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**The Persisting Impact of Germany's Arms Transfers on Women’s Rights**



**Submission to the CEDAW 77 Pre-Sessional Working Group (02 Mar 2020 - 06 Mar 2020) – Germany - List of issues prior to reporting**

**Berlin, February 2020**

# The submitting organizations

The European Center for Constitutional and Human Rights (ECCHR) is an independent non-profit human rights organisation, registered in Berlin (Germany) since 2007. By engaging in strategic litigation, ECCHR uses legal means to protect groups and individuals against systematic human rights violations, and hold state and non-state actors accountable for these egregious acts. The Women’s International League for Peace and Freedom (WILPF) is an international non-governmental organization with ECOSOC status since 1948. We use existing international legal and political frameworks to achieve fundamental change in the way states conceptualize and address issues of gender, militarism, peace and security.

This submission follows up on recommendations on arms transfers and Women, Peace and Security made by the CEDAW Committee in its review of Germany in 2017.

# Arms Exports by Germany and its impacts on women

ECCHR together with WILPF submitted a Joint Shadow Report for the CEDAW Committee's 66th session during which Germany was reviewed (2017) and to the Committee on Economic, Social and Cultural Rights for its review of Germany in 2018.[[1]](#footnote-1) Both these reports are provided as annexes to this submission. They describe Germany's arms exports to Saudi-Arabia for the period of 2015-2016 and the impacts the use of such arms had on the civilian population in Yemen, including on women.[[2]](#footnote-2) Since March 2015, Saudi Arabia has been engaged in the war in Yemen together with a group of supporting states such as Egypt or the United Arab Emirates (UAE) (the Saudi-led coalition).

German arms exports to members of the Saudi-led coalition fighting in Yemen have continued through 2017 up to today. Exports from Germany had a strong focus on states in the Middle East, with Egypt, Saudi Arabia and the UAE among the top eight importers of German weapons in 2017[[3]](#footnote-3),Saudi Arabia again in fourth place in 2018[[4]](#footnote-4) and Egypt and the UAE respectively ranking 2nd and 6th place in the first half of 2019.[[5]](#footnote-5)The following two tables provide an overview of the monetary value of German arms exports to Saudi Arabia and the UAE.

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| --- |
| Value of arms export licenses granted in Germany for exports to Saudi Arabia in 2015-2019[[6]](#footnote-6) |
| 2015 | 2016 | 2017 | 2018 | 2019[[7]](#footnote-7) |
| 270.040.534[[8]](#footnote-8) | 529.705.969 | 254.457.823 | 416.423.547 | 831.003 |

|  |
| --- |
| Value of arms export licenses granted in Germany for exports to the UAE in 2015-2019 |
| 2015 | 2016 | 2017 | 2018 | 2019 |
| 107.281.038 | 169.475.128 | 213.866.923 | 45.267.104 | 206.109.936 |

Over the course of the past five years, exports of weapons of high relevance to the actual warfare in Yemen were thus licensed and subsequently carried out to those states. Such war materiel includes the Eurofighter Typhoon and components for the Tornado fighter jet - important elements of the Saudi-led Coalition’s air force that carries out airstrikes in Yemen - together with a continuous supply of spare parts for their maintenance, as well as war vessels, refuelling planes, missiles and bombs.Investigative journalists have documented clear evidence of the use of such materiel in the war in Yemen such as the Tornado and Eurofighter fighter jets as well as further weaponry.[[9]](#footnote-9)

Equipped with, *inter alia*, German arms, members of the Saudi led coalition have committed widespread violations of international humanitarian law, including alleged war crimes, also in the years 2017-2019, according to reports by independent sources. On 26 January 2018, the UN Security Council Panel of Experts found that “*throughout 2017, there have been widespread violations of international humanitarian law and international human rights by all parties to the conflict*”.[[10]](#footnote-10) Airstrikes by the Coalition and Houthi explosive ordnance used throughout much of 2017 “*continued to affect civilians and the civilian infrastructure disproportionally*”, and the Panel had seen no evidence “*to suggest that appropriate measures were taken by any side to mitigate the devastating impact of these attacks on the civilian population*”.[[11]](#footnote-11) The Panel also noted that “*after 33 months of air strikes the number of credible targets remaining is considered to be very low*”.[[12]](#footnote-12)

