

SaferAfrica and Saferworld

Protocol for the GLR and HoA

"small arms" are weapons designed for personal use and shall include: light machine guns, sub-automatic guns, including machine pistols, fully automatic rifles and assault rifles, and semi-automatic rifles.

"small arms" shall also include:

"firearms", meaning:

(a) any portable barreled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899; ...

Strengthening small arms controls:

An audit of small arms control legislation in the Great Lakes region
and the Horn of Africa

REGIONAL AND NATIONAL
OVERVIEW



Catherine Flew and **Angus Urquhart**

February 2004

Strengthening small arms controls:

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Use of terms

Where the term ‘small arms’ has been used generally in the text, it has been used to refer to both ‘light weapons’, ‘small arms’ and ‘ammunition’ as set out in the ‘Protocol for the Prevention, Control and Reduction of SALW in the Great Lakes Region and the Horn of Africa.’ (‘Protocol for the GLR and HoA’).

‘Protocol for the GLR and HoA’ – Article 1

“**light weapons**” shall include the following portable weapons designed for use by several persons serving as a crew: heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder-fired rockets, anti-aircraft weapons and launchers, and air defence weapons.

“**small arms**” are weapons designed for personal use and shall include: light machine guns, sub-machine guns, including machine pistols, fully automatic rifles and assault rifles, and semi-automatic rifles.

“**small arms**” shall also include:

– “**firearms**”, meaning:

(a) any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique small arms and their replicas. Antique small arms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique small arms include small arms manufactured after 1899;

(b) any other weapon or destructive device such as an explosive bomb, incendiary bomb, grenade, rocket launcher, missile, missile system or mine’.

– “**ammunition**”, meaning the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a small arm or light weapon, provided that those components are themselves subject to authorisation in the respective State Party.

– and “**other related materials**”, meaning any components, parts or replacement parts of a small arm or light weapon, that are essential to its operation.

However, the reader should be aware that in the sections relating to ‘Definitions’ and ‘Civilian possession and use’, where we talk of the coverage as determined by the definitions set forth in individual national acts, we are referring to the specific, narrow definition of ‘small arms’ and ‘light weapons’ as detailed above.

The reader should further be aware that within individual national acts, and even within the titles of such acts, the terms used – ‘firearms’, ‘small arms’, ‘light weapons’, ‘arms of war’ and so on – may not be consistent with the definitions of those terms as set out in the Protocol for the GLR and HoA.

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Acknowledgements

Saferworld is grateful to the UK Government for funding this project.

In the research and writing of this report valuable assistance was provided by government officials in all of the countries included in the study. The authors also wish to thank Riccardo De-Caris, SaferAfrica for his comments and Dr Natal Ayiga of Makerere University, Uganda, for undertaking the initial research for this project.

Foreword

THE PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS is one of the greatest humanitarian challenges. To address it a united and holistic approach is required from governments and civil society. Such an approach is embodied in the 'Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa' which was signed in March 2000. Since then progress towards implementing the Declaration has been made and while slower than desired a degree of momentum is now building.

The Nairobi Secretariat, the regional co-ordination body for small arms in the Great Lakes region and the Horn of Africa has been significantly enhanced in 2003. Most signatories to the Nairobi Declaration have established national co-ordination agencies, known as National Focal Points, and other significant progress has been made at the national level in Kenya, Tanzania and Uganda towards the establishment and implementation of National Action Plans for Arms Management and Disarmament.

Many studies of trafficking of small arms for crime or to support conflict show a variety of ways in which legal small arms can be diverted for illegal purposes if there are inadequate legislative controls. International co-operation, the establishment of effective tracing systems and the enforcement of arms embargoes are essential to reduce and combat the illicit trafficking and misuse of small arms.

Strengthening and harmonising legislation on these issues and others is one of the key tasks that states in the sub-region have committed to address in the Nairobi Declaration and other international small arms agreements. A 'Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa' has been developed by the Eastern Africa Police Chiefs Co-operation Committee and was signed by Chiefs of Police in Tanzania in December 2003. It is important that this is now effectively implemented. This will necessitate national and regional reviews of legislation in order to ensure that there are effective common standards of control on small arms in operation across the region.

This comprehensive and accessible study by Saferworld and SaferAfrica will significantly aid states as they address the issue of legislative controls. At the national level the detailed country tables will assist national governments in identifying areas of weakness that must be addressed and existing best practice. While at the regional level, the regional overview and comparative analysis will aid governments to regionally harmonise their national legislation and to develop rigorous and effective minimum standards of control.

Some states have already begun to examine where and how their small arms legislation must be amended while for others this challenge still remains to be tackled. For all countries, however, this report will provide a valuable point of reference for fine-tuning proposed amendments or as a starting point from which to embark on a process of review.

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Co-ordinator

Nairobi Secretariat on Small Arms and Light Weapons

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Purpose and context

Introduction

THIS REPORT IS AN ABRIDGED VERSION of a comprehensive study on small arms legislation in the Great Lakes region (GLR) and Horn of Africa (HoA), conducted by Saferworld and SaferAfrica. The report builds on the methodology developed in a similar study conducted on small arms legislation in Southern Africa by Saferworld and SaferAfrica entitled *The Law of the Gun: An Audit of Firearms Control Legislation in the SADC Region*, published in June 2003.

This research project aims to assess the strengths and weaknesses of the small arms control legislation in nine countries of the GLR and HoA. This abridged version presents the narrative analysis for Burundi, Djibouti, Eritrea, Kenya, Rwanda, Seychelles, Sudan, Tanzania and Uganda. To date it has not been possible to complete research in the Democratic Republic of Congo (DRC), Ethiopia and Somalia.

The full version of the report contains a detailed analysis of the primary piece of small arms control legislation in each country against the commitments contained in the key regional and international small arms agreements:

- ‘Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organised Crime’ (‘UN Firearms Protocol’);
- ‘United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects’ (‘UN Programme of Action’);
- ‘Bamako Declaration on an African Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons’ (‘Bamako Declaration’);
- ‘Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa’ (‘Nairobi Declaration’);
- ‘Co-ordinated Agenda for Action on the Problem of the Proliferation of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa’ (‘Co-ordinated Agenda for Action’);
- ‘Implementation Plan of the Co-ordinated Agenda for Action on the Problem of the Proliferation of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa’ (‘Implementation Plan’);
- ‘Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa’ (‘Protocol for the GLR and HoA’).

