



**BROKEN
CHALK**

Submission to the United Nations OFFICE OF THE HIGH
COMMISSIONER FOR HUMAN RIGHTS

CALL FOR INPUT | OFFICE OF THE HIGH COMMISSIONER FOR HUMAN
RIGHTS

The impact of arms transfers on human rights.

Submitting Organization: BROKEN CHALK

December 2023

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Broken Chalk is an Amsterdam-based non-governmental organisation (NGO) committed to addressing human rights violations in the education sector. It was established in October 2020. A multinational team of dedicated human rights advocates collaborates extensively on researching violations in every corner of the world.

The organisation's primary activities include removing obstacles to education, promoting peace and tranquillity in society through intercultural tolerance, preventing radicalism and polarisation, and eliminating educational opportunity gaps across different demographics.

Broken Chalk works hard in advocacy and lobbying on behalf of these educational victims, engaging with international organisations to prompt action. Additionally, the volunteers and interns working remotely worldwide at Broken Chalk prepare comprehensive reports for international organisations, stakeholders, and governments, highlighting human rights violations in education. These reports aim to draw attention to the often-overlooked aspects of human rights violations, providing stakeholders with a complete understanding and calling for the international community to act in cases where conflict halts access to education and endangers civilians' lives. This approach ensures that awareness is raised and necessary actions are taken to address these violations. Broken Chalk is genuinely international, achieving a local and global perspective in its work.

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Introduction

For the comprehensive evaluation of the situation on practices of states regarding access to information on arms transfer, "Broken Chalk" has laid down seven points of focus on the questions presented for this call that focus on concrete examples carried out by countries of the mentioned regions. These points are as follows:

I. The impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfer on the enjoyment of Human Rights: Related to the implications of arms transfer and specific examples of its effects on Africa and Latin America.

II. Access to information: A key to preventing violations of human rights derived from licit or illicit arms transfer in the Global South

III. Laws on access to information, country example: Regulations in Guatemala related to arms transfer, restriction and availability of information

IV. State Proactive Disclosure Practices and the situation in which the tracing is available: Examples of a state with proactive disclosure of information related to arms regulation and analysis of its limitations.

V. Obligations related to access to information or transparency apply to private business entities, wholly or partially State-owned enterprises, including those carrying out arms transfers: The establishment of good practices by private entities and obligations related to arms transfer to minimise harmful effects on human rights.

VI. Right of access to information on arms transfers of parties to legal proceedings possible exceptions related to the admission of evidence: Examples of countries with limits on access to information regarding evidential purposes.

VII. Transboundary nature of arms transfers affects or can affect the enjoyment of the right of access to information in preventing, mitigating and responding to the negative impact on human rights relating to such transfers: The limits and scope of protection of access to information about arms transfer regarding the applicability of different regulations, and protection laws.

I. The impact of arms transfers, including the diversion of arms and unregulated or illicit arms transfers, on the enjoyment of Human Rights

In the complex landscape of international relations, the transfer of arms plays a pivotal role in shaping the socio-political dynamics of nations. Without a doubt, incidents affect global South countries and become particularly evident in African and Latin American countries, in which arms and an extensive history of conflicts and corruption have shaped the rates of violence.

The transfer of arms, particularly in African countries, has been a source of significant concern due to its profound impact on human rights. One poignant example is found in the Democratic Republic of Congo (DRC), a nation plagued by prolonged conflict, insurgent groups, and external involvement. The exchange of arms for mineral resources in the DRC has led to egregious human rights violations, including murders, sexual violence, and the instrumental use of children in armed conflicts. The DRC acquires ammunition from various countries, including China, Egypt, France, the United States, and South Africa, often without adequate scrutiny of potential risks associated with human rights abuses. Notably, the armed forces in the DRC have been implicated in selling ammunition to rebel groups, contributing to the destabilisation of the Government and perpetuating violence.ⁱ

In addition to the immediate consequences, arms transfers to government forces in the DRC have sustained further human rights violations, such as mass rape. The lack of effective regulation and oversight has allowed for instances where government forces have committed atrocities against civilians, as exemplified by a brutal attack on the village of Bushani in North Kivu province.ⁱⁱ Such incidents underscore the dire consequences of unregulated arms transfers, highlighting the urgent need for international attention and intervention.

Shifting the focus to Latin American countries, the region grapples with its own set of challenges related to firearm transfers, especially concerning low-calibre firearms. Despite efforts to regulate firearm transfers and implement strict criteria, issues persist, particularly regarding the accessibility of firearms to minors. The lack of enforceability of existing laws and transparent policies regulating firearm movement contribute to a concerning trend of firearms ending up in the hands of underage individuals, posing threats within educational institutions. This is evident in several incidents across countries such as Guatemala, Honduras, and Panama, where firearms have been discovered in schools, leading to potential dangers and challenges in tracing their origin.

