

**UNIDIR's submission to the Office of the United Nations High Commissioner for  
Human Rights on the human rights impact of diversion of arms and illicit and  
unregulated arms transfers on women and girls**

Geneva, April 2020

The United Nations Institute for Disarmament Research (UNIDIR) welcomes the call by the Human Rights Council, in its resolution 41/20, for a report on the impact of the diversion of arms and unregulated or illicit arms transfers on the human rights of women and girls.

Poorly regulated arms transfers, as well as weapons diversion, enable and accelerate conflict and armed violence. Understanding the evolving risks associated with, and impacts of, poorly regulated arms transfers, including on the human rights of women and girls, is essential in developing effective prevention and risk mitigation strategies and actions.

### Conceptualizing weapons and ammunition diversion

Although there is no universally agreed definition, diversion can be conceptualized as the movement – either physical, administrative or otherwise – of weapons and ammunition from the legal to the illicit realm, in defiance of national and/or international law, to an unauthorized end user or for unlawful end use. Diversion can occur at any stage of weapons and ammunition life cycles, and might entail, for example, appropriation and/or physical rerouting leading to a potential change in the effective control or ownership of weapons and ammunition to actors, groups or entities that have not been authorized by competent national authorities.<sup>1</sup>

A useful way to understand how diversion occurs is to examine the various stages of the supply chain of weapons and ammunition and to identify incident points. The chart below presents five stages of the supply chain – 1) manufacture, 2) before the transfer, 3) during the transfer, 4) post-delivery storage, including physical security and stockpile management, and 5) end use or disposal – as well as potential incidents points. These include:<sup>2</sup>

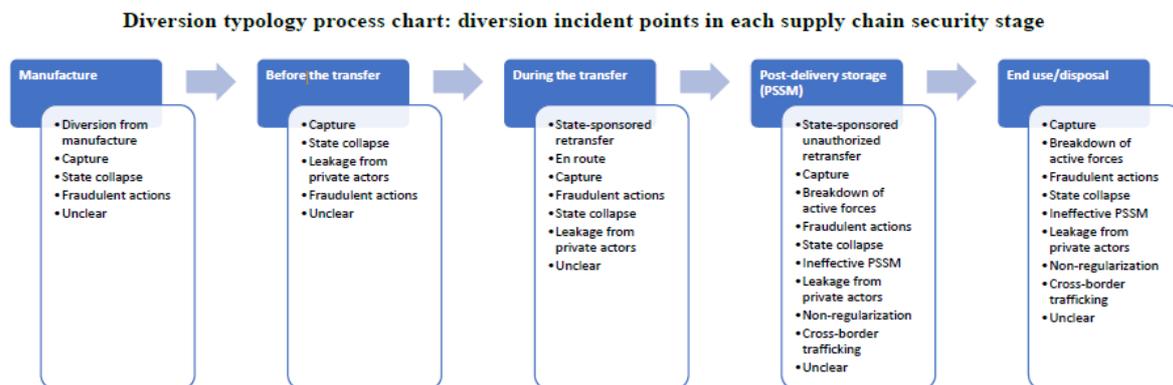
- Diversion from manufacture;
- State-sponsored unauthorized retransfers;
- Diversion en route;
- Capture;
- Fraudulent actions;
- Breakdown of active forces;

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<sup>1</sup>“Diversion typology”, paper submitted on behalf of the Chair, Group of Governmental Experts on problems arising from the accumulation of conventional ammunition stockpiles in surplus, GGE/PACAS/2020/3, 10 February 2020.

<sup>2</sup> Idem.

- State collapse;
- Ineffective physical security and stockpile management;
- Leaks from private actors;
- Non-regularization;
- Cross-border trafficking;
- Unclear (including State loss by undetermined means).



Abbreviation: PSSM, physical security and stockpile management.

Source: “Diversion typology”, GGE/PACAS/2020/3.

To fully assess the impact of diversion, it is important to take into account not only weapons but also ammunition and parts and components. In particular, ammunition is less regulated in pre-transfer stage, in-transfer, and use. It needs to be replenished and it has an immediate impact in increasing or reducing violence. Ammunition has been under-studied and more needs to be done to monitor and diagnose its diversion, illicit trafficking, and misuse.<sup>3</sup> In view of this, the present submission will address the problem of weapons diversion in conjunction with ammunition.

### The impact of diversion of arms and unregulated or illicit arms transfers on the human rights of women and girls

Flows of diverted weapons and ammunition can fuel violence and insecurity in conflict and non-conflict settings, which tend to exacerbate existing gender inequalities and gender-specific risks and vulnerabilities, thereby negatively impacting the rights of women and girls. This adverse impact can be direct or indirect, occurring in both the short- and long- terms.

