in early 2007 were supplied in 2003 by a South African manufacturer, a majority-owned subsidiary of a UK arms company, for "border security", according to the company.

# APPLYING AN EFFECTIVE ARMS TRADE TREATY HUMAN RIGHTS RULE

SUBSTANTIAL RISK: Guinea's security forces have a 10-year record of widespread, persistent, serious human rights violations perpetrated during Guinea's 1998 presidential elections, 2000 local elections, and 2001 referendum; and in violently suppressed demonstrations in 2004, 2005, 2006, 2007 and 2008, using the types of small arms, internal security weapons and military vehicles which continued to be supplied during this period.

**SERIOUS VIOLATIONS** have been persistently reported throughout this period, including unlawful killings, and the use of excessive and indiscriminate force against demonstrators and members of the political opposition. These abuses were also systematic, in some cases ordered and supported by the highest state authorities.

In these circumstances an adequate ATT human rights rule would require states to prevent the supply to Guinea's security forces of such arms used for unlawful killings and the exercise of excessive force, until the Guinean government demonstrably institutes and enforces measures to prevent, investigate and prosecute serious human rights violations perpetrated by those forces.

# CASE 2/IMPUNITY AND ARMED VIOLENCE AGAINST WOMEN IN GUATEMALA



Women protest against the high murder rate of women in Guatemala and the lack of action by the state, November 2005.

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The body of 19-year-old university student Claudina Velásquez Paiz, who was studying to become a lawyer, was found on 13 August 2005. She had been shot and semen was found on her body. The subsequent investigation was seriously deficient; key witnesses were not interviewed, and the principal suspects were not even tested to ascertain if they had fired a gun. According to Claudina's father: 'The investigator... stated that the crime scene wasn't investigated as it should have been only because the victim was prejudiced against due to her background and condition. Claudina was classified as a person whose death shouldn't be investigated because of the place she was found in and because she was wearing sandals, a necklace and a belly button ring.'

In November 2005, the head of the Special Prosecutor's Office on Crimes against Life finally took over the investigation. In October 2006 the Guatemalan Human Rights Ombudsman's Office reported that in Claudina Velásquez Paiz' case "the State failed in its obligation to respect and guarantee the right to life, security and due process."

Guatemala is no longer in armed conflict, but is awash with arms. Unchecked supplies of small arms from abroad continue to fuel serious, widespread human rights abuses by both state and non-state actors, fostered by systematic failures to adequately investigate and prosecute widespread armed killings and acts of armed sexual violence.

An effective ATT human rights rule would restrict precisely these international small arms supplies, while not hindering the legitimate supply of other arms – such as larger military weapons – which are not used by civilians in armed violence, or by security forces in unlawful killings and other abuses.

An estimated 1.8 million firearms in Guatemala – 90 per cent unregistered – contribute to a climate of fear and criminality. 80 per cent of murdered men and 69 per cent of murdered women are killed with firearms. Between 2001 and 2006 more than 2,200 woman and girls were murdered, in many cases after being subjected to acts of gross physical violence, rape and other forms of torture. As the national Human Rights Ombudsman has said, "the difference is that in the case of women they make them suffer more before being killed."

Only around one per cent of all killings reportedly result in a conviction. A systematic lack of investigation into murders, and subsequent low conviction rates, has contributed to a culture of impunity for such crimes. This is particularly true of murders of women: Amnesty International has documented a pattern of murders in which the authorities' response clearly depends on the victim's gender.

With the state's failure to undertake effective investigation and prosecution, continuing insecurity has been met with further violence: security force members have been accused of torturing and extrajudicially executing individuals deemed socially undesirable.

According to UN customs data, Argentina, the Czech Republic, Germany, Italy, Slovakia, South Korea and Turkey exported nearly \$7million-worth of pistols and revolvers to Guatemala between 2004 and 2007. A new weapons and ammunition control act, introduced in March 2009, has tightened some controls on domestic firearms and criminalized illicit firearms and ammunition trafficking. But the large number of existing illicit small arms has not been significantly reduced, and impunity for killings with such arms continues.