The full version of the report is intended as a reference document to assist law-makers and others involved in reviewing national small arms legislation. For every country, the existing national small arms law is unpacked and its provisions detailed, by issue, alongside the requirements of the regional and international small arms agreements. This analysis is presented in an individual table for each country, which assesses the level of conformity with the requirements of the regional and international small arms agreements. This abridged version provides an analytical overview of the current state of small arms legislation across the sub-region.

Regional overview of small arms and security situation

Few other sub-regions in the world have been blighted by insecurity and conflict like that in the GLR and HoA. Since the end of colonial rule only Kenya and Tanzania have escaped the ravages of war within their borders, though even Tanzania fought in Uganda to assist with the overthrow of Idi Amin's regime in 1979. Currently, in Burundi, civil war continues despite the signing of a power-sharing agreement between the government and one of the main rebel groups, the Forces for the Defence of Democracy, in October 2003. A peace deal was signed by the government and main rebel groups in the DRC in December 2002 and UN peacekeeping forces have been deployed, but fighting continues in the eastern provinces. In Sudan peace negotiations continue at the time of writing, but there are continued clashes in the west of the country. Internal instability also continues to afflict Uganda, where the government is striving to contain the long-running internal conflict in the north of the country with the Lord's Resistance Army. Eritrea, Ethiopia and Rwanda are emerging from violent conflict and are treading the path towards long-term stability and peace, while the spectre of renewed conflict continues to loom. Smaller scale, yet still destabilising, violent conflict is also occurring in the Kenya-Uganda-Sudan border region where violent cattle raiding and inter-ethnic and inter-clan conflict is claiming lives and stifling development. Widespread violent crime, including banditry in rural areas and car jacking and robberies in the cities, often of an increasingly organised nature, has taken firm root across the sub-region. The high-profile attacks on embassies and tourist sites in Kenya and Tanzania are evidence that the scourge of terrorism has also touched the sub-region.

At the heart of much of this instability and suffering are small arms. While not the direct cause of war and crime their widespread availability fuels and enables conflict, often protracting it, hampering its resolution, undermining attempts to develop peace and speeding the return to violence. The presence of small arms can also engender and feed a culture of violence based on fear and intimidation. Small arms are freely available in much of the sub-region and new or re-circulated supplies continue to flow freely from criminal to criminal and conflict zone to conflict zone. There is consequently an urgent need to effectively control the proliferation of small arms in the region. The states of the GLR and HoA are party to a number of important agreements and have committed themselves to take concerted action. Some of the states in the sub-region have also made significant progress towards implementation. For example, the regional and international agreements call for the establishment of inter-departmental co-ordination agencies to act as national points of contact on small arms, and National Focal Points have accordingly been set up in Burundi, Rwanda, Kenya, Sudan, Tanzania and Uganda. The Nairobi Secretariat has also been established to co-ordinate and oversee implementation of the Nairobi Declaration and National Action Plans on small arms are being developed in Kenya and Uganda, whilst Tanzania is already implementing its National Action Plan. Nonetheless, much more can and must be done.

Importance of strong small arms legislation

If comprehensive legislation is not in place, the effectiveness of other measures, for instance to tighten border controls, raise awareness of the dangers and impact of firearm misuse or improve the capacity of law enforcement agencies, will be undermined. At the same time, strong legislation alone will only have a limited impact should there be a lack of capacity in other areas, such as law enforcement.

Strong and effective legislation is important for a number of reasons. Legislation sets the parameters for the definition of legally owned small arms and illicit small arms. It should provide the framework for controls on the ownership, possession and use of small arms by civilians and the state. These controls should ensure that small arms are handled responsibly and stored securely to prevent their misuse and that legally-owned small arms do not pass into illicit circulation. It should provide controls to assist the police in maintaining accurate records of registered small arms, and contain provisions for the effective marking of small arms, which are both crucial in assisting the police to trace illicit small arms back to their point of origin. Legislation should govern the import, export and transit of arms to help ensure that small arms are not delivered or diverted into unauthorised hands. It should provide controls over the manufacturing of small arms to ensure that manufacturers act responsibly and produce small arms that are correctly marked. It should regulate the trade in small arms, ensuring that arms dealers are strictly controlled and act responsibly. Legislation should also provide the police with the power to inspect, search, seize, confiscate, and where necessary, destroy small arms that are being misused or are in illicit circulation.

The states of the GLR and HoA have recognised the importance of having strong legislative controls over small arms and have signed up to various regional and international small arms agreements which set out requirements for national small arms legislation. The commitments to which they are party include:

Protocol for the GLR and HoA:

‘3, (a), Each state party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its national law the following conduct, when committed intentionally:

- (i) Illicit trafficking in small arms and light weapons.
- (ii) Illicit manufacturing of small arms and light weapons.
- (iii) Illicit possession and misuse of small arms and light weapons.
- (iv) Falsifying or illicitly obliterating, removing or altering the markings on small arms and light weapons as required by this Protocol.’

Bamako Declaration

‘3. We recommend that Member States should:

A, iii, adopt, as soon as possible, where they do not exist, the necessary legislative and other measures to establish as a criminal offence under national law, the illicit manufacturing of, trafficking in, and illegal possession and use of small arms and light weapons, ammunition and other related materials;

B, ii, Encourage the codification and harmonization of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition. Common standards could include, but not be limited to, marking, record-keeping and controls governing imports, exports and the licit trade.’

Nairobi Declaration

‘iv) Encourage a concrete and co-ordinated agenda for action for the subregion to

promote human security and ensure that all states have in place adequate laws, regulations and administrative procedures to exercise effective control over the possession and transfer of small arms and light weapons...’

UN Programme of Action

‘II, 2 To put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients.

II, 3 To adopt and implement, in the States that have not already done so, the necessary legislative or other measures to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction, in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes.’

A number of countries in the Great Lakes region and the Horn of Africa, including Kenya, Rwanda, Tanzania and Uganda, have already begun the process of legislative review. Of these states, Tanzania has progressed furthest, with a new small arms act now drafted and undergoing parliamentary scrutiny. The new act should become law in the near future.