Further neutral observers have reported incidents of indiscriminate attacks on civilians including women and children. On 12 June 2018, MSF reported that a Coalition airstrike hit an MSF cholera treatment centre the previous day, despite the fact that coordinates of the centre had been provided to the Coalition. MSF maintained “*that the bombing is an unacceptable attack on a medical facility”* and *“strongly condemn*[ed] *this attack, which is part of a worrying pattern of strikes on essential medical services that leave an already very fragile population with even less access to essential, lifesaving medical care and services*.” [[13]](#footnote-13) On 26 March 2019, Save the Children reported that one of its hospitals in Yemen had been attacked killing seven civilians.[[14]](#footnote-14) In its latest report for 2019, the Panel of Experts reported airstrikes carried out by the Saudi-led air forces that contravene international humanitarian law in particular the principle of distinction. The victims of these airstrikes include numerous children and women not taking part in the hostilities.[[15]](#footnote-15)

Against this background, specifically the exporting of arms to members of the Saudi-led coalition has been condemned by several European and International Institutions. On 4 October 2018, European Parliament Resolution (2018/2853(RSP)) on Yemen considered that indiscriminate airstrikes by the Coalition may amount to war crimes, and urged EU states to refrain from arms sales to the Coalition.[[16]](#footnote-16) Furthermore, in its 2019 report the UN Group of Eminent Experts on Yemen established by the Human Rights Council recommended third states “*Considering the prevailing risk that arms provided to parties to the conflict in Yemen may be used to commit or facilitate serious violations of international humanitarian law and international human rights law, States should prohibit the authorization of transfers of, and refrain from providing, arms that could be used in the conflict to such parties*. ”[[17]](#footnote-17)

While the indiscriminate bombing of towns and cities may seem gender-blind, there are serious gendered impacts of the use of explosive weapons in populated areas that are largely unaccounted for when those selling or using weapons are assessing risks and damage, or when others develop policies to rebuild post-violence.[[18]](#footnote-18) At this point we recall the specific impacts this situation has on women as summarized by the WILPF & ECCHR shadow report in 2017:

“*the use of explosive weapons and indiscriminate shelling in Yemen on healthcare facilities, which have been destroyed or damaged as a result have a disproportionate impact on women’s health. Without access to reproductive health services, women face an increased risk of life-threatening complications, as well as loss of access to family planning, exposing them to unwanted pregnancies in perilous conditions.”*

It further reads:

“*in such context, women and girls often suffer gravely and disproportionately due to forced displacement, sexual violence, trafficking, lack of access to health care (including sexual and reproductive health) and to victim and survivor assistance. Hospitals, schools, markets, and houses have been targeted by explosive weapons. The large destructive radius of such weapons means that even the striking of military targets within a populated area has caused the destruction or damaging of civilian infrastructure, such as health and education facilities and houses.”*[[19]](#footnote-19)

# Past recommendations by the CEDAW Committee on Germany’s arms exports

In its concluding observations on Germany in 2017 the CEDAW committee highlighted the following areas of concern:

*„The inadequate legal framework to hold companies and corporations registered or domiciled in the State party accountable for violations of women’s human rights abroad, and the lack of a gender perspective in the national action plan on business and human rights;”*

It therefore recommended that the State party:

*“Adopt specific measures, including a mechanism for redress to facilitate access to justice on behalf of women who are victims of human rights violations, and ensure that judicial and administrative mechanisms in place take a gender perspective into account;“*

Dealing with the topic of women and peace and security and arms exports the committee was:

