

Exporting Violence and Inequality

**The Link between German Arms Exports
and Gender-Based Violence**

Studie des Centre for Feminist Foreign Policy (CFFP)
im Auftrag von Greenpeace

List of Abbreviations

ATT:	Arms Trade Treaty
BMJV:	Bundesministeriums der Justiz und für Verbraucherschutz
CAAT:	Campaign Against Arms Trade
CEDAW:	Convention on the Elimination of All Forms of Discrimination Against Women
CSP:	Conference of States Parties to the Arms Trade Treaty
ECCHR:	European Center for Constitutional and Human Rights
EU:	European Union
FGM:	Female Genital Mutilation
GBV:	Gender-based violence
ICC:	International Criminal Court
ICRC:	International Committee of the Red Cross
IHRC:	International Human Rights Clinic (Human Rights Program At Harvard Law School)
LGBTQI+:	Lesbian, Gay, Trans, Queer, Intersex (people)
NAP:	National Action Plan
NATO:	North Atlantic Treaty Organization
NGO:	Non-governmental organisation
SALW:	Small Arms and Light Weapons
UN:	United Nations
WILPF:	Women's International League for Peace and Freedom
WPS:	Women, Peace, and Security
2SLGBTQIA:	Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual

Trigger warning:

This report discusses gender-based violence, including sexualised violence, against women, girls, gender non-conforming people, LGBTQI+, men, and boys. If you are a survivor of gender-based violence and need support, the *European Institute for Gender Equality* provides an [overview](#) of support hotlines in the various EU member states.

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➔ Kein Geld von Industrie und Staat

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Deutsche Zusammenfassung

Um Frieden und Sicherheit zu bewahren und wiederherzustellen, müssen insbesondere die Geschlechterverhältnisse in einer Gesellschaft betrachtet werden. Dies betonte der Sicherheitsrat (SR) der Vereinten Nationen im Jahr 2000 in der Resolution 1325 (VNSR 1325) zu „Frauen, Frieden und Sicherheit“. Deutschland hat sich national durch den „Aktionsplan der Bundesregierung zur Umsetzung von VNSR 1325 für den Zeitraum 2017–2020“ verpflichtet, die Vorgaben der Resolution umzusetzen. Darüber hinaus enthalten die Leitlinien der Bundesregierung „Krisen verhindern, Konflikte bewältigen, Frieden fördern“ sowie die deutsche Kandidatur für den Sicherheitsrat 2019–2020 wichtige Referenzen zu VNSR 1325 und ihren Folgeresolutionen.

Deutschland hat immer wieder für die Zeit im Sicherheitsrat der Vereinten Nationen die zentrale Bedeutung der Mitwirkung von Frauen in allen Phasen von Friedensverhandlungen, Konfliktprävention und Friedenskonsolidierung betont und verweist dazu auf VNSR 1325. Deutschland schließt sich damit der Initiative von Schweden während dessen Zeit im Sicherheitsrat an, die Agenda Frauen, Frieden und Sicherheit in allen Bereichen des Sicherheitsrates voranzutreiben.

Am 23. April 2019 hat der Sicherheitsrat der Vereinten Nationen unter deutschem Vorsitz in einer offenen Debatte eine neue VNSR 2467 zu konfliktbezogener sexualisierter Gewalt verabschiedet. Dabei ist klar, dass geschlechtsspezifische Gewalt in engem Zusammenhang mit Rüstungsexportpolitik steht. VNSR 2467 bezieht sich ebenfalls explizit auf den **internationalen Waffenhandelsvertrag (Arms Trade Treaty, ATT)**, der 2014 verabschiedete wurde. Dieser sieht nämlich konkret vor, dass Genehmigungen von Rüstungsexporten nicht erteilt werden sollen, wenn die Möglichkeit besteht, dass mit diesen Waffen **geschlechtsspezifische Gewalt** ausgeübt oder ermöglicht wird – also **Gewalt, die sich gegen eine Person aufgrund ihres Geschlechts, ihrer Geschlechtsidentität oder ihrer sexuellen Orientierung richtet**.

Geschlechterblinde und intransparente Rüstungsexportpolitik

Deutschland hat den ATT ratifiziert und will eine Vorreiterrolle bei der Umsetzung von VNSR 1325 spielen und steht gleichzeitig für eine völlig intransparente und geschlechterblinde Rüstungsexportpolitik, insbesondere im Kontext sexualisierter und geschlechtsspezifischer Gewalt. Zu diesem Schluss kommt die vorliegende Studie des CFFP im Auftrag von Greenpeace. Sie skizziert die Zusammenhänge zwischen geschlechtsspezifischer Gewalt und der Proliferation konventioneller Waffen und zeigt auf, wie wenig Beachtung das Risiko dieser Gewalt im deutschen Rüstungsexportkontrollsystem findet. Ein Blick auf andere Länder führt an, wie eine inklusive und geschlechtersensible Rüstungsexportkontrolle einen Beitrag zur Prävention von geschlechtsspezifischer Gewalt leisten kann und formuliert konkrete Politikempfehlungen für die deutsche Regierung in dieser Hinsicht.

Die für den Export von deutschen Kriegswaffen und sonstigen Rüstungsgütern maßgeblichen und politisch verbindlichen **Politischen Grundsätze** nennen geschlechtsspezifische Gewalt nicht als expliziten Grund, Exportgenehmigungen nicht zu gewährleisten. Stattdessen wird von Seiten der Bundesregierung immer wieder betont, dass das Risiko von geschlechtsspezifischer Gewalt im Rahmen der allgemeinen menschenrechtlichen Folgeabschätzung für Kriegswaffen „mitgedacht“ würde. Die jährlichen Menschenrechtsberichte, die eine wichtige Grundlage für die menschenrechtliche Folgeabschätzung sind, gehen jedoch nicht systematisch ein auf etwa Gewalt gegen Frauen oder LGBTQI+ Personen. Eine gender-blinde menschenrechtliche Folgeabschätzung riskiert aber, das Risiko von geschlechtsspezifischer Gewalt zu übersehen. Denn diese Art von Gewalt ist kaum dokumentiert und kann auch dann vorkommen, wenn Indikatoren anderer Menschenrechtsverletzungen nicht gegeben sind. So ist beispielsweise die Rate von Mordfällen an Frauen in Australien und Neuseeland überdurchschnittlich hoch, obwohl die allgemeine Mordrate vergleichsweise niedrig ist.