Scope of the study

The scope of this study is limited to the legal controls that are laid out in the primary piece of national legislation on small arms control, usually the firearms or arms and ammunition act. Provisions relating to the control of small arms are also likely to be contained in some other pieces of legislation. For instance, controls relating to the use of small arms by police officers may be contained in a police act or statute. In some cases, where information has been readily available, this study has included some of these other laws. However, this study has focused on the primary act relating to small arms control in each country. The primary reason for this is that those people responsible for small arms control in the governments of the region, whom we contacted for assistance in collecting the relevant legislation, were in most cases able to provide only the primary piece of small arms legislation. This in itself illustrates the importance of undertaking legislative review in order to draw all the national legislation pertaining to small arms together in one Act, of which all relevant actors are aware.

This study has also been limited to the legislation itself and does not touch on the de facto practice of small arms control; how the laws are actually implemented or issues concerning the capacity to enforce legal controls. The existence of legislative controls does not necessarily mean that an effective control system is being enforced. Conversely, the absence of sufficient legal controls does not necessarily preclude the operation of an effective control regime on the ground. Neither of these two scenarios is, however, desirable. Effective small arms legislation and effective controls on the ground should be the objective of all states.

This study focuses on the GLR and HoA; the sub-region from which the signatories to the Nairobi Declaration are drawn. However, in the course of the research for this report it became apparent that it would not be possible to include information on all the countries of the sub-region. Consequently, the DRC and Somalia are not included, primarily because of the difficulties of conducting research that arise from continued internal instability, and in the case of Somalia specifically, the absence of an established government. It was also not possible to gather the necessary information to be able to

include Ethiopia in the study. The Seychelles, though not a part of the GLR and HoA, has been included, however, because of her membership of the Eastern African Police Chiefs Committee (EAPCCO), one of the key co-ordinating bodies for small arms issues in the sub-region. As such the Seychelles has been party to the development of the Protocol for the GLR and HoA.

Aims and objectives

The aim of this research project is to produce a report that will:

- Identify where national legislation conforms or fails to meet the standards of the regional and international small arms agreements, highlight best practice and identify important areas for strengthening legislation nationally and harmonising legislation regionally.

In so doing, the research project will also:

- Identify and analyse the commitments relating to legislative controls governing small arms, ammunition and other related materials contained within the: UN Programme of Action; UN Firearms Protocol; Bamako Declaration; Nairobi Declaration and its Co-ordinated Agenda for Action and Implementation Plan; and Protocol for the GLR and HoA.
- Provide on a country-by-country basis an overview of the existing legislation governing the control of small arms, ammunition and other related materials in each of the states of the GLR and HoA under review.

Methodology

The methodology used here builds on that developed and utilised by Saferworld and SaferAfrica in their recent joint study of small arms legislation in Southern Africa (*The Law of the Gun: An Audit of Firearms Control Legislation in the SADC Region* (June 2003)). Saferworld and SaferAfrica have further developed this methodology to analyse the small arms legislation in the GLR and HoA, conducting investigations and consultations with the National Focal Points. Initial research for this project was conducted by Dr Natal Ayiga of Makerere University, Uganda, on behalf of Saferworld.

Analytical categories

The following broad categories were identified in order to facilitate a uniform approach to the analysis of very different pieces of legislation:

- Definitions
- Controls on civilian possession and use
- Record keeping and marking
- Import, export and transit
- Brokering
- Manufacture
- Trade
- Seizure, disposal and enforcement
- Arms embargoes
- State-owned small arms

Status of regional and international small arms agreements

Legal status

The UN Programme of Action, Bamako Declaration and Nairobi Declaration and its Co-ordinated Agenda for Action and Implementation Plan are all political commitments and are not, therefore, legally binding. The Protocol for the GLR and HoA will, once ratified, be legally binding. It is likely that the entry into force of the Protocol for the GLR and HoA will follow 30 days from the deposit of instruments of ratification by two-thirds of signatories to the Protocol. The Protocol for the GLR and HoA has been signed by the respective Chiefs of Police in the sub-region (including the Seychelles) and at the time of writing (December 2003) it is anticipated that this will be signed by ministers at the Nairobi Declaration Review Conference in March 2004. Ensuring that the Protocol for the GLR and HoA is agreed and enters into force as soon as possible must be a high priority for the governments of the sub-region.

Similarly, the UN Firearms Protocol will upon signature, ratification and entry into force also be legally binding. The UN Firearms Protocol will enter into force 90 days after deposit of the fortieth instrument of ratification *and* once the 'UN Convention against Transnational Organised Crime' has itself entered into force. The UN Firearms Protocol has been signed by a number of states but has yet to enter into force, and as such, its provisions are not yet legally binding on any state. The UN Firearms Protocol has been signed by only the Seychelles of the countries in the GLR and HoA and has yet to be ratified by any states in the sub-region. Indeed, a total of only 11 UN member states have ratified the Protocol. The 'UN Convention against Transnational Organised Crime', which must enter into force for its related instruments to have effect has also yet to enter into force. Nonetheless, in view of the urgency with which the problems related to the uncontrolled proliferation of small arms need to be addressed, the states of the GLR and HoA should strive to implement the provisions of the UN Firearms Protocol, Protocol for the GLR and HoA and those of the politically binding UN Programme of Action, Bamako Declaration and Nairobi Declaration, as soon as possible.

Conformity

Throughout this report, where we talk of 'conformity', 'commitments', 'requirements' or similar terms, we do so with regard to the importance of fully implementing the provisions of these agreements and the need to ratify them and hasten their entry into force. By noting the 'conformity' or otherwise of existing national legislation we are not indicating a legal commitment to the UN Firearms Protocol or Protocol for the GLR and HoA before these are ratified and have entered into force. Full conformity with the provisions of these regional and international agreements is, nonetheless, important in laying the foundations for the effective control of small arms across the GLR and HoA.

The reader should also note, however, that while the regional and international agreements are very important guides to the action that states must take with regard to the review of legislation, in many areas they require a great deal of detailed elaboration to ensure the implementation of a truly effective legal control regime. Where we provide an overview of each country's small arms legislation and note some of the key absences, these absences refer solely to those instances where the legislation falls short of the requirements of the regional and international agreements. Indeed, where we talk of full conformity to certain provisions, this does not necessarily indicate that the provisions are adequate to ensure that a strong legal control regime, free of any loopholes, exists.¹ As an example, many of the countries included in this study have a high degree of conformity with the requirements for a system of licensing or authorisation for civilian possession and use of small arms, yet, the reality in many cases is of legislation that fails to provide effective control for the problems faced by many countries in this area. Given the general and consensual nature of agreements of this type, this

¹ The comment that we make on conformity also refers solely to the acts that we have been able to obtain and have included in the tabular analysis of the full version of this study. The reader should be aware that other pieces of legislation may exist which contain provisions meeting the requirements of the regional and international agreements.

situation is unsurprising and it is true that their provisions were agreed with the intention that they would be developed and elaborated in greater detail in the future. It is important that this process of reviewing and amending legislation elaborates the general requirements of the regional and international agreements in such a way that ensures that the most stringent and comprehensive legal controls are put in place.