<sup>3</sup> See UNIDIR, *Conventional Ammunition Management: Gap Analysis*, 2019, available in English, French, and Spanish at: <https://unidir.org/publication/conventional-ammunition-management-gap-analysis> (and *Key Issues and Processes Pertinent to The Management of Conventional Ammunition: Report of The Third Thematic Seminar*, 2019, available at: <https://unidir.org/publication/key-issues-and-processes-pertinent-management-conventional-ammunition-report-third>)

A non-exhaustive list of potential impacts that weapons and ammunition diversion, as well as illicit transfers, may have on the human rights of women and girls is presented below. Even though the potentially impacted rights are outlined separately, it should be noted that, in reality, they are interdependent. Similarly, the weapons-related problems that deny or undermine the rights of women and girls are also interrelated and mutually reinforcing. Finally, it must be underlined that acts committed using diverted or illicitly acquired weapons and ammunition can be perpetrated by a variety of actors, including state actors, non-state actors and individuals.

- *Right to Life*<sup>4</sup>

The diversion of arms and ammunition, both in conflict and non-conflict settings, can increase the likelihood of women and girls becoming victims of violence, including but not limited to different forms of femicide.<sup>5</sup> The connection between weapons availability and gender-based violence is evident in the fact that a small arm is used in approximately one-third of all femicides. In countries with the highest rates of femicide, more than half of these killings are perpetrated with small arms.<sup>6</sup>

- *Right to Freedom from Slavery*<sup>7</sup>

Weapons and ammunition acquired illicitly may be used by armed and criminal groups or individuals to force or coerce women and girls into slavery, servitude and forced labour, including sexual slavery, forced prostitution and other forms of sexual exploitation. A recent illustration of this problem refers to Yazidi women and girls forced into sexual slavery by ISIS militants.<sup>8</sup>

- *Right to Freedom from Torture*<sup>9</sup>

Diverted, poorly regulated, and illicitly transferred weapons and ammunition may aid private actors in the commission of physical, sexual and psychological violence against women and girls, including in domestic settings. They may also increase the ability of private actors to

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<sup>4</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 3); *International Covenant on Civil and Political Rights* (1966, art. 6).

<sup>5</sup> WHO, 'Understanding and addressing violence against women', available at [https://apps.who.int/iris/bitstream/handle/10665/77421/WHO\\_RHR\\_12.38\\_eng.pdf;jsessionid=EDE73D9BF00E419154552301F901B494?sequence=1](https://apps.who.int/iris/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf;jsessionid=EDE73D9BF00E419154552301F901B494?sequence=1)

<sup>6</sup> UN MOSAIC Module, *Women, men and the gendered nature of small arms and light weapons*, 2018.

<sup>7</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 4); *International Covenant on Civil and Political Rights* (1966, art. 8).

<sup>8</sup> UN Commission of Inquiry on Syria, 'ISIS is committing genocide against the Yazidis', available online <https://www.ohchr.org/FR/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=20113&LangID=F>

<sup>9</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 5); *International Covenant on Civil and Political Rights* (1966, art. 7).

exercise coercive control by creating an atmosphere of fear and intimidation, thereby discouraging victims from reporting to or seeking assistance from the authorities.<sup>10</sup>

- *Equality Before the Law*,<sup>11</sup> *Right to Effective Judiciary*,<sup>12</sup> *Right to Public Hearing*,<sup>13</sup> *Right to the Presumption of Innocence*<sup>14</sup>

Women and girls may be threatened and coerced by unauthorized recipients of weapons and ammunition – including governmental actors under arms embargoes – to make false utterances and testimonies, denying them access to justice. Cases of women and girls being subjected to rape and other forms of sexual violence to force confessions have been documented in military facilities, in Syria, between 2011 and 2016.<sup>15</sup>

- *Right to Freedom of Movement*<sup>16</sup>

Armed conflict and insecurity fueled by diverted and illicitly transferred weapons and ammunition can limit women and girls' ability to freely move and travel. In fleeing violence, women and girls may end up in IDP and refugee camps with no access to sanitation infrastructure and reproductive health care. In such settings, the risk of sexual violence, including harassment, assault and rape is likely to increase. As reported by the UN OCHA, one in five internally displaced or refugee women in humanitarian crisis and armed conflict have experienced sexual violence.<sup>17</sup>

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<sup>10</sup> Although according to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment such acts generally must be inflicted by a public official, the UN Committee Against Torture, in its General Comment 2, asserted that states bear the responsibility in exercising due diligence to prevent, investigate, prosecute and punish such private actors. The Committee has applied this principle to States' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking. For more information, see UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 24 January 2008, CAT/C/GC/2, available at: <https://www.refworld.org/docid/47ac78ce2.html>

<sup>11</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 7); *International Covenant on Civil and Political Rights* (1966, art. 14).

