



Human Rights Council**Forty-fourth session**

15 June–3 July 2020

Agenda items 2 and 3

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General****Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Impact of arms transfers on human rights****Report of the United Nations High Commissioner for Human Rights****Summary*

In the present report, the United Nations High Commissioner for Human Rights clarifies the scope of goods to be considered when discussing diversion of arms and unregulated or illicit arms transfers and highlights how these practices have a gendered impact on the human rights of women and girls. In the report, the High Commissioner also notes that ownership and use of arms relate closely to specific expressions of masculinity, power and control that further gender-based discrimination against women and girls, and highlights that addressing gendered root causes of violence is essential. After an examination of measures for preventing diversion of arms and unregulated or illicit arms transfers, the High Commissioner concludes with a number of recommendations.

* The present report was submitted after the deadline so as to include the most recent information.



I. Introduction

1. In its resolution 41/20, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report, in consultation with States, United Nations agencies and other relevant stakeholders, on the impact of the diversion of arms and unregulated or illicit arms transfers on the human rights of women and girls.
2. To prepare the report, OHCHR sought input from Member States, international and regional organizations, national human rights institutions and non-governmental organizations.¹ The report also draws on a diverse range of public sources, including international and regional instruments, the practice of United Nations human rights mechanisms, and reports of regional and humanitarian organizations, civil society, scholars and practitioners.
3. In the present report, the High Commissioner builds on a prior report,² submitted in response to resolution 32/12 of the Human Rights Council, on the impact of arms transfers on the enjoyment of human rights, in order to provide States and other relevant stakeholders with elements to assess the relationship between arms transfers and human rights law that may guide them to strengthen efforts to effectively protect human rights.³
4. In the present report, the High Commissioner examines specific ways that diversion of arms and unregulated or illicit arms transfers may create a gendered impact on the human rights of women and girls. It also examines how these practices may increase gender-based violence against women and girls, including sexual violence and domestic violence. Placing the topic within the broader context of preventing human rights violations against women and girls, she examines considerations that can be taken into account to prevent diversion of arms and unregulated or illicit arms transfers. The High Commissioner concludes with a number of recommendations.

II. Diversion of arms and unregulated or illicit arms transfers: definitions

5. Diversion of arms and unregulated or illicit arms transfers have a negative impact on human rights in both conflict and non-conflict situations. They vastly increase the widespread and uncontrolled availability of arms, thereby increasing the risk that the arms will be directed to, or come into the hands of, those who use them to commit human rights violations or abuses.⁴ The overwhelming majority of illicit firearms in the hands of non-State actors were manufactured legally and prepared for commercial distribution before being diverted at some stage in the supply chain.⁵ There were approximately 750 million diverted firearms in the hands of civilians in 2017, vastly outweighing the number of

¹ OHCHR received contributions from Brazil, Ireland, Mexico, Qatar, Sweden and Switzerland. Contributions were also received from the Office for Disarmament Affairs, the United Nations Office on Drugs and Crime (UNODC), the United Nations Institute for Disarmament Research (UNIDIR), Airwars, the Arms Trade Treaty Secretariat, Control Arms, Project Ploughshares, the Somali Human Rights Association and the Women's International League for Peace and Freedom. All contributions are on file with the Secretariat and available for consultation.

² See A/HRC/35/8.

³ In the prior report, the High Commissioner highlighted some key aspects of the impact of arms transfers, including the potential or actual use of transferred arms, on the enjoyment of human rights. The High Commissioner also noted that there was limited data available in relation to all types of arms, and all consequences, which prevented a comprehensive understanding of the impact of arms transfers on human rights. In the present report, the High Commissioner will complement that discussion by providing additional data on the specific human rights impact of diversion of arms and unregulated or illicit arms transfers on women and girls.

⁴ A/HRC/35/8, para. 7.

⁵ See the contributions of UNODC and the Women's International League for Peace and Freedom.

firearms estimated to be owned by the military and law enforcement sectors combined.⁶ States also continue to conduct unregulated or illicit arms transfers, resulting in thousands of civilian casualties and widespread displacement and human suffering on a massive scale.

6. In resolution 41/20, the term “arms” is used without qualification. States have long recognized the importance of considering not only weapons,⁷ but also ammunition,⁸ parts and components together,⁹ as these categories are interrelated and their diversion and unregulated or illicit transfer threatens peace and security, and human rights.¹⁰ Diverted ammunition can also cause considerable harm as the main charge in improvised explosive devices, including victim-operated improvised explosive devices that function as anti-personnel landmines.¹¹ Indeed, the Secretary-General has stated that improvised explosive devices are now a leading cause of deaths and injuries in armed conflict, with particularly devastating impacts on civilians.¹²

7. In resolution 41/20, the terms “diversion of arms” and “unregulated or illicit arms transfers” are also used without qualification. There is no agreed international legal definition of diversion. In the context of arms, however, it has been defined 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.¹³ Diversion of arms encompasses diversion

⁶ Civilians own approximately 850 million firearms worldwide, vastly outweighing the number of firearms held by global military and law enforcement sectors combined. Indeed, 88 per cent of these were held by unauthorized end users in 2017 (A/HRC/42/21, paras. 5–6).

⁷ In the context of international arms transfers, the United Nations Register of Conventional Arms contains seven main categories of major conventional weapons: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft and unmanned combat aerial vehicles, attack helicopters, warships and missiles and missile launchers. See www.unroca.org/categories. Article 2 (1) of the Arms Trade Treaty includes these eight categories, adding small arms and light weapons as an additional category. When referring to weapons in the present report, the High Commissioner will consider the seven categories of conventional weapons in the United Nations Register of Conventional Arms together with small arms and light weapons.

⁸ The terms “ammunition” and “munitions” are used interchangeably.

⁹ See Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Firearms Protocol), art. 4 (1); Arms Trade Treaty, art. 3 (Ammunition/Munitions) and art. 4 (Parts and Components); Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials; Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly; Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community; and Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials.