## APPLYING AN EFFECTIVE ATT HUMAN RIGHTS RULE

**SERIOUS ABUSES:** Murders, sexual violence and unlawful killings and injuries committed using small arms are ongoing and widespread in Guatemala.

SUBSTANTIAL RISK: The government has failed to take feasible steps to prevent this pattern of grave abuses, either by civilians or state forces, and impunity for these abuses is widespread. Many are perpetrated using illegally held firearms and ammunition drawn from an unlicensed market which credible estimates indicate is large and well supplied, and includes foreign weapons imported from abroad; Guatemala's own domestic small arms production is small — producing only 5.56mm ammunition for the police and military — although some domestically produced ammunition has leaked to unlicensed users.

An effective ATT human rights rule would require states not to export handguns and ammunition to civilian suppliers in Guatemala on a case-by-case basis as long as there was a substantial risk that they would be passed onto the illicit market and into the hands of those perpetrating serious human rights abuses. This risk would continue until the Guatemalan authorities take effective steps to remove large existing numbers of illicit arms from circulation; and until murders and unlawful killings using small arms are adequately investigated and prosecuted. Similarly, given ongoing concerns regarding security forces' adherence to international human rights law, small arms and ammunition would not be exported to forces in Guatemala persistently responsible for unlawful killings, until they can demonstrate that such killings will be adequately investigated and punished.

An ATT human rights criterion would not prevent the supply of arms not used in civilian armed violence, or by Guatemalan security forces in unlawful killings and other abuses: for example, larger military systems to the armed forces for legitimate self-defence, or patrol boats for counter-narcotics operations.

# CASE 3/ARBITRARY ARRESTS, EXCESSIVE FORCE AND UNLAWFUL KILLINGS IN MYANMAR



Security forces arrive at a demonstration in the centre of Yangon, September 2007.

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'The authorities cut the phone lines at about five in the afternoon. At ten past nine that night, they crashed open the main gate of the monastery with their military trucks. They started beating the monks as soon as they came in. They kicked open the main door of the monastery after they crashed open the gate. They beat us indiscriminately as soon as they got inside the building. It was a preventive strike so that the monks could not resist the attack. They ordered us to stand against the wall and hit the monks who did not obey their orders with sticks.'

Colleague of U Thilavantha, a monk in Yangon who died on 26 September 2007 after being attacked by armed forces who raided their monastery

Between 25 and 29 September 2007, in response to the country's largest anti-government demonstrations since the pro-democracy uprising in 1988, Myanmar's security forces raided monasteries and attacked peaceful demonstrators. Thousands were arrested, hundreds injured, and at least 31 people killed, although the actual death toll was likely to be over 100.

Amnesty International has confirmed that during the crackdown, state security personnel, or groups supported by them, fired rubber bullets, tear gas grenades and live rounds into crowds of peaceful demonstrators. For example, Thet Paing Soe and Maung Tun Lynn Kyaw, students at State High School No. 3 in Tamwe, Yangon, were shot dead while demonstrating on 27 September. Eyewitnesses reported shots being fired from military trucks and flyover bridges, and reported that they were aimed deliberately at perceived leaders of the demonstrations.

## APPLYING AN EFFECTIVE ARMS TRADE TREATY HUMAN RIGHTS RULE

SUBSTANTIAL RISK: The September 2007 actions were far from isolated. The regime's military, security and police forces have a well-documented and long-standing record of serious human rights violations, which the UN has described as widespread and systematic.

**SERIOUS VIOLATIONS:** Recorded patterns of violations include extrajudicial killings, enforced disappearances, torture, forced labour and the recruitment of child soldiers, in some cases amounting to war crimes and crimes against humanity.

Amnesty International believes that the widespread, systematic and serious character of human rights violations in Myanmar, including crimes against humanity, committed by agents of the state and by groups acting with the state's authorization and support, justifies the imposition of a mandatory UN arms embargo on Myanmar. In its absence, however, an ATT human rights criterion would prohibit states from supplying arms and related equipment to Myanmar's military and security forces until it can be demonstrated that they will not be used for serious human rights violations.