Dass der ATT das Risiko von geschlechtsspezifischer Gewalt berücksichtigt, war vor allem der Verdienst von feministischer Zivilgesellschaft. Diese weist seit Jahrzehnten darauf hin, dass alle Arten von konventionellen Waffen dazu beitragen können, geschlechtsspezifische Gewalt auszuüben oder zu ermöglichen. Dazu gehören die Ermordung von LGBTQI+-Menschenrechtsverteidiger*innen oder die Vergewaltigung von Frauen oder Männern durch bewaffnete Gruppen in Konfliktsituationen. Der ATT erkennt auch solche Fälle an, in denen die Waffen nicht direkt an dem Gewaltakt beteiligt sind, sondern diesen indirekt ermöglichen und erleichtern. So kann ein Lastwagen sexualisierte Gewalt ermöglichen, wenn damit Gefangene zu einem Gefängnis gebracht werden, in denen sie sexuell missbraucht werden. Zu diesen Fällen zählt jedoch auch eine Waffe, die allein durch das Tragen eine Person einschüchtert und damit den Widerstand für weitere geschlechtsspezifische Gewalt überwindet.

Andere Länder sind hier bereits weiter als Deutschland. Sowohl Kanada als auch Großbritannien haben geschlechtsspezifische Gewalt als ein explizites Kriterium in ihre nationale Gesetzgebung übernommen, das geprüft werden muss, bevor Waffenexporte genehmigt werden können.

Die Autor*innen der vorliegenden Studie fordern:

1. Die Bundesregierung muss prüfen, ob deutsche Waffen geschlechtsspezifische Gewalt ermöglichen. Das schließt die Entwicklung von konkreten Kriterien ein, anhand derer das Risiko geprüft wird, ob geschlechtsspezifische Gewalt im Empfängerland ein systematisches Problem ist, ob es Fälle von geschlechtsspezifischer Gewalt durch Sicherheitskräfte gibt, und ob die Empfängerregierung willens und fähig ist, geschlechtsspezifische Gewalt durch nicht-staatliche Akteur*innen zu verhindern und zu ahnden – wie es etwa Lettland bereits umsetzt.

2. Die Bundesregierung muss sicherstellen, dass für die jährlichen Menschenrechtsberichte an die Botschaften zivilgesellschaftliche Akteur*innen – vor allem im Empfängerland – die Erstellung der Berichte unterstützen können. Ihnen muss sie ermöglichen (unter anderem durch finanzielle Unterstützung), das benötigte Wissen zum Zusammenhang von der Verbreitung von Waffen und geschlechtsspezifischer Gewalt zu sammeln sowie zur Verfügung zu stellen.
3. Die Bundesregierung muss durch Trainings sicherstellen, dass die Verantwortlichen von menschenrechtlichen Folgeabschätzungen verstärkt Expertise zu geschlechterspezifischer Gewalt aufbauen.
4. Die Bundesregierung sollte ihre Rüstungsexportberichte auch in englischer Sprache veröffentlichen, inklusive detaillierter Informationen zu den genehmigten Exporten (inklusive des Endnutzer) als auch zu den abgelehnten Exporten (inklusive Empfängerland, Endnutzer und Grund für die Ablehnung).
5. Deutschland sollte eine Vorreiterrolle bei der Umsetzung des ATT spielen und sich auf europäischer als auch auf internationaler Ebene dafür einsetzen, dass der Zusammenhang zwischen Proliferation von konventionellen Waffen und geschlechtsspezifischer Gewalt mehr Aufmerksamkeit erhält, und die Operationalisierung des Waffenhandelsvertrag in diesem Bezug vorantreiben – wie es beispielsweise Irland vorlebt.

Ein Ende von geschlechtsspezifischer Waffengewalt wird es erst geben, wenn Länder wie Deutschland keine Waffen mehr exportieren. Bis dahin kann eine umfassende Implementierung des internationalen Waffenhandelsvertrag einen wichtigen Beitrag zur Prävention von geschlechtsspezifischer Gewalt leisten. Indem Deutschland genau das nicht macht, fällt die Bundesregierung nicht nur hinter ihre eigenen Versprechen zurück, die VNSR 1325 umzusetzen und Geschlechtergerechtigkeit weltweit zu fördern. Sie akzeptiert auch, das Risiko von geschlechtsspezifischer Gewalt gegen Frauen und LGBTQI+ Personen, aber auch Männer durch deutsche Waffen zu erhöhen.

I. Introduction

In 2014, after sustained lobbying by international civil society organisations such as *Women's International League for Peace and Freedom (WILPF)*, the *International Action Network on Small Arms Women's Network (IANSA)*, and the *Global Arms Coalition* the international community recognised the link between gender-based violence (GBV) and the international arms trade for the first time in an international treaty when the UN General Assembly adopted the *Arms Trade Treaty (ATT)*.

This treaty requires governments to “take into account the risk of the conventional arms [covered by the ATT] being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children” (ATT, Art. 7.4.). The inclusion of a legally binding provision on GBV in the ATT should not be underestimated, as it shifts the international debate from one on whether the proliferation of arms has an impact on GBV to one on *how* to address and prevent GBV (ICRC, 2019b).

Gender-based violence (GBV) is directed at a person on the basis of their sex and/or socially constructed gender role in society, including sexual orientation, gender identity or non-conforming behaviour (Acheson, 2020). The term GBV acknowledges that roles associated with sex, gender, and sexuality interact with other factors, such as age, class, and race (Ibid). It also recognises that GBV is rooted in the unequal power relations and discrimination against women and gender non-conforming people within our societies as well as a manifestation of such power inequalities (Chinkin, 1991). For these reasons, women, girls, and gender non-conforming people are disproportionately affected by GBV, although GBV can be targeted against any gender (WILPF, 2016). GBV is the most prevalent form of violence in the world and is present in all societies across the world – in times of conflict and peace.