¹⁰ See the submissions of Ireland, Switzerland, UNIDIR and the Women’s International League for Peace and Freedom.

¹¹ In his disarmament agenda, the Secretary-General indicated that the components of improvised explosive devices can be sourced from poorly secured munitions (*Securing Our Common Future: An Agenda for Disarmament* (United Nations publication, Sales No. E.18.IX.6), p. 37). OHCHR has expressed deep concern over the harm to civilians caused by victim-operated improvised explosive devices that function as anti-personnel landmines. See, for example, United Nations Assistance Mission in Afghanistan and OHCHR, *Afghanistan: Protection of Civilians in Armed Conflict 2019*, pp. 30–31, indicating that pressure-plate improvised explosive devices that function as anti-personnel landmines killed 149 civilians and injured 371 in Afghanistan in 2019.

¹² *Securing Our Common Future: An Agenda for Disarmament*, p. 36.

¹³ See the contribution of UNIDIR, citing GGE/PACAS/2020/3, para. 4. See also Sarah Parker, “Article 11. Diversion”, in *The Arms Trade Treaty: A Commentary*, Stuart Casey-Maslen and others, eds. (Oxford, Oxford University Press, 2016), para. 11.21, in which she cites Owen Greene and Elizabeth Kirkham, *Preventing Diversion of Small Arms and Light Weapons: Issues and Priorities for Strengthened Controls: Biting the Bullet Policy Report* (February 2009), p. 9, and Matt Schroeder, Helen Close and Chris Stevenson, “Deadly deception: arms transfer diversion”, in *Small Arms Survey 2008: Risk and Resilience* (Cambridge, United Kingdom, Cambridge University Press, 2008), p. 114, to indicate that diversion also refers to unlawful end use that is carried out by authorized end users.

under an international transfer as well as domestic diversion, such as diversion from State holdings or stockpiles. Such diversion may happen as a result of inadequate stockpile management or security, or as a consequence of corruption, resulting in the sale of State-held weapons by corrupt officials or armoury guards to illicit end users.¹⁴

8. Diversion¹⁵ during transfer and post-delivery storage includes the retransfer of the arms to an unauthorized third party if the original exporter imposed restrictions on the retransfer and the State seeking to retransfer does not observe those restrictions.¹⁶ In this sense, diversion would include cases in which a State imports arms on the condition that they may only be used by its armed forces, but later transfers those arms to another State. Diversion during transfer and post-delivery storage also includes situations in which an importing State undertakes to use the arms for a certain end use and changes the end use without the authorization of the original exporting State.¹⁷ Therefore, diversion would also include cases in which a State imports arms for exclusive use by its armed forces, but later transfers them to community groups that do not officially form part of its armed forces.

9. “Arms transfer” generally covers the export, import, sale, lease or loan of arms from the jurisdiction and/or control of one State to that of another.¹⁸ The Disarmament Commission’s Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H provide a broad definition of “illicit arms trafficking”, which includes international trade in conventional arms outlawed by international law and relevant national laws.¹⁹ A transfer of arms for the purpose of aiding or assisting a State to commit torture would be illicit because it violates international law.²⁰ Similarly, an arms transfer by a State party to the Arms Trade Treaty that violates a Security Council arms embargo²¹ or fails to properly assess the risk that the arms could be used to commit or facilitate serious acts of gender-based violence²² would also be illicit.

Therefore, if a State imports assault rifles under an end-use certificate specifying that they will be delivered to the armed forces, but distributes them to traffic police, this would constitute diversion.

¹⁴ Parker, “Article 11. Diversion”, para. 11.23. The Secretary-General has also pointed out that inadequate physical security of stockpiles can result in diversion of arms to illicit markets, including to non-State armed groups, terrorists and transnational organizations (*Securing Our Common Future: An Agenda for Disarmament*, p. 44).

¹⁵ Diversion of arms can occur during any of the five major stages of the “supply chain”: during manufacture; before the transfer (point of embarkation); during the transfer (in transit to the authorized end user); during post-delivery storage (physical security and stockpile management); or during end use or disposal. See the contribution of UNIDIR, citing GGE/PACAS/2020/3, para. 6. For a comprehensive discussion of the main incident points within the stages of diversion, please see GGE/PACAS/2020/3, paras. 8–13.

¹⁶ See the contribution of UNIDIR, citing GGE/PACAS/2020/3, para. 9 and annex I. See also Parker, “Article 11. Diversion”, para. 11.33, citing Schroeder, Close and Stevenson, “Deadly deception: arms transfer diversion”, p. 115.

¹⁷ See the contribution of UNIDIR, citing GGE/PACAS/2020/3, para. 9 and annex I. See also Parker, “Article 11. Diversion”, para. 11.33, citing Schroeder, Close and Stevenson, “Deadly deception: arms transfer diversion”, p. 115.

¹⁸ A/HRC/35/8, footnote 3.

¹⁹ *Official Records of the General Assembly, Fifty-first Session, Supplement No. 42 (A/51/42)*, annex I, para. 7.

²⁰ Article 16 of the International Law Commission’s draft articles on responsibility of States for internationally wrongful acts asserts that a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with the knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State (*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* and corrigendum (A/56/10 and A/56/10/Corr.1), p. 47). The International Law Commission has also stated that the prohibition of torture is a peremptory norm of general international law (*jus cogens*) (*Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/74/10)*, pp. 146–147, conclusion 23 and annex).

²¹ See Arms Trade Treaty, art. 6 (1).

²² *Ibid.*, art. 7 (4).