While Latin American states have adopted varying measures to regulate firearm possession, the effectiveness of these policies remains uncertain. The complex relationship between firearms and public safety in Latin America, coupled with the prevalence of firearms in civilian hands, further complicates efforts to mitigate violence. As the region grapples with a public safety crisis, the evaluation of firearm regulations and their impact on reducing violence

becomes a pressing concern, necessitating a nuanced approach to address the multifaceted challenges posed by arms transfers.

A. The situation in African countries related to arms transfer and its effects on children and women's human rights

One example of how armed transfer may affect human rights occurs in African countries, some with a long history of conflict. In the case of the Democratic Republic of Congo, a country embroiled in volatile conflict over the years, which has led to the rise of insurgent groups and different countries profiting from the conflict through the exchange of arms for mineral resources, Human rights violations as a result of illicit arms deals and transfers have been evident leading to murders, sexual violence, instrumental use of children, and looting, illegal exploitation of natural resources, ecosystems deterioration and human development infringement.

Arms transfer to volatile areas in the pursuit of defending the State also has downsides, as seen in Congo, where the armed forces in 2008 were invaded and looted by the forces, and days later, the National Congress for the Defense of the People attacked the town of Kiwanja leaving 150 civilians dead. In addition, in May 2023, several insurgent groups defected, leaving behind weapons and ammunition. The Senior DRC Armed Forces entrusted a colonel with the weapon and ammunition, who then disappeared to join a new group with the ammunition and weapons, resulting in mass rape, innocent killings and insecurity.

Arms transfers to Government forces also sustain more human rights violations, including mass rape and other acts of sexual violence. Between December 31 2010, and January 1 2011, FARDC soldiers attacked the village of Bushani in North Kivu province. The soldiers raped nearly 50 women – aged 16 to 65 – firing gunshots in the air and threatening them with death if they resisted. Some ammunition cartridges subsequently found at the scene were manufactured in China.

B. The situation in Latin American countries and how violence attempts with the right to education.

The Latin American context is a clear example of efforts to regulate firearm transfers, especially concerning low-calibre firearms that are often more accessible to the population. Regulations in these countries include standard criteria, such as allowing registration only for individuals of legal age. However, this criterion poses challenges in tracking or controlling firearms in the possession of minors, potentially exacerbating illicit trade among underage individuals. While issues of firearm regulation in the United States contribute to tragedies in schools, similar problems occur in Latin American countries despite rigorous controls on arms purchase, sale, and transport. Two main factors contribute to this: the lack of enforceability of the law and the absence of transparent policies regulating the movement of firearms, which can quickly end up in the hands of minors.ⁱⁱⁱ

Over the past two decades, the problem of firearms in schools has been persistent and pressing in various countries in the region. Instances revealing this phenomenon include schools being used to store firearms, discoveries and confiscations of weapons within school premises, reports from students and teachers claiming to have seen firearms on educational premises, students caught carrying weapons and ammunition, accidental or intentional firearm discharges within schools, armed students threatening peers and teachers, and even suicides and shootings within schools resulting in injuries and deaths. ^{iv}

Examples of Incidents: Guatemala, Honduras, and Panama^v

- Fraijanes (Guatemala), March 13, 2017: A fifth-year high school student at Solalto College in Fraijanes discharged a firearm in the classroom without injuring any classmates. The student had concealed the pistol in his backpack, and the incident occurred around 10:30 a.m., resulting in the shot hitting the floor.
- Cortés Department (Honduras), July 14, 2019: Police discovered large-calibre weapons, ammunition, and military attire hidden in the ceiling of a school bathroom at Mirtha Torres de Mejía school in the Planeta 8 sector.
- Veraguas (Panama), December 11, 2017: A student pulled out a firearm within the educational institution and threatened another student to steal their cell phone.

These examples illustrate how firearms reach students and pose dangers in schools. However, neither legislation nor the public information platforms in these countries can clearly explain how, when, and where these firearms came into the possession of students.

II. Access to information: A key to preventing human rights violations derived from licit or illicit arms transfer in the Global South.

