

# Oxfam International Technical Brief

## Practical Guide: Applying Sustainable Development to Arms-Transfer Decisions

The devastating impact of conflict, armed crime, and all forms of armed violence<sup>1</sup> around the world is apparent for all to see. Armed violence closes schools, paralyses communities, burdens health-care systems, discourages investment and economic activity, and makes lives and livelihoods less secure. Spending on arms or arms races can divert vital funds from public services such as education and health care, and when such spending takes place without accountability and transparency, it can aggravate corruption. Individually and cumulatively, these impacts undermine sustainable development and the achievement of internationally-agreed targets such as the Millennium Development Goals (MDGs).

International transfers of conventional arms<sup>2</sup> impair poverty reduction and socio-economic development when they contribute to armed crime, conflict, or serious violations of human rights, when they undermine post-conflict peacebuilding, or when they involve excessive unaccountable spending or corrupt practices. In different circumstances however, international arms transfers can provide the right environment for development by strengthening the capacity of military, security, and police forces to protect citizens from conflict and crime.

That is why more effective and responsible regulation of the international arms trade is needed urgently to ensure that arms transfers intended to achieve security do not come at the cost of undermining progress against development. Transfers must take place in accordance with states' international legal obligations and global norms.

Many states recognise that their obligations to protect and promote sustainable socio-economic development have application to transfers of conventional arms. The rigorous and consistent application of these obligations is required to ensure improved conditions for development on the ground.

The purpose of this document is to assist states to apply sustainable development standards when making decisions regarding international arms transfers through the application of a clear and consistent procedure. It outlines:

- The legal basis and international standards for development criteria related to international arms transfers;
- What development criteria should contain to enable effective decision-making on international arms transfers; and

- Guidelines to assist national licensing authorities and other government officials to apply development criteria to decisions about international arms transfers, including a set of relevant questions to consider when forming a judgement.

The decision to authorise an international arms transfer should be made on a case-by-case basis, in dialogue between the authorising and recipient state. It should express on what grounds the authorising body is confident that a substantial risk to sustainable development is not presented.

## Legal basis and international standards for sustainable development<sup>3</sup> criteria

The legal obligations and other responsibilities of states concerning sustainable socio-economic development are firmly grounded in the UN Charter and in international human rights and other international law,<sup>4</sup> including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. They are also included in numerous other resolutions, declarations and universal commitments to poverty reduction and socio-economic development such as the MDGs.

### UN Charter obligations and international law

Article 51 of the UN Charter recognises that every state has a right to individual and collective self-defence. However, this right must be balanced with other UN Charter obligations, including the promotion of ‘higher standards of living, full employment and conditions of economic and social progress and development’ and ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion’ (Article 55).

The UN Charter also enshrines the requirement to ‘promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources’ (Article 26), specifically making it a requirement of the Security Council. The need to ensure appropriate levels of spending on armaments has since been reinforced and widely accepted by member states in universal agreements such as the outcome document of the General Assembly First Special Session devoted to disarmament (1978)<sup>5</sup> as well as a number of regional and sub-regional arms export control instruments.<sup>6</sup>

The Universal Declaration of Human Rights recognises that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’ (Article 25). The International Covenant on Economic Social and Cultural rights recognises the right of everyone to education’ (Article 13), and ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’ (Article 12). The rights contained in this Covenant are widely considered to be indivisible from those in the Covenant on Civil and Political Rights and respect for both sets of rights are necessary for the full enjoyment of sustainable development.

## **Development responsibilities in resolutions, summits, and declarations**

Human rights and obligations to promote 'higher standards of living, full employment and conditions of economic and social progress and development', enshrined within the UN Charter, have been reinforced by numerous summits, resolutions, and declarations.<sup>7</sup> For example, the 1986 UN General Assembly Declaration on the Right to Development reaffirmed that development is an inalienable human right and committed states to strengthening peace and security, and to ensuring that the resources released by effective disarmament measures were used for development.<sup>8</sup>

The MDGs universally agreed in September 2000 by all UN member states enshrined rights and obligations to socio-economic development and poverty reduction. The 2005 World Summit reaffirmed that 'development is a central goal in itself' and that development, peace, security, and human rights are 'the pillars of the United Nations' and are 'interlinked and mutually reinforcing'.<sup>9</sup>

Under the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, states are committed to making 'greater efforts to address problems related to human and sustainable development, taking into account existing and future social and developmental activities'.