However, despite international progress of operationalising the ATT's requirements concerning GBV alongside important work of civil society organisations, many governments continue to have questions about the link between the international arms trade and GBV or how to effectively account for the risk of GBV in national arms control processes. This includes the German government. At the same time, Germany has over the last years increased its commitment to advance the ‘Women, Peace, and Security’ agenda. **By ineffectively accounting for the risk of GBV in its arms export processes, the German government, however, risks jeopardising its efforts to advance the ‘Women, Peace, and Security’ (WPS) agenda, which among other things calls for the efficient protection of women and girls of sexualised violence in conflict – one prominent example of GBV. Explicitly accounting for the risk of GBV in arms control processes is specifically important in cases in which the results of a gender-blind risk assessment would not prohibit an arms export.**

This study seeks to understand how Germany can improve its arms export control process within the context of GBV. To do this, firstly, the study will briefly outline the interlinkages between GBV and the proliferation of conventional weapons (I). Secondly, it will highlight how little attention the risk of GBV receives in the German arms export control system (II). Lastly, this article will highlight international ‘good practices’ on how to contribute to the prevention of GBV through comprehensive arms export control (III) and provide concrete policy recommendations for the German government in this regard (IV). The study is based on desk research and a range of interviews with academics, civil society, and government representatives.

I.I Interlinkages between GBV and the proliferation of conventional arms

All types of conventional weapons that are being proliferated through the international arms trade can be used to commit or facilitate all forms of GBV (sexualised, physical, emotional and psychological as well as socioeconomic) (Acheson, 2020). **Detailed statistics on violence linked to traded arms are difficult to pinpoint for various reasons**, including reporting praxis from states, which for example do generally not report on the survivors or the perpetrators’ sexual orientations or gender identity (Romero et al., 2019).

The work of non-governmental organisations (NGOs) and activists demonstrate **the various ways in which GBV can be committed or facilitated by arms**: During the conflict in Syria, women were forced to walk naked as shields around battle tanks (Greenwood, 2013; based on WILPF, 2016). In Iraq, Daesh killed men and boys because they did not dress appropriately, “often alleging that they are homosexual or insufficiently masculine” (MADRE et al., p.25; based on Acheson, 2020). *The National Coalition of Anti-Violence Programme* estimates that in 2015, guns were used in about 60 per cent of homicides of LGBTQI+ people in the United States (Tillery et al., 2017). About 4.5 million women in the US today report having been threatened with a gun by an intimate partner (YWCA, 2020). Ray Acheson from WILPF has demonstrated how weapons which use surveillance, such as armed drones, can facilitate GBV as “the practice of counting all males of a military age as militants (...) assuming them to be potential or actual combatants or militants, is a form of GBV” (Acheson, 2020, p.146). WILPF (2017, p.2) further notes that the proliferation of arms “has a negative impact on women’s standing and bargaining power within the household, their mobility, and their participation in public and political life, and can hinder their access to and use of resources, business and employment opportunities”. Ahead of the local and departmental elections in Colombia in October 2019, the NGO *Sisma Mujer* warned that women candidates are being targeted “both for running as candidates, and for disturbing the patriarchal order” (Zulver, 2019).

I.I.I. The interlinkages between GBV and Small Arms and Light Weapons (SALW)

GBV can be committed and/or facilitated with all types of conventional weapons. This is important as, so far, the interlinkages of SALW and GBV have received attention by governments and international organisations. Indeed, given their accessibility and transportability, small arms often “are the weapons of choice in domestic violence, in political violence and in sexual[ised] violence in armed conflict” (Barr and Masters, 2011, p.9). It is welcomed, that the German government decided in 2019, in principle, not to export SALW to non-EU, non-NATO or NATO-equivalent countries. However, this is insufficient to address GBV because this decision fails to consider that GBV is also present in all countries worldwide, including high-income countries (Acheson, 2020; CARE, 2018). Indeed, Small Arms Survey (2016, p.1) found that “as many or more women than men suffered violent deaths in eight countries characterised by high income and low violence levels”, including Germany’s allied countries, such as New Zealand, Switzerland or Japan. Moreover, the export of small arms which are not considered as weapons of war continues to be licensed to third countries. For example, in 2019, pistols and revolvers went to India for 244,000 U.S. dollar.¹

I.I.II. The interlinkages between GBV and weapons beyond SALW

Moreover, the ATT also covers the “**uses of arms that make human rights violations easier**” (Control Arms and IHRC et al., 2019, p.2) which encompasses situations when the arms are “one or more steps removed from the actual violation” (Casey-Maslen et al., 2016, para. 7.35).² Thus, an armoured vehicle which is being used to transport detainees to a prison where serious acts of GBV are committed is facilitating GBV (Ibid); as are warships which are being used for trafficking women and girls; or battle tanks which surround a village, in which trapped women and girls are then sexually abused (Acheson, 2020).

In summary, the prevalence of all forms of GBV is strongly linked to and often exacerbated by the proliferation of conventional arms through the international arms trade. Comprehensive and effective arms control is thus a crucial aspect of preventing GBV.

II. GBV in Germany's arms export control system

II.I. GBV in Germany's arms export control regulative framework

Germany's arms export control is regulated by several laws and regulations. On the national level the *German War Weapons Export Act* (Kriegswaffenkontrollgesetz) (BMJV and BfJ, 1990) and the *Foreign Trade Law* (Außenwirtschaftsgesetz) (BMJV und BfJ, 1990b), in conjunction with the *Political Principles of the Government of the Federal Republic of Germany for the Export of War Weapons and Other Military Equipment* (Politische Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern) (Political Principles) (Bundesregierung, 2019). Additionally, in 2019, Germany revised the 2015 *Small Arms Principles*, which governs "the export of small arms and light weapons, corresponding ammunition, and production of equipment to third countries" (ECCHR and WILPF, 2018, p.8). Germany is also a State Party to the ATT.