Each process of national review will uncover unique challenges and identify unique needs. Newly drafted or amended legislation must therefore meet these challenges and cater for these needs. The process of review should include wide-ranging internal and external consultations and, in considering issues of regional harmonisation and the identification of minimum standards, should seek to agree the highest possible standards. In the section below on 'General observations and commonalities of national legislation', which provides an overview of legal controls in the region in different analytical categories, we have indicated some of the cases in which more stringent and comprehensive controls than those outlined in the regional and international agreements should be considered and what those controls might contain.

Harmonisation of legislation

The legislative controls in place in the countries covered by this study vary greatly in terms of issues covered and the manner in which different aspects of control are legislated for. Jurisprudence, legal systems, constitutions, bureaucratic processes, national policy and the nature and extent of the small arms problem are among the factors that will determine what a country's legislation will look like. While legislation needs to be country-specific the transnational nature of the small arms problem requires that countries work together and that they seek to ensure consistency in particular areas of legal controls on small arms. For instance, with regard to the issue of penalties, differing levels, or degrees of severity of sanction, can simply mean that those seeking to conduct illicit activities will seek haven in the country with the weakest penalties. Similarly, if certain offences are illegal in one country but not in another, unscrupulous persons or groups may gravitate towards the country in which they can conduct their affairs unimpeded by the arm of the law. The implication of having weaker controls in some countries than in others is that the trafficking of arms, and other destabilising activities with which it is frequently closely associated, can continue with a high risk of such activities spilling across the national borders within the sub-region.

Establishing common standards and practices in certain key areas is, therefore, an important way of clamping down on illicit small arms practices in a co-ordinated and concerted manner across the GLR and HoA. However, such co-operation can only take place at a meaningful level if it is based on a common understanding of certain concepts. For this reason the Protocol for the GLR and HoA stresses the need for states to promote 'legal uniformity and minimum standards', while the Bamako Declaration calls for the 'harmonisation' of legislation.

In amending and strengthening existing legislation, or drafting new acts, a key consideration must, therefore, be that of harmonisation based on minimum standards of control. Such harmonisation has two central and equally important components: internal harmonisation of controls on small arms within each country; and external harmonisation of small arms legislation between all states in the GLR and HoA. The process of internal harmonisation is one aimed at ensuring the coherence of provisions relating to small arms within other relevant national laws and removing any anomalies or contradictions that might exist. It should also seek to make the legislation as easily accessible as possible and to this end should aim to place controls on small arms in as few acts and statutes as possible. This illustrates the need for governments to conduct a full inventory and national review of all legislation and regulations which contain provisions relating to small arms control.

Regional harmonisation does not mean that states must replicate one another's legislation, but aims to ensure that basic common standards are contained in all small arms legislation in the GLR and HoA. Specific actions and activities should be recognised as criminal offences and minimum standards and legal uniformity agreed in all the states in the sub-region. These criminal offences should also be subject to the same penalties. Indeed, the provisions of the Protocol for the GLR and HoA call for a high degree of harmonisation across the region. Three key provisions state the commitments regarding harmonisation to which state parties will have to adhere once the Protocol is signed and ratified. Article 3 (c) reads: 'States parties undertake to incorporate in their national laws:

- (v) provisions promoting legal uniformity and minimum standards regarding the manufacture, control, possession, import, export, transit, transport and transfer of small arms and light weapons;
- (vi) provisions ensuring the standardised marking and identification of small arms and light weapons at the time of manufacture, import and export;
- (xiii) provisions promoting legal uniformity in the sphere of sentencing⁷.

Complying with other provisions of the regional and international agreements, by for instance ensuring that the civilian possession and use of light weapons is prohibited, will in itself establish a degree of regional harmonisation, as all states will have controls on the same issues. In this way, through the national review of legislation regional harmonisation will, to a certain extent, occur automatically.

However, as the extracts from the Protocol for the GLR and HoA reproduced above highlight, a greater degree of regional harmonisation is in fact called for. Consequently, it is crucial that an in-depth and co-ordinated process of regional consultation is undertaken to unpack and agree the minimum standards to which all will adhere regarding the manufacture, control, possession, import, export, transit, transport and transfer of small arms and determine the nature and extent of regional legal uniformity in these areas. As an example of the importance of regional discussion, certain existing agreements between landlocked and neighbouring sea-bordered states, mean that shipments of goods transiting to a landlocked state may not be inspected by the authorities of the state, such as Tanzania, through which they are transported. Consequently, this creates the risk that shipments of small arms or other sensitive and possibly illicit goods may pass through a state undetected. Agreeing rigorous common standards on transit controls is therefore vital.

Regional discussions must also cover the issues of marking and sentencing. Article 5 (b) of the Protocol for the GLR and HoA calls for the introduction of 'harmonised, heavy minimum sentences for small arms and light weapons crimes and the carrying of unlicensed small arms and light weapons'. Yet, at present the level of penalties applicable for these offences (where indeed such offences exist) varies greatly from country to country. The issue of small arms brokering, which is currently regulated by no state in the sub-region, is also one that requires regional consultation. It is important, therefore, that states in the GLR and HoA consult and agree these common standards as part of any national review of small arms legislation. This study is intended to promote and aid discussion on these key issues of harmonisation.

An important associated issue that should be addressed as part of discussions on regional harmonisation, although not actually covered by the regional and international small arms agreements, is that of extradition between states in the sub-region. This is crucial in ensuring that criminals do not simply flee to countries where they are safe from prosecution. It must be remembered that as a general rule a court only has jurisdiction for offences committed within that particular country. Thus, if a criminal has committed an offence in another country he or she may only be tried for such crime in the country where the crime has been committed. Without proper

extradition agreements in place criminals cannot be effectively pursued across borders and prosecuted.

The way forward

This study identifies some of the gaps that exist between the regional and international small arms agreements to which the countries of the GLR and HoA are party and the legislation governing small arms in these states. Thorough reviews of legislation will need to take place to ensure that these gaps are adequately filled.