<sup>12</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 8); *International Covenant on Civil and Political Rights* (1966, art. 14).

<sup>13</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 10); *International Covenant on Civil and Political Rights* (1966, art. 14).

<sup>14</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 11); *International Covenant on Civil and Political Rights* (1966, art. 14).

<sup>15</sup> UN Commission of Inquiry on Syria, *"I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic*, 15 March 2018, Conference Room Paper (A/HRC/37/CRP.3). Available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-37-CRP-3.pdf>

<sup>16</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 13); *International Covenant on Civil and Political Rights* (1966, art. 12).

<sup>17</sup> See UNOCHA, *Gender-based violence: A closer look at the numbers*, 21 May 2019, available at: <https://www.unocha.org/story/gender-based-violence-closer-look-numbers>

- *Right to Freedom of Thought and Religion<sup>18</sup>, Right to Freedom of Opinion and Expression<sup>19</sup>*

Diverted weapons and ammunition may be used as a tool of intimidation to limit women and girls' ability to freely express their opinions, thoughts and religious beliefs. Women human rights defenders and activists may be specifically targeted, thus reducing women's willingness and capability to resist and protest, silencing women and facilitating the push-back against women's rights.<sup>20</sup>

- *Right to Take Part in Government<sup>21</sup>*

Diverted weapons and ammunition may be used to dissuade women from running for elections, participating in political life or taking part in government structures.

- *Right to Work<sup>22</sup>*

The fear and insecurity created by the availability of arms and ammunition in the hands of unauthorized recipients can inhibit women from enjoying the right to work and achieving their full potential in the pursuit of economic opportunities. Women may be forced to reduce their working hours, avoid working in territories controlled by unauthorized recipients of weapons and ammunition.

- *Right to Education<sup>23</sup>*

Women and girls' access to education may be affected by armed violence and insecurity fueled by the availability of diverted and illicitly transferred arms and ammunition. This is manifested in acts such as the abduction of girls from schools, the occupation of schools by armed actors, or the destruction of education infrastructure by the use of large caliber weapons. Extremist and terrorist groups may also deny girls' the right to education by threatening students and teachers.

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<sup>18</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 18); *International Covenant on Civil and Political Rights* (1966, art. 18 and 27).

<sup>19</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 19); *International Covenant on Civil and Political Rights* (1966, art. 19 and 20).

<sup>20</sup> Christine Chinkin, *Arms Control, Disarmament and The Women, Peace and Security Agenda*, UNIDIR commentary, 21 October 2019, available at: <https://unidir.org/commentary/arms-control-disarmament-and-women-peace-and-security-agenda>.

<sup>21</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 21); *International Covenant on Civil and Political Rights* (1966, art. 25).

<sup>22</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 23); *International Covenant on Economic, Social and Cultural Rights* (1966, art .6).

<sup>23</sup> UN General Assembly, *Universal Declaration of Human Rights* (1948, art. 26); *International Covenant on Economic, Social and Cultural Rights* (1966, art. 10, 13 and 14).

## Understanding the linkages between diversion or illicit weapons and ammunition transfers and gender-based violence against women and girls

Attitudes towards gender and weapons contribute to the latter's use for intimidation, threats, and the commission of acts of gender-based violence against women and girls, including sexual, physical, verbal, psychological and socio-economic violence. As others have noted, "this applies to conflict and non-conflict settings, and is defined as the continuum of gender-based violence, fed by the illicit arms flows, proliferation of small arms, as well as the lack of accountability – impunity – for such violence".<sup>24</sup>

- *Conflict and post-conflict settings*

In conflict situations, diverted weapons and ammunition can be used by armed actors to commit acts of GBV and other forms of war-time sexual violence, such as rape and sexual slavery. The illicit flow of arms and ammunition into conflict zones further heightens and prolongs these risks to women and girls as they can increase the coercive power of non-IHL compliant armed groups or lead to the geographical diffusion and escalation of violence as a result of multiplying actors with access to illicit weapons.

In these circumstances, women and girls become reliant on basic humanitarian assistance and protection. But humanitarian access can also be disrupted as a result of the wide availability of illicit weapons and ammunition, particularly when humanitarian workers are attacked, or aid is confiscated by armed actors. Following the cessation of hostilities, illicit weapons and ammunition continue to circulate among civilians and former combatants, especially when the state is unable or unwilling to conduct comprehensive Disarmament, demobilization and reintegration (DDR) programs or implement community violence reduction interventions.