The **Political Principles** do not feature the risk of GBV as an explicit reason to deny an export license, despite being updated in 2019, four years after the ATT came into force and despite the explicit recommendation by the Committee on the Elimination of Discrimination against Women, a body of independent experts that monitors the implementation of the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) in 2017 "that legislation regulating arms export control be harmonized in line with article 7 (4) of the Arms Trade Treaty (...)" (CEDAW Committee, 2017, p.10). The *Political Principles* state "military equipment exports are fundamentally not approved where there is 'sufficient suspicion' of the involved military equipment's misuse for internal repression or other on-going and systematic violation of human rights" (Bundesregierung, 2019, p.5; translation based on Stohl and Holtom, 2014). GBV always constitutes a serious human rights violation (Control Arms and IHRC, 2019).³

The politically binding *Political Principles* determine the licensing processes and compliance with the legally binding *EU Council Common Position 2008/944 CFSP* (Council of the European Union, 2008) (Bundesregierung, 2019; ECCHR and WILPF, 2018). The **EU Common Position** obligates the EU Member States to assess the arms license applications against eight criteria. Criterion 2 states that Member States shall deny exports, "if there is clear risk that military equipment might be used for internal repression", or "in the commission of serious violations of international humanitarian law" and "exercise special caution and vigilance in issuing licenses (...) to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe" (Council of the European Union, 2008, Art. 2). **The 2019 update of the EU Common Position did not amend the language to explicitly bring the EU Common Position in line with the language of the ATT** despite lobbying by civil society organisations, such as *Control Arms*.⁴ Germany was on the Committee overseeing the review of the *EU Common Position*.⁵ However, the 2019 update of the non-binding *User Guide to the EU Common Position* explicitly states that "the issue of gender-

based violence (GBV) and violence against women and children should be taken into account when examining Criterion 2" (Council of the European Union, 2019, p.54).

As the **ATT is the only regulation within the patchwork of Germany's export control system that explicitly requires Germany to account for the risk of GBV**, it will be elaborated in detail here.

II.II. GBV in Germany's arms export control praxis in line with the ATT

The ATT explicitly requests State Parties to take into account the risk of the conventional arms or items (covered by the ATT) that are under consideration for export might be "used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children" (ATT, Art. 7.4).⁶

Control Arms (2018) identified a **four-step process which outlines how to incorporate GBV into national arms export assessments adequately**. Based on this process, the next section will discuss to what extent Germany is operationalising the ATT's requirements in this regard.

Step 1. Identify what types of GBV are recognised as violations under Article 6.3 and 7.1 of the ATT

Article 7.4 aims to ensure that the exporting State Parties take the risk of GBV into account when conducting a risk assessment in line with Article 6.3. when accounting for the risk that "the arms would be used in the commission of **genocide, crimes against humanity (...) or war crimes**" (ATT, Art. 6.3), this, e.g. can include rape or sexual slavery committed as genocide or enforced prostitution committed as a crime against humanity (Control Arms, 2018).⁷

If the export is not prohibited under Article 6, Article 7.4 obligates State Parties to take into account the risk of GBV when conducting a risk assessment in line with Article 7.1. when **assessing the potential that the conventional arms would contribute to or undermine peace and security**; or could be used to commit or facilitate a serious violation of international humanitarian law and human rights law.⁸

Concerning the risk of conventional arms undermining peace and security, the ATT covers not only state security but also human welfare. It thus also obligates State Parties to assess "the export's likely effects on all aspects of peace and security, including by undertaking a gender-based analysis and considering the role of women in promoting and maintaining peace and security" (Control Arms and IHRC, 2019, p.2). Commentators on the ATT have further stressed that **the concept of peace and security also covers "domestic peace and security concerns"** (Casey-Maslen et al. 2016, para. 7.79-7.81).

Article 7.1. further acknowledges that serious violation of international humanitarian law includes sexual slavery, enforced prostitution, forced pregnancy or mass killings of military-age men to prevent them from participating in hostilities constitutes GBV (ICRC, 2019). Moreover, GBV always is a human rights violation, and there is growing consensus among scholars and practitioners “that GBV is inherently serious in all cases” (Control Arms and IHRC, 2019, p.3). GBV not only constitutes a serious human rights violation when committed by state agents, but also when the state fails to meet its due diligence obligation in preventing, investigating, and punishing GBV by private individuals, companies, and armed groups (Control Arms and IHRC, 2019).

When accounting for the risk of GBV during an arms export control process, it is essential to know that **the ATT obligates State Parties to assess the potential that arms or items would (7.1.a) and could (7.1.b) contribute to the risks outlined above. Both articles do not require knowledge of absolute certainty that the arms or items will be used** (Ibid).

Step 2. Identification of those GBV violations listed in Step 1 are prevalent in the recipient state and the recipient state’s capacity to prevent and punish acts of GBV

Step two of the incorporating GBV into an export assessment involves the identification of those in Step 1 identified forms of GBV are prevalent in the recipient state and the state’s capacity to prevent and punish these forms of GBV (Control Arms, 2018).

Germany differentiates between “other military goods” (andere Rüstungsgüter) and weapons of war (Kriegswaffen).⁹ In the case of the former, companies file an export application with the Federal Office for Economic Affairs and Export Control, which, in principle, approves or rejects the application (Federal Ministry for Economic Affairs and Energy, 2020). In the case of weapons of war, companies file an export application directly with the Ministry for Economic Affairs and Energy (Ibid). If the goods are exported to EU countries, NATO countries or NATO-equivalent countries (Australia, Japan, New Zealand, and Switzerland), the Ministry for Economic Affairs and Energy makes this decision, in principle, without consulting other ministries.¹⁰ *The Political Principles* contain a positive presumption for these **allied countries** and regulate that the export into these countries should, in principle, not be limited (Politische Grundsätze, 2019, pp. 3-4).¹¹ In line with this, interviews with representatives of the German government conducted for this study indicate that, in principle, **no substantial human rights risk assessment is undertaken ahead of assessing the export application for weapons of war** to be exported to those countries.¹² In the case of weapons of war that are exported to **third countries** (any countries excluding EU, NATO, and NATO-equivalent countries), the Ministry for Economic Affairs and Energy forwards these export application, together with their assessment, to the Federal Foreign Office and the Ministry for Defence. If the ministries disagree

in their evaluation or if the export is especially politically sensitive, the *Federal Security Council* (Bundessicherheitsrat) will make the decision.¹³

The Federal Foreign Office is responsible for the human rights risk assessment. In its interpretative declaration upon ratifying the ATT, Germany explicitly recognises that the risk of GBV and violence against women and children needs special attention during the export licensing process. (Denkschrift zu dem Waffenhandel, 2014).¹⁴ However, government officials have repeatedly stated, including in interviews for this report, that the **German government does not explicitly assess the risk of GBV, but only conducts a general (gender-blind) human rights assessment.**¹⁵

Why we need gender-sensitive human rights assessments

There are multiple reasons for explicitly accounting for the risk of GBV in arms control processes in particular in cases in which the results of gender-neutral human rights assessments would not prohibit an arms export. Three of them are discussed here.