In navigating the intricate landscape of firearm regulation in Latin America, it becomes evident that a common challenge prevails despite the region's diverse approaches. Latin American states, characterised by significant regulatory heterogeneity, generally lean towards adopting restrictive measures marked by stringent licensing and registration systems. However, the effectiveness of these policies remains shrouded in uncertainties due to limited compliance and an absence of empirical evidence. The critical question of whether these regulations genuinely prevent injuries and deaths lingers, casting a shadow over the broader public policy discourse.^{vi}

Against this backdrop, the public safety crisis gripping Latin America underscores the profound impact of firearms on regional violence. Latin American states are contemplating stricter access to firearms as a rational measure to mitigate the escalating levels of violence. In this intricate web of challenges and potential solutions, the pivotal role of access to information emerges as a cornerstone, empowering authorities, policymakers, and the public with the indispensable knowledge needed to navigate the complexities of firearm-related violence and craft effective governance and law enforcement strategies. Access to information is critically important in preventing violence related to arms for several key reasons:^{vii}

Transparency and Accountability:

Access to information promotes transparency within the government and law enforcement agencies, holding them accountable for their actions and decisions related to arm transferring. This transparency helps ensure these entities operate within the law and ethical standards.

Understanding the Root Causes:

Comprehensive information about the movement, sale, and transfer of firearms allows policymakers and law enforcement to understand the root causes of firearm-related violence. This understanding is crucial for formulating effective strategies to address and prevent such violence.

Identifying Trends and Patterns:

Access to information enables the identification of trends and patterns related to firearms, such as the flow of weapons, areas with higher rates of violence, and specific demographics involved. This knowledge is vital for targeted interventions and resource allocation. Information on legal arms transactions helps authorities prevent the diversion of legally acquired firearms into illicit channels. Governments can minimise the risk of firearms falling into the wrong hands by monitoring legal transfers.

Effective Policy Formulation:

Policymakers rely on accurate and up-to-date information to formulate effective policies aimed at reducing the prevalence of firearms in society. Understanding the sources of firearms, the motivations behind their use, and the dynamics of illegal arms trade informs evidence-based policy decisions.

Public Awareness and Advocacy:

Accessible information empowers the public to be aware of the firearm situation in their community. This awareness can drive advocacy efforts for stricter regulations, improved enforcement, and community-based programs to address the root causes of violence.

International Cooperation:

In cases where arms trafficking involves cross-border activities, access to information facilitates international cooperation. Sharing data on arms transfers and collaborating with other nations helps combat transnational organised crime and illegal arms trade effectively.

III. Laws on access to information, country example.

Access to information on arms transfer in Guatemala: A Proactive yet Deficient Approach

Guatemala stands as an example of a country with strong regulations governing firearms, but the proactive disclosure of information regarding arms transfers remains deficient. The context surrounding access to information on firearms sheds light on both the positive efforts made and the shortcomings that persist within the system.

A. Applicable Laws on Access to Information in Guatemala

In Guatemala, the Constitution (Article 38) recognises the right of Guatemalan citizens to possess and carry firearms.^{viii} The Congress of the Republic is granted the authority to establish conditions to exercise this rightfully. Through the Legislative Decree Number 15-2009, known as the "Law on Arms and Ammunition," the General Directorate of Arms and Ammunition Control (Digecam) functions were defined, placing it under the Ministry of National Defense. Digecam is empowered to regulate controls over firearms and ammunition within the national territory.^{ix}

In compliance with constitutional mandates, Guatemala is a signatory to the United Nations Convention against Transnational Organized Crime and the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA).^x Legislative measures, such as the aforementioned law, have been enacted to eliminate the illicit trafficking of firearms and ammunition.

B. Applicability of Laws to Arms Transfers

Digecam is mandated to provide access to information under Article 7, with the Ministry of Defense overseeing its registration of arms. Article 16 ensures the right of individuals to access public information held by obligated entities, with various methods available for information requests, including through the Digecam website or direct solicitation.

The obligation extends to private entities involved in arms transfers, and individuals have the right to access information on such transfers, subject to the provisions of the law.

C. Restrictions on Access to Information on Arms Transfers

The Government is not proactive in disclosing information on arms transfers. Information is typically provided upon request, and the transfer processes are not inherently public. Specific information may require preliminary data, and access is granted upon individual requests. The information available includes details about authorised suppliers for arms sales, their authorisations, and information about security companies.

No statistical data is publicly available regarding the number of requests for information on arms transfers, granted or rejected.

IV. State proactive disclosure practices and situations where tracing is available.

In contrast to some Central American countries, Guatemalan governments fulfil duties related to publicity and access to public information. However, this is limited to providing data on authorised companies for sales and information on private security firms. Statistical data related to firearm registration, purchases, transfers, and seizures of illegal arms is not proactively disclosed. Such information can be obtained through individual requests governed by laws on public access to information, with potential delays and the risk of negative responses.

