

WORKING PAPER PRESENTED BY MEXICO, SPAIN AND THE SMALL ARMS SURVEY TO THE NINTH CONFERENCE OF STATES PARTIES TO THE ARMS TRADE TREATY

Mitigating the risk of armed violence against people on the basis of their actual or perceived sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) through the Arms Trade Treaty (ATT)

1. Summary

While many cases likely go unreported, in countries where data collection is possible, armed violence against people on the basis of their actual or perceived sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) and gender expression remains a serious issue. Through a better understanding of the nature and scope of homophobic, biphobic and transphobic* armed violence, States Parties can use articles 6(3), 7(1) and 7(4) of the Arms Trade Treaty (ATT) as tools to prevent serious human rights violations of this kind, and encourage further data collection to inform risk assessments.

2. The differentiated impact of small arms and light weapons on people of diverse SOGIESC

Despite advances in the acceptance of people of diverse SOGIESC in many countries in recent years¹, reports of violence against lesbian, gay, bisexual, trans and queer (LGBTQ+[†]) people rose starkly in many countries in 2022.² In the last few years, there have been several widely reported armed attacks on LGBTQ+ people such as the 2016 Orlando nightclub shooting that killed 49 and injured 58³ and the 2022 Colorado Springs nightclub shooting that killed 5 and injured 17⁴, the 2018 assassination of bisexual Rio de Janeiro city councillor Marielle Franco in 2018⁵, the killing of two and wounding of 20 people at Oslo's 2022 LGBTQ+ Pride Festival⁶ and the murder of two young LGBTQ+ people at a bar in Slovakia in 2022⁷. It is likely that many other acts of armed violence go unreported or receive less media attention.

In terms of LGBTQ+ arms-related deaths, trans people, and especially trans women, seem to be targeted disproportionately. The Trans Murder Monitoring website counted 327 murders of trans and gender diverse people in the world between October 2021 and September 2022. The majority of recorded cases were from Latin America and the Caribbean. Of all the crimes identified, 38% involved a firearm. Minority Black, migrant trans women of colour, and transgender sex workers were disproportionately targeted.⁸

A register of violence against LGBTQ+ persons in members of the Organization of American States (OAS) that operated between January 2013 and March 2014 also confirmed the high victimization rates among trans women. While a firearm was reportedly used in 25% of the 770 cases and 30% of the 594 lethal cases recorded, 66% of those killed by firearms were (or were perceived as) trans women, 29% were gay men

* According to the UN Office of the High Commissioner for Human Rights, '[h]omophobia is an irrational fear of, hatred or aversion towards lesbian and gay people; biphobia is an irrational fear of, hatred or aversion towards bisexual people; transphobia denotes an irrational fear, hatred or aversion towards transgender people.' Free & Equal: United Nations for LGBTQ Equality. 2018. [LGBTQ Equality: Frequently Asked Questions](#). Geneva: Office of the High Commissioner for Human Rights, p. 1.

[†] SOGIESC is a universal term preferred in formal UN documentation. Many, but not all people of diverse SOGIESC identify as L, G, B, T, Q. SOGIESC also includes Intersex persons.

and 5% were lesbians.⁹ Another study from Latin America and the Caribbean running from 2014 to 2019 noted that since 2017, the number homicides committed against LGBTQ+ people using firearms has surpassed the number committed with sharp objects.¹⁰ The majority of these were in Mexico and Central America, where many of the firearms present are legally acquired in the USA and subsequently diverted for criminal use on the other side of the border.¹¹ 44% of the 959 homicides recorded were committed with a firearm. Of these, 45% of the victims were trans women, 30% were gay men and 13% were lesbians. Whereas most homicides committed against gay men involved sharp objects, the majority of trans women and lesbians were killed with firearms.¹²