GBV can be prevalent in the absence of indicators of other human rights violations

Research shows that femicide rates are often above the global average in regions with comparatively low overall violent death rates, including Western Europe, Eastern Asia, and Australia/New Zealand (Small Arms Survey, 2016).¹⁶ Similarly, in Eastern Europe and the Russian Federation, femicide rates appear disproportionately high concerning homicides in general (Small Arms Survey, 2012). Research also reveals a direct correlation between femicides rates and the use of firearms: on average, firearms were used in one-third of all femicides worldwide, and countries affected by high levels of femicide exhibit a higher proportion of femicides committed with firearms (Small Arms Survey, 2012).

Similarly, levels of domestic violence have remained relatively static (i.e. high) in countries in which the overall rate of lethal violence has been decreasing, such as in Europe (Small Arms Survey, 2016). As Control Arms and IHRC (2019, p.7) state: “Arms can enable and exacerbate, and (...) facilitate, private acts of domestic violence.” For example, in the US – the most dangerous high-level income country for women in terms of gun violence – access to a gun makes it 500 per cent more likely that the abusive partner will kill his woman partner (Everytown, 2019). Other examples of the prevalence of GBV in the absence of other indicators of human rights violations include armed actors restricting the access of women, or LGBTQI+ people to reproductive health services; state security forces threatening LGBTQI+ human rights defenders; or sexualised violence within security forces.¹⁷

GBV is often underreported, undocumented, and tolerated

The need to pay special attention to the risk of GBV during an arms export risk assessment is reinforced by the chronic underreporting of GBV. UN Women (2019) estimates that **less than 40 per cent of women survivors of GBV seek help of any sort, and only 6 per cent report to the authorities** (Sida, 2015). In the USA in 2015, only 33 per cent of LGBTQI+ survivors of intimate partner violence made an official report to the police (Waters, 2015). The reasons for not reporting experiences of GBV include abuse by and mistrust in security and law enforcement structures. For example, The Canadian *National Inquiry to Missing and Murdered Indigenous Women and Girls*, which analysed the rights violations Indigenous women, girls and 2SLGBTQIA people face in Canada, highlighted in their 2019 report how (armed) police officers perpetrated sexualised violence against indigenous women. Few survivors reported these incidents, as they mistrusted the police forces and the justice system (Ibid). This led the *Inquiry* to conclude that the Canadian institutions “contribute to maintaining a culture that normalizes violence against Indigenous women and children” (Ibid., p.101).

Connected to the underreporting of GBV in the national context, is the lack of comparable data on GBV by international human rights bodies. *UN Women* (2019) notes that comparable national prevalence data on intimate partner violence are only available for 106 countries (for the period between 2005-2017). In other instances, data is unavailable because certain types of GBV are not (adequately) criminalised by national law (UN Women, 2019). For example, until today, only four in ten countries prohibit marital rape (ibid).

The gendered boundaries of theory and praxis of international law

By now, many widely ratified international treaties confirm that GBV violates international human rights law (Control Arms and IHRC, 2019, p.3). Until the 1990s, various forms of GBV such as domestic violence, rape, female infanticides or forced sterilisation were generally not interpreted as (grave) human rights violations (Labenski and Yoshida, 2019). Only in 1992, the *CEDAW General Recommendation No.19* recognised GBV as a form of discrimination against women. Today rape and sexualised violence can be sentenced as genocide, crimes against humanity or war crimes (ICC, 2011) and UN investigative bodies are increasingly characterised by gender-sensitive mandates, like the *UN Group of Experts on Yemen or the International, Impartial and Independent Mechanism for Syria* (von Gall, 2020).

Nevertheless, challenges remain in turning this progress on the legal level into praxis. Only in 2019, the *International*

Criminal Court (ICC) handed down its first (now pending) conviction for crimes of sexualised violence (Mlambo-Ngcuka, 2019). Moreover, a range of horrendous forms of GBV (female infanticide, honour killings, dowry-related violence) is still not being recognised as prosecutable by the ICC (Neenan and Chinkin, 2017). Furthermore, one of the most significant criticisms from the 1990s remains: the bias of international law towards “maintaining an artificial war/peace paradigm and private/public”, which until today makes it hard to capture the gender-based violence in private spheres” (Ibid).

Human rights reports, which are annually filed by the German embassies in the respective countries, are fundamental for the risk assessment for arms export decisions. These reports follow a standardised form comprising eight chapters, including one on the discrimination against women, the rights of children, and the situation of sexual minorities, respectively. These chapters include questions on a few specific types of GBV, such as human trafficking and sexual exploitation, ‘honour killings’, Female Genital Mutilation (FGM), and laws discriminating against sexual minorities. Beyond these few specific questions, there are no questions on the prevalence of GBV and no questions on GBV that is being committed with or facilitated by arms, or the state’s capacity to prevent and punish acts of GBV. An increased level of internal awareness has led to more information on GBV being included in the human rights reports; however, this is highly dependent on individuals within the embassies. According to interviews conducted for this study, no training has been offered for embassies staff or desk officers producing and evaluating these reports to better account for GBV. Beyond the human rights reports, there are no standardised indicators/questions that are being assessed for the risk assessment.

For the human rights reports, the German government appears to rely mostly on their assessments as well as findings by international entities, including the UN, OSCE, the EU as well as the Council of EU. Whether and to what extent reports by international human rights organisations and (local) civil society are being consulted seems to depend on the individuals within the embassies and the relevant desk officers within the Federal Foreign Office.

Step 3. Identification whether there is an overriding risk that the relevant arms or items would be used to commit or facilitate the relevant acts of GBV identified in step 2

As part of this risk assessment, the German government assesses whether the request seems credible, meaning whether the possible end-user can “reasonably” need and use the amount and type of arms or items requested. It further considers whether an acceptable end-user assurance has been received, which is ob-

ligatory under the *Political Principles* (Stohl and Holtom, 2014), and whether the recipient state respected previous end-user assurances and the risk of diversion (Ibid). It remains unclear, to what extent, if at all, GBV is assessed for within this process.

