

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
**Report to the Human Rights Council on the impact of arms transfers on
human rights**

Questionnaire

Submission of Conectas Direitos Humanos

The following questionnaire is aimed at assisting United Nations bodies, human rights mechanisms, specialized agencies, civil society, particularly international and regional non-governmental organizations and academic institutions, funds and programmes and national human rights institutions in providing information and inputs for the above mentioned report.

1. Please identify the ways that arms transfers impact on the enjoyment of human rights. Are there rights that are particularly affected? Are there groups of rights-holders which are particularly affected?

CONECTAS: Everyday millions of people around the globe are affected by serious and massive human rights violations perpetrated or facilitated by irresponsible and unaccountable arms transfers. The United Nations General Assembly included the significant reduction of illicit arms flows as a target (16.4) of the Sustainable Development Goals, recognizing its importance to promote peaceful and inclusive societies, providing access to justice for all.

Illicit and irresponsible arms transfers affected the enjoyment of a wide range of international protected human rights, including civil, political, economic and social rights. The right to life enshrined in Article 6 of the International Covenant on Civil and Political Rights (ICCPR) is inherently linked to the international community's human rights concern with small arms and light weapons (SALW)¹. Therefore, the broad scope of right to life under the ICCPR serves as the basis for other international standards regarding the excessive use of force caused by firearms, e.g. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. It's important to notice that the use of some types of arms, e.g. explosive and fragmentation weapons, could kill and injure people indiscriminately, affecting civilians (including women and children) and communities as well damaging buildings and infrastructures. Therefore, they are likely used to violate economic and social rights to

¹ See Barbara Frey, *Obligations to Protect the Right to Life: Constructing a Rule of Transfer Regarding Small Arms and Light Weapons*, 36 in *UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS* (Mark Gibney and Sigrun Skogly, eds.): Univ. of Penn. Press (2010).

education, health and adequate housing, according with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Aspects of gender-based violence (GBV) are present in various contemporary international standards and debates on disarmament and arms control. The Arms Trade Treaty recognizes the link between gender-based violence and the international arms trade, establishing the illegality of transfers if there is a risk that the weapon will be used to commit or facilitate serious acts of GBV or serious acts of violence against women and children (article 7.4). The United Nations Security Council also recognized² that men and women experience wars differently, requiring that these differences be taken into account and recommending that women's full and equal participation in all aspects and states of peace processes is an essential aspect to building sustainable peace³. The adoption of resolution 65/69 on "Women, disarmament, arms control and non-proliferation" by the United Nations General Assembly in 2010 is another example of an increased attention by international community on the implication of gender perspectives in disarmament issues.

- 2. Are you aware of assessments by governments of the impact that arms transfers may have on the enjoyment of human rights? If possible, please specify what considerations are taken into account when making these assessments, including national procedures and/or laws and international obligations and standards. On what information and/or sources of information are these assessments by governments based?**

- 3. What considerations should be taken into account by governments when assessing the impact and arms transfer may have on human rights, including national procedures and/or laws and international obligations and standards? On what information and/or sources of information should such assessments be based?**

CONNECTAS: The Arms Trade Treaty creates⁴ an international obligation to its States Parties to carry out a risk assessment prior to authorization of the exports of conventional arms under the scope of its regime. This procedure must assess the potential that the conventional arms be used to commit or facilitate a serious violation of international humanitarian law or international human rights law (Article 7 (i) and (ii)). The legally-binding regime encompassed by the ATT, however recent, could create an environment of confidence among

² See UNSC resolution 1325 and its follow-up resolutions.

³ See Reaching Critical Will, *Gender and disarmament* in FIRST COMMITTEE BRIEFING BOOK 2016 (Reaching Critical Will, eds.): New York (2016).

⁴ See Article 7.

its State Parties, allowing them to share good practices in risk assessment and refine their criteria.

An ideal risk assessment of the impact of arms transfers in the enjoyment of human rights should take into account, inter alia: (i) the behavior of the recipient country regarding international human rights treaties and standards; (ii) the risk of diversion; (iii) prior assurances and conformation of end-user's obligations; (iv) the commitment of the recipient country regarding international arms control regimes, e.g., Mine Ban Treaty, Convention on Cluster Munitions and the Arms Trade Treaty; (v) the existence of a transparent, accountable and participative national arms control system; (vi) prior record of use of weapons in gender-based violence; and (vii) levels of armed violence and homicides rate; (viii) participation and engagement in the UN Convention on Certain Conventional Weapons.

4. Are you aware of a refusal or refusals by government to authorize a proposed arms transfer or arms transfers on the basis that the arms transfer would impact on the enjoyment of human rights? If possible, please specify the factors that were taken into consideration in making this decision, and the nature of the human rights that would have been impacted by such the proposed transfer.