## **Additional state responsibilities on corruption and transnational crime**

Obligations of states to address corruption, corrupt practices, and transnational organised crime are enshrined in a range of different conventions and treaties containing provisions that can help guide states when considering development in international arms transfers. The UN Convention Against Transnational Organised Crime (CATOC), agreed in 2000, and the UN Convention Against Corruption, agreed in 2003, require states to act to improve accountable and transparent government spending, tackle corruption, and investigate and prosecute corrupt activities. The Additional Firearms Protocol 55/255 to UN CATOC requires states to address illicit manufacture and trafficking in firearms, their parts and components, and ammunition.

## **Existing criteria on sustainable development in international arms-transfer decision-making**

The UN Guidelines for International Arms Transfers (1996) endorsed by the UN General Assembly commit states to avoiding international transfers that aggravate conflict, that will not be used for legitimate security needs, or that 'seriously undermine a state's economy'.

In addition, specific commitments by states to consider development when making decisions about international transfers of arms are already included in most regional and multilateral arms-transfer instruments. Currently, these instruments cover a total of 89 countries, including nine of the top 11 arms exporters and 14 of the 20 least-developed countries.

**Box 1: Examples of language committing states to consider development in existing regional and multilateral agreements**

The **Wassenaar Arrangement Best Practice Guidelines** for Small Arms and Light Weapons (2002) and the Organisation for Security and Cooperation in Europe's (**OSCE Principles Governing Conventional International Arms Transfers** (1993) and **Document on Small Arms and Light Weapons** (2000) include identical text requiring participating states to take into account 'the nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and the objective of the least diversion for armaments of human and economic resources'.

The **ECOWAS Convention** on small arms and light weapons, their ammunition, and other related materials (2006) states: 'A transfer shall not be authorised if it is destined to ... hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the transfer'.

The **Best Practice Guidelines for the Implementation of the Nairobi Protocol** on small arms and light weapons (2004) stipulate that 'States should not authorise the transfer if it is likely to ... adversely affect sustainable development through the excessive or unjustifiable diversion of resources from social expenditure to military expenditure'.

The **EU Common Position on Arms Exports** (2008) requires states to consider 'the compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources'.

Thus, it is clear from the language and criteria contained in the regional, multilateral and global agreements on international arms transfers, that states recognise their responsibility to carefully consider the impact of international arms transfers on sustainable development before authorising an arms transfer.

## Essential elements of a sustainable development criterion

Given the legal basis and international standards as described earlier, and its translation into many regional and global agreements, it is clear that a significant global norm is emerging. It is thus essential that steps be taken to standardise how these criteria are applied in practice.

National licensing authorities and other government officials involved in the arms-transfer decision-making process require a clear and consistent procedure for determining whether there is a substantial risk that the transfer will seriously impair poverty reduction or socio-economic development to ensure that such transfers are prohibited. Arms should not be transferred where there is a substantial risk of:

- Involving the excessive and unaccountable allocation of human and economic resources to armaments;
- Involving a pattern of corruption;
- Increasing or maintaining high levels of armed violence, nationally or regionally;
- Undermining peacebuilding or post-conflict reconstruction.

## The practical application of sustainable development criteria: how can states identify that a specific arms transfer poses a substantial risk to poverty reduction and socio-economic development?

A thorough assessment of the risk that specific international arms transferred will impact on poverty reduction and socio-economic development should be framed by the following four areas:

- Accountable allocation of resources;
- A pattern of corruption;
- High levels of armed violence;
- Undermining peace-building.

For each of these areas, the assessment of each international arms transfer should include an inquiry on four levels:

- The recipient state's **history and record of respect** in relation to this area.
- The recipient's intentions as expressed through **formal commitments and current practice**. This includes consideration of a state's formal commitment in treaties and other agreements, and action by the state to implement those commitments through government policy and practice.
- The recipient's **capacity** to ensure that international obligations and commitments are implemented through government and state institutions.
- The **specific international arms transfer** itself, including the nature of the arms being transferred and the stated end-use and end-user.

The following sections provide relevant questions that officials should use to guide the arms-transfer decision-making of the government they serve. In some cases, there is overlap between questions on the four areas outlined above. Such overlap or repetition will serve to reinforce the authorising states' procedure and decision-making process. This is also the case when a criterion on development overlaps with other arms-transfer criteria – for example, criteria on international humanitarian law, international human rights law or on diversion.

The decision to authorise an international arms transfer should be made on a case-by-case basis. It should express on what grounds the authorising body is confident that a substantial risk to sustainable development is not presented in relation to each of the four areas discussed. Dialogue between the authorising and recipient state is an important part of the decision-making process.