Step 4. Identification whether mitigating measures satisfactorily and significantly reduce the identified risks

The German government considers mitigating measures in specific cases, but not regularly (Stohl and Holtom, 2014). These mitigating measures include end-user certificates, and – concerning SALW – the “New for Old Principle” (Ibid). Moreover, the Federal Foreign Office is currently evaluating to what extent post-shipment-controls in recipient countries could be integrated into the German export control system (Ibid). However, all of these mitigation measures considered by the German government primarily address the risk of diversion, and not the threat that arms and items to be exported are being used to commit or facilitate GBV.

III. International „good practices“ of incorporating GBV into national arms export control

Despite the ATT’s relatively young age, a few ‘good practices’ on incorporating GBV into national export control have emerged, which have been documented by civil society, in particular the *Arms Trade Treaty Baseline Project* and WILPF. The following section will highlight some of these practices.

III.I. Explicitly accounting for GBV in the national export control system and praxis

As discussed, GBV is often underreported, inappropriately documented and inadequately addressed in national and international law. Moreover, because it can occur in the absence of other indicators of human rights violations, the risk of GBV needs to be specifically accounted for in the export risk assessment. Increasingly, countries are reviewing their arms export system in this regard.

In 2019, Canada became State Party to the ATT. *Inter alia*, the legislation, which operationalised the treaty in domestic law, reads: “the Minister shall take into consideration whether the goods or technology specified in the application for the permit (...) could be used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children” (Parliament of Canada, 2013). Moreover, the *Export and Brokering Controls Handbook* (Global Affairs Canada, 2019), a tool specifically aimed at providing practical information for exporters about Canada’s export control system, lists examples of key considerations that should be taken into account during the risk assessment process. These considerations include:

- ▶ “Do any of the parties identified in the permit application have a record of committing serious violations of the human rights of women, children or vulnerable groups?”
- ▶ “Is there substantiated information to indicate that the goods or technologies proposed for export, or similar goods or technologies, have been, or may be, used to commit serious acts of violence against women, children or vulnerable groups in the destination country?”

During interviews conducted for this report, representatives of *Global Affairs Canada* further confirmed that the standardised human rights assessments include specific questions on GBV and violence against women and children.¹⁸ Their internal human rights reports, which are crucial for the export assessment, explicitly account for the link of GBV and arms (WILPF, 2017).

Early on, **Latvia**, developed a detailed set of questions to explicitly account for the prevalence of GBV in the recipient country, including questions addressing GBV facilitated by or committed with firearms, as well as the state’s capacity and willingness to prevent and punish GBV (WILPF, 2017, p.19). Questions include:

- ▶ “Is there evidence of acts or patterns of GBV in the recipient country?”
- ▶ “Are there laws, policies, and implementation mechanisms in the importing state designed to prevent GBV?”
- ▶ “Are there vetting systems for the acquisition of firearms or the enrolment of private security companies, and do they include background checks on GBV or psychological tests that would take into account the risk of GBV?”

In 2014, the **United Kingdom of Great Britain and Northern Ireland** updated its *Consolidated EU and National Arms Export Licensing Criteria*, committing themselves to “also take account of the risk that the items might be used to commit gender-based violence or serious violence against women or children” (Cable, 2014). Moreover, their internal human rights reports include explicit information on GBV (WILPF, 2017).

III.II. Strengthen internal capacities to account for GBV in the arms export control process

Civil society reports (WILPF, 2017) and interviews conducted for this study highlight that despite a genuine interest to account for GBV, export control officers and government representatives, responsible for the risk assessment process, usually do not have expertise on gender and/or GBV. This is, however, crucial to ensure that this risk can be assessed appropriately.

The **Swedish government** recognises the need to “ensure that the Inspectorate of Strategic Products has expertise to be able to include gender equality aspects and risks of gender-based and sexual[ised] violence in assessments with regard to human rights and international humanitarian law, and to implement Article 7.4. of the Arms Trade Treaty” (Swedish Government, 2018). Canada has provided general training for more than 200 people involved in the arms export control risk assessment since the new legislation, which operationalises the ATT in domestic law, came into force. *Inter alia*, this training covered the types of sources to consult during the export review process and the level of detail that should go into the analysis.¹⁹

III.III. Acknowledge that the ATT’s 7.4 “facilitate” includes instances in which items are one or more steps away from the GBV act

A large majority of governments only consider the direct link between the risk of GBV and a particular item or suitable to be exported or transferred and the specific end-user. However, *in theory*, **Sweden’s** legislation does not require a direct link between the items under consideration and the risk of GBV but a general assessment of the situation (WILPF, 2017).

III.IV Cooperation with civil society and transparency

Institutionalised cooperation with and continued political and financial support of civil society is as essential during the implementation of the ATT, as it was during the negotiation of the treaty.

During the **Canadian** process of drafting the legislation operationalising the treaty in domestic law, the Canadian government consulted civil society (and military equipment producing industry).²⁰ Moreover, private citizens as well as representatives of military producing industry and representatives of organisations (academic/civil society) were invited to share their views on the then proposed “approach to assessing the Arms Trade Treaty (ATT) criteria, including its statement on how it will assess the seriousness of human rights violations” as part of the Public Consultations on “Proposed strengthening of Canada’s export controls regime” (Global Affairs Canada, 2018, p.6) by filling out an online questionnaire. The questionnaire included the following question:

- ▶ “What specific criteria do you believe the government should use to assess export and brokering permit applications against the risk that the export will result in serious acts of gender-based violence or violence against women and children?” (Ibid., p.7).

Enabling civil society to monitor the operationalisation of the ATT is closely linked to being transparent about arms exports. In this regard, the **Dutch Government** has been a good example for some years already. Currently, the government is required to report on arms exports several times a year. Annually, the government publishes reports on the *Dutch Arms Export Policy*, which, since more than a decade now, have also been available in English (Stop Wapenhandel, 2016). Notably, these reports include information on those exports that have been denied, including country of destination, a brief description of the goods, recipient, end-user, and the reason for denial in line with the criteria defined by the *EU Common Position* (Minister for Foreign Trade and Development Cooperation and the Minister of Foreign Affairs (2019)). Furthermore, the Dutch government must inform parliament on definitive export permits for a complete system larger than 2 million Euros, within two weeks after the export was granted (Stop Wapenhandel, 2016). Moreover, the government must inform the parliament when an export is denied because of the risk that the exported goods being used to commit to facilitate GBV.²¹

III.V. Demonstrating international leadership on preventing GBV through arms export control

Several State Parties to the ATT have contributed to strengthening the understanding of the interlinkages between GBV and the international arms trade, to develop practical guidance

on how to operationalise the ATT’s requirements in this regard, and to advance the international discussion on these topics.