In terms of the impacts of armed conflict, conflict parties sometimes play on longstanding, strongly entrenched prejudices against minorities, including people of diverse SOGIESC, to rally support. As such, the type and extent of violence against people of diverse SOGIESC - ranging from sexual violence, rape, torture, unlawful killings, persecution, and other attacks on their physical and mental integrity – are compounded.¹³ Many people who face discrimination on the basis of SOGIESC rely on often clandestine networks of trust and mutual support to ensure their safety. Conflict, and conflict-related displacement, can disrupt these networks thereby exposing them to violence and discrimination at the hands of armed groups and state security actors but also from family and community members, other refugees and displaced persons. They may also face threats from host populations, including discrimination in presumed 'safe spaces' on the basis of ethnicity, nationality or refugee status.¹⁴

The issue of discriminatory violence by security forces and other armed actors against LGBTQ+ and gender-diverse persons, particularly human rights defenders in conflict-torn areas has been raised by the UN Secretary-General and the United Nations Independent Expert on protection against violence and discrimination based on SOGIESC.¹⁵ The abovementioned OAS register of violence against LGBTQ+ persons illustrated this trend, reporting that in 47 (21%) of the 233 cases where the identity of the perpetrator was known, or 6% of all cases, state agents were included among the perpetrators.¹⁶

ILGA World reports that 62 UN Member States criminalize consensual same-sex sexual conduct and two additional UN Member States have de facto criminalization.¹⁷ While enforcement of these legal measures varies, all Member States retain the option of enforcing any law through the use of armed state agents, thereby further exposing people of diverse SOGIESC to armed violence or human rights violations facilitated by the carrying of arms.

The UN High Commissioner for Human Rights also noted that firearms can disproportionately impact LGBTQ+ youth due to attacks, but also because discrimination correlates with higher rates of suicide attempts, which are more likely to be fatal should these individuals have access to firearms.¹⁸ It has also documented cases of so called 'honour killings' where children and youth have been shot by family members due to their sexual orientation or gender identity.¹⁹

3. Interpretations of violence on the basis of SOGIESC as GBV within international frameworks

Some international institutions have interpreted violence on the basis of SOGIESC to be a form of gender-based violence. Often mistaken as synonymous with violence against women, GBV can be described as 'violence that is directed at a person based on her or his specific sex or gender role in society. It is linked to the gendered identity of being a woman, man, intersex, transsexual, or transgendered. The term GBV recognises that violence takes place as a result of unequal power relations and discrimination in society on the basis of one's sex or gender.'²⁰

The **International Criminal Court** has recently developed a policy on gender persecution, which is defined as a crime against humanity ‘committed against persons because of sex characteristics and/or because of the social constructs and criteria used to define gender’.²¹ It explicitly recognises widespread or systematic attacks against people on the basis of SOGIESC as a form of gender persecution because of the perpetrators’ discriminatory intent ‘to regulate or punish those who are perceived to transgress ...“accepted” forms of gender expression’.²² Under this interpretation, the transfer of arms to contexts where this may reasonably take place could be prohibited under the ATT.

According to the **UN High Commissioner for Human Rights**, even states that criminalize same-sex relations or do not offer legal protections to people of diverse SOGIESC still have obligations under various international human rights treaties to protect life, liberty and security, prevent torture and other cruel, inhuman or degrading treatment, protect the right to privacy and against arbitrary detention, ensure equality before the law and protect the right to freedom of expression, association and assembly of all, irrespective of their sexual orientation or gender identity.²³ It has also that physical and psychological violence of a homophobic nature constitutes ‘a form of gender-based violence, driven by a desire to punish those seen as defying gender norms.’²⁴

In addition, the non-binding **Yogyakarta Principles** state that ‘the policing of sexuality remains a major force behind continuing gender-based violence.’²⁵

4. Violence on the basis of SOGIESC within the framework of the ATT

Depending on the facts and circumstances, several articles in the ATT could provide potential entry points for authorizing or exporting States Parties to consider the risk of conventional weapons being used against people of diverse SOGIESC. These include, where applicable:

- (1) the Article 6(3) prohibition on a State Party authorizing transfer of conventional arms if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.
- (2) the Article 7(1)(b) requirement that an exporting State Party assess the potential that conventional arms being exported could be used to, among other things, commit or facilitate a serious violation of international humanitarian law or a serious violation of international human rights law.
- (3) the Article 7(4) requirement that an exporting State take into account the risk of conventional arms being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

ATT States Parties that adopt wider interpretations of GBV may be better able to mitigate the risk of violence based on SOGIESC by, for example, applying article 7(4) to include violence committed on the basis of gender identity, such as transphobic violence.

