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## Civil Society Commentary

**Deutscher Juristinnenbund e.V. (djb)**  
Anklamer Strasse 38 • D-10115 Berlin  
fon: +49 30 4432700 • fax: +49 30 44327022  
geschaefsstelle@djb.de • http://www.djb.de

**Frauensicherheitsrat**  
(Women's Security Council – FSR)  
Anna von Gall • agall@posteo.de

**by the Deutscher Juristinnenbund (German Women Lawyers Association) and Frauensicherheitsrat (Women's Security Council) in response to Germany's evaluation as 2016 OSCE Chair of its steps to implement the OSCE Human Dimension commitments**

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### *Editing NGOs and signees*

- Deutscher Juristinnenbund (German Women Lawyers Association – djb), the president Ramona Pisal
- Frauensicherheitsrat (Women's Security Council – FSR), Anna von Gall

### *Supporting NGOs*

- Medica mondiale (contributed to the language editing costs)
- Women's International League for Peace and Freedom (WILPF)
- Amnesty International – German section (Sektion der Bundesrepublik Deutschland e.V.)
- Frauennetzwerk für Frieden e.V. (Women's Network for Peace)

### *Contents*

Introduction: OSCE, CEDAW and the agenda on women, peace and security .....	2
Part I: Implementation of the Security Council agenda on women, peace and security – the development of a National Action Plan .....	2
1. Inclusive process and baseline study .....	3
2. Co-ordination, responsibility and accountability .....	4
3. Allocation of financial and human resources .....	4
4. Monitoring and evaluation .....	5
Part II: Content-related issues regarding Germany's WPS agenda .....	5
1. Administrative supervision of abuses .....	6
2. Measures regarding the situation of female refugees on German territory .....	6
3. Gender training courses .....	7
4. Gender aspects in criminal prosecution .....	7
5. Measures regarding extraterritorial operations by Germany via state and non-state actors .....	8

***Introduction: OSCE, CEDAW and the agenda on women, peace and security***

UN Security Council resolution 1325 (UNSC 1325) is the first instrument to address the disproportionate and unique impact of armed conflict on women and to call for a gender perspective, by means such as consulting local and international women's groups. These groups of female activists have been the prime mover behind this first global agenda on women, peace and security (WPS). However, the inclusion of civil society remains one of the main tasks for successful national implementation strategies. Therefore, DJB and FSR welcome the decision by the German Foreign Ministry to evaluate the implementation of Germany's OSCE human dimension commitments during its OSCE chairmanship.

With the Helsinki Final Act, Germany affirmed its respect for and fulfilment of human rights obligations under treaties it is a party to, such as the Convention on the Elimination of Discrimination against Women (CEDAW). The women, peace and security agenda as set out in UNSC 1325 and subsequent resolutions reflects human rights obligations as enshrined in CEDAW.<sup>1</sup> Consequently, as the CEDAW Committee stated in its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations,<sup>2</sup> member states are responsible for implementing resolution 1325.<sup>3</sup>

In order for OSCE member states to better implement UNSC 1325 and comply with their human rights obligations by integrating a gender perspective into the security architecture,<sup>4</sup> the OSCE issued the OSCE Study on National Action Plans on the Implementation of the United Nations Security Council Resolution 1325 (hereafter: OSCE Implementation Study).<sup>5</sup> This study identifies essential components that need to be in place to successfully implement the agenda on women, peace and security: a) clear goals, budget and responsibilities; b) concrete actions; d) domestic relevance; and e) greater effectiveness.<sup>6</sup> This study also addresses the development of National Action Plans (NAP).<sup>7</sup> It concludes that co-operation with civil society is vital, an overall co-ordinator is crucial, and that an NAP has to define a monitoring and evaluation process to be sustainable and efficient. Most of these components are in line with several other studies.<sup>8</sup>

This civil society report discusses Germany's approach to WPS and urges additional or alternative strategies, where necessary. It focuses on technical aspects of NAP development (Part I) and on elements needed for coherent, targeted and effective actions (Part II). It reveals that Germany tends to take a silo approach, and therefore struggles to effectively implement the WPS agenda while largely ignoring the relevance of binding human rights frameworks.