The government of **Ireland**, for example, regularly addresses the issue in statements to the Conference of States Parties to the Arms Trade Treaty (CSP). At the CSP3, Ireland launched a working paper on Article 7.4. and gender-based violence assessment (Ireland, 2017). At CSP4, Jonathan Patchell, Deputy Head of Mission at Embassy of Ireland in Tokyo, expressed Ireland’s hope that “the inclusion of GBV as a consideration in arms transfers has set a precedent (...) in arms control (Ireland, 2018, p.3). In 2018, Ireland also financially supported the development of the highly useful publication by Control Arms (2018) *How to use the Arms Trade to Address Gender-Based Violence. A Practical Guide. A Practical Guide for Risk Assessment*.

This *Practical Guide* formed the basis of the curriculum developed for the “Central and Eastern European Regional Training on the Gender-based Violence (GBV) Criteria in the Arms Trade Treaty (ATT)” for export licensing officials from several European countries. This training was implemented by Control Arms and hosted by the government of **Latvia** in Riga. As the President of the CSP5, Latvia also chose gender and gender-based violence as the thematic focus area of its presidency, and state parties adopted several recommendations on gender and gender-based violence at CSP5.²²

As these examples show that a range of different steps can be taken to better operationalise the ATT’s requirement to account for the risk of exported goods being used to commit or facilitate GBV. This is crucial for every government committed to preventing GBV. However, while these ‘good practices’ are welcome, there is a substantial discrepancy between the regulations on paper and their implementation. Indeed, many of the governments mentioned above, including Canada, the United Kingdom and Sweden, continue to allow arms exports to conflict parties, thereby undermining their policies.

IV. Policy recommendations for the German government

Over the last few years, the German government has increased its commitment to advance and protect women's rights. Choosing the "Women, Peace, and Security" agenda as one of the focus areas of Germany's non-permanent membership in the UN Security Council, and explicitly mentioning gender equality in the programme for Germany's Presidency of the Council of the EU are two of the most visible examples of this commitment. Unfortunately, this engagement continues to be detached from Germany's arms exports, and political will to harmonise these interlinked policy areas is lacking. This is, for example, illustrated by the current National Action Plan (NAP) on WPS, in which the German government commits itself to promoting women's participation in conflict prevention processes, including disarmament processes (CFFP et al., 2020). However, the NAP does not explicitly focus on conflict prevention, let alone on disarmament or arms control (Ibid). In contrast, the current Irish NAP explicitly focuses on conflict prevention, which includes efforts to advance disarmament and arms control (Ibid).

Recognising these interlinkages, and the consequences the international arms trade has on human security of political minorities is imperative if Germany wants to live up to its commitments, including advancing the WPS agenda. The *very first* step in this regard would be to better account for GBV and violence against women and children in Germany's arms export control praxis. The following section will provide policy recommendations in this regard. However, the authors would like to highlight that **even the best arms export control system will not eliminate the risk of German arms being used to commit or facilitate GBV. This can only be guaranteed by ending arms exports.**²³

1. Ensure that GBV is explicitly and mandatorily accounted for in the arms export control process

As demonstrated in chapter III, Germany's current risk assessment process inadequately accounts for GBV. Thus, the German government should:

- ▶ Update the *Political Principles* to ensure that the risk of GBV is explicitly mentioned as one criterion that mandatorily needs to be accounted for in the risk assessment.
- ▶ In consultation with German and international civil society, update the annual human rights reports to include specific questions and indicators on
 - 1) The prevalence of all forms of GBV (such as percentage of femicides or reports of hate speech against LGBTQI+);
 - 2) GBV committed with or facilitated by arms (such as evidence of state security forces discriminating against LGBTQI+ or use of firearms reported in domestic violence);
 - 3) The recipient State's capacity to prevent and punish acts of GBV (e.g. existence of GBV prevention and punishment laws or evidence of investigations of GBV under their authority) (Control Arms, 2018).²⁴

- ▶ Ensure that reports by national and international civil society are consulted for the human rights assessment, in particular findings by feminist civil society on armed violence, GBV and the proliferation of arms. Additionally, shadow reports by NGOs under CEDAW and other human rights treaty monitoring bodies as well as judgements and reports by the ICC, and crime statistics should be consulted.²⁵

2. Strengthen internal capacities to account for GBV in the arms export control process

Research and interviews conducted for this study allow for the conclusion that the level of awareness of GBV strongly varies across embassies and departments, and often depends on the individual's interest. Thus, the German government should ensure

- ▶ To offer regular and mandatory training on the interlinkages of GBV and the international arms trade for all embassy staff members, desk officers and export licensing officials involved in the human rights risk assessments. Ensure that civil society, as well as gender and human rights experts, play a substantial role in this training.

3. Acknowledge that the ATT's 7.4 "facilitate" includes instances in which arms are one or more steps away from the GBV act

As outlined in chapter III, the German government does not include in its assessment goods or items that can facilitate GBV when they are one or two steps away from the violent act. This, however, fails to account for the ATT's provisions. Thus, the German government should

- ▶ Within their arms export control process also account for "uses of arms that make human rights violations easier" (Control Arms and IHRC et al. 2019), and not only those instances where goods or items are directly contributing to GBV.

4. Cooperate with civil society and ensure transparency

- ▶ Support and finance civil society organisations to provide information on the prevalence of GBV, its interlinkages with the proliferation of arms and the respective state's capacity to prevent and punish GBV.²⁶
- ▶ Support and finance civil society organisations to develop further guidance and training materials on operationalising the ATT's requirement to take into account the risk of GBV.
- ▶ Ensure the official reports on German arms export (Rüstungsexportberichte) are also available in English and include more detailed information on the granted exports, including the end-user; as well information on denied license applications,

including country of destination, a brief description of the goods, recipient, end-user and the reason for denial (including a stand-alone criterion for GBV) in line with the criteria defined by the *EU Common Position*.