## Relevant questions: accountable allocation of resources

### History and record of respect

1. Is there is a history of transparent and accountable reporting on military expenditure and arms procurement within the state budget, and what measures have been taken to ensure that this exists? This could include:
  - Annual budgets for military expenditure, disaggregated and published.
  - Open debate of government arms spending and budgeting in parliament and media.
2. Does the recipient state have a history of civilian oversight of its military and security expenditure, or what measures have been taken recently to establish this? This could include:
  - A government department responsible for overseeing security and military planning and activities, including arms procurement.
  - An elected parliamentary committee or mechanism responsible for overseeing the government department responsible for security and military activities.

### Formal commitments and current practice

3. In current practice, is spending on arms procurement fully accounted for and disaggregated in the published state budget? Potential problems could include:
  - Elements of military expenditure contained within other, non-disaggregated budget lines, such as national security or law enforcement;
  - Elements of military expenditure not in the state budget.
4. Does the recipient state have publicly-debated national security and defence plans that conform to international law and standards?
  - Are civil society organisations and the press able to access information on the government's security and defence plans?
  - Do civil society organisations and the press have the opportunity to question or challenge the governments' national security and defence plans?
5. Are current arms procurement decisions taken by the government and announced to the legislature or parliament in accordance with publicly-debated national security and defence plans?
6. Has the recipient state signed and ratified the UN Convention Against Corruption (CAC)?<sup>10</sup> If so, is it implementing requirements under Article 9 of the CAC on public procurement and management of public finances and Article 10 on public reporting?

7. Does the recipient state complete annual, full, and accurate reports on its imports and exports for the UN Register of Conventional Arms?

### **Capacity**

8. Do the recipient state's relevant institutions and bodies involved in international arms procurement decisions have the capacity to ensure that international arms transfers meet a clearly-identified national security or defence need, and take place 'in a manner consistent with democratic norms and sound principles of governance and the rule of law'?<sup>11</sup>
  - Are there state institutions with the authority, capacity, and knowledge to implement security planning, military budgeting, and arms procurement?
  - Are there civilian and/or parliamentary and legislative oversight mechanisms with the authority, capacity, and knowledge to oversee security planning, military budgeting, and arms procurement?
9. Where a lack of institutional capacity has been identified, what measures are being taken to strengthen this capacity consistent with relevant international standards – e.g. programmes of training, capacity building, and security sector reform? Is the arms transfer linked to these programmes?

### **The specific arms transfer**

10. Have the full life-cycle costs of the proposed arms purchase been accounted for in the procurement process, including costs of maintenance, repair and overhaul, operational costs, and decommissioning?
11. Has the recipient undertaken a cost-benefit analysis and affordability study of the arms transfer and/or any associated security package?
12. Will the arms acquisition lead to an increased national debt burden for the recipient country and, if so, how has any future impact on the state budget been considered by the recipient state?
13. What evidence is there to provide additional assurance that this transfer will not involve excessive or unaccountable allocation of resources?

## **Relevant questions: corruption**

### **History and record of respect**

1. Has the recipient state experienced a persistent pattern of well-founded allegations of corruption in its defence or security sector?

- Where there are allegations of corruption committed by its nationals or on its territory, has the state investigated them?
- Where serious cases of corruption have been found to have occurred, has the exporter or recipient taken measures to prosecute the offenders and to prevent future corrupt practices?

### **Formal commitments and current practice**

2. Has the recipient signed and ratified the UN Convention Against Corruption?
  - Does the recipient actively implement and report on the Convention (particularly Articles 9 on public procurement, 10 on public reporting, and 13 on participation of society)?
  - Does the recipient actively implement and report on requirements under Article 13 of the CAC 'to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption'?
3. Has the recipient state signed and ratified the UN CATOC?<sup>12</sup>
  - Is it implementing requirements under Articles 8 on criminalisation of corruption, Article 9 on public procurement and management of public finances, and Article 10 on public reporting?
4. Does the recipient have in place the legal, judicial, and administrative measures necessary for identifying and prosecuting corruption in the defence and security sectors? (See Articles 26-42 of the UN Convention Against Corruption, and Articles 8 and 9 of the UN CATOC.)
5. Does the recipient cooperate with other states and with international investigations in connection with criminal proceedings relating to investigations of corruption and organised crime? (See Articles 46-59 of the UN Convention Against Corruption, and Article 18 on mutual legal assistance in the UN CATOC.)

### **Capacity**

6. Does the recipient state's law enforcement and judicial institutions have the capacity to implement existing laws, policies, and mechanisms to prevent, investigate, and prosecute corruption in defence and security sector arms procurement?
7. Where a lack of institutional capacity has been identified, what measures are being taken to strengthen this capacity?