III. Impact of unregulated or illicit arms transfers and diversion of arms on the human rights of women and girls

10. Ten of the Sustainable Development Goals contained in the 2030 Agenda for Sustainable Development refer to the importance of arms control.²³ In his 2018 Agenda for Disarmament, the Secretary-General also recognized that arms control helps to end conflicts, secure peace and ensure respect for principles of humanity.²⁴ The Secretary-General has further underscored that preventing diversion of arms and unregulated or illicit arms transfers is a fundamental aspect of arms control²⁵ because it secures the peace and saves lives.²⁶

11. Human rights mechanisms, States and research organizations have collected statistics and information that reflect the multiplier effect that diversion of arms and unregulated or illicit arms transfers have on human rights abuses and violations.²⁷ Several special procedure mandate holders have also emphasized the importance of preventing diversion of arms and unregulated or illicit arms transfers. A number of relevant recommendations have also been made in this regard during the universal periodic review.²⁸ For example, the Democratic Republic of the Congo was encouraged to address the accumulation and illicit transfer of small arms and light weapons through improved stockpile management, effective prosecution of unauthorized sellers and distributors and progression of legislative controls.²⁹ With regard to Germany, comprehensive strengthening of arms export licensing controls to prevent arms from being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children was also recommended.³⁰

A. Gender-based violence

12. Gender-based violence is violence that is directed at a person based on discriminating norms and practices relating to his or her specific, sex, gender or role in society.³¹ It includes, but is not limited to, physical violence, sexual violence, psychological

²³ See Goal 3 (Good health and well-being); Goal 4 (Quality education); Goal 5 (Gender equality); Goal 8 (Decent work and economic growth); Goal 10 (Reduced inequalities); Goal 11 (Sustainable cities and communities); Goal 14 (Life below water); Goal 15 (Life on land); Goal 16 (Peace, justice and strong institutions); and Goal 17 (Partnership for the Goals).

²⁴ *Securing Our Common Future: An Agenda for Disarmament*, p. 33.

²⁵ *Ibid.*, pp. x, 33, 40–41 and 44.

²⁶ *Ibid.*, p. x.

²⁷ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, for example, has indicated that there are approximately 2 million unlawful small arms and light weapons circulating within the borders of Burkina Faso (A/HRC/25/59/Add.1, para. 26). He also reported that arms provided by States to armed groups in the Syrian Arab Republic and Iraq had ultimately fallen into the hands of Islamic State in Iraq and the Levant (A/HRC/29/51, para. 17). The Special Rapporteur on extrajudicial, summary or arbitrary executions has noted evidence of widespread use of cluster munitions by armed groups in dozens of urban and rural locations in Ukraine (see A/HRC/32/39/Add.1). The Independent Expert on the situation of human rights in the Sudan noted that there were an estimated 700,000 weapons in illegal circulation across Darfur (A/HRC/39/71, para. 9). The Special Rapporteur on the situation of human rights in Eritrea has reported on illicit arms transfers between States and Eritrea in violation of a Security Council arms embargo (see A/HRC/38/50 and A/HRC/35/39). See also the contribution of Mexico, indicating that over 230,000 illicit firearms enter Mexico through its northern border every year. See also the contributions of Airwars, Control Arms and the Women's International League for Peace and Freedom for a discussion of specific instances of diversion of arms and unregulated or illicit arms transfers that have an impact on civilians in Iraq, Libya, Nigeria, the Syrian Arab Republic, Yemen and Latin America.

²⁸ See A/HRC/42/5, A/HRC/39/9, A/HRC/30/12, A/HRC/23/8, A/HRC/23/6 and A/HRC/19/12.

²⁹ See A/HRC/42/5.

³⁰ See A/HRC/39/9.

³¹ See OHCHR, *Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice* (New York and Geneva, 2018). It is also important to note that homophobic and transphobic violence are a form of gender-based violence that is driven by a desire to punish those seen as defying gender norms (A/HRC/19/41, para. 20).

violence and economic violence.³² Gender-based violence against women is violence directed against a woman because she is a woman or violence that affects women disproportionately.³³ The Committee on the Elimination of Discrimination against Women notes that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated.³⁴

13. In paragraph 2 of its resolution 41/20, the Human Rights Council noted with alarm that diversion of arms and unregulated or illicit arms transfers could have a seriously negative impact on women's and girls' full enjoyment of all human rights, increasing the risk of gender-based violence.

14. Small arms and light weapons is the category of weapons most implicated in human rights violations in general, and gender-based violence in particular. The Committee on the Elimination of Discrimination against Women has repeatedly recognized the detrimental impact of small arms and light weapons on women and girls, including those that have been diverted and transferred illicitly.³⁵ In order to understand the harm caused by small arms and light weapons, it is important to acknowledge that they do not need to be discharged to have an impact on the enjoyment of human rights. Rather, their presence at home or in the community, and the threat or implied threat of their use can be sufficient to have a severe impact on human rights.³⁶

15. The Secretary-General has stated that arms control must recognize the relationship between gender and arms in order to play a key role in reducing violence against women and girls.³⁷ Indeed, gender-sensitive arms control is closely linked to target 5.1 of the Sustainable Development Goals on ending all forms of discrimination against all women and girls everywhere and target 5.2 on eliminating all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

16. Diversion of arms and unregulated or illicit arms transfers may have a gendered impact on the rights to life and security of person of women and girls because they fuel the commission of gender-based violence against women.³⁸ The High Commissioner underscored that women vastly outnumber men as victims of domestic homicide³⁹ and that women living with a gun in their home are disproportionately more vulnerable to being victims of gender-related killings.⁴⁰ The Committee on the Elimination of Discrimination against Women has expressed concern regarding the impact that unregulated arms transfers and the proliferation of small arms and light weapons have on the physical security of women.⁴¹ The Special Rapporteur on violence against women, its causes and consequences has also indicated that unregulated firearms exacerbate violence against women.⁴²

17. Gender-based violence against women and girls facilitated by diversion of arms and unregulated or illicit arms transfers often results in rape and other forms of sexual violence,

³² See the contribution of the Women's International League for Peace and Freedom.