- *Non-conflict settings*

Diverted weapons and ammunition can also be acquired by unauthorized civilians who may use them in committing domestic and community violence against women and girls. The increase in availability of arms and ammunition in the domestic environment further power imbalances and reinforces social hierarchies which give men dominance over women.<sup>25</sup>

Most perpetrators of femicide are male and are frequently known to the victim; often their current or former intimate partners, family members or friends. The presence of a gun increases the risk of a lethal outcome for women within the domestic context.<sup>26</sup> Women human-rights defenders, activists, protestors or actors in resistance movements may become a victim of a gender-based violence in an environment with accessibility of weapons.

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<sup>24</sup> Christine Chinkin, *Arms Control, Disarmament and The Women, Peace and Security Agenda*, UNIDIR commentary, 21 October 2019, available at: <https://unidir.org/commentary/arms-control-disarmament-and-women-peace-and-security-agenda>.

<sup>25</sup> SEESAC, *Gender and SALW. Gender Aspects of SALW and How to Address Them in Practice*, 2018, available at: <http://www.seesac.org/f/docs/Gender-and-Security/Gender-Aspects-of-SALW---ENG-28-09-2018.pdf>

<sup>26</sup> *Idem*,

In places where femicides and violence against women and girls are likely to occur, the establishment of diversion monitoring and diagnosis systems would be valuable to determine the origin of the weapons and ammunition being used, whether they were obtained illicitly or not. Furthermore, such systems could provide a better understanding of the scale and scope of the problem and provide data for evidence-based policies.

Diversion monitoring systems would allow to better understand the role of women and girls in diversion and illicit trafficking, including the extent of their participation, motivations, and impacts. While most cases of trafficking and armed violence involve participation of men, anecdotal evidence from both conflict and non-conflict settings shows that women involvement in trafficking, smuggling, and diversion needs further analysis.<sup>27</sup>

### Recommendations to improve pre-transfer risk assessments and monitor diversion

To mitigate the risk of weapons and ammunition being diverted, exporting States should be able to conduct an effective pre-transfer risk assessment. “An effective pre-transfer risk assessment considers risks at different stages of the lifecycle, incorporates red flag risk indicators, relies on having credible and reliable information from different sources at the right time, and contributes towards an accountable system of [weapons and] ammunition management”.<sup>28</sup>

Key elements to consider when conducting pre-transfer risk assessments are:<sup>29</sup>

- Access to information and documentation: registers, watch lists, check-lists, verification and authentication of all parties (particularly end-users and brokers), analysis of destination, context and routes.
- Communication and cooperation: information exchange mechanisms and intelligence sharing, role of industry.<sup>30</sup>
- Technical assessment: thorough analysis of end-user, items vs end-user, market prices, especially sensitive items.
- Consider risk mitigation measures: reduction in number of items, end-user documentation and re-export assurances<sup>31</sup>, delivery verification, geographic restriction clause, restriction on use clause, approved list of carriers, shipment

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<sup>27</sup> UNLIREC, *Profiling Ammunition Seized at Border Controls and Recovered from Crime Scenes Across Latin America and the Caribbean: The Dominican Republic Case Study and Methodology*, upon request and *Small Arms Survey, Weapons Compass: Mapping Illicit Small Arms Flows in Africa* at: [www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-AU-Weapons-Compass.pdf](http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-AU-Weapons-Compass.pdf)

<sup>28</sup> See UNIDIR, *Key Issues and Processes Pertinent to The Management of Conventional Ammunition: Report of The Third Thematic Seminar*, 2019, available at: <https://unidir.org/publication/key-issues-and-processes-pertinent-management-conventional-ammunition-report-third>

<sup>29</sup> See UNIDIR presentation for Regional Caribbean Meeting in Kingston September 2019 upon request.