An instance of limited government proactivity is evident on the DIGECAM portal in Guatemala.^{xi} The portal provides specific information on authorised enterprises for arms transfers and private security companies. Annual updates include resolutions for cancelled personalities, reasons, and relevant data. In 2022, two arms sales businesses were cancelled, one due to the owner's death and another due to a discrepancy in location. Approval for another arms sales company was granted for meeting legal requirements. Original documents are made publicly accessible on their website.^{xii}

Despite the active collaboration and the wealth of information provided by the justice sector, there are limitations in obtaining comprehensive insights into the transfer of firearms. The available data, while valuable for criminal investigations, does not necessarily provide a nuanced understanding of the larger patterns and dynamics surrounding the movement of weapons. The focus on individual cases may not capture the broader context of arms trafficking, legal transfers, or other elements critical to formulating effective policies.

V. Obligations related to access to information or transparency apply to private business entities, wholly or partially State-owned enterprises, including those carrying out arms transfers.

States Parties are responsible for implementing the Arms Trade Treaty (ATT). Yet, different types of industry and private sector entities play an essential role in ensuring the treaty's effectiveness and universality.^{xiii} Arms manufacturers and export and import companies, as well as brokers, freight forwarders, logistics and transportation providers, banks and financial service providers, and insurance providers, are obliged to comply with national laws, regulations, processes, and procedures that States put in place to regulate the export, import, transit, trans-shipment, and brokering of conventional arms to fulfil their ATT obligations. Therefore, the participation of industry representatives in ATT processes is essential for the treaty's success.^{xiv}

It is important to note that, even if a State is party neither to the ATT nor a regional arm transfer instrument, its arms transfers do not occur in a legal vacuum. At a minimum, they are framed by the State's obligation in an armed conflict to respect and ensure respect for International Humanitarian Law "in all circumstances", including all state parties, including states that have not signed the ATT, privately owned businesses and partially State-owned enterprises.^{xv}

In the case of private business entities, long-term contracts, on-time milestone payments, and cost reimbursement in case of early contract termination are just some of the benefits offered by this market. Despite the sector's more complex regulatory environment, from the private equity perspective, the attractiveness of the arms sector lies in its predictability and ties with governments.^{xvi}

Share information with other parties.

According to the ATT, member states must share information with their arms-trading countries.^{xvii} However, it is essential to note that even though privately-owned companies are subject to laws under the State, privately owned businesses are not subject to publishing their financial reports. Hence, company sales could be hidden from the Government and the public. This hinders a state and undermines the ATT, as controlling and regulating convention arms becomes challenging to monitor.

Prohibit certain arms transfers and not authorise certain arms exports.

A member state, under the Arms Trade Treaty, is obliged to acquire information under its jurisdiction for states, including wholly/ partially state-owned enterprises or Private Business entities involved in arms transfers, to monitor conventional arms to assess the risk of diversion to prohibit certain arms transfers and not authorise certain arms exports.

States have formulated several documents to guide the prohibition of certain arms transfers and not authorise certain arms exports through risk assessments. For example, the Wassenaar agreement outlines guidelines relating to decision-making of arms exports and licensing, including avoiding transfers that might contribute to a destabilising accumulation of conventional arms.

Regulate arms imports

Members of the Arms Trade Treaty must regulate Arms imports by providing transparency and information to the exporting arms trading states. These measures include End-user documentation whose importance is to ensure that arms are legally transferred and are not diverted to illicit human rights violations. Without it, states are not able to identify its authenticity. A few guidelines have been set by member states, such as SALW transfer controls; however, it does not apply to all arms with the UNODA, stating that the delivery verification is low and end-use monitoring is largely neglected, hence the need for states to formulate a guideline, to establish monitoring and increase transparency in arms transfers.

Regulate arms transit and trans-shipment

The ATT obligates each member state to control arms transfers and manage end-to-end arms users in transit and trans-shipment. Therefore, the State is obliged to monitor arms in transit and trans-shipment (change of the mode of transportation) of all arms by actors involved, including private business entities in arms transfers. Controls may be enforced in various ways, including through licensing or customs controls, particularly about the overflight of arms controls relating to the passage of dangerous goods. Member states have begun formulating guidelines to regulate arms transit; however, much focus needs to be brought to the supply chain actors involved in the arms shipment. This includes the shippers and traders.

Through this, states will mitigate arms transfers to ensure the arms are not intended for Human rights violations and are in accordance with the International Humanitarian Law.

Regulate arms brokering

The Arms Trade Treaty (ATT) underlines that member states should take necessary measures by their national laws to regulate brokering under its jurisdiction, including wholly/partially state-owned enterprises or private business entities. These regulations include the State obliging brokers to register or obtain a written authorisation from the State before engaging in brokering.