These processes of legislative review should at all times be informed by the principles of good governance. A review should be transparent, accountable and inclusive, allowing for input from all interested parties including members of civil society. As a foundation for this process a framework, within which the review of legislation can take place, needs to be developed. This framework should be elaborated in the form of a national policy that sets forth the objectives and components of the government's small arms strategy relating to legislation and other aspects of small arms control. Elaboration of such a policy should also be informed by an understanding of the particular problems that the country faces with regard to small arms control and of the resources that are available to address the problem. Each country will have unique needs, priorities and experiences and as such will need to develop its own unique approach, while at the same time adhering to certain agreed minimum standards for control.

The process of regional harmonisation, necessary to agree such minimum standards, will require a great deal of consultation among member states to ensure that the minimum standards to which all should adhere are fully understood by all and are implemented consistently. It is also vital that these minimum standards are rigorous enough to control the problems of small arms proliferation and do not just tend to the lowest common denominator. These consultations should ideally take place prior to any national review of legislation so that the issue of harmonisation can be taken into account from the outset.

The comprehensive review of legislation must then be backed up by effective implementation. A major issue in this regard is the capacity of the law enforcement agencies and judiciary. Those who implement the law on a daily basis must be fully conversant with the provisions of any new or amended legislation. A similar process of awareness raising with the public is also vital. The general public must clearly understand their rights and responsibilities under the law.

In conclusion, every state in the GLR and HoA will face unique challenges in reviewing its firearm legislation. For some this will be a major task and will involve the drafting of entirely new legislation. For others it may require only the modification of existing laws. This paper is intended to aid the states of the GLR and HoA with the review of small arms legislation and to serve as a point of reference that can guide states in processes of both national review and regional harmonisation.

2

Regional overview of existing legislation

Introduction

THIS SECTION PROVIDES A REGIONAL OVERVIEW of the existing primary pieces of national legislation on small arms control. Under each analytical category key elements of the legislation are highlighted with regard to the conformity or otherwise to the regional and international small arms agreements. There follows a comment for each analytical category highlighting certain issues that states should consider when reviewing their national legislation. This comment section is not intended to cover every element of controls but instead highlights the issues that are most important to address in order to ensure that legislation effectively controls the proliferation of small arms. The comments refer to:

- issues which are not covered by the regional and international agreements;
- areas where these agreements provide general requirements that leave considerable scope for interpretation; and
- places where the standards set by the agreements could be further strengthened to avoid potential loopholes.

It is acknowledged that every country will need to develop legislation to meet its own unique needs and circumstances but also that effective minimum standards will need to be established. These comments are recommendations for the development of such effective minimum standards.

Regional summary

The nature and coverage of national small arms legislation in the GLR and HoA varies greatly from country to country and from issue to issue. While this makes identifying firm trends regarding either particularly strong or weak controls difficult there are a number of issues that in most cases require particular attention. Six of these areas are outlined below:

- **Civilian possession and use** Strong controls are needed to ensure the responsible use of small arms by competent persons as a means of minimising leakages into the illicit market, the illicit use of legal small arms and the occurrence of accidents resulting from incompetence or poor safety measures. While some controls on the civilian possession and use of small arms exist in all countries there are a significant number of gaps in many areas. On some issues of civilian possession controls exist but important

detail is lacking, for instance on systems of licensing and authorisation and restrictions on carriage and use. In other areas controls are lacking in many or all states, for instance relating to the total prohibition of civilian possession and use of light weapons.

- **Brokering** Many of the small arms that have entered the illicit market in the GLR and HoA have been trafficked in deals organised or facilitated by arms brokers. It is therefore vital that effective controls are placed upon such arms brokers as called for in the Co-ordinated Agenda for Action and Protocol for the GLR and HoA. Currently, however, only the Seychelles has provisions covering brokering activities, even though brokering itself is not defined as a specific crime.
- **Manufacture** While the manufacturing of small arms and ammunition is not established on a large scale in the GLR and HoA, Kenya, Tanzania and Uganda do have arms or ammunition factories. In addition, illicit small arms are being produced in a number of countries in the sub-region in local cottage industries. Effective controls on the manufacturing of small arms are therefore important. Some form of licensing, authorisation or restriction on the manufacture of small arms exists in all countries. However, these controls often lack detail and should be reviewed to ensure that they prohibit cottage industries and clearly establish the manufacture of small arms without a licence as a criminal offence. Crucially, there are no requirements for manufactured small arms and ammunition to be marked and for records of production and transfer to be kept.
- **Destruction** Destroying collected, obsolete, redundant or surplus stocks is an important way in which to reduce the risks of such small arms leaking into the illicit market. Kenya and the Seychelles are the only countries to have any provisions relating to the destruction of small arms and even these provisions are very limited.
- **Arms embargoes** It is vital that small arms are not trafficked to countries under United Nations arms embargoes as these countries are often the least stable and most conflict-prone. However, none of the states of the GLR and HoA conform with the provisions of the regional and international agreements that call for criminal sanctions to be placed on those who breach arms embargoes.
- **State-owned small arms** One of the sources of illicit small arms in the sub-region is from state-owned stocks that have leaked into the illicit market through negligence, poor security and management of stocks or deliberate criminal intent on the part of state officials. In the legislation considered in this study few countries have established controls on state-owned stocks and where provisions do exist these cover only certain areas and in only limited detail.

Regional conformity and recommendations

Definitions

The level and scope of the definitions provided in the small arms control acts considered in this study vary greatly. In judging conformity or otherwise to the regional and international agreements we have sought to analyse the extent to which the definitions allow for controls to be enacted over those arms and ammunition specified in the regional and international agreements. For instance where the Protocol for the GLR and HoA calls for a system of licensing to be in place for the civilian possession of small arms it is important that all small arms, as defined in the Protocol for the GLR and HoA, are indeed covered by the existing national legislation.

With this in mind, the most notable absence from the definitions in every country's legislation is of a separate definition of 'light weapons' which would enable the enacting of legal provisions to prohibit their possession and use by civilians, as called for in

the Protocol for the GLR and HoA.² The scope of definitions of small arms or firearms (different terms are used in different acts) varies across the region. Eritrea's legislation contains no definitions, while Djibouti, Rwanda, and Uganda have narrow definitions that do not appear to cover all the types of arms specified in the regional and international agreements. Kenya and the Seychelles appear to have definitions that cover a broader range of arms and ammunition than specified in the regional and international agreements, and Tanzania has definitions which are adequate. In the cases of Burundi and Sudan the definitions are unclear.