<sup>30</sup> See UNIDIR, *Enhancing the Understanding of Roles and Responsibilities of Industry and States to Prevent Diversion*, August 2019, available at: <https://unidir.org/publication/enhancing-understanding-roles-and-responsibilities-industry-and-states-prevent>

<sup>31</sup> See UNIDIR, *A Menu of Options to Enhance the Common Understanding of End Use/r Control Systems to Strengthen their Role in Preventing Diversion*, January 2019, available at: <https://unidir.org/publication/menu-options-enhance-common-understanding-end-user-control-systems-strengthen-their>

verification, physical verification of delivery, improvements in Physical Security and Stockpile Management (PSSM), marking and tracing.<sup>32</sup>

When conducting pre-transfer assessments, relevant actors may consult the following sources of information:

- Documentation: export/import/transit licenses, end-user documentation, air waybill, bill of lading, dangerous good declaration, dispatch advice, declaration of goods for export, letter of credit or other payment instrument, commercial and pro-forma invoices, insurance documentation, packing list, certificate of origin.
- Other sources: information from diplomatic missions, intelligence officers, government officials (at the point of export, transit, import), air and maritime transport databases, air traffic control logs, port authorities, aircraft repair and ship maintenance companies, air and sea crews, national registries of companies, chambers of commerce, open-source intelligence, UN databases and sanctions lists, specialized organizations databases and reports.<sup>33</sup>

In order to improve risk assessments processes, countries may consider exchanging information on mitigation and prevention measures for diversion, focusing not only on end user but also on end use (unlawful use). This is possible within the framework of Article 11 of the Arms Trade Treaty (ATT), which encourage States Parties to share relevant information with one another on effective measures to address diversion as well as to report to other States Parties, through the ATT Secretariat, on measures taken in addressing the diversion of transferred arms. To address diversion that may lead to acts of GBV, countries could share best practices, information and resources that are useful to inform GBV risk assessments, demonstrating how the GBV criteria feeds into their decision-making processes.<sup>34</sup>

Finally, to prevent diversion it is important to understand where the weaker points along the supply-chain are. To do that, States may establish diversion monitoring and diagnosis systems. Diversion monitoring and diagnosis could be defined as measures to identify and monitor movement of weapons, ammunition, and parts and components along the supply chain. This could be done in actual time (in the case of items that remains in the custody of legal users) or retroactively (following its diversion to, and recovery from, unauthorized users).

Identifying the point of diversion is critical to prevent future cases and inform physical security and stockpile management (PSSM) practices and pre-transfer risk assessments. Some

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<sup>32</sup> See UNLIREC: Arms Trade Treaty Implementation Manual, available upon request.

<sup>33</sup> *Idem*.

<sup>34</sup> International Gender Champions Disarmament Impact Group, *Factsheet: Gender in the ATT*, 2019, available at: <https://unidir.org/publication/fact-sheet-gender-att>

of the activities that are considered diversion monitoring include: post-delivery verifications, end-use and end-user monitoring, tracing and profiling.<sup>35</sup>

### Looking ahead: UNIDIR research priorities on preventing diversion and promoting gender equality

While preventing the diversion of conventional arms is a key objective of the Arms Trade Treaty (ATT) and represents an essential benchmark from which further progress can be made, there is a lack of shared understanding among States on how the Treaty has contributed to reducing diversion risks so far, and what new opportunities exist to improve policies and practices to tackle diversion in arms transfers.

Against this background, UNIDIR launched a research project entitled “*Strengthening shared understanding on the impact of the ATT in addressing risks of diversion in arms transfers: Assessing progress made and identifying options and avenues for moving forward*”. The research is conducted in collaboration with Conflict Armament Research, Small Arms Survey and Stimson Center. The assessment of progress made under the ATT, and the identification of options and avenues to strengthen policies and practices to address diversion would contribute to tackling the challenges associated to poorly regulated arms transfers at the national, regional and multilateral levels. It would also support knowledge enhancement and exchange on counter-diversion among policymakers and practitioners from various sectors involved in arms transfers, including in supporting the development of new policies and practices in regions where such systems may not yet be in place.

UNIDIR will produce issue briefs to enhance the knowledge of stakeholders on effective policies and practices. These issue briefs will cover legal aspects regarding the concept of diversion, provide practical guidance on the typologies of diversion, and outline counter-diversion measures that can be implemented by States. Additionally, a research methodology will be developed to assess the impact of the ATT in preventing diversion. This methodology will also provide an important reference point for states to develop and apply indicators to measure the impact of national and regional control measures in preventing diversion.

Going beyond the limited articulation of women as victims and recognizing the multiple roles that women can play in international security, UNIDIR will produce a research report on the professionalization of weapons and ammunition management and take stock of women’s engagement in this predominantly male field. It will provide an overview of gendered patterns of engagement on WAM and identify best practices for improving women’s participation, in line with the Women, Peace and Security agenda.

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<sup>35</sup> See UNIDIR, *Conventional Ammunition Management: Gap Analysis*, 2019, available in English, French, and Spanish at: <https://unidir.org/publication/conventional-ammunition-management-gap-analysis> (available in English, French, and Spanish).