5. Demonstrate political leadership at the European and the international level²⁷

The subject of preventing GBV through effective arms control continues to be driven by civil society, and very few countries, such as Latvia and Ireland. However, so far, this topic is not being championed by a country which is among the world's largest arms exporters. Thus, the German government should

- ▶ Highlight the interlinkages between the international arms trade and GBV in speeches, statements, and reports by Germany, in particular in ATT Working Groups, preparatory meetings and CSPs. Advocate for highlighting the interlinkages in speeches, statements, and reports supported by Germany.
- ▶ Continuously highlight the ATT's humanitarian purpose to reduce human suffering and counter attempts to interpret the ATT as a pure trade regulatory framework.
- ▶ Yield, whenever possible, the floor to survivors of GBV to state their demands and needs.
- ▶ Ensure that the German delegations to arms control, disarmament and non-proliferation conferences, meetings and processes include delegates with expertise on GBV.
- ▶ In line with the decisions adopted by the CSP5, proactively share information on Germany's practice of accounting for GBV in its national arms export assessment and facilitate learning between State Parties (CSP5, 2019).

6. Further restrict the export of arms, in particular SALW, and corresponding ammunition

The 2019 version of the *Political Principles* includes a principled stop of SALW to third countries. However, Germany continues to export ammunition for SALW and small arms that are not considered as weapons of war to third countries as well as an increasing number of SALW to NATO, EU and NATO-equivalent countries. Indeed, in 2019, Germany exported SALW and corresponding ammunition worth of almost 200 billion Euros to the US (CAAT, 2020). Given GBV is also prevalent in EU, NATO, and NATO equivalent countries and that the export to these countries is, in principle, not limited, no substantial human rights assessment is being done ahead of exports to those countries. Acknowledging that SALW are often the "weapon of choice" in gender-based violence, the German government should:

- ▶ Immediately cease export of ammunition for SALW and small arms that are not considered as weapons of war to third countries.
- ▶ Ensure in-depth human rights assessment, in particular an assessment of the potential of arms and items to be exported being used to commit or facilitate GBV, including those to EU, NATO, and NATO-equivalent countries.
- ▶ Work towards a comprehensive export stop of SALW to any country.

7. Acknowledge the synergies between the WPS agenda and the ATT

UN Security Council resolutions 2106, 2122, and 2467 (introduced by the German government) explicitly refer to the ATT, thereby reconfirming the synergies between the WPS and the ATT.²⁸ Germany should actively acknowledge and act upon these synergies by

- ▶ Ensuring that the upcoming NAP on WPS puts an explicit focus on conflict prevention and includes activities to promote international disarmament and preventive arms control (CFFP et al., 2020).

Sources

- 1 For further research see the United Nations Comtrade Database (UN Comtrade) <https://comtrade.un.org/data/>.
- 2 Art. 7.4 of the ATT requires State Parties to take into account not only the risk of the arms being used to commit serious acts of GBV, but also the risk that exported goods facilitate serious acts of GBV, which encompasses a much wider range of uses of conventional weapons. For a detailed elaboration on the interpretation of 'facilitate', see Control Arms and IHRC (2019).
- 3 See Control Arms and IHRC (2019) for an overview of treaties that contain obligations that suggest GBV violates international human rights law.
- 4 Interview with Verity Coyle, 4 June 2020.
- 5 Interview with Verity Coyle, 4 June 2020.
- 6 The ICRC (2019, p.2) emphasizes that the "disparities in understanding of definition do not prevent State Parties from conducting the required risk assessments" in line with their respective understanding of the term 'gender'".
- 7 See ICRC (2016) for a detailed discussion of Article 6 (3) and Gaggioli (2014) for a comprehensive overview of the international legal recognition of acts of sexualised violence as war crimes.
- 8 Article 7.1. further requires State Parties to take the risk of GBV into account when assessing the risk that the conventional arms could be used to commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism or to transitional organized crime to which the exporting State is a Party.
- 9 For a definition of weapons of war in line with the German law, please see The War Weapons Export Act (BMJV and BfJ, 1990).
- 10 Interviews conducted with representatives of the Ministry for Economic Affairs and Energy, 16 June 2020 and with civil society expert on 6 May 2020.
- 11 Restrictions are nevertheless possible in special cases, such as for political reasons.
- 12 Human rights risk assessments are currently being done for arms exports to Turkey, and exports to Turkey have been recently rejected.
- 13 Interviews conducted with representatives of the Ministry for Economic Affairs and Energy, 16 June 2020.
- 14 In the response to a parliamentary request by the opposition party Die Linke, the government emphasized in August 2020 again that GBV plays a prominent role in the arms export licensing process (Bundesregierung, 2020).
- 15 Meeting with German civil society and the Ministry of Foreign Affairs in April/May 2019.
- 16 In the 1970s, the term meant the killing of a woman or a girl based on her sex (Bloom, 2008). With time, this definition expanded to refer to any killing of a woman, which facilitates the comparability of cross-national data (Small Arms Survey, 2016). This study uses later definition.
- 17 E-mail exchange with Katrin Geyer, Associate, WILPF, June 2020.
- 18 Interview with representative of Global Affairs Canada, 24 June 2020.
- 19 Interview with representative of Global Affairs Canada, 24 June 2020.
- 20 Interview with representative of Global Affairs Canada, 24 June 2020.
- 21 Interview with representative of Ministry of Foreign Affairs of The Netherlands, 25 May 2020.
- 22 Please see the Final Report of the CSP5 for the adopted recommendations on gender and GBV (CSP5, 2019).
- 23 Due to the scope of the study, it will not repeat recommendations other NGOs have made to improve the German arms export control system, in particular with regard to accountability, transparency, and cooperative ventures. See for example ECCHR and WILPF (2018), and the annual GKKE arms export reports.
- 24 Resources by Control Arms (2018), WILPF (2016), as well as ECCHR and WILPF (2017) provide a detailed overview of relevant indicators and questions that should be considered.
- 25 Resources by Control Arms (2018), WILPF (2016), as well as ECCHR and WILPF (2018) provide a good overview of useful sources of information.
- 26 The authors are very grateful to Verity Coyle for her input for this section.
- 27 The authors are very grateful to Raluca Muresan for her input for this section.
- 28 For an overview of the synergies, see Acheson and Butler (2019).

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