³³ Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 19.

³⁴ General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 10.

³⁵ See CEDAW/C/COD/CO/8, CEDAW/C/NGA/CO/7-8, CEDAW/C/CHE/CO/4-5, CEDAW/C/IND/CO/4-5, CEDAW/C/COD/CO/6-7 and CEDAW/C/PAK/CO/4.

³⁶ See the contribution of Ireland.

³⁷ *Securing Our Common Future: An Agenda for Disarmament*, p. 39.

³⁸ Committee on the Elimination of Discrimination against Women, general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, para. 32. See the contributions of Brazil, Ireland, Mexico, Sweden, Switzerland, the Office for Disarmament Affairs, UNIDIR, UNODC, Project Ploughshares, the Somali Human Rights Association and the Women's International League for Peace and Freedom.

³⁹ See the contributions of the Office for Disarmament Affairs, UNODC and the Women's International League for Peace and Freedom. See also A/HRC/42/21, para. 36.

⁴⁰ A/HRC/42/21, para. 36. See also the contributions of UNIDIR, UNODC and the Women's International League for Peace and Freedom.

⁴¹ See CEDAW/C/COD/CO/6-7 and CEDAW/C/PAK/CO/4.

⁴² A/HRC/41/42/Add.1, para. 94.

further affecting the physical and mental integrity of women and girls.⁴³ Armed and criminal groups often use diverted arms to force women and girls into slavery, including sexual slavery.⁴⁴ The Special Rapporteur on contemporary forms of slavery, including its causes and consequences has reported extremely high levels of violence against women perpetrated by gang members, which includes forcing young women and girls to become gang members' sexual partners and to smuggle weapons into prisons.⁴⁵ According to UNODC, an estimated 500,000 illegal weapons were used to systematically perpetrate thousands of cases of sexual violence, including rape and sexual slavery, in one country alone during a six-year period.⁴⁶ The Somali Human Rights Association has indicated that women and girls who leave camps for internally displaced persons to relieve themselves or collect firewood are often subjected to sexual and gender-based violence by men with unregulated small arms.⁴⁷ Women and girls who are forced to flee their homes due to the uncontrolled availability of arms are also at a higher risk of sexual violence, including exploitation by human traffickers.⁴⁸

18. The Secretary-General has highlighted that ownership and use of arms are closely linked to specific expressions of masculinity related to control, power, domination and strength.⁴⁹ Correspondingly, the overwhelming majority of small arms owners are men, and young men perpetrate the vast majority of armed violence.⁵⁰ Gender-based violence against women is rooted in these and other gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour.⁵¹ In turn, these factors contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard.⁵²

19. Addressing the gendered impact⁵³ of diversion of arms and unregulated or illicit arms transfers therefore requires an understanding of gendered root causes of violent behaviour and the recognition that bringing about changes in gender roles is an effective tool for preventing human rights violations and conflict more broadly. It also requires an acknowledgement that women and girls should not only be perceived as victims of gender-based violence. In many countries, they have demonstrated remarkable resilience⁵⁴ in the

⁴³ See the contributions of the Office for Disarmament Affairs, UNIDIR, UNODC, Project Ploughshares, the Somali Human Rights Association and the Women's International League for Peace and Freedom.

⁴⁴ See the contributions of UNIDIR and UNODC.

⁴⁵ See A/HRC/33/46/Add.1.

⁴⁶ See the contribution of UNODC.

⁴⁷ See the contribution of the Somali Human Rights Association.

⁴⁸ See the contribution of the Office for Disarmament Affairs. See also the contribution of Project Ploughshares, citing: Gianna Robbers, Gunta Lazdane and Dinesh Sethi, "Sexual violence against refugee women on the move to and within Europe", *Entre Nous*, No. 84 (2016), p. 27.

⁴⁹ *Securing Our Common Future: An Agenda for Disarmament*, p. 39. See also UNODC, Project Ploughshares and the Women's International League for Peace and Freedom.

⁵⁰ *Securing Our Common Future: An Agenda for Disarmament*, p. 39. See also the contribution of Switzerland.

⁵¹ Committee on the Elimination of Discrimination against Women, general recommendation No. 35, para. 19.

⁵² *Ibid.*

⁵³ Although in the present report the High Commissioner focuses on the gendered impact of diversion of arms and unregulated or illicit arms transfers on women and girls, these may also have a gendered impact on men and boys. For example, men and boys accounted for the vast majority of violent deaths, including homicides and armed conflict in 2018. See the contribution of the Women's International League for Peace and Freedom, citing Small Arms Survey, "Global violent deaths in 2018". Available at www.smallarmssurvey.org/fileadmin/docs/W-Infographics/SAS-GVD-March-2020-update.pdf

⁵⁴ In Somalia, for example, they have played a fundamental role in the survival of internally displaced families for the past 29 years by creating microenterprises and performing manual labour to generate income. See the contribution of the Somali Human Rights Association.

face of armed violence and have been key players in small arms control, the prevention of diversion of arms and advocacy for disarmament.⁵⁵

B. Impact on fundamental freedoms

20. The uncontrolled availability of firearms also restricts the free movement of women and girls in situations of widespread insecurity, particularly when the risk of sexual violence is rampant.⁵⁶ It has also been shown in studies that female survivors of explosive weapon attacks who have suffered disfigurement or disability are more likely to suffer marginalization than men, which also affects their freedom of movement.⁵⁷ These restrictions on movement hinder the ability of women and girls to assemble and express their opinions in a public political platform,⁵⁸ and may cause a gendered impact on their rights to political participation and freedom of assembly and expression.