To adequately protect human rights, an ATT must cover military, security and policing arms, and related equipment of all types. It must not be limited only to the eight categories proposed by some states – the seven categories of vehicles, artillery and missiles included the UN Register of Conventional Arms, plus small arms and light weapons. For example, military transport and utility vehicles, not currently covered by the UN Register, are widely used in both military and internal security operations. During the crackdown, Myanmar's security forces used distinctive Chinesemade army trucks, several hundred of which have been delivered to Myanmar since 2005, to raid monasteries, and to transport and co-ordinate security forces.



Grenade launcher used by Myanmar security forces during demonstrations in Yangon, 28 September 2007.

An ATT should also cover internal security weapons and munitions, often not of military specification but widely deployed by police and security forces. In Yangon in 2007, security forces repeatedly used rubber bullets, tear gas canisters and live ammunition against peaceful protesters, fired from firearms and launchers, including some visually identical to grenade launchers designed in Singapore.

The case of Myanmar also shows why an ATT should cover specialized arms production machinery and equipment. Many of the types of small arms used to violate human rights in the 2007 crackdown and since are reportedly produced in Myanmar itself. Myanmar's small arms production capacity began with the transfer of production machinery by West German companies in the 1950s and 1960s, but more recently the journal Jane's Intelligence Review has alleged that in 1998 Myanmar was supplied with a purpose-built factory to manufacture assault rifles and ammunition, allegedly designed and built by a Singaporean company with assistance from Israeli consultants.





# **CASE 4/ARBITRARY** ARRESTS, **EXTRAJUDICIAL EXECUTIONS AND** WAR CRIMES IN SOMALIA



Armed Ethiopian soldiers on a "technical" in Mogadishu, May 2007.

'On 16 October 2007 I was in Somalia. On the fourth night I was there the village was occupied by Ethiopians. I was among 41 who were arrested by the Ethiopians. We were taken to the military base. I could see the battle wagons, and more than 15 technicals [jeeps mounted with light weapons]. I was questioned by a Somali guy who was working with the Ethiopians. We were all asked the same question: "Why are you here?" We said we were just living in our homes.'

'When the questions ended, nine of us were taken away and dropped into a lorry. I think these nine were taken to Ethiopia. I think this is because two of them were mullahs with long beards... The rest, 32 including me, we ran away, we escaped, but 11 were killed, shot dead. I could see them falling as they were ahead of me, they were the first group running away. That was the day I decided to flee the country. Later, on 22 November I saw five hodies that had their throats cut. Two of them were beheaded. The area was occupied by Ethiopians.'

"Zakaria", aged 41, from Bakara Market area, Mogadishu, arbitrarily arrested by Ethiopian forces in Somalia

Although Somalia itself has been subject to a mandatory UN arms embargo since 1992, arms have continued to flow to warring parties engaged in serious human rights violations and war crimes that have engulfed the country for over two decades. Some of the forces involved in the conflict have been supplied with arms received outside the country, in locations not formally subject to the embargo. For example, between late 2006 and early 2009 the Ethiopian government conducted a major military offensive inside Somalia, in conjunction with the Transitional Federal Government (TFG), to expel forces loyal to the Islamic Courts Union (ICU). During the two preceding years, Ethiopia reported imports of significant quantities of military arms from China, the Czech Republic, Israel, North Korea and Russia, according to UN customs data. During the offensive itself, Ethiopia reported it has imported over \$48 million of military weapons from China, Bulgaria and South Korea, despite grave violations of international human rights and humanitarian law by Ethiopian and allied TFG forces within Somalia, and despite the UN Monitoring Group on Somalia having described Ethiopian forces' presence in Somalia as an inherent violation of the arms embargo. In the face of armed groups' renewed offensives in 2009, the US government reportedly shipped 40 tons of arms to TFG forces.