### **The specific arms transfer**

8. Has there been any well-founded allegation of corruption in relation to this particular deal?
9. What evidence is there to provide additional assurance that this transfer will not involve serious corruption?

## **Relevant questions: armed violence**

### **History and record of respect**

1. Does the recipient state have a recent history of high or increasing levels of national or regional armed violence (including armed crime, armed conflict, or serious violations of human rights)?
2. Have there been previous known or suspected diverted or re-transferred arms from this recipient to another party where there was a risk that the arms would contribute to a high level of armed violence in any form, whether armed conflict or armed crime, or be used for serious violations of human rights?

### **Formal commitments and current practice**

3. Does the recipient state have effective small arms control in place?<sup>13</sup> Questions to identify the presence of effective small arms control include:
  - Are the relevant laws, regulations, and administrative procedures in place to exercise effective control over the production, export, import, and transit of small arms and light weapons?
  - Is there a department in the government which oversees policy guidance, research and monitoring on armed violence?
  - Is there effective management and security of stockpiles of arms and explosives, particularly those held by the police, the military, and other forces authorised by the state? If not, what programmes are in place to improve this management and security?
  - Are there programmes in place for the destruction of arms and explosives that are deemed surplus to national security requirements?
  - Are there public awareness campaigns on arms and voluntary weapons collection and destruction programmes?
  - Does the recipient state promote regional, sub-regional and multilateral cooperation and information exchange to prevent, combat, and eradicate the illicit trade in small arms and light weapons across borders?
4. Is the recipient state actively implementing and reporting on commitments under the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects?
5. Is the recipient state complying with requirements under the International Tracing Instrument and implementing recommendations of the UN Group of

Governmental Experts on the prevention of illicit brokering of small arms and light weapons?

6. Is the recipient state party to the UN Firearms Protocol? If yes, is it actively implementing and reporting on the measures within the UN Firearms Protocol?
7. Has the recipient signed the 2006 Geneva Declaration on Armed Violence and Development?
  - What mechanisms have they put in place to measure the incidence and impact of armed violence?
  - What armed violence-reduction strategies, policies and programmes have they put in place?
  - What evidence can they provide of reductions in armed violence?
  - What arms and ammunition are being used in current patterns of armed violence?
8. Does the recipient state have in place a system for regulating gun ownership, which limits the risk that arms will be used for armed violence?
9. Is the recipient state implementing a programme of security sector reform in line with international standards? Is the arms transfer linked to that programme?

### **Capacity**

10. Does the recipient state's law enforcement and judicial institutions have the capacity to implement small arms controls in line with international standards?
11. If the recipient state's small arms controls have been identified as weak, are any effective programmes in place to strengthen them? Does this transfer correlate with any requirements limiting arms transfers within these programmes?

### **The specific international arms transfer**

12. Is there any evidence that the types of arms being transferred are being used in ongoing patterns of armed violence?
13. Is there a high risk of diversion from the stated end-user?
  - Does the recipient maintain rigorous control over arms transferred and their further transfer?
  - Does the recipient have the capacity to ensure that there will be no diversion from the stated end-user?
  - What additional measures to ensure against diversion have been taken by the recipient state (e.g. rigorous stockpile management, marking and tracing, participation in regional arms control agreements, effective regulation of dealers and brokers)?
14. Is there a substantial risk that the arms will contribute to the systematic violation of economic, social, and cultural (ESC) rights by the state's security forces? When looking at this question, exporting states should use detailed criteria on

international human rights law and international humanitarian law, as outlined in practical guides by Amnesty International and ICRC.<sup>14</sup>

- Does the recipient state have a history of using armed force for serious violations of ESC rights (e.g. house removals, displacement, preventing access to schools and health care)?
- Does the recipient state have a history of using the type of weapons being transferred for serious violations of ESC rights?
- Where there has been a history of serious and systematic violations, what measures has the recipient state taken to guard against this happening again?

15. What evidence is there to provide additional assurance that this transfer will not contribute to a high level of armed violence?

## Relevant questions: peace-building

For particular cases where the recipient state is in a situation of post-conflict peace-building, or is in a region or neighbouring another state that is in a post-conflict situation, these extra questions apply.

### **The specific international arms transfer**

1. Is the arms transfer in accordance with existing UN Security Council resolutions and arms embargoes?
2. Is the transfer in accordance with responsibilities identified in any relevant internationally-recognised peace agreement?
3. Is the transfer in accordance with any relevant programmes of disarmament, demobilisation, and reintegration?