C. Impact on adequate standard of living

21. Refugee crises and internal displacement, which are primarily driven by armed conflict that is fuelled by the illicit proliferation of small arms and light weapons, may have a gendered impact on women and girls, including their right to an adequate standard of living and right to housing.⁵⁹ For example, more than 75 per cent of internally displaced persons in Yemen are women and girls.⁶⁰

22. Uncontrolled proliferation of weapons can subject women and girls in patriarchal societies to secondary victimization by forcing them to bear the brunt of the socioeconomic dimensions of conflict.⁶¹ Upon the death or disabling injury of their partner, parent or parents, they are often burdened with providing for their family in extremely difficult conditions.⁶² Indeed, in some countries experiencing protracted armed conflict, up to 21 per cent of households are led by girls under 18.⁶³ Having been stripped of economic opportunities, the resulting survival choices for many are prostitution, commercial labour or domestic servitude,⁶⁴ which risk exposing them to continued violence, including sexual violence.⁶⁵ They are also exposed to poor working conditions and exclusion from their communities.⁶⁶

D. Impact on the right to health

23. Protracted armed conflicts fuelled by the use of illicit or unregulated armed transfers and diversion of arms have devastating impacts on access to health care for nearby residents who are often exposed to artillery and rocket fire, air strikes and snipers when

⁵⁵ See the contribution of the Women's International League for Peace and Freedom, citing the role of women in these initiatives and providing examples from Colombia, Kenya, Libya and Yemen.

⁵⁶ See the contributions of Switzerland, UNODC, Control Arms and Project Ploughshares.

⁵⁷ See the contribution of the Office for Disarmament Affairs. See also the contribution of Control Arms, citing Martin Butcher, "The gendered impact of explosive weapons used in populated areas in Yemen" (Oxford, Oxfam International, 2019).

⁵⁸ See the contributions of Switzerland, UNIDIR, UNODC and the Women's International League for Peace and Freedom.

⁵⁹ See the contribution of Project Ploughshares, citing S/2019/1011, p. 1.

⁶⁰ See the contribution of Project Ploughshares, citing Butcher, "The gendered impact of explosive weapons use in populated areas in Yemen", p. 9.

⁶¹ Committee on the Elimination of Discrimination against Women, general recommendation No. 30, para. 48. See also *Securing Our Common Future: An Agenda for Disarmament*, p. 39, and the contribution of UNODC.

⁶² See the contribution of the Women's International League for Peace and Freedom, citing Cate Buchanan, "The health and human rights of survivors of gun violence: charting a research and policy agenda", *Health and Human Rights*, vol. 13, No. 2 (December 2011), p. 51.

⁶³ See the contribution of the Women's International League for Peace and Freedom.

⁶⁴ A/HRC/42/21, para. 37.

⁶⁵ See the contribution of the Somali Human Rights Association, indicating that teenage girls internally displaced by armed conflict in Somalia are often forced to perform manual labour, such as housework for wealthy employers, who frequently subject them to abuse, including sexual and gender-based violence.

⁶⁶ A/HRC/42/21, para. 37.

trying to access health-care facilities that have not been destroyed or damaged.⁶⁷ Without access to sexual and reproductive health services, women and girls are exposed to ill-health from communicable diseases and unwanted pregnancies, and face an increased risk of maternal mortality and morbidity.⁶⁸

E. Impact on the right to education

24. Diversion of arms and unregulated or illicit arms transfers may also have gendered impacts on girls' right to education.⁶⁹ Armed attacks on education facilities, particularly those resulting in the abduction of girls, can create a ripple effect, setting in motion a range of negative impacts such as loss of education, child and forced marriage, early pregnancy, and the stigma associated with sexual violence and children born from rape, all of which dramatically affect the educational future of girls.⁷⁰ In instances in which armed groups have forcibly recruited children from schools and raped schoolchildren and teachers during attacks, this has resulted in significantly fewer enrolled students, particularly girls, once the schools reopen. Moreover, the death of parents and destruction of family homes, fields, animals and other means of livelihood due to armed violence have led parents to prioritize the education of boys in light of financial difficulties.⁷¹

IV. Legal framework for due diligence

25. In its resolution 41/20, the Human Rights Council recalled the principles and provisions relating to international human rights law and international humanitarian law, and the need for responsible action by States, as required by the Arms Trade Treaty and other relevant instruments.

26. In the present section, the High Commissioner builds on a prior report on arms transfers (A/HRC/35/8), which outlined the general principle of due diligence and the responsibility for aiding or assisting in the commission of an internationally wrongful act in international human rights law and public international law.⁷² The High Commissioner sets forth specific due diligence principles under international human rights law that relate to diversion of arms and unregulated or illicit arms transfers.

27. International human rights law provides for the principle of due diligence, by which a State may be held responsible for its failure to take reasonable steps to prevent, investigate, punish and ensure reparations for human rights violations and abuses committed by private persons or entities, including companies and non-State armed

⁶⁷ See the contribution of the Women's International League for Peace and Freedom.

⁶⁸ See the contributions of Switzerland, the Office for Disarmament Affairs, UNIDIR, UNODC, Control Arms, Project Ploughshares and the Women's International League for Peace and Freedom.

⁶⁹ See the contributions of Switzerland, the Office for Disarmament Affairs, UNIDIR, UNODC, Project Ploughshares and the Women's International League for Peace and Freedom.

⁷⁰ Committee on the Elimination of Discrimination against Women, general recommendation No. 36 (2017) on the right of girls and women to education, para. 48. See also the contribution of the Women's International League for Peace and Freedom, citing Holly Cartner, *"I Will Never Go Back to School": The Impact of Attacks on Education for Nigerian Women and Girls* (New York, Global Coalition to Protect Education from Attack, 2018).

⁷¹ See the contribution of the Women's International League for Peace and Freedom, citing Holly Cartner, *"All That I Have Lost": Impact of Attacks on Education for Women and Girls in Kasai Central Province, Democratic Republic of Congo* (New York, Global Coalition to Protect Education from Attack, 2019).