The UN Monitoring Group has also alleged that Somali armed groups, including ICU and Al-Shabaab forces, procure arms from Somalia's burgeoning arms markets, and that both markets and armed groups receive arms shipments from Eritrea, Ethiopia and Yemen and other countries in the region. These groups have used such arms in persistent violations of international human rights and humanitarian law. Armed violence also continues to deny Somalis access to adequate health care and food, exacerbated during 2008 by targeted shootings of humanitarian aid workers.

# APPLYING AN EFFECTIVE ARMS TRADE TREATY HUMAN RIGHTS RULE

SUBSTANTIAL RISK: The UN Panels of Experts and Monitoring Groups on Somalia have repeatedly made credible allegations since 2002 that vehicles, small arms, light weapons, ammunition and technical support are being supplied from Ethiopia, Eritrea, Yemen and other countries in the region, to parties perpetrating grave violations of international law in Somalia's catastrophic conflict.

**SERIOUS VIOLATIONS:** Forces on all sides of the conflict have engaged persistently in a wide spectrum of grave human rights violations including unlawful killings, arbitrary detentions and torture; and serious violations of international humanitarian law, including indiscriminately shelling civilian areas and deliberately targeting civilians.

An ATT human rights rule would require states to prevent the direct and indirect supply of arms and related material to all forces engaged in war crimes, crimes against humanity and other serious human rights violations within Somalia — whether or not those forces or their location were explicitly covered by the UN arms embargo — unless transferring states could demonstrate that those arms would not be deployed by the parties to the conflict in Somalia, and were not of a kind likely to be used for serious violations of international humanitarian and human rights law.

## NECESSARY SCOPE FOR AN EFFECTIVE ARMS TRADE TREATY

To ensure respect for international humanitarian and human rights law, an ATT must realistically cover arms and related equipment of all types, not simply those covered by the UN Register of Conventional Arms and small arms/light weapons categories. For example, all sides in Somalia's conflicts have commonly used "technical" vehicles described by "Zakaria" above: typically trucks or light utility vehicles mounted with heavy machine guns or 23mm/39mm anti-aircraft cannon, used to attack ground targets.

Neither unarmoured transport/utility vehicles of military specification, nor the anti-aircraft cannon commonly mounted on "technicals" are covered by the UN Register.

# CASE 5/ARMS FOR UNLAWFUL KILLINGS AND WAR CRIMES IN THE DEMOCRATIC REPUBLIC OF THE CONGO



A Congolese woman in the Kibati camp north of Goma, eastern DRC, November 2008. The camp was set up for civilians displaced by fighting between the DRC national army and the National Congress for the Defence of the People armed group.

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'There's only an old and sick man inside. The soldier asks his name and demands money, but the old man has none, so he pushes him down into a corner of the hut. Then Théophile and I are ordered to lie down on the bed, side-by-side. And I knew then that our moment had come. The soldier shoots several times: at the level of my head, and at the heart. This was at almost point-blank range. By some miracle one bullet grazes my neck and the second goes through my arm. Then the soldier goes out, closing the door behind him. This was around midday. Théophile is hit, his body twisted across the bed by the bullets. He was whimpering, then he cries out suddenly and I know that he is dead. I was covered in blood, and lost consciousness.'

Survivor of attack by soldiers from the armed group, the Rally for Congolese Democracy (RCD-Goma), Buramba, North Kivu, December 2004

All sides in the brutal interlocking conflicts in the Democratic Republic of the Congo (DRC) since 1996 have repeatedly, systematically and pervasively breached international human rights and humanitarian law. A belated and partial UN arms embargo, imposed in 2003 on armed groups in eastern DRC and on groups not party to the 2002 DRC peace agreement, was intended to end the conflict; however, it has failed to stem arms flows to the perpetrators of these abuses, in part due to irresponsible but technically legal arms transfers to the supporters and suppliers of armed groups in the region.