CONNECTAS: In 2013 and 2014, actions of civil society organizations from Brazil and Mozambique challenged the plans of Brazilian government to donate three Brazilian-manufactured military aircrafts to the Mozambican Air Force during the escalation of the crisis in the African country. As result, this arms transfer was cooled out after the parliamentary control exercised by the Brazilian National Congress⁵.

This growth of tensions between the ruling party FRELIMO (Mozambique Liberation Front) and the opposition party RENAMO (Mozambican National Resistance) sparked fears that the African country could slip back into civil war. The conflict in Mozambique was the subject of a statement by the Brazilian Ministry of Foreign Relations on October 22, 2013,²⁶ in which it claimed that Brazil was accompanying "with concern the incidents occurred in recent days in the region of Gorongosa, in Sofala Province, between the defense forces of Mozambique and Renamo". It also mentioned the importance of finding solutions to the differences between the two sides, based on dialogue and negotiation, within a framework of strengthening the rule of law, democratic institutions and stability.

⁵ See Camila Asano and Jefferson Nascimento, "Arms as foreign policy: the case of Brazil", SUR 22 (2015), accessed February 3, 2017, <http://sur.conectas.org/en/arms-foreign-policy-case-brazil/>.

Just three days after releasing the statement, the Executive branch of Brazil's government requested authorization from Congress to donate three Brazilian-made Embraer T-27 TUCANO military aircraft to the Mozambican Air Force. In the presentation of the motives for the donation, dated May 5, 2013 – i.e., five months before the authorization request was issued and clearly not taking into account the new climate of military tensions in Mozambique – the Ministry of Defence justified it with the fact that the Brazilian Air Force now had more advanced aircraft – notably the Embraer AT-29 SUPER TUCANO. It also cited the cost of maintaining the TUCANOs and the potential investment to get them back into working order.

Brazilian and Mozambique NGOs questioned the timing of this donation, mentioning the lack of any clarification about the use of the military aircraft by Mozambican Armed Forces, unlike the practice adopted by Brazil in previous donations of military hardware. The advocacy efforts with the members of Congress responsible for analyzing the transfer of the aircraft led to the inclusion of an amendment in the authorization for the donation. The amendment conditioned the donation to be used exclusively for pilot instructions and training activities, given the possible use for purposes of warfare in an escalating growing political and military tension that has gripped Mozambique in the original purpose of donation. Finally, in August 2016 the draft law authorizing the donation of the three military aircrafts to Mozambique was withdrawn by the Brazilian government.

5. Are you aware of a refusal of refusals by a government to authorize a proposed arms transfer on the grounds of the risk of diversion of the arms?

CONNECTAS: In 2014, a group of UN experts concluded that Brazilian less-lethal weapons reached Côte d'Ivoire, a country that since 2004 has faced an embargo imposed by the UN Security Council⁶. The discovery raises doubts about Brazil's commitment to the embargo. According to the document submitted in October 2013, the Embargo Monitoring Unit of the United Nations mission in the country found evidence of the use of non-lethal grenade launchers and ammunition manufactured by the Brazilian company Condor.

In a letter sent to the Brazilian Ministry of Defense of Brazil, Brazilian and Cote Ivorian NGOs asked⁷ Brazil to clarify what steps are being taken to “ensure that arms originating from Brazil are not being transferred illegally to Côte d'Ivoire or territories where arms embargoes or armed conflicts exist”. According to

⁶ According to United Nations Security Council resolution 1572: “All States must (...) take the necessary measures to prevent the direct or indirect supply, sale or transfer to Côte d'Ivoire (...) of arms or any related material”.

⁷ See more: <http://bit.ly/2kwcRwl>

the report of the UN group, the Brazilian authorities have used the illegal transfer argument to explain the discovery of the weapons. Both the Brazilian government and Condor have confirmed that a sale of this type of weapon and ammunition was made to neighboring Burkina Faso in 2012. According to the organizations, these arms were transferred to Côte d'Ivoire.

After this episode, members of the Brazilian Ministry of External Relations declares privately that an internal directive restricted arms transfers to Burkina Faso, given the risk of diversion. Notwithstanding, the guidelines to controlling international transfers of conventional arms by Brazil are currently classified⁸, keeping their content far from public scrutiny. Therefore, it's impossible to verify whether the restriction of arms transfers mentioned above is still in force.

⁸ The arms transfers policy in Brazil is known as PNEMEM – National Export Policy for Military Equipment, which was established during the military dictatorship (1964-1985). Running counter to democratic principles, PNEMEM is a classified document updated in an unaccountable manner since its adoption in 1974.