*„concerned about the use of arms exported by the State party, including in conflict zones, and the inadequate monitoring by arms-producing corporations of the use of their arms in the context of violence against women, in line with its obligations under the Arms Trade Treaty.“*

It therefore recommended

*“that legislation regulating arms export control be harmonized in line with article 7 (4) of the Arms Trade Treaty and the Council Common Position 2008/944/CFSP of the European Union. “*

In addition, in the context of its third UPR in 2017 Germany received and accepted three recommendations related to the human rights impacts of arms transfers, including a recommendation from Albania to: “155.14 Harmonize arms export control legislation in line with provisions of the Arms Trade Treaty and the Council of the European Union Common Position, and ensure that, before export licenses are granted, comprehensive and transparent assessments are conducted of the impact that the misuse of small arms and light weapons would have on women, including those living in conflict zones” and from Peru to “155.16 Strengthen the assessment of the human rights impact of the arms export licensing system to prevent them from being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.” [[20]](#footnote-20)

# German regulation of arms exports and criminal accusations

The recommendations issued by the CEDAW Committee have, to the knowledge of undersigned organizations, not had any immediate impact on Germany’s legislative basis for arms export control nor its administrative approach to granting licenses. Solely, the government’s annual report on arms exports in the year 2017 explicitly mentioned an update of the EU User’s Guide accompanying EU Common Position 2008/944/CFSP reinforcing that the risk of gender based violence is a necessary element of the risk assessment under criterion 2 of Art. 2 of said Common Position.[[21]](#footnote-21) Yet, this update already took place before CEDAW made its recommendation and has apparently not led to any meaningful change minimizing the number of exports with risk for gender based violence or serious violence against women. In addition, undersigned organizations were invited by the Ministry of Foreign Affairs to an informal discussion of the Committee’s recommendation that resulted in a set of guidelines drafted by undersigned organizations for conducting an arms export risk assessment of gender-based violence.[[22]](#footnote-22) These guidelines were also submitted to the Ministry of Foreign Affairs. Neither WILPF nor ECCHR were informed subsequently to what extent these guidelines are now in use in the relevant government institutions.

In January 2018, the German ruling parties CDU/ CSU and SPD, in their Coalition agreement for a new German government, agreed to try to call a halt to approvals of arms exports to any country directly participating in the war in Yemen.[[23]](#footnote-23)However, the Federal government did not fully implement this approach.Only on 19 November 2018, in the aftermath of the murder of journalist Jamal Khashoggi, unrelated to the impacts of the war in Yemen, did the German government publicly renounce granting any further licenses for exports to Saudi Arabia and committed itself to using its leverage to influence already existing license holders not to deliver products to Saudi Arabia.[[24]](#footnote-24)The German government has extended this position four times since then, most recently on 17 September 2019 for a period of another six months until 31 March 2020.[[25]](#footnote-25)However, the decision taken states that deliveries based on joint European production programmes and related collective licenses are not suspended until 31 December 2019, even if the final destination is Saudi Arabia or the UAE. The government is only required to carry out consultations with its European partners to avoid the use of joint end-products in the war in Yemen and the industry is obliged to contractually ensure that its business partners do not export the end-products to Saudi Arabia or the UAE.[[26]](#footnote-26)

Against this background a coalition of one Yemeni and several European NGOs have submitted a communication to the Office of the Prosecutor of the International Criminal Court.[[27]](#footnote-27) The 350 page communication provides details on 26 airstrikes conducted by the Saudi led coalition which may amount to war crimes. The organizations called upon the ICC to investigate the legal responsibility of corporate and political actors from several European companies including Germany. Two companies from Germany are among those that contribute to the arms exports to the Saudi-led coalition, namely Airbus Defence and Space GmbH as well as Rheinmetall AG.

