

INTERNATIONAL ALLIANCE OF WOMEN
ALLIANCE INTERNATIONALE DES FEMMES

IAW website: <http://www.womenalliance.org>

Equal Rights - Equal Responsibilities
Droits Égaux - Responsabilités Égales



TALKING POINT July 2012

Equal Rights

Women's Human Rights: The Arms Trade Treaty and CEDAW

Panel discussion organized by UN Women, IANSA, WILPF and IAW
20 July 2012

Paper presented by Ms Pramila Patten, CEDAW Expert, Chairperson of Working Group on General Recommendation on the "Protection of the Human Rights of Women in Conflict and Post-Conflict situations"

I am extremely grateful to UN Women and the co-sponsors IANSA, IAW and WILPF for hosting this side event at the time of the negotiations of this first and historic Arms Trade Treaty (ATT) which purports to establish common international standards for the import, export and transfer of conventional arms. This treaty provides a unique opportunity for Member States to agree on tough controls on the arms trade that would significantly help reduce armed violence against women across the world..... an opportunity that is priceless.

I feel particularly privileged to be speaking at this event and to be associated with the most prominent NGOs who have been engaged in the ATT process for many years. IANSA led civil society organizations worldwide in supporting the idea of an ATT and in 2003, was instrumental in launching the Control Arms Campaign.

Who has never heard about women being raped at gun point? From whichever region, whichever country you come from, this is a common occurrence. Small arms facilitate widespread sexual and domestic violencein stable countries, likewise in countries which are in conflict or post-conflict contexts. There are abundant reports of conflict-related sexual violence happening everywhere - in the home, detention facilities, and camps for displaced persons and refugees, perpetrated by a range of State and non-State actors, members of government armed forces, paramilitary groups, peacekeeping personnel and civilians. The testimonies of women explaining how they have been sexually abused at gunpoint are common. They all relate how guns were put to their throats and stomachs to make sure that they followed the orders.....often in front of male members of their family, father, husband or brother.

Would it possible to rape women in front of their communities and families, on such a large scale in much of the world's conflicts if there weren't such a wide availability of small arms and light weapons? Guns are facilitating domination and violence against women; guns are preventing women from exercising their basic rights on a daily basis, in the marketplaces where they trade, in the fields where they work, at water-points and along the roads where girls walk to school.

There is a clear gender dimension to the arms trade as women are increasingly and disproportionately affected by armed gender-based violence. Yet, despite the ratification of CEDAW by 187 States Parties, it is a matter of concern that women and gender are being largely ignored in the process towards an ATT and that some Member States still have difficulty to see the relationship between women, security and arms control and the incidence of gender-based violence perpetrated or facilitated by conventional weapons, particularly small arms.

On the one hand, it is true that the impact of armed violence on women's minds, bodies and freedom, remains quite invisible. There are no statistics when guns are not used to kill but to exert power; when guns are used behind closed doors to subjugate family members; when guns are used to threaten women and girls with sexual violence.

On the other hand, everywhere the stories are the same. Guns are being used to take away women's rights on a massive scale. There is more and more documentation on the nexus between militarization/proliferation of small arms and violence against women, especially sexual violence perpetrated in times of conflict and post conflict. There are recent reports from the Special Rapporteur on Women, the Secretary-General's report amongst others. In February 2012, before the Security Council, the SRSG on Sexual Violence placed emphasis on how the proliferation of small arms and light weapons enable these atrocities. In his last report, the Secretary General listed a number of countries where armed gender-based violence was rife.....DRC, Colombia, Sudan, Somalia, Cote D'Ivoire, Central African Republic, Chad, Libya amongst others. In respect of the Democratic Republic of the Congo, for example, the report refers to acts of sexual violence, including mass rapes perpetrated as a form of retaliation by armed groups..... acts of sexual violence used as an instrument to assert economic or political control over the population. The report provides details of how on 31 December 2010 and 1 January 2011, at least 46 women and one girl in North Kivu were raped by armed men. The report also refers to sexual violence in post-conflict situations such as in Central African Republic and Chad where, the limited progress in the disarmament, demobilization and reintegration and security sector reform processes and the continued presence of armed individuals and absence of State authority in certain regions, are said to contribute to the culture of impunity.

What is clear is that we are today living in a world of continuing instability and violence. Armed conflicts continue to occur in many parts of the world and have escalated over the last decade. Increased access to inexpensive and lethal weaponry fuels and perpetuates armed conflicts and these weapons are used by State and non State actors, irregular forces, private militias, guerillas, warlords and civilians. The arms trade certainly acts as a catalyst for those conflicts. Last week (on 10 July 2012), I listened to the video message of the President of Liberia, Madam Ellen Johnson Sirleaf who was urging for the treaty to regulate not only the transfers of small arms and light weapons but also the bullets and ammunitions which actually kill people and she mentioned how the absence of bullets and ammunitions during the battle of Monrovia between rival armed groups in June 2003 temporarily ended the terror on the city's population until fresh and illegal supplies arrived. She was making the point that without bullets and ammunitions the guns can be reduced to silence and peace efforts can bear fruits.