***Part I: Implementation of the Security Council agenda on women, peace and security – the development of a National Action Plan***

The period covered by the Federal Government's First National Action Plan to Implement Security Council Resolution 1325 (NAP I)<sup>9</sup> terminates in 2016. There are joint efforts within the respective ministerial departments to evaluate NAP I and at the same time to develop a second NAP that covers 2017 and subsequent years (NAP II).

Contrary to the recommendations made by the OSCE,<sup>10</sup> the UN<sup>11</sup>, the EU<sup>12</sup> and the CEDAW Committee (GR No. 30), the German Government ignores concrete aspects of sustainable WPS implementation and ignores essential components for the development of an NAP.

In line with Security Council resolution 1325 and Art. 7 CEDAW (GR No. 30, para. 42), we demand that the Government significantly improve the participation of civil society in the elaboration, implementation and monitoring of NAP II and a possible third NAP. We demand that NAP II: 1) consider a comprehensive participation process; 2) allocate appropriate financial and human resources explicitly to implement the WPS agenda; 3) set up an overall co-ordinator and ensure policy coherence; and 4) adopt monitoring standards that comply with international benchmarks developed as part of the WPS agenda.

### **1. Inclusive process and baseline study**

**As with NAP I for which the last civil society organization (CSO) meetings were held in February and July 2015, the Government has shown modest willingness to seriously include CSOs in the development process for NAP II. While the opinion of especially national civil society and women's organisations was in fact requested during one meeting in July 2016,<sup>13</sup> the request comes far too late. The presentation of NAP II is now scheduled for September and/or October 2016. However, the draft will be shared with CSOs only on short notice and the self-evaluation report by the Government will only be presented orally. The consultations are last-minute and merely symbolic, instead of being a real concern to the Government. Once again, the consultations' impact on NAP II can only be limited.**

Measures included in the NAP need to be coherent, targeted, sustainable and effective. This is only possible via a broad consultation and evaluation process with CSOs, academic institutions, survivors and local diaspora organizations. NAPs that are developed via an inclusive process are often better implemented.<sup>14</sup>

The development of impact-related measures shall start with a baseline study that gathers information on current gaps and challenges, on different implementation strategies by other Member States (such as the Netherlands, Ireland and Nepal)<sup>15</sup> and on how embassies are implementing the WPS agendas in their region. Analysis of existing studies from the EU/EPLO,<sup>16</sup> UN<sup>17</sup> and OSCE<sup>18</sup> as well as from academic institutes<sup>19</sup> can provide important information about challenges<sup>20</sup> and wrong decision-making processes, and can facilitate impact-related planning.<sup>21</sup> A broad and inclusive evaluation and development process of this type is needed to elaborate short- and long-term goals, and to determine how activities need to be directed toward these objectives and goals.

We therefore urge the German Government to consider a comprehensive participation process that complies with international benchmarks (OSCE Implementation Study, pp. 43 and 49-50; CEDAW Committee, GR 30, para. 83) and practices of other Member States developed for sustainable implementation of the WPS agenda.

## **2. Co-ordination, responsibility and accountability**

The Action Plan for Civilian Crisis Prevention (2004), the First and Second Development Policy Gender Action Plan (2009-2012 and 2016-2020), the draft Guidelines on Civilian Crisis Prevention and the Agenda 30 address the role of women and girls in conflict-prone regions and conflict-related settings. While theoretically these policy documents all together aim at establishing “‘women, peace and security’ as a cross-sectional issue in the Federal Government’s foreign, security and development policy,”<sup>22</sup> they make no or weak reference to 1325.

Over the coming months, the German Government is going to elaborate new guidelines (“Leitlinien”) on civil crisis prevention. An integrated approach to both these processes – the “Leitlinien” and “NAP 1325” – is necessary to enrich both, i.e. priority must be placed on both civilian conflict management and on gendering the entire conflict cycle. We call on the German Government to ensure compliance with Resolution 1325 in that context.

The lack of compliance and the failure to mainstream WPS are also reflected in the recently published White Paper (Weißbuch 2016) from the Federal Ministry of Defence on the Security Policy of Germany and the Future of the German Federal Armed Forces.<sup>23</sup> It contains only one vague reference to 1325. In order to be part of a general strategy, WPS should have been seriously included in the new White Paper. This failure shows the need for a co-ordination and responsibility mechanism.