## Reaching a decision

Based on information and assessment of these various elements, an exporting state will be able to reach a decision on whether:

- There is a need for more information from the recipient state before the exporter can be sure that the transfer will not pose a substantial risk of undermining poverty reduction and socio-economic development, and the transfer can be authorised.
- There is a substantial risk that the proposed transfer of arms would undermine poverty reduction and socio-economic development, and the transfer cannot be authorised.

A final decision should be based on an overall assessment that is objectively informed through the systematic application of clear criteria using reliable and credible evidence. The decision should clearly indicate the reasons for believing that there is, or is not, a substantial risk that the transfer in question would be likely to undermine poverty reduction and socio-economic development.

Information regarding decisions and decision-making should be part of a dialogue between the exporting and recipient states engaged in the arms-transfer process and should involve any transit states relevant to the transfer.

The decision not to allow a transfer of arms or ammunition should be based on the principle of the right to development, on universal commitments to achieving poverty eradication and development goals, and obligations on states to ensure the progressive fulfilment of economic, social, and cultural rights. The decision should not be used as a punitive measure, or to secure an economic, political, or military advantage to a state or group of states.

## Notes

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<sup>1</sup> Armed violence consists of the use or threatened use of weapons to inflict injury, death or psychosocial harm, (see OECD-DAC Armed Violence Reduction: Enabling Development, 2009). This can happen in a context of conflict or where there are high levels of armed crime, serious violations of human rights or other forms of violence. 'Armed violence' does not refer to the lawful use of state force where that complies fully with relevant international standards such as the UN Charter, international human rights law, international humanitarian law, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>2</sup> 'Transfers' refers to international transfers moving from the territory of one state to that of another. 'Arms' include heavy weapons; small arms and light weapons; parts and components thereof; expertise or technology, including logistical or financial support for such transfers; paramilitary equipment; dual-use goods intended for military, security, and police purposes; munitions, including ammunition and explosives; expertise or technology transferred from one country to another.

<sup>3</sup> The concept of 'sustainable development' here refers to socio-economic development and poverty reduction that is sustainable for future generations. In this report we have referred to this as sustainable socio-economic development. Reference to this concept is well established and can be found in numerous reports including: UN World Commission on Environment and Development (1987) 'Our Common Future', UN: New York.

<sup>4</sup> E.g. UN Convention Against Corruption, International Humanitarian Law, UN Convention of the Law of the Sea, and other relevant international environmental law.

<sup>5</sup> Paragraph 89, Outcome of UN GA First Special Session devoted to disarmament.

<sup>6</sup> Wassenaar Arrangement Best Practice Guidelines, OSCE Principles Governing Conventional International Arms Transfers, ECOWAS Convention, Nairobi Protocol Best Practice Guidelines, EU Code of Conduct.

<sup>7</sup> The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the ILO Indigenous and Tribal Peoples Convention (No. 169), the Declaration on the Right to Development, and commitments made at the Earth Summit in Rio, the World Conference on Human Rights in Vienna, the International Conference on Population and Development, the World Summit for Social Development, the Habitat II conference.

<sup>8</sup> UN GA Declaration on the Right to Development.

<sup>9</sup> 2005 World Summit Outcome Document.

<sup>10</sup> UN Convention Against Corruption (2003).

<sup>11</sup> OECD (2007) 'OECD-DAC Handbook on Security System Reform: Supporting security and justice', OECD: New York.

<sup>12</sup> UN Convention Against Transnational Organised Crime (2000).

<sup>13</sup> See OECD, *ibid.* p5.

<sup>14</sup> For more detailed guides to applying criteria on IHL and IHRL, see publications by the ICRC (2007) 'Arms Transfer Decisions, Applying international humanitarian law criteria', ICRC: Geneva, and Amnesty International (2008) 'How to apply human rights standards to arms transfer decisions', Amnesty International: London.

## Sources of information

### Relevant documents

- UN Convention Against Corruption (2003)
- OECD (2007) 'OECD-DAC Handbook on Security System Reform: Supporting security and justice', OECD: New York.
- OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions
  - World Bank Governance and Anti-Corruption Strategy
  - African Union Convention on Combating Corruption
  - UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Document A/CONF.192/15)
  - UN Convention Against Transnational Organized Crime (2000)
  - UN Firearms 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 (A/RES/55/255)

### Additional resources

- Reports by the UN Secretariat, UN Security Council, and international agencies (UNDP, UNIDIR, UNICEF, WHO, ICRC etc.)
- Reports by international financial institutions (World Bank, IMF, IABD, ADB)
- Reports by specialised policy NGOs research institutions (Amnesty International, SIPRI, BIC Database, Transparency International, Small Arms Survey)
- National development plans by governments and reports in line with international goals such as the MDGs
- Reports by NGOs on specific country situations

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