⁷² In that report, the High Commissioner underscored that international human rights law provided for the principle of due diligence, by which a State may be held responsible for its failure to take reasonable steps to prevent, investigate, punish and ensure reparations for human rights violations and abuses committed by private persons or entities, including companies and non-State armed groups. The High Commissioner also clarified that, under public international law, as articulated in article 16 of the International Law Commission's draft articles on responsibility of States for internationally wrongful acts, a State that transferred arms with the knowledge that the arms would aid or assist another State to commit a serious violation of international human rights law might be held responsible for failing to exercise due diligence by taking the necessary preventive measures (A/HRC/35/8, paras. 20–21).

groups.⁷³ In particular, this due diligence obligation requires States parties to the International Covenant on Civil and Political Rights to undertake reasonable positive measures to respond to reasonably foreseeable threats to life caused by private persons and entities, whose conduct is not attributable to the State.⁷⁴ This includes the obligation to take adequate preventive measures to protect individuals against reasonably foreseen threats of being murdered or killed by criminals and organized crime or militia groups, including armed or terrorist groups.⁷⁵ In this context, the Human Rights Committee has emphasized that States parties should reduce the proliferation of potentially lethal weapons to unauthorized individuals within their own borders.⁷⁶ Therefore, States parties should take reasonable positive measures to reduce domestic diversion⁷⁷ of arms and unregulated or illicit arms imports.

28. States parties must also take appropriate measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, which have a direct and foreseeable impact on the right to life of individuals outside their territory, are consistent with the right to life.⁷⁸ This includes activities conducted by corporate entities based in the territory of States parties or subject to their jurisdiction.⁷⁹ In implementing these measures, States parties must take into account related international standards of corporate responsibility,⁸⁰ and the right of victims to obtain an effective remedy.⁸¹ The duty to protect the right to life also requires States parties to take special measures of protection towards victims of domestic and gender-based violence and trafficking in persons, including women and girls.⁸²

29. Consequently, States parties to the Covenant have a binding due diligence obligation to take appropriate measures to prevent diversion of arms that has a direct and foreseeable impact on the right to life of individuals outside their territory. They are also obligated to take appropriate legislative and other measures to prevent unregulated or illicit arms transfers that originate with arms corporations based in their territory or subject to their jurisdiction. All measures taken to protect the right to life must be gender-responsive and protect women and girl victims of gender-based violence and trafficking in persons.

30. Article 2 (e) of the Convention on the Elimination of All Forms of Discrimination against Women explicitly provides that States parties must take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Accordingly, States parties are obligated to take all appropriate measures to prevent, as well as to investigate, prosecute, punish and provide reparations for, acts or omissions by non-State actors that result in gender-based violence against women.⁸³ This includes actions taken by corporations operating extraterritorially.⁸⁴ If a State party fails to take these measures when it is aware or should be aware of the risk of gender-based violence against women, it commits a human rights violation.⁸⁵ Therefore, State parties to the Convention have a binding obligation to take all appropriate measures to prevent diversion of arms and unregulated or illicit arms transfers.⁸⁶

⁷³ Ibid., para. 20.

⁷⁴ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 21.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ See the definition of “diversion” in section II above, which emphasizes the delivery of arms to “unauthorized end users”.

⁷⁸ Human Rights Committee, general comment No. 36, para. 22.

⁷⁹ Ibid.

⁸⁰ Ibid., endnote 67, referring to principle 2 of the Guiding Principles on Business and Human Rights.

⁸¹ Ibid., para. 22.

⁸² Ibid., para. 23.

⁸³ Committee on the Elimination of Discrimination against Women, general recommendation No. 35, para. 24 (b).

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ See section III above for a discussion of how diversion of arms and unregulated or illicit arms transfers fuel gender-based violence against women.

V. Measures for preventing diversion of arms and unregulated or illicit arms transfers

A. Prevention of diversion

31. States parties to the Arms Trade Treaty have taken a considerable step towards preventing diversion of arms.⁸⁷ Article 11 of the treaty focuses on preventing diversion and sets forth a series of measures towards this end. Article 11 (2) obligates States parties to take measures to prevent diversion of conventional arms by using a national control system and national control list. Although the Treaty does not specify how such systems should be composed, it implies that an effective national control system must require any individual or entity, whether private or public, to seek and receive authorization from the control system prior to a transfer of items contained in the national control list. The system must also enable a State to objectively assess each request under international and national law, and make a principled and consistent decision based on the evidence,⁸⁸ including any risk of diversion.

32. Article 11 (2) emphasizes the importance of assessing the risk of diversion prior to authorizing an export by suggesting measures such as examining the parties involved in the export and requiring additional documentation, certifications and assurances. Crucially, it suggests declining authorization for the export as a preventive measure.

33. Article 11 (3) expands on these measures by requiring importing, transit, transshipment and exporting States parties to cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion. Article 11 (5) further underscores the importance of information-sharing by encouraging States parties to exchange information on matters such as: illicit activities, including corruption; international trafficking routes; illicit brokers; sources of illicit supply; methods of concealment; common points of dispatch; or destinations used by organized groups engaged in diversion.

34. The list of measures included in article 11 is non-exhaustive. States have agreed on a longer list of possible measures to prevent and address the risk of diversion for each stage in the arms supply chain,⁸⁹ which includes:

- (a) Before the transfer:
 - (i) Taking into account the risks of diversion when conducting the export assessments mandated by article 7 of the Treaty (this measure would therefore obligate States parties to deny an export authorization under article 7 (3) if there is an overriding risk of diversion);⁹⁰
 - (ii) Refraining from authorizing an export if a significant risk of diversion is detected;
 - (iii) Verifying the adequacy of the recipient's storage facilities through physical inspections;

⁸⁷ See the contributions of Brazil, Ireland, Mexico, Sweden and Switzerland.

⁸⁸ Stuart Casey-Maslen, "Article 5. General implementation", in Casey-Maslen and others, *The Arms Trade Treaty: A Commentary*, para. 5.17.