**We therefore urge the German government to introduce a co-ordination body to implement the WPS agenda in a comprehensive and sustainable manner.<sup>24</sup> While we welcome the Ministry of Foreign Affairs being in charge of co-ordinating UNSC 1325, implementing the WPS agenda requires clear and high-level government commitment in policy and leadership. It should involve a co-ordination body<sup>25</sup> such as a Gender Adviser to the Federal Government, or a special task force, working group or steering committee as introduced by the Netherlands and Ireland.<sup>26</sup> This would increase the probability of a holistic gender approach to Germany’s foreign, security and development policy.**

## **3. Allocation of financial and human resources**

One of the main obstacles to implementing the WPS agenda worldwide and by the German Government in particular has been the failure to allocate sufficient resources and funds.<sup>27</sup> NAP I failed to emphasize the importance of applying a gender perspective to the Government’s overall needs assessments, planning and budget monitoring. However, it is vital to allocate a budget for concrete activities<sup>28</sup> to implement the WPS agenda,<sup>29</sup> for the evaluation and monitoring process laid down in the NAP,<sup>30</sup> and to guarantee funding for the work by CSOs. For NAP II to have a sustainable impact, it is therefore important to revise the structure of “project-based” budgeting. Instead, budgeting has to focus on long-term capacity-building of both State and non-State entities.<sup>31</sup> **We therefore urge the German Government to develop a comprehensive gender budgeting strategy with**

**adequate funding allocated not only to the actions designated in NAP II but also to its development, monitoring and evaluation.**<sup>32</sup>

#### **4. Monitoring and evaluation**

Since 2010, the UN and the EU have emphasized the development of indicators, benchmarks and targets to enable the revision and updating of UNSC 1325 NAPs.<sup>33</sup> Such indicators make it easier to measure progress and identify areas that need to be improved. Accordingly, national governments are urged to establish systems that systematically monitor and regularly assess activities related to the WPS agenda. This helps to strengthen commitment and partnerships, encourage accountability, and build a foundation for sustainable investments.<sup>34</sup> However, it is important to analyse the design of the monitoring mechanisms and to review the indicators from time to time.<sup>35</sup> Each member state shall develop its own set of indicators to enable the revision and updating of its NAP.<sup>36</sup> For example, the Netherlands has used an inclusive process to develop goals and objectives. On this basis, the coordinating partners (the Dutch gender platform WO=MEN and the Ministry of Foreign Affairs) developed a country-specific monitoring and evaluation (M&E) system based on specific, measurable, attainable, realistic and timely (SMART) indicators.<sup>37</sup> In Ireland, a monitoring group consisting of representatives of statutory bodies, civil society and academia oversees the activities set out in the NAP and publish an independent progress report. It meets four times a year and receives secretarial and technical support from the Conflict Resolution Unit.<sup>38</sup>

While the German NAP I includes a series of objectives, it provides for neither evaluation/monitoring standards nor clear temporal targets. Although the above-mentioned EU indicators are appended to NAP I, it remains unclear how they are used for the evaluation process. The NAP I remains too vague in its formal monitoring and evaluation mechanisms.<sup>39</sup> We therefore urge the German Government to adopt monitoring standards that comply with the international benchmarks developed as part of the WPS agenda.<sup>40</sup>

#### ***Part II: Content-related issues regarding Germany's WPS agenda***

As the CEDAW Committee noted in the GR No. 30 on women in conflict prevention, conflict and post-conflict situations, all the areas of concern addressed in the Security Council's WPS agenda find expression in the substantive provisions of CEDAW. Implementation of the WPS agenda must therefore be premised on a model of substantive equality and cover all rights enshrined in this Convention.<sup>41</sup> Consequently, an NAP that is meant to be consistent with human rights needs to include a balanced set of external and internal measures.<sup>42</sup> In other words, Germany should develop an NAP II that includes measures relating to both its engagement abroad and its acts and omissions on its own territory. The following aspects are particularly relevant in our opinion:

## **1. Administrative supervision of abuses**

In its seventh and eighth periodic report to the CEDAW Committee, Germany claims that ‘introducing a special “national code of conduct” or a special, strict “national monitoring system” [regarding sexualized violence committed by members of the Federal Armed Forces] is not necessary’ (para. 162). The provisions under the Act on the Legal Status of Soldiers (Gesetz über die Rechtsstellung von Soldaten – SG), however, remain very general.<sup>43</sup> They contain no concrete proscription or prohibition of sexual harassment, abuse and exploitation by members of the Federal Armed Forces (FAF), be they against civilians or against members of the armed forces, in particular female soldiers.