The root causes of conflicts are diverse and the victims of those conflicts are disproportionately civilians. One tragic feature they have in common is that women and girls suffer their impact disproportionately. There is overwhelming evidence that women are increasingly deliberately targeted for and subjected to various forms of violence and abuse ranging from arbitrary killings, torture and mutilation, sexual and gender-based violence, forced prostitution, forced impregnation, forced termination of pregnancy and sterilization.

Women and girls are primarily targeted by the use of sexual violence, 'including as a tactic of war to humiliate, dominate, instill fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group' and that this form of sexual violence persists even after the cessation of hostilities. For the majority of women in post-conflict environments, the violence does not stop with the official ceasefire or the signing of the peace agreement.

As you know, the Committee is in the process of elaborating a GR on the "***Protection of the human rights of women in conflict and post conflict contexts***" and with the support of UN Women, regional consultations have so far been held in 4 regions (Asia Pacific, Africa, Eastern Europe and Central Asia and LAC) to better capture the diversity of conflicts and experiences of women.

In all 4 consultations, participants addressed the widespread availability of small arms and light weapons and its impact on women's security; they evoked the irresponsible transfers of weaponry and the role and accountability of external actors. They all see the effective control of small arms as a first step towards reducing and ultimately preventing violence against women. Participants stressed that women do have a role to play in disarmament and in the security debate, including the question of small arms and light weapons reduction and domestic controls. They urged for the need to address conflict-related sexual violence in the context of security sector reform initiatives and arrangements.

As the GR will cover the application of the Convention to the participation of women in conflict prevention and resolution of conflicts, participants stressed that controlling the tools of violence is imperative in the work of conflict prevention and in the building of peace and security.

In the Africa regional consultation, one of the biggest obstacles to development was articulated to be the proliferation and the misuse of small arms, light weapons and ammunitions leading to a proliferation of armed conflicts. Participants mentioned how over the last five (5) years alone over 18 of Africa's 53 countries have experienced war, armed conflict or widespread political unrest with countries like Somalia, South Sudan, and Democratic Republic of Congo experiencing protracted conflict for a decade or more.

Linking CEDAW and ATT – There are clear linkages to be drawn between CEDAW and the ATT. I will start with the **Preamble** of the Convention which establishes a clear linkage and legitimizes the place of women in the disarmament and in the security debate. The preamble to the Convention emphasizes the specific factors relating to armed conflict which hinder the enjoyment of substantive equality for women and reiterates the necessity for complete disarmament.

The Convention on the Elimination of all forms of Discrimination is the authoritative legal instrument on women's human rights and a binding source of international law for those States that have ratified it. **Article 1** contains a broad definition of discrimination against women, which covers both direct and indirect discrimination. The Convention guarantees women the equal recognition, enjoyment and exercise of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, domestic or any other field, irrespective of their marital status, and on a basis of equality with men.

The Convention is a dynamic instrument that accommodates the development of international law and the Committee has also interpreted the Convention in a dynamic and progressive manner. In GR 19, the Committee stated that gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. The Committee stressed that the definition of discrimination in **Article 1**, includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.

The arms trade has specific gender dimensions and direct links to discrimination and gender-based violence. With the use of weapons, power and status, both State and non-State parties often perpetrate gender-based violence, disproportionately affecting women with impunity. This has far-reaching implications for efforts to consolidate peace, security, gender equality and secure development.

Whether in conflict or post-conflict situations, small arms, including diverted arms from the legal trade, can have a direct or indirect effect on women as carriers of these weapons, as victims of domestic violence, as victims of conflict-related sexual violence, and even as protestors or actors in resistance movements. Gender-based violence, violence that either targets a woman because of her gender or has a disproportionate effect on women, impacts discrimination against women as it can affect the enjoyment of their fundamental rights such as the right to liberty and security, equal protection, and many others.

So why shouldn't gender-based violence be part of the discussion on the arms trade? There is a clear need for a gender dimension to the Arms Trade Treaty as women are disproportionately affected by armed gender-based violence. CEDAW is a valid argument, an important tool to be used in the demands that gender-based violence be included in the criteria section of the ATT.