Good practice documents and guidelines have been formulated on regulating arms brokering, such as arm documents on establishing and maintaining an arm transfer control system indicating brokering controls. Additionally, regional corporations have engaged in developing and implementing Arms brokering. For example, Arms brokering has taken centre stage in

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Regional seminars funded by the European Union and the United States, focusing on transparency in brokering arms.

VI. Right of access to information on arms transfers of parties to legal proceedings, possible exceptions related to the admission of evidence, including exceptions related to trade secrets or national security. If the press and the public have been excluded from all or part of such proceedings, please provide information on the extent to which this has occurred.

Different countries have different laws and governance. Therefore, access to information on arms transfers of parties to legal proceedings may vary depending on the jurisdiction and specific legal frameworks in place.^{xviii} It is important to note that the specifics regarding the right of access to information, exceptions, and exclusions can vary significantly depending on the legal system and jurisdiction under consideration.

First, access to information in preventing, mitigating and responding to the negative human rights impact the Right of Access to Information. Many legal systems have a recognised principle of public access to information related to legal proceedings, including arms transfers. This allows the press and the public to access relevant information unless there are specific justifiable reasons for imposing limitations.

Exceptions to Access: There are typically exceptions to the right to access information, particularly regarding the admission of evidence. Two standard exceptions related to arms transfers are Trade Secrets and National Security.

Information considered a trade secret may be subject to restrictions, including proprietary information owned by companies involved in arms transfers. However, the scope and applicability of this exception will depend on various factors, such as the jurisdiction and the specific legal provisions in place.^{xix} While for National Security, information deemed to be a threat to national security may also be subject to limitations. Disclosing Sensitive information related to arms transfers could potentially harm National security interests. However, restrictions to access must generally be proportionate to the legitimate aim pursued.

Exclusion of Press and Public: In some cases, the press and the public may be excluded from all or part of the legal proceedings, including those related to arms transfers.^{xx} The extent to which this occurs can vary depending on the specific circumstances, such as the sensitivity of the information or the potential impact on National security. However, such exclusions are typically scrutinised to ensure fairness and transparency.

South Africa depicts a clear example of a state that excluded media from engaging in secret trade. The Country was embattled in an arms transfer four months after independence, in September 1994.^{xxi} In a report by the Human Rights Watch, The Government had sold arms to

Yemen- A war-stricken country with gross humanitarian violations. The country, through its arms company, Armscor, secretly sold arms to many other countries, such as Rwanda and Yugoslavia, as a result of the UN arms embargo imposed in 1977.^{xxii}

VII. Transboundary nature of arms transfers affects or can affect the enjoyment of the right of access to information in preventing, mitigating and responding to the adverse human rights relating to such transfers.

As stated above, the same actors involved in the illegal weapons trade are also involved in the legal trade in weapons; therefore, the right to access to information in mitigating and responding to the violations of human rights as a result of arms transfers becomes difficult because of the interest and power of interested parties.

The transboundary nature of arms transfers can have implications for the enjoyment of the right to access information relating to such transfers. Here are a few ways the transboundary nature can affect access to information.

Jurisdictional Challenges

Arms transfers often involve multiple jurisdictions, including the exporting country, the importing country, and potentially transit countries. Each jurisdiction may have its laws and regulations regarding access to information. This can create challenges in determining which jurisdiction's laws apply and which information is subject to disclosure.^{xxiii}

Different Legal Standards

Different countries may have varying standards regarding the right of access to information. Some countries may have robust transparency laws, while others may have more restrictive practices.^{xxiv} In cases where arms transfers overlook multiple jurisdictions, inconsistencies in legal standards can complicate access to information on a transboundary level.

National Security Concerns

Transboundary arms transfers may involve sensitive information related to national security. Governments often cite national security as a justification for restricting access to certain information. The international nature of arms transfers can amplify concerns about the potential impact on national security, making it more challenging to access such information.

Lack of International Standards

There is no universal international legal framework explicitly addressing access to information on arms transfers. While there are international commitments and guidelines relating to arms transfers (such as the Arms Trade Treaty), they primarily focus on regulating the transfers rather than information access.^{xxv} The absence of comprehensive international standards can create inconsistencies and challenges in accessing information across borders.

A recommendation to address these challenges requires international cooperation and coordination and encouraging transparency and sharing of relevant information among countries involved in arms transfers. This will help mitigate the impact of the transboundary nature and promote greater access to information. Efforts to develop common international standards regarding the right of access to information on arms transfers could also contribute to a more consistent approach globally, where states would have a guiding lead on how to approach the transboundary nature of arms transfers.



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