5. Policy recommendations to ATT States Parties

(1) States parties are encouraged to consider the following in export risk assessments:

- Conflict-related violence against people on the basis of actual or perceived SOGIESC (article 6(3));
- The involvement of armed state and non-state actors committing systematic, serious human rights violations against people on the basis of actual or perceived SOGIESC (article 7(1));
- Violence committed or facilitated by firearms against people on the basis of their actual or perceived SOGIESC that could be considered as serious acts of gender-based violence or violence against women or children (article 7(4)) based on national legal interpretations of these terms.

(2) Exporting states parties are encouraged to take into account data and reports in risk assessments on:

- Incidents of (armed) violence against people of diverse SOGIESC in the importing country;
- Perpetrators of (armed) violence against people of diverse SOGIESC with particular attention given to the role of state agents in both official and unofficial capacities;
- The willingness and capacity of the importing State to punish arms-related crimes against people of diverse SOGIESC, including 'honour killings' of minors, or their incitement to suicide using firearms, on the basis of their actual or perceived SOGIESC.
- The criminalization of consensual same-sex activities in the importing country, and other limits on the freedom of expression of people of diverse SOGIESC facilitated by the threat or actual use of firearms that could be considered to be a serious violations of international human rights law (under art 7(1)(a)(ii)), or serious acts of GBV or violence against women and children (under art 7(4)).
- The risk of exported conventional arms being diverted to those who could use them to commit or facilitate acts of violence against people of diverse SOGIESC.

(3) States parties are encouraged to provide international cooperation and assistance to improve data collection efforts on the impacts of small arms and light weapons on people based on actual or perceived SOGIESC, including by disaggregating national statistics by gender identity and sexual orientation.²⁶

(4) Exporting States are encouraged to consult with and fund the work of groups working on the rights of people of diverse SOGIESC, including those from other minority groups, on small arms related issues and violence to ensure their specific concerns are taken into consideration when carrying out risk assessments.