**In conformity with UN standards, the FAF shall adopt a more explicit code of conduct and explain how it implements an effective zero-tolerance policy, including preventive measures, enforcement mechanisms and remedies for victims. It is highly likely that such a policy will also reduce the acceptance of harmful concepts of masculinity, gender-based violence and gender stereotypes inside the FAF, and will influence the number of women in the Federal Armed Forces.**<sup>44</sup>

## **2. Measures regarding the situation of female refugees on German territory**

As the CEDAW Committee noted, the Convention applies at every stage of the displacement cycle (CEDAW GR No. 30, paras 53). It therefore also applies to refugees and asylum seekers in Germany. As to the current dramatic situation of female refugees and asylum seekers in Germany,<sup>45</sup> it is evident that Germany has failed to recognize that situations of forced displacement affect women differently from men, and to include gender-based discrimination and violence. Women and girls are currently subjected to gross human rights violations inside and outside camp settings, including the risk of sexualized violence, trafficking and forced prostitution.<sup>46</sup>

**It is therefore necessary to guarantee measures such as gender-separated accommodation and sanitary facilities in all refugee camps in Germany<sup>47</sup> and to provide extensive psychological and social support services to refugee victims of sexualized violence.<sup>48</sup> The Government should provide special programs that prevent and combat sexual exploitation in and around refugee camps committed by other asylum seekers and refugees but also by the staff at reception centres.<sup>49</sup>**

**With the Second Asylum Package (Asylpaket II), the law on family reunion (§ 104 section 13 Residence Act) has been tightened even further. This affects especially women who were initially supposed to follow their male family members via family reunion visas. These women now need to either hold out in conditions in their war-torn countries or undertake hazardous overland routes – if any are still possible. In both cases they are especially at risk of experiencing sexualized violence.**

**We therefore urge the German Government to revise and effectively address the gender dimension of its refugee policies.**

### 3. Gender training courses

The fact that Germany offers gender training courses to its civilian, police and military staff in preparation for their missions should be welcomed. However, these courses are not mandatory, so they only reach those members of the armed forces who are already interested in and sensitive to the gender dimensions of conflict. Since NAP I, there have been several approaches on how to integrate a gender perspective in mission preparation. **We urge the German government to continue such approaches and to offer more mandatory gender training courses.**

### 4. Gender aspects in criminal prosecution

On 28 September 2015, the Criminal Court of Stuttgart convicted the Rwandan leader of the Hutu militia group “Forces Démocratiques de Libération du Rwanda (FDLR)”, Ignace Murwanashyaka, of aiding war crimes in eastern Democratic Republic of Congo. Although the original indictment listed five charges involving rape and/or sexual enslavement, all of these charges were dropped over the course of the proceedings. Although the German Code of Criminal Procedure applied to the trial, the legal norms on the rights of victims and witnesses were not exhausted. The victim witnesses were not properly informed about their procedural rights, they were not informed about the progress of the trial and there was no long-term psycho-social or medical support for them.

This case highlights the challenges in taking action against high-ranking perpetrators – such as commanders – of conflict-related sexualized violence committed abroad. Often no evidence can be brought due to victims’ fear of stigmatisation and a non-gender-sensitive investigation strategy. Even if there are victim witnesses willing to testify – like in the case in Stuttgart – it is a challenge for the investigation, prosecution and court to gather and properly deal with the evidence due to a lack of gender competence regarding sexualized war violence.

As sexualized and gender-based violence in war are often part of a larger strategy and foreseeable, it is important to have an adequate investigation and prosecution strategy. This includes: **competent investigators who are able to analyse specific cultural settings in gender-specific ways and who are able to gather gender-specific data and evidence; competent judges and prosecutors who are informed about causes and consequences of sexualized and gender-based violence; appropriate treatment of survivors of sexualized violence in a trauma-sensitive way; and proper outreach programmes in place to inform the population of the country concerned about the state of the trial. Unless these challenges are solved, the pattern of such crimes will remain hidden, the evidence of sexualized and gender-based violence will remain invisible, and such crimes will therefore remain unpunished.**<sup>50</sup> Thus far such trials have had no preventive effect.