DRC government forces and Congolese and foreign armed groups have engaged in widespread human rights violations sometimes amounting to war crimes, including unlawful killings, rape and the recruitment and use of child soldiers. During earlier phases of the conflict, Rwandan and Ugandan troops also engaged in war crimes, including the indiscriminate shelling of civilian areas and extrajudicial executions of unarmed civilians. The International Court of Justice ruled in 2005 that between 1998 and 2003 Ugandan forces had tortured civilians, failed to protect the civilian population during fighting with other combatants, incited ethnic conflict, and were involved in the training of child soldiers.

All sides also assisted and equipped armed groups whose primary military undertaking was to conduct systematic attacks against civilian communities, often because of their ethnic identity. As part of a renewed peace process, the hurried integration of armed groups into the DRC national army has more recently given such groups access to new government weapons without dismantling their chains of command or vetting fighters to screen out suspected perpetrators of war crimes or serious human rights violations. The legacy of these violations continues to deny adequate health care and other economic and social rights to the DRC's population. More than 1.5 million people are still displaced by conflict in eastern DRC. Armed groups have repeatedly and deliberately attacked and looted health centres and hospitals, which continue to be overwhelmed by the legacy of mass rape and injury.

The UN arms embargo has been persistently breached by a pattern of arms transfers from neighbouring countries and by internal arms trafficking, allegedly sponsored in some cases by the DRC government. In addition, however, arms continued to be supplied legally from Albania, Bosnia and Herzegovina, China, Czech Republic, the Russian Federation, Serbia and other countries to government forces in the DRC, Rwanda and Uganda. Although not covered by the UN arms embargo, arms deliveries to some state forces after the imposition of the embargo coincided closely with their military support to embargoed forces in eastern DRC, including arms supplies by road and air.

## APPLYING AN EFFECTIVE ARMS TRADE TREATY HUMAN RIGHTS RULE

SERIOUS VIOLATIONS: From 1997 onwards, Amnesty International and others documented a wide spectrum of war crimes and serious human rights violations in eastern DRC, perpetrated widely by government forces from the DRC, Uganda and Rwanda, and by armed groups supported by those forces.

SUBSTANTIAL RISK: Although direct perpetration of some of these violations ended when Rwandan and Ugandan forces withdrew, the UN Panel of Experts also credibly and repeatedly reported arms transfers and military assistance from Rwandan, Ugandan and DRC forces to armed groups in eastern DRC from 2003 onwards, which continued such abuses.

Given such evidence, an ATT human rights rule would supplement and reinforce the UN embargo on eastern DRC. It would require states to prevent arms supplies to armed forces that either seriously violate international humanitarian and human rights law in eastern DRC or supply weapons to armed groups engaged in such violations, even though those armed forces are not themselves directly subject to the embargo. Transferring states would have to clearly demonstrate that any arms supplied would not be diverted to these forces in eastern DRC, or sent on to armed groups there.

Front cover:

Mother and child shelter from shelling,
Mogadishu, Somalia, February 2007.

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## **ACTION NEEDED NOW**

Amnesty International calls on all governments to:

- support, participate in and swiftly conclude negotiations for an effective Arms Trade Treaty (ATT);
- ensure that the ATT establishes binding rules for assessing international arms transfers on a case-by-case basis, and clearly determine when an arms transfer is prohibited;
- ensure that these binding rules reflect the UN Charter and States' existing international obligations including international human rights and humanitarian law.

States can sell, acquire and possess conventional arms for legitimate security, law enforcement and self defence needs consistent with relevant principles of international law, including international humanitarian and human rights law, and according to UN and other international arms control standards and best practices. But all too often, governments, companies and individuals break the rules with tragic and even catastrophic consequences.

States should not transfer arms internationally where there is a substantial risk that they will be used in serious violations of international humanitarian or human rights law. They should also prohibit international arms transfers where there is a substantial risk that they will facilitate patterns of armed violence including terrorist attacks, gender-based violence, violent crime and/or organized crime; or that they will be used for terrorist attacks or seriously impair poverty reduction or socio-economic development.



**Amnesty International** is a global movement of 2.2 million people in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion — funded mainly by our membership and public donations.

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