⁸⁹ See annex D to the draft report to the fourth conference of State parties. Available at www.thearmstradetreaty.org/hyper-images/file/ATT_CSP4_WGETI_Draft_Report_EN1/ATT_CSP4_WGETI_Draft_Report_EN.pdf. The recommendations in the annex were drawn from a variety of sources, including States parties, civil society and documents in a list of possible reference documents on diversion that had been agreed upon by States parties and authored by the Office on Disarmament Affairs, the European Union, Coordinating Action on Small Arms, the Organization for Security and Cooperation in Europe, the Regional Centre on Small Arms and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

⁹⁰ UNIDIR concurs with the need for thorough pre-transfer risk assessments as a means for countering diversion of arms. In its submission, it states that an effective pre-transfer risk assessment considers risks at different stages of the life cycle, incorporates red flag risk indicators, relies on credible and reliable information from different sources at the right time, and contributes towards an accountable system of weapons and ammunition management.

(iv) Enforcing technical conditions to secure conventional arms, such as systematic marking and implementation of systems preventing use by non-authorized persons;

(b) During the transfer: monitoring and protecting shipments, in cooperation with the industry parties involved, from the time the arms leave the warehouse in the exporting State until the intended end user receives them;⁹¹

(c) Post-delivery storage:

(i) Requiring exporting States to conduct post-delivery checks in cooperation with the competent authorities in the importing State to verify compliance with end-use conditions, such as the condition that no re-export can take place without the country of origin being notified beforehand;⁹²

(ii) Requiring importing States to register and maintain records of arms entering their national territory and to securely transfer these to the authorized end user;

(iii) Requiring exporting and importing States to initiate and respond in a timely manner to tracing requests, including through utilization of existing tools, such as the Illicit Arms Records and Tracing Management System.⁹³

35. Many States perform diversion risk assessments under strict national regulatory frameworks⁹⁴ and other multilateral export control regimes to which they are a party.⁹⁵ In conducting these assessments, States take measures that mirror those in the list endorsed by State parties to the Arms Trade Treaty, such as: exchanging information with ministries and other government agencies,⁹⁶ using diplomatic channels to verify end-user destinations,⁹⁷ consulting open-source information,⁹⁸ assessing the human rights record of the receiving country,⁹⁹ and examining the amount of diverted weapons seized, as well as the extent of domestic diversion in a country.¹⁰⁰

36. Some States have enacted national legislation to counter diversion of arms and its impact on the rights of women and girls.¹⁰¹ For example, Sweden has developed a national action plan under a feminist foreign policy for implementing Security Council resolutions on women, peace and security. The plan ensures that a gender perspective is integrated into discussions, final documents and relevant resolutions in the area of arms control, particularly regarding small arms and light weapons.¹⁰²

⁹¹ See also the contribution of UNIDIR, which supports measures to identify and monitor movement of weapons, ammunition and parts and components along the supply chain.

⁹² See also the contribution of UNIDIR, which supports post-delivery verifications as an effective means for diversion monitoring.

⁹³ See also the contribution of UNIDIR, which supports arms tracing as an effective means for diversion monitoring.

⁹⁴ See the contributions of Brazil and Sweden. See also the contribution of UNODC, indicating that States can significantly reduce the risk of diversion if they establish effective national systems for export and import authorization in accordance with article 10 of the Firearms Protocol and the criteria enshrined in the Arms Trade Treaty.

⁹⁵ See the contributions of Ireland, Mexico and Sweden.

⁹⁶ See the contributions of Sweden and Switzerland.

⁹⁷ See the contributions of Ireland and Switzerland.

⁹⁸ See the contributions of Ireland, Switzerland and Project Ploughshares.

⁹⁹ See the contribution of Switzerland.

¹⁰⁰ See the contributions of Brazil and Switzerland.

¹⁰¹ See the contributions of Brazil, Ireland, Mexico, Qatar, Sweden and Switzerland. See also the contribution of the Women's International League for Peace and Freedom, highlighting legislation in Belgium, Germany, Switzerland and the United Kingdom of Great Britain and Northern Ireland.

¹⁰² See the contribution of Sweden. In advance of the twentieth anniversary of Security Council resolution 1325 (2000) on women and peace and security, 40 States committed to creating, modifying or strengthening their national action plans for the implementation of that resolution. Nine States confirmed that they will be developing their first ever national action plans: Bulgaria, Cyprus, Egypt, Ethiopia, Latvia, Malta, Sri Lanka, South Africa and Uruguay. See www.peacewomen.org/node/103512. The Secretary-General has stated that the implementation of the women and peace and security agenda is the responsibility of all Member States. He has also encouraged all Member States

37. Switzerland has enacted legislation that denies arms export authorizations in instances in which there is a strong risk that the arms will be diverted to an unauthorized end user. It also conducts post-shipment verifications to verify whether a receiving State has transferred arms in violation of its end-user agreement.¹⁰³

B. Prevention of illicit or unregulated arms transfers

38. In a prior report,¹⁰⁴ the High Commissioner outlined the steps States have taken to regulate arms transfers through a variety of binding instruments at the international and regional levels.¹⁰⁵ Most of the instruments prohibit arms transfers that violate international human rights and/or international humanitarian law. Article 6 of the Arms Trade Treaty also specifically prohibits arms transfers that violate Security Council arms embargoes or other international obligations.

