

Presentation - Guidance on the implementation of Article 7(4)

Slide 1 - We welcome this opportunity to speak on Article 7(4) of the ATT and the steps States should take to prevent arms transfers from facilitating serious gender based violence (GBV) and serious violence against women and children.

Control Arms has previously presented on this issue and today, I will build upon those presentations, while also drawing on contributions made by the ICRC and Small Arms Survey. In this presentation, I hope to outline key pointers and questions designed to offer States practical guidance on the implementation of Article 7(4). As requested, I am addressing GBV and violence against women and therefore, I do not address violence against children.

Slide 2 - Before delving into the assessment on Article 7(4) I wish to address a question that often arises concerning its application: how this article fits within the broader context of Articles 6 and 7. Over the past three decades, it has become widely recognized among scholars, UN bodies, tribunals, States and civil society that GBV constitutes a serious violation of international human rights law, and can also amount to a war crime, a crime against humanity, or genocide, depending on the circumstances. Furthermore, GBV has also been recognized to be inherently serious in nature.

Slide 3 - Given the broad scope of GBV and violence against women, these violations are covered under multiple provisions in Article 6 and Article 7. By including Article 7(4) as a stand-alone provision and requiring States Parties to “take into account” the risk of GBV and violence against women “in making this assessment,” the Treaty seeks to ensure that these issues are systematically assessed under each relevant sub-section of Articles 6 and 7. While serious violations of international human rights law or international humanitarian law include acts of GBV and violence against women, it is important to have Article 7(4) as a stand alone provision as these issues can be overlooked when applying the risk assessment. Essentially, Article 7(4) is a requirement for States Parties to pay special attention to the issues of GBV, violence against women and girls when applying Articles 6 and 7.

Slide 4 - For Article 7(4) to be effectively implemented within the broader ATT risk assessment, **it is essential that licensing officers are properly trained and have a clear understanding of these issues. What can help with the application of Article 7(4) is to increase the involvement of women in ATT processes, especially as licensing officials. Another strategy is to consult with GBV specialists, especially for those contexts where this is judged to be an issue.**

Slide 5 - **The first step in applying Article 7(4) is that States must investigate whether in the recipient State there is serious GBV and violence against women.**

When investigating these issues, licensing officials must be aware that the nature of GBV can change in a country and they need to remain alert to such changes. For example, past WGETI Reports have underlined that GBV concerns both sexual violence and other acts committed against an individual because of their sex and/or socially constructed gender role. A recent illustration of this is the report from the Independent International Fact-Finding Mission for Sudan into violations of international human rights law and international humanitarian law, published in October 2024. This report details acts of sexual violence being committed against both females and males.

Slide 6 - The second step is that licensing officials must determine whether a violation is considered to be serious. This is determined by the character (i.e., the gravity) of the violation and the extent of harm suffered by victims. While the threshold of this assessment is relatively low, it requires a careful, case-by-case and holistic assessment. Some States Parties consider violations to be serious if they are widespread and systematic. However, such an approach is at risk of overlooking the serious harm suffered by a small number of victims.

Slide 7 - The third step is to consider whether the importing State is taking effective action to prevent GBV and violence against women. The ICRC has encouraged exporting states to consider as part of their risk assessment whether the recipient State has complied with its obligations under international law in the past and what steps has it taken to prevent, end or punish serious violations of GBV and violence against women. For example, does the recipient have laws in place to address these violations? Are these violations adequately punished? Have military, security personnel, and police forces received training on preventing GBV and violence against women?

Slide 8 - As a fourth step in the assessment process, States must **determine whether there is an “overriding risk” that the arms or items under Articles 2(1), 3 or 4 to be transferred would be used to commit or facilitate the relevant acts of serious GBV and violence against women identified under question 1.** The use of a weapon to “commit or facilitate” a human rights violation can encompass a wide range of acts, including actions taken by non-state actors. Specifically, the term “facilitate” refers to situations in which the arms transferred may make human rights violations easier to carry out, even when the arms are not directly involved in the actual violation. The Small Arms Survey has highlighted that the mere presence of a weapon can be used to intimidate vulnerable groups, such as women and the LGBTQ community, thereby exacerbating the risks of their rights being seriously violated.

In the absence of comprehensive and disaggregated data on arms and GBV and violence against women, **exporting States must carefully assess whether the weapons they intend to transfer could potentially be used to facilitate these acts.** The ICRC has framed this as a need for States to make a prospective assessment, considering how the recipient is likely to behave in the future and how the arms being transferred will likely be used.

Article 7(7) requires that, “If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the

authorization after consultations, if appropriate, with the importing State.” Exporting States must be aware that if there is a conflict or internal tensions, for example, these can be contexts where GBV and violence against women can significantly increase and therefore, it is important to keep such contexts under review.

Slide 9 - Turning to the issue of **mitigating measures** as set out in Article 7(2), exporting States can assess whether mitigating measures or other approaches might satisfactorily and significantly reduce the risks identified. Given the grave nature of serious GBV and violence against women, it is difficult to contemplate measures that can effectively mitigate these risks in the short term, as they often represent long-term, entrenched issues. When looking at mitigation measures some States Parties look at whether the recipient State is party to relevant IHL and Human Rights treaties, including the Convention on the Elimination of Discrimination Against Women (CEDAW). Again, membership of a particular treaty is insufficient as a measure for mitigating the serious and often long term problem of GBV and violence against women. It is crucial to ensure that the obligations of these treaties are effectively implemented in both law and practice. This should be assessed under the question of whether the recipient State takes effective action to prevent GBV and violence against women. Licensing officials must also be aware that some States may have ratified CEDAW, but have included reservations that effectively undermine the object and purpose of this Convention.

Slide 10 - In all of the steps outlined above, what is important is a rigorous and informed assessment. The obligation rests with States to make good faith efforts in applying the assessment set out in Article 7. A crucial point raised by the Small Arms Survey is that GBV and violence against women can be normalised in certain contexts, underscoring the need for States to consult multiple sources of information. States should endeavour to obtain firsthand insight into the situation on the ground in the recipient State and to verify this information, for example, by cross checking information against media and UN reporting. If a State does not have a presence on the ground, we would propose that it is essential to verify what is happening on the ground by consulting at least three separate sources of information.

Slide 11 - Applying Article 7(4) requires drawing on a range of reliable sources of information. While there are still critical gaps in the collection and analysis of disaggregated data on the extent and impact of GBV and violence against women, there are numerous credible sources that States can include, as a minimum, in their risk assessment. These include diplomats and officials providing reporting from the concerned States, documents from relevant UN bodies and mechanisms such as the UN Secretary-General’s Special Representative on Sexual Violence in Conflict, CEDAW and the Human Rights Council, reports from media, and NGOs such as Amnesty International and Human Rights Watch. We strongly advise consulting women and GBV specialists working in the regions where the weapons will be transferred. Their expertise can provide valuable insights, leading to more informed decision-making on issues related to GBV and violence against women.

Slide 12 – In applying Article 7(4), licensing officials must be rigorous in identifying whether there is serious GBV and violence against women, consult diverse sources of information, assess



whether the recipient is taking effective action to combat GBV and violence against women, and carefully evaluate whether the weapons to be transferred could facilitate such violations. In doing so, States will strengthen their overall human rights risk assessments.