## **5. Measures regarding extraterritorial operations by Germany via state and non-state actors**

As the CEDAW Committee noted in its GR No. 30, the proliferation of conventional arms can have a direct or indirect effect on women as victims of conflict-related gender-based violence or on protectors and actors in resistance movements. In order to meet their obligation to prevent such crimes, State parties shall address the gendered impact of international transfers of arms (CEDAW Committee, GR No. 30, paras 32-33, UNSC 2122, preamble).<sup>51</sup>

**We urge the German government to take into account the risk of arms exports by companies within its jurisdiction that may facilitate or aggravate generalised violence against women in the importing states as mentioned in Article 7 (4) of the Arms Trade Treaty. If it has not yet done so, Germany needs to establish a risk evaluation mechanism for arms export and pass legislation that includes specific gender-sensitive criteria as a factor in authorizing or refusing arms export.**

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<sup>1</sup> CEDAW Committee, General recommendation No. 30 on women in conflict, prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013 (hereafter: CEDAW Committee, GR 30), para. 26; Lewis et al., Making the normative case: Implementing Security Council resolution 1325 as part of a legal framework on women, peace and security, in: LSE Pro Bono Matters, Project Supervisor: Christine Chinkin, April 2015.

<sup>2</sup> CEDAW Committee, GR 30.

<sup>3</sup> UN Women, Preventing Conflict Transforming Justice Securing the Peace, A Global Study on the Implementation of Security Council resolution 1325, 2015, (hereafter: UN Women, Global Study, 2015), Executive Summary, p. 15.

<sup>4</sup> Cf. Deutsches Institut für Menschenrechte, OSCE Evaluation-Report, 2016 (hereafter: DIMR, 2016), p. 59 OSCE Gender Action-Plan 2004, para. 44 (e), 2014.

<sup>5</sup> OSCE, Study on National Action Plans on the Implementation of the United Nations Security Council Resolution 1325, 22 October 2014 (hereafter: OSCE, Implementation Study, 2014), available under <http://www.osce.org/secretariat/125727>.

<sup>6</sup> OSCE, Implementation Study, 2014, pp. 9 – 10.

<sup>7</sup> OSCE, Implementation Study, 2014, pp. 9 – 10.

<sup>8</sup> Cf. UN Women, Global Study, 2015, pp. 241; OSCE Implementation Study, 2014.

<sup>9</sup> German Parliament, Aktionsplan der Bundesregierung zur Umsetzung von Resolution 1325 des Sicherheitsrats der Vereinten Nationen für den Zeitraum 2013 – 2016, BT-Drs. 17/11943, 19.12.2012.

<sup>10</sup> OSCE, Implementation Study, 2014.

<sup>11</sup> UN Women, Global Study, 2015, pp. 240 – 252.

<sup>12</sup> Council of the European Union, Second Report on the EU-indicators for the Comprehensive Approach to the EU Implementation of the UN Security Council Resolutions 1325 & 1820 on Women, Peace and Security, 2014 (hereafter: CoEU, EU Indicators, 2014).

<sup>13</sup> NAP I, p. 21.

<sup>14</sup> EPLO, Lessons Learnt in Monitoring the Implementation of EU Women, Peace and Security Policy - An analysis of the current EU indicators for the Comprehensive Approach to the EU implementation of the UN Security Council resolutions 1325 and 1820 on Women, Peace and Security, 2013 (hereafter: EPLO, EU indicators, 2013). Similar, UN Women, Global Study, 2015, p. 242: „Inclusion can raise awareness, contribute to advocacy initiatives, and ensure a variety of perspectives on issues of security that affect diverse stakeholders. In turn, broad participation, which reinforces the right to equality and non-discrimination, makes the resulting plans and strategies more responsive to the needs and expectations on the ground, and increases the level of ownership and commitment to implementation.“