Comment

- **Coverage of definitions** In reviewing their national legislation, states should consider the extent to which existing (or newly created) definitions ensure coverage of the categories of arms and ammunition detailed in the regional and international agreements.
- **Clarity and specificity** States should also consider the clarity and specificity of the definitions, so that it is clear which arms are included (and excluded) from the coverage of the act and so that the definitions provided are, as far as possible, consistent with and relevant to existing and future arms technologies.

Controls on civilian possession and use

- **Licensing** A licence, permit or special authorisation is required for the possession of small arms in all cases. In a few cases the licensing procedure is clearly stipulated, but the majority of acts contain limited or no detail regarding this process.
- **Prohibition** All countries other than Djibouti, Eritrea and Tanzania have prohibitions on the civilian possession of certain types of small arms. However in no country is there an explicit and total prohibition of the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns, as called for by the Protocol for the GLR and HoA.
- **Competency testing** Burundi, Kenya and Uganda are the only countries to stipulate that licences will be refused to those deemed to be of unsound mind or otherwise unfit to possess small arms. Explicit provisions for the competency testing of prospective small arms owners are contained in one case only, Sudan.
- **Restrictions on number** Sudan is the only country to have restrictions on the number of small arms that may be owned by an individual, as called for by the Protocol for the GLR and HoA. With some exceptions, no person in Sudan is allowed to possess more than two small arms.
- **Safe storage** Kenya, Rwanda, the Seychelles and Uganda are the only countries that require provisions for the safe and secure storage of civilian owned small arms.
- **Relinquishing** Restrictions on the relinquishing of small arms are contained in all cases except Djibouti and Tanzania. Express restrictions on the pawning and pledging of small arms exist only in Kenya, the Seychelles and Uganda.
- **Restrictions on carriage and use** In addition to a requirement that licences be obtained, all countries except Sudan have restrictions on how and where small arms may be carried and used, however in the majority of cases these restrictions are vague.

Comment

- **Licensing** The regional and international agreements require licences to be obtained for the civilian possession and use of small arms. In reviewing their legislation states

² However, in Kenya and the Seychelles there is a separate definition in the legislation of 'arms of war', which covers arms defined as light weapons within the Protocol for the GLR and HoA and enables the enacting of these provisions prohibiting their civilian possession and use.

should consider the inclusion, where it does not yet exist, of:

- A detailed and standardised system specifying the conditions under which licences will be granted, the information that must be contained on each licence and the responsibilities imposed by the licence;
- A limit on the number of small arms held by one person under normal circumstances to two;
- Limits on the maximum number of licences to be issued each year and the number of small arms that may be covered by each licence.

■ **Competency testing** Competency testing of licence applicants is called for under the Protocol for the GLR and HoA. In reviewing their legislation states should consider the nature and content of the competency tests that they put in place and consider introducing:

- Formalised and standardised tests which include assessments of the applicant's ability to use, carry and store small arms safely and responsibly and of the applicants knowledge of laws applicable to small arms.
- Checks to ensure that applicants are of sound mental health, not inclined to violence and not drug or alcohol dependent.
- Checks to ensure that licences are not issued to applicants with previous convictions for small arms related offences.

■ **Safe storage** The Protocol for the GLR and HoA calls for effective control of small arms including the storage thereof. In reviewing their legislation states should consider including detailed requirements stipulating the specifics of the storage provisions that should be enacted. For instance, the Seychelles has fairly strong controls in this regard, requiring every owner of a firearm or ammunition to keep them at all times securely and in safe custody and, when not in use, in a locked fireproof steel box or receptacle approved by the licensing authority.

■ **Restrictions on carriage and use** The Protocol for the GLR and HoA requires provisions establishing as a criminal offence the illicit possession and misuse of small arms. In reviewing their legislation states should consider including detailed restrictions on the manner in which small arms may be carried and used. For instance, Uganda has fairly extensive provisions in this regard, whereby it is an offence to act in a drunk or disorderly manner while carrying a small arm; to use a small arm or imitation small arm to resist arrest; to threaten violence whilst carrying a small arm or imitation small arm; to display a small arm or imitation small arm in a public place in such a manner as to cause alarm; and to discharge small arms deliberately or negligently in a public place. It may also be pertinent to consider other circumstances in which the possession, use and carriage of small arms should be controlled.

Record keeping and marking

■ **Record keeping** All countries except Eritrea have legislation that contains some record keeping requirements. However in many cases these are poorly defined and fall short of the commitments contained in the regional and international agreements that require the centralised registration of all civilian owned arms and for records (including details of markings) to be kept, for not less than ten years, on small arms held, transferred or manufactured.

■ **Records on civilian owned small arms** In some countries there is a requirement for the holding of records on licences granted for civilian owned small arms. In Rwanda the legislation stipulates that these are to be managed centrally by the Ministry of Defence and in the case of the Seychelles there is a provision for the establishment of a central firearms registry. In other cases it is not clear whether records are to be maintained in a single central registry. Kenya, Djibouti and Eritrea appear to lack any provisions for keeping records on civilian owned small arms.

- **Records on the trade in small arms** In all cases there is a requirement for the keeping of records on the trade in small arms. Some countries require records to be maintained on those small arms imported for the purpose of trade therein. Only Kenya, the Seychelles and Uganda, however, require the maintenance of registers of licensed small arms dealers.
- **Records on the manufacture of small arms** An explicit requirement for the keeping of records on the manufacture of small arms is lacking in all cases.
- **Maintenance of records** The Protocol for the GLR and HoA and the UN Firearms Protocol require the maintenance for not less than ten years of records of information on small arms. All countries except Burundi and Rwanda, where the legislation requires that records on traded arms be maintained permanently, fall short of this requirement.
- **Type of marking** There are some provisions for the marking of small arms, or the keeping of records on markings in all countries except Eritrea and Burundi. In Rwanda, the central system for the registration of small arms requires the marking of all unmarked small arms with letters of recognition and a serial number. Kenya, Rwanda, the Seychelles, Sudan and Uganda stipulate that licences for the civilian possession of small arms will not be granted in relation to arms that do not bear markings. However, in all cases the requirements fall short of the commitments contained in the regional and international agreements, which require standardised systems for the marking of small arms at the time of manufacture, import or export and stipulate the information that should be contained in markings and where on the small arms the marking should be.
- **Marking of all small arms** All small arms, whether manufactured, imported or exported for civilian or state purposes, should be marked in accordance with the regional and international agreements.