Article 2 sets out the core obligations of States Parties and calls on States parties to condemn discrimination against women in "all its forms", while **Article 3** refers to appropriate measures that States parties are expected to take in "all fields" to ensure the full development and advancement of women. Through these 2 provisions, the Convention anticipates the emergence of new forms of discrimination that had not been identified at the time of its drafting.

Under **Article 2**, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfill women's right to non-discrimination and to the enjoyment of equality. States parties have an obligation not to cause discrimination against women through acts or omissions; they are further obliged to react actively against discrimination against women, regardless of whether such acts or omissions are perpetrated by the State or by private actors. Discrimination can occur through the failure of States to take necessary legislative or other measures.

In GR 28 on Article 2, the Committee stressed that the obligations of States parties do not cease in periods of armed conflict or in states of emergency resulting from political events or natural disasters. Such situations have a deep impact on and broad consequences for the equal enjoyment and exercise by women of their fundamental rights. States parties should adopt strategies and take measures addressed to the particular needs of women in times of armed conflict and states of emergency.

Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. **Article 2 (e)** of the Convention mandates States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. This means that States may also be responsible for private acts of violence if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. Including gender-based violence in the criteria of the ATT would acknowledge that both exporting and importing countries would have a joint, though different, responsibility to prevent these crimes.

Article 7 of CEDAW is also very relevant in the special importance that it places on women's participation in the public life of their country. Women's participation in peace-building processes has been recognized as a priority in conflict and post-conflict settings. International political commitments such as U.N. Security Council Resolution 1325 and its follow-up resolutions emphasize the importance of women's full and equal participation in conflict resolution, peace-building and post-conflict reconstruction. Article 7 is critical in the promotion of the role of women in international peace and security, especially in political decision-making and peace processes. The participation of women in security sector debate and reform is essential to a robust human security agenda. Another relevant dimension which must be addressed is the multi-faceted effect which arms can have on women's participation... as a major source and threat of violence. We have seen this in a number of States reports such as Haiti. Small arms represent a significant threat because they often deter women from participating in the political life of their country because of security fears, for them as individuals as well as their families.

I want to say that there are other articles of CEDAW which are also very relevant such as Article 12 when we consider the psychological trauma that is associated with the use, or threatened use, of small arms. There is also the impact of small arms on vulnerable groups of women such as older women, women with disabilities, minority groups amongst others but for the sake of time, I have only focused on Article 1,2 and 7.

In addition to CEDAW and other major international human rights treaties, there are of course other important international policy frameworks which make an important contribution to the international regime of protection and advancement of women's human rights in conflict and post-conflict situations, namely SCR 1325 as well as the other 5 resolutions (SCR 1820, 1888, 1889, 1960 and the last one SCR 1983 adopted in June 2011) which have considerably strengthened the international legal framework on women, peace and security.

The Committee recognizes that the various thematic resolutions of the Security Council are important political frameworks for advancing advocacy on women, peace and security, especially as they consistently remind Member States of their legally binding obligations under international law, in particular the duty to respect and protect women's human rights in armed conflict and in the post-conflict context. Furthermore, all the areas of concern addressed in the numerous thematic resolutions of the Security Council find expression in the substantive provisions of the Convention as the binding source of international law. These SCRs 1325 and others, which together form the Women Peace and Security agenda, do not exist in a legal vacuum. They are part of an existing legal framework of both international humanitarian law and human rights law with their respective enforcement mechanisms. Within these resolutions, specific mention is made to human rights and in particular to CEDAW.

The general recommendation on the protection of the human rights of women in conflict and post conflict situations, will highlight the synergy between the two sets of standards and situate the numerous global commitments relating to the protection of women in times of conflict and advancement of their human rights post-conflict situations in a wider context of equality and non-discrimination in international human rights law.

CONCLUSION

In conclusion, I would like to say that like you, I am pinning my hopes on a robust ATT as experiences in Africa and other parts of the world show that without such a treaty, armed violence and wars will continue to be fueled by irresponsible arms transfers. I fully agree that if the ATT is to be an effective legal instrument in regulating the international arms trade, recognition of the potential gendered impacts of international transfers of arms must be included. I also support your position that there should be strong references to gender in the treaty text and the criteria in the treaty should address risks of gender-based armed violence.

I would like to end by congratulating IANSA, WILFP, IAW and all the other NGOs for their diligence and perseverance in spearheading this treaty process for many yearsand urge you to press on until the very last minute of the negotiations.

You will make history in the next few days and change the world for the better. Millions are counting and watching to ensure that an Arms Trade Treaty that will truly make a difference in the lives of the world's people be delivered. We all share the hope that the ATT, through its legally-binding nature, will provide for a strong humanitarian push to prevent human suffering caused by the illicit trade in arms as well as contribute to more sustainable and stable security sectors.