39. Ratification and particularly observance of these instruments by eligible States is a key method for preventing unregulated or illicit arms transfers.¹⁰⁶ Ratification and observance of the Arms Trade Treaty¹⁰⁷ is particularly impactful, as the Treaty is the first international, legally binding instrument to govern specifically the transfer of conventional weapons, ammunition, parts and components, and to incorporate human rights as a standard to restrict such transfers, with the express purpose of reducing human suffering, including gender-based violence and acts of violence against women and children.¹⁰⁸ Indeed, as part of the universal periodic review, recommendations have been made to several States to ratify or accede to the Treaty.¹⁰⁹

40. All countries participating in arms transfers should also consider taking into account the Modular Small-arms-control Implementation Compendium, which translates into practice the codes of conduct and standard operating procedures of key global agreements aiming to prevent diversion of arms and unregulated or illicit arms transfers.¹¹⁰

VI. Conclusions and recommendations

41. Diversion of arms and unregulated or illicit arms transfers fuel the commission of gender-based violence against women and girls and have an impact on their enjoyment of all human rights. Addressing this impact requires an understanding of the gendered root causes of violent behaviour. Bringing about changes in gender norms and attitudes can help prevent human rights violations and conflict more broadly. For example, gender stereotypes, which place women and girls in a subordinate role in society and fuel expressions of masculinity related to power and domination, can exacerbate the gendered impact of the diversion and transfer of arms.

to implement the operational paragraphs of the related Security Council resolutions and fulfil their human rights obligations, as well as to implement the recommendations contained in previous reports of the Secretary-General on women and peace and security (S/2019/800, para. 121).

¹⁰³ See the contribution of Switzerland.

¹⁰⁴ See A/HRC/35/8.

¹⁰⁵ In addition to the instruments already indicated above, mention should be made of the Council of the European Union's Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

¹⁰⁶ See the contributions of Ireland, Mexico and UNODC.

¹⁰⁷ For example, at least 18 States that transfer arms to the conflict in Yemen are parties to the Arms Trade Treaty. See the contribution of Control Arms, citing Stockholm International Peace Research Institute Arms Transfers Database, containing trend-indicator values and trade registers. The Group of Eminent International and Regional Experts on Yemen has questioned the legality of many of these transfers (A/HRC/42/17, para. 92).

¹⁰⁸ See A/HRC/35/8 and the contributions of Brazil and Mexico. Article 7 (4) of the Arms Trade Treaty explicitly requires States parties to take into account the risk of arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children when conducting mandatory export assessments.

¹⁰⁹ See A/HRC/37/16, A/HRC/37/13, A/HRC/36/13, A/HRC/36/12, A/HRC/36/11, A/HRC/36/10, A/HRC/36/5, A/HRC/36/4, A/HRC/36/3, A/HRC/34/5, A/HRC/33/15, A/HRC/32/14, A/HRC/30/16, A/HRC/30/12, A/HRC/30/11, A/HRC/30/9 and A/HRC/26/3.

¹¹⁰ See the contribution of UNODC.

Addressing the gendered impact of arms diversion and transfers also requires the formulation and review of legislation and public policy measures on arms control through a human rights and gender lens.

42. The High Commissioner's report submitted to the Human Rights Council in 2017 contained a series of suggestions and recommendations for addressing the human rights impact of arms transfers, which included suggestions for how States and other relevant stakeholders could assess the relationship between arms transfers and human rights law. These suggestions and recommendations¹¹¹ should be considered in conjunction with the Secretary-General's Agenda for Disarmament and the call to action for human rights,¹¹² which promote equality for women and girls and set forth additional steps and measures for safeguarding their human rights. They should also be considered together with the following recommendations to States for addressing the gendered impact of diversion and unregulated or illicit arms transfers on women and girls to establish a comprehensive approach for safeguarding human rights from the negative impact of uncontrolled proliferation of arms. In this regard, States should:

(a) Systematically collect and share data, disaggregated by relevant factors, on the way that different categories of arms cause or facilitate human rights violations against women and girls, including gender-based violence, and the correlation between proliferation of arms and gender-based violence;¹¹³

(b) Accede to and/or ratify the Arms Trade Treaty and regional instruments regulating arms transfers,¹¹⁴ and the Convention on the Elimination of All Forms of Discrimination against Women¹¹⁵ and regional instruments on the human rights of women;

(c) Promote the participation of women in all arms control and disarmament processes and forums, including at global disarmament meetings;

(d) Create national control systems to ensure compliance with these instruments and other relevant provisions of international law, including the principles of due diligence¹¹⁶ and the responsibility for aiding or assisting in the commission of an internationally wrongful act, while also taking into account international standards of corporate responsibility, in particular the Guiding Principles on Business and Human Rights;

(e) Implement in a gender-responsive manner the recommendations made by United Nations and regional human rights mechanisms on ways to address the human rights impact of diversion of arms and unregulated or illicit arms transfers on women and girls, including by addressing the root causes of gender-based discrimination and violence;¹¹⁷

(f) Deny export authorizations for arms transfers after conducting comprehensive, gender-sensitive risk assessments, if there is a significant risk that the arms will be diverted;

¹¹¹ A/HRC/35/8, paras. 39–50.

¹¹² See

www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf.

¹¹³ In their contributions, Switzerland, the Office for Disarmament Affairs, UNODC and the Women's International League for Peace and Freedom emphasized that serious challenges existed in finding and accessing comprehensive quantitative and qualitative disaggregated data on those issues.

¹¹⁴ To be read in conjunction with A/HRC/35/8, para. 46. The current status of participation in the Arms Trade Treaty includes 106 States parties, 32 States that are signatories but not yet parties (one of which no longer intends to become a party) and 56 States that have not yet joined the Treaty. See <https://thearmstradetreaty.org/treaty-status.html?templateId=209883>.

¹¹⁵ There are 189 States parties to the Convention on the Elimination of All Forms of Discrimination against Women.

¹¹⁶ States should take particular note of their due diligence obligations, as set forth in section IV of the present report.

¹¹⁷ To be read in conjunction with A/HRC/35/8, para. 47.

(g) **Ensure that national control systems implement the risk assessments and other measures to prevent and address diversion of arms proposed by States parties to the Arms Trade Treaty, with a particular focus on the measures highlighted in section V of the present report;**

(h) **Generate political momentum to encourage the implementation of these measures among other States.**