# Suggested questions

ECCHR recommends that the CEDAW Committee requests Germany to provide information on:

* measures it has taken to harmonize its legislation regulating arms export control in line with the previous CEDAW recommendations and with accepted UPR recommendations cited above.
* measures it has taken to create a new and single arms export control law or a similarly effective measure that:
	+ requires licensing authorities to integrate a gender perspective in its decision making process;
	+ requires arms manufacturing and exporting corporations to carry out a human rights due diligence including the risk of gender based violence or serious violence against women;
	+ requires adequate post-sales monitoring by arms manufacturing and exporting corporations producing corporations of the use of their arms in the context of violence against women;
	+ conceptualize arms export control laws to also protect the human rights of those affected by the use of exported weaponry, including victims of gender-based violence or serious violence against women.
* measures it has taken to ensure that the specific risks posed by the arms industry in the facilitation of acts of gender based violence or of other violations of women’s rights are adequately addressed by companies until a single and harmonized arms export control law or a proposed law on mandatory human rights due diligence for business have entered into force.
* measures it has taken to investigate the criminal responsibility of German licensing authorities and arms producing and exporting companies for the exports to members of the Saudi-led coalition fighting in Yemen and how it ensures that these investigations take a gender perspective into account.
1. WILPF & ECCHR, The Impact of Germany’s Arms Transfers on Women, Germany’s Extraterritorial Obligations under CEDAW, Joint Shadow Report, CEDAW Committee, 66th Session, January 2017. Available at: https://www.ecchr.eu/fileadmin/Kommentare\_Konferenzberichte\_Weiteres/CEDAW\_Germany\_Arms\_Transfers\_Jan\_2017.pdf [↑](#footnote-ref-1)
2. *Ibid*, pp. 11-13. [↑](#footnote-ref-2)
3. Report of the German Government on its Policy on Exports of Conventional Military Equipment in 2017, <https://www.sipri.org/databases/national-reports>, pp. 73-74. [↑](#footnote-ref-3)
4. Report of the German Government on its Policy on Exports of Conventional Military Equipment in 2018, <https://www.sipri.org/databases/national-reports>, pp. 72. [↑](#footnote-ref-4)
5. Report of the German Government on its Policy on Exports of Conventional Military Equipment in the first half of 2019 (so far only available in German), p. 23, https://www.bmwi.de/Redaktion/DE/Publikationen/Aussenwirtschaft/ruestungsexport-zwischenbericht-2019.pdf?\_\_blob=publicationFile&v=10 [↑](#footnote-ref-5)
6. All figures in this and the following two tables are taken from the Annual Reports of the German Government on its Policy on Exports of Conventional Military Equipment. See *supra* notes 3-5. [↑](#footnote-ref-6)
7. For the year 2019 official data is only available for the first half of the year. [↑](#footnote-ref-7)
8. All figures are provided in Euro. [↑](#footnote-ref-8)
9. Recherchebündnis deckt deutsche Rüstungsexporte im Jemen auf, Der Stern, 26 February, 2019, https://www.stern.de/politik/deutschland/-germanarms--recherchebuendnis-deckt-deutsche-ruestungsexporte-im-jemen-auf-8597032.html; Hekman Ludo, “#GermanArms Jets over Yemen”, 27 February 2019, video clip, https://www.youtube.com/watch?time\_continue=154&v=An8B62toSqg; On Lighthouse reports, see <https://www.lighthousereports.nl/>.; Nermin Ismail, 6 February 2019, Deutsche Welle, Deutsche Waffen töten im Jemenkrieg, https://www.dw.com/de/deutsche-waffen-t%C3%B6ten-im-jemenkrieg/a-47386710. [↑](#footnote-ref-9)
10. Final report of the Panel of Experts on Yemen, UN Doc.S/2018/594, p. 3. All reports can be found here: https://www.un.org/securitycouncil/sanctions/2140/panel-of-experts/work-and-mandate/reports2018. [↑](#footnote-ref-10)
11. *Ibid*, at 3. [↑](#footnote-ref-11)
12. *Ibid*, at 10. [↑](#footnote-ref-12)
13. MSF, ‘Yemen: Airstrike hits MSF cholera treatment center in Abs’, 12 June 2018, <https://www.doctorswithoutborders.org/what-we-do/news-stories/story/yemen-airstrike-hits-msf-cholera-treatment-center-abs> [↑](#footnote-ref-13)
14. Save the Children, Seven Killed in Bombing of Save the Children-supported Hospital in Yemen, 26 March 2019, https://www.savethechildren.org/us/about-us/media-and-news/2019-press-releases/seven-killed-in-hospital-bombing-yemen [↑](#footnote-ref-14)
15. Final report of the Panel of Experts on Yemen, UN Doc.S/2020/70, pp. 36-41, 175-192. [↑](#footnote-ref-15)
16. European Parliament resolution of 4 October 2018 on the situation in Yemen (2018/2853(RSP)), http://www.europarl.europa.eu/doceo/document/TA-8-2018-0383\_EN.html [↑](#footnote-ref-16)
17. Report of the detailed findings of the Group of Eminent International and Regional Experts on Yemen A/HRC/42/CRP, para 933. [↑](#footnote-ref-17)
18. *Women and Explosive Weapons*, Women’s International League for Peace and Freedom, February 2014; *We Are Still Here: Mosulite Women 500 Days After the Conclusion of the Coalition Military Operation*, Women’s International League for Peace and Freedom, January 2019. [↑](#footnote-ref-18)
19. *Supra* note 1, pp. 12-13. [↑](#footnote-ref-19)
20. Report of the Working Group on the Universal Periodic Review, Germany, 11 July 2018, A/HRC/39/9; Report of the Working Group on the Universal Periodic Review\* Germany Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, 11 September 2018, A/HRC/39/9/Add.1 [↑](#footnote-ref-20)
21. Report of the German Government on its Policy on Exports of Conventional Military Equipment in 2017, <https://www.sipri.org/databases/national-reports>, p. 11; The EU Common Position’s update was concluded in 2019. However a consolidated version is not yet publically available. [↑](#footnote-ref-21)
22. WILFP and ECCHR, 5 September 2017, Guidelines for the conducting of an arms export risk assessment of gender-based violence, https://www.ecchr.eu/fileadmin/Kommentare\_Konferenzberichte\_Weiteres/Guidelines