<sup>15</sup> UN Women, Global Study, 2015, p. 424, also referring to the Netherlands, Sierra Leone and Nepal as cases of a participatory approach. Ireland’s second National Action Plan on Women, Peace and Security, 2015 – 2018 (hereafter: Ireland, 2nd NAP, 2015), available under <https://www.dfa.ie/media/dfa/alldfawebsitemedia/ourrolesandpolicies/ourwork/empoweringwomen-peaceandsecurity/Irelands-second-National-Action-Plan-on-Women-Peace-and-Security.pdf>; The Netherlands Action Plan on Women, Peace and Security 2016 - 2019. A partnership to contribute to the implementation of the Women, Peace and Security Agenda, 2015 (hereafter: The Netherlands, NAP 2016, available under <http://wo-men.nl/wp-content/uploads/2016/05/FINAL-NAP-2016-2019.pdf>.

<sup>16</sup> CoEU, EU indicators, 2014. In this report, they agreed to analyse and refresh the 17 Indicators in the light of lessons learned during the preparation of the First and the Second Implementation Reports. EPLO, EU indicators, 2013.

<sup>17</sup> UN Women, Global Study, 2015.

<sup>18</sup> OSCE, Implementation Study, 2014.

<sup>19</sup> Barbara Miller et al., Women in Peace and Security through United Nations Security Resolution 1325: Literature Review, Content Analysis of National Action Plans, and Implementation, 2014.

<sup>20</sup> The EU, for example, identified in its second report, challenges in the implementation of the WPS agenda, where the EU can do better, see CoEU, EU indicators, 2014, p. 5.

<sup>21</sup> Cf. e.g., the Swiss report „Frauen Frieden Sicherheit – reloaded – Zivilgesellschaftlicher Alternativbericht zum Nationalen Aktionsplan 1325 aus der Genderperspektive – Impulse für Akteurinnen in Politik, Verwaltung und Zivilgesellschaft (Working Group “1325 - reloaded”), 2016. The Working Group “Women Peace Security – reloaded” is a dialogue platform and a think tank gathering Swiss NGOs working in the field of Women, Peace and Security. The group critically reviews the gender-specific impacts of peacebuilding policy, gender mainstreaming initiatives as well as gender-specific policies and tools implemented within the framework of 1325. It also examines the relevance of an intersectorial methodology beyond the boundaries between peacebuilding, human rights, humanitarian aid and development cooperation from a gender perspective. The Working Group also coordinated the civil society report of the Swiss NAP with recommendations for civil society, NGOs, parliamentarians and the Swiss administration, available under <http://koff.swisspeace.ch/what-we-offer/working-group-on-women-peace-security/>



<sup>44</sup> On existing and increasing harmful gender stereotypes among members of the Federal Armed Forces, see the study: Gehard Kümmel, *Truppenbild ohne Dame?*, Potsdam 2014.

<sup>45</sup> For details, see European Parliament, Directorate-General for Internal Policies, 'Reception of female refugees and asylum seekers in the EU – Case Study Germany, 2016 (hereafter EP Case Study).

<sup>46</sup> For details, see EP-Case Study, p. 27.

<sup>47</sup> Cf. GR No. 30, paras 53, 57 (e). See also UNICEF, Ministry of the Family (Bundesministerium für Familie, Senioren, Frauen und Jugend) et al, *Mindeststandards zum Schutz von Kindern, Jugendlichen und Frauen in Flüchtlingsunterkünften*, July 27, 2016, available under <http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung5/Pdf-Anlagen/schutzkonzept-fluechtlinge,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

<sup>48</sup> Cf. also UN Women, *Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council resolutions on Women, Peace and Security*, 2015.

<sup>49</sup> Cf. GR No. 30, para 41.

<sup>50</sup> Office of the Prosecutor at the International Criminal Court, *Policy Paper on Sexual and Gender-Based Crimes*, 2014; United Kingdom, *International Protocol on the documentation and investigation of sexual violence in conflict*, 2014.

<sup>51</sup> Including via the ratification of the Arms Trade Treaty, which in its article 7 (4) clarifies that States, prior to authorization of the export of arms under its jurisdiction shall, in an objective and non-discriminatory manner, take into account the risk of the conventional arms being used to commit or facilitate inter alia serious acts of gender-based violence or serious acts of violence against women. See BGBl, 2013 II, p. 1427.