Comment

- **Centralised record keeping** The Protocol for the GLR and HoA requires the regulation and centralised registration of all civilian owned small arms. States should therefore consider establishing electronic databases to enable the permanent maintenance of records on who is licensed to possess small arms and how many.³
 - **Register of dealers** In order to enable the effective control of all weapons owned by dealers, as is called for by the Nairobi Declaration Co-ordinated Agenda for Action, all countries should consider maintaining registers of small arms dealers.
 - **Maintenance of records** The Protocol for the GLR and HoA and the UN Firearms Protocol require the maintenance of records of information on small arms for not less than ten years and the UN Programme of Action states that records should be maintained for as long as possible. Small arms can remain in circulation and fit for use for decades and therefore states should consider introducing a requirement that records be maintained permanently.
- Import, export and transit**
- **Import licences** Licences or special authorisation are required for the import of small arms in all countries. Burundi, Kenya, Rwanda, Sudan and Uganda prohibit the importation of certain categories of small arms.
 - **Export and transit licences** In all cases expect Rwanda licences or special authorisation

³ Establishing electronic databases is an important way in which records of all small arms can be easily stored and accessed, facilitating the tracing of small arms and in so doing aiding law enforcement agencies to prosecute those involved in illicit firearm activities. However, electronic databases are expensive to establish and require further investments to train operators and ensure that they are effectively maintained. Consequently this is an area in which donor support is particularly needed and where donor governments may also be able to share knowledge, skills and expertise.

are required for the export and transit of small arms. (Rwanda appears to have no controls relating to the export of small arms, but does require end-user certificates for those small arms in transit across Rwanda).

- **End-user certificates** Only Rwanda has provisions for the use and verification of end-user certificates but this applies only to arms in transit.
- **Information on licences** Burundi, Djibouti and Sudan are the only countries to specify the information that must be included on import, export or transit licences, and these specifications fall short of the requirements outlined in the Protocol for the GLR and HoA and the UN Firearms Protocol.
- **Record keeping** Most countries require that records be maintained on the import of small arms, but in Eritrea, Kenya, the Seychelles and Uganda this requirement appears to be completely absent and in Tanzania and Sudan it appears to apply only to those small arms imported for the purpose of sale.
- **Marking** Systems for the marking of small arms at the time of import, with the country of import and a unique serial number, are lacking in all cases.

Comment

- **Criteria for the export of small arms** The regional and international agreements require that a system of licensing for the import and export of small arms is in place and that provisions exist for the control of small arms in transit. The UN Programme of Action also calls for national regulations for the assessment of export applications to be consistent with existing responsibilities under international law. In reviewing their legislation states should consider including provisions that ensure the thorough scrutiny of applications to export small arms. Such scrutiny would seek to ensure that licences are not granted in cases where exported small arms may be used to breach international humanitarian or human rights law, for instance where small arms may be used to deny people's rights as established under the Universal Declaration of Human Rights.
- **Arms in transit** In reviewing their legislation states should consider establishing systems whereby they will only allow for the transit of small arms across their territory upon receipt, in advance of the shipment, of certificates from the importing and exporting states. If there is a risk that the weapons could be used for breaches of international law, the transit authorisation should be refused.
- **End-user certificates** The UN Programme of Action requires that all states have systems to ensure effective control over the export and transit of small arms, which include the use of authenticated end-user certificates. In reviewing their national legislation states should consider introducing a requirement that end-user certificates take the form of a legally binding commitment, whereby the recipient must notify the exporting country if they intend to re-export the arms and must make a commitment that the arms will not be used to breach international law. The certificates should indicate the serial numbers of the arms to be transferred, the means that will be used to transport the arms and the route along which they will be transported. The licensing government should reserve the right to conduct follow-up checks to ensure that arms are used in accordance with the export licence application.

Brokering

- In the Seychelles it is possible to charge someone with trading or trafficking in small arms, which would cover brokering activities, and the law does make allowance for extra-territorial control, although brokering itself is not defined as a specific crime. In no other country in the sub-region are there controls over brokers.

Comment

- **Registration and licensing** All the regional and international agreements require provisions for the control of brokers. In reviewing their legislation states should consider establishing a system whereby brokers must be registered and obtain authorisation for each individual transaction. Such systems should also ensure that brokers operate in a transparent manner and are subject to regular and random checks, as called for by the Protocol for the GLR and HoA. States should further consider establishing controls over national brokers operating outside national territory.

Manufacture

- **Licensing** Special authorisation is required for the manufacture of small arms in Eritrea and in all other cases small arms may only be manufactured in government authorised premises. In Sudan and Tanzania the licensing requirements appear to apply only to the premises in which manufacturing takes place and not to the person who manufactures the small arms. In Djibouti, Kenya, and the Seychelles the legislation stipulates that manufacturing must be carried out in accordance with government permission, instructions or directions.
- **Record keeping and marking** Requirements for the marking of small arms at the time of manufacture and for record keeping in relation to the manufacture of small arms are lacking in all cases.

Comment

- **Manufacture** In reviewing their legislation states should consider including clear controls over the manufacture of small arms, whereby the licensing requirements cover the persons who manufacture small arms as well as the premises in which manufacture takes place. The legislation should also clearly stipulate that the manufacture of small arms without a licence is a criminal offence.
- **Gunsmiths** All states should also consider introducing a requirement for the registering of gunsmiths and for the keeping of records in relation to the repair of small arms.

Trade

- **Licensing** The regional and international agreements call for the effective control of traders and small arms transfers. In all cases, special authorisation or a licence is required to trade in small arms. Burundi and Uganda are, however, the only countries to specify standards that prospective dealers must meet. In Burundi applications must be accompanied by a certificate of good conduct and morals and a favourable recommendation from the governor of the province and in Uganda applicants must be deemed competent and qualified to carry on the business of a dealer or gunsmith.
- **Premises** Most countries specify standards that premises must meet in order to be used for the purpose of trading in small arms. Kenya, the Seychelles and Uganda require that stores have only one means of entry and two locks, with the master key being retained by the Licensing Authority. Burundi and Rwanda specify that gun stores must have metallic/reinforced concrete walls, an armoured metallic door and a secret security lock.