\_Arms\_Export\_GBV.pdf [↑](#footnote-ref-22)
23. Ein neuer Aufbruch für Europa, Eine neue Dynamik für Deutschland, Ein neuer Zusammenhalt für unser Land , Koalitionsvertrag zwischen CDU, CSU und SPD 19. Legislaturperiode, see p. 149, available at: https://www.cdu.de/system/tdf/media/dokumente/koalitionsvertrag\_2018.pdf?file=1. [↑](#footnote-ref-23)
24. Reply of the German government to a parliamentarian request for information by member of parliament Sevim Dagdelen et al and the fraction DIE LINKE, Bundestagsdrucksache 19/7800, 8 February 2019. [↑](#footnote-ref-24)
25. https://in.reuters.com/article/germany-arms-saudi-ban/german-government-extends-arms-export-moratorium-for-saudi-arabia-idINKBN1W31OX; https://www.zeit.de/politik/deutschland/2019-09/waffenembargo-ruestungsexportstopp-saudi-arabien-verlaengerung  [↑](#footnote-ref-25)
26. https://www.bundesregierung.de/breg-de/aktuelles/pressemitteilungen/verstaendigung-der-bundesregierung-zu-ruhensanordnungen-und-gemeinschaftsprogrammen-1595750. [↑](#footnote-ref-26)
27. Case Report by NGO coalition: “Made in Europe, bombed in Yemen: How the ICC could tackle the responsibility of arms exporters and government officials”, https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CaseReport\_ECCHR\_Mwatana\_Amnesty\_CAAT\_Delas\_Rete.pdf. [↑](#footnote-ref-27)