Notes

- ¹ Flores, Andrew R. 2021. '[Social Acceptance of LGBTQ People in 175 Countries and Locations, 1981 to 2020](#)'. Los Angeles, CA: UCLA School of Law Williams Institute.
- ² See, for example, ILGA Europe. [2023 Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex people in Europe and Central Asia](#). Brussels: ILGA Europe, p.9.
- ³ Straub, Frank, Jack Cambria, Jane Castor, Ben Gorban, Brett Meade, David Waltemeyer, and Jennifer Zeunik. 2017. [Rescue, Response and Resilience: a critical incident review of the Orlando public safety response to the attack on the Pulse nightclub](#). Critical Response Initiative. Washington, DC: Office of Community Oriented Policing Services, p.x.
- ⁴ Manley, Kelley and Jesus Jiménez. 2023. [Police Describe Chaotic Scene After Colorado Springs Shooting](#). *The New York Times*. 22 February 2023.
- ⁵ HRC Staff. 2018. [LGBTQ Brazilian Councilwoman Marielle Franco Assassinated, Calls Grow for Government Investigation](#).
- ⁶ Sanminiatielli, Maria and Karl Ritter. 2022. [Norway shaken by attack that kills 2 during Pride festival](#). *AP News*. 25 June 2022.
- ⁷ Terenzani, Michaela and Peter Dlhopelec. 2022. [Years of LGBT Intolerance in Slovakia Culminate in Two Killings](#). *Balkan Insight*. 17 October 2022.
- ⁸ Transrespect versus Transphobia Worldwide. 2022. [Trans Murder Monitoring Update – Trans Day of Remembrance 2022](#).
- ⁹ CIDH LGBTQ Violencia. 2014. '[Registro de Violencia contra Personas LGBT](#)'. Organization of American States.
- ¹⁰ Baca, Lucía, David Alonzo and Yarly Katery Madrid. 2019. [El prejuicio no conoce fronteras: Homicidios de lesbianas, gay, bisexuales, trans en países de América Latina y el Caribe 2014 – 2019](#). Bogotá: Sin Violencia LGBTI, p.26-27.
- ¹¹ Baca, Alonzo and Madrid, p.28; Parsons, Chelsea and Eugenio Weigend Vargas. 2018. [Beyond our Borders: How Weak U.S. Gun Laws Contribute to Violent Crime Abroad](#). Center for American Progress. 2 February.
- ¹² Baca, Alonzo and Madrid, p.28.
- ¹³ Reader friendly summary of the report "armed conflict and peacebuilding", From wars against diversity to an inclusive peace, United Nations Independent Rapporteur on protection against violence and discrimination based on sexual orientation and gender identity, 2022
- ¹⁴ Myrntinen, Henri and Megan Daigle. 2017. [Where merely existing is a risk: sexual and gender minorities in conflict, displacement and peacebuilding](#). London: International Alert, p. 15.
- ¹⁵ United Nations General Assembly. 2022. [Protection against violence and discrimination based on sexual orientation and gender identity. Note by the Secretariat](#). A/77/235, para 31.
- ¹⁶ CIDH LGBTQ Violencia. 2014. '[Registro de Violencia contra Personas LGBT](#)'. Organization of American States.
- ¹⁷ ILGA World. 2023. [Database – Area 1: Legal Frameworks – Criminalisation of consensual same-sex sexual acts](#). Last accessed 4 May 2023.
- ¹⁸ UN General Assembly. 2022. [Impact of the civilian acquisition, possession and use of firearms by children and youth. Report of the United Nations High Commissioner for Human Rights](#). A/HRC/44/41. Report of 19 January, para 34.
- ¹⁹ UN General Assembly. 2015. [Discrimination and violence against individuals based on their sexual orientation and gender identity](#). Report of the Office of the United Nations High Commissioner for Human Rights. A/HRC/29/23. Report of 4 May, para 30; UN General Assembly. 2013. [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Addendum 2. A/HRC/23/47/Add.2](#). Report of 18 March, para 47-50.
- ²⁰ Acheson, Ray. 2019. [Gender-based Violence and the Arms Trade Treaty](#). 2nd Ed. Geneva / New York: Reaching Critical Will / Women's International League for Peace and Freedom, p. 4; Casey-Maslen, Stuart, Andrew Clapham, Gilles Giacca and Sarah Parker. 2016. *The Arms Trade Treaty: a Commentary*. Oxford, Oxford University Press, p. 179.
- ²¹ The Office of the Prosecutor. 2022. [Policy on Gender Persecution](#). The Hague: International Criminal Court, p. 3. The document stipulates that gender persecution would fall under Article 7(1)(h) of the Rome Statute, 'persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender... or other grounds universally defined as impermissible under international law', 'when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.
- ²² The Office of the Prosecutor, p.4.
- ²³ United Nations General Assembly. 2011. '[Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. Report of the United Nations High Commissioner for Human Rights](#)'. Report of 17 November. A/HRC/19/41, para. 8-19;
- ²⁴ UNGA, A/HRC/19/41, para. 20.; Casey-Maslen et al., p.179.
- ²⁵ [The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity](#). 2007, p.6.
- ²⁶ See, for example, Argentina's national register of femicides. Corte Suprema de Justicia de la Nación. 2022. [Registro Nacional de Femicidios: Durante 2021 se produjeron 251 víctimas letales de violencia de género en todo el país](#), Buenos Aires, 31 May.