Comment

- **Competency testing** The regional and international agreements call for the effective control of traders and small arms transfers. To meet this requirement all countries should consider introducing a standardised system of competency testing for small arms dealers, which includes:
 - Formalised and standardised tests which include assessments of the applicant's ability to use, carry and store small arms safely and responsibly and of the

applicant's knowledge of the laws relating to small arms.

- Checks to ensure that applicants are of sound mental health, not inclined to violence and not drug or alcohol dependent.
- Checks to ensure that licences are not issued to applicants with previous convictions for small arms related offences.

Seizure, disposal and enforcement

- **Seizure** In all countries except Djibouti there are provisions for the seizure, confiscation and forfeiture of small arms.
- **Disposal** Provisions for the disposal of seized and confiscated small arms are, however, missing in all cases except Kenya, the Seychelles, Sudan and Uganda.
- **Destruction** Kenya and the Seychelles are the only countries in which the legislation explicitly provides for the destruction of small arms, although it states that other forms of disposal may also be used. This aspect of the Seychelles' legislation applies to small arms which have been seized by the police on the grounds that they are believed to have been connected with an offence. It also applies to small arms which have been held for a period exceeding three months in a store maintained by the Seychelles Police Force. In Kenya an officer in charge of a firearm store may destroy, or otherwise dispose of, ammunition or explosives found in a firearms store which he believes to be dangerous.
- **Re-activation** Controls over the re-activation of de-activated small arms are missing in all cases.
- **Monitoring and auditing** Provisions for the monitoring and auditing of small arms and licences exist in all cases except Eritrea and Tanzania.

Comment

- **Destruction** The Bamako Declaration recommends the development and implementation of programmes for the destruction of seized stocks. In order to dispose of small arms in a way that prevents them from entering the illicit market or flowing into regions in conflict, as called for by the Protocol for the GLR and HoA, all states should consider introducing requirements for the destruction of all seized small arms.
- **Monitoring and auditing** Extensive provisions allowing for the monitoring and auditing of small arms, licences and premises should be introduced in all countries. States should consider introducing a requirement that all licences for the possession and trade in small arms be renewed every year. All countries should also consider providing for regular, random inspections by the police and licensing authorities of those premises where small arms are held.

Arms embargoes

- No states have provisions that make it a criminal offence to breach arms embargoes, despite such requirements being contained in all of the regional and international agreements.

Comment

- **Offence** All states should introduce measures to criminally sanction the breaching of UN Security Council arms embargoes and other international sanctions on the export of weapons.

State-owned small arms

- **Coverage of acts** Members of the armed forces and state employees, and the small arms in their possession, are exempt from the provisions of the primary piece of small arms legislation in most cases. Therefore, provisions to control the possession, import,

export, transit and destruction of state-owned small arms are not included.

- Sudan is an exception and contains detailed lists of the types of small arms that state employees are entitled to possess, as well as provisions for the disposal of small arms confiscated from the armed forces and police.
- In Uganda, the Police Statute 1994 and National Resistance Army Statute 1992 contain some limited controls over state-owned small arms. There are no provisions, however, for the marking, safe-storage or destruction of state-owned small arms or for national inventories of and accountability for state-owned small arms.

Comment

- **Destruction and identification of surpluses** The Protocol for the GLR and HoA requires effective programmes for the destruction and responsible disposal of small arms rendered surplus, redundant or obsolete, and the Bamako Declaration recommends the development and implementation of programmes for the identification and destruction of surplus, obsolete and seized stocks. In order to dispose of small arms in a way that prevents them from entering the illicit market or flowing into regions in conflict, as called for by the Protocol for the GLR and HoA, all states should consider introducing requirements for the destruction of all surplus, or obsolete state-owned small arms. States should also ensure that they have provisions providing for the identification of state-owned small arms as surplus or obsolete, in order to allow for their destruction.
- **Control of state-owned small arms** To ensure that state-owned small arms are responsibly used and managed and do not therefore leak into the illicit market, states should consider establishing detailed procedures, where they do not exist, regarding the issuing of firearms to state employees and their subsequent use. Such procedures should ensure that state-owned firearms are possessed only for authorised state business and are at all other times returned to state armouries. In addition state employees should provide detailed reports accounting for the discharge of any firearm.
- **Competency of state employees** To ensure the responsible use of state-owned firearms, states should consider introducing comprehensive systems to screen and train any persons who may use state-owned firearms. This should include detailed assessments of personal suitability to possess and use firearms and tests to ensure the competency of any person to possess and use firearms. Such screening, testing and training should be regularly repeated.

- Penalties**
- The penalties contained in the legislation differ greatly across the various states. Many countries have not updated or reviewed their penalties for some years, and the fines, in particular, seem out of touch with the contemporary economic and small arms situation.

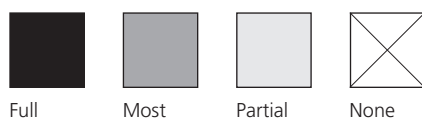
Comment

- **Rationalisation and harmonisation** The issue of penalties will require significant attention in terms of harmonisation across the region. States should review the penalties in place for small arms related offences as part of broader reviews of their small arms legislation.

Overview of legislation – comparative conformity table

CATEGORY	Burundi	Djibouti	Eritrea	Kenya	Rwanda	Seychelles	Sudan	Tanzania	Uganda
Definitions	Partial	Partial	None	Full	Partial	Full	Partial	Most	Partial
Controls on civilian possession and use	Partial	Partial	Partial	Most	Most	Most	Most	Partial	Most
Record keeping, marking and tracing	Partial	Partial	None	Partial	Partial	Partial	Partial	Partial	Partial
Import, export and transit	Partial	Most	Partial	Partial	Partial	Partial	Most	Partial	Partial
Brokering	None	None	None	None	None	Partial	None	None	None
Manufacture	Partial	Most	Partial	Partial	Partial	Partial	Partial	Partial	Full
Trade	Most	Partial	Partial	Most	Most	Most	Most	Partial	Most
Seizure, disposal and enforcement	Partial	Partial	Partial	Partial	Partial	Most	Partial	Partial	Most
Arms embargoes	None	None	None	None	None	None	None	None	None
State-owned firearms	None	None	None	Partial	None	Partial	Most	None	Partial

KEY: Level of conformity to the regional and international agreements



3

National overviews of existing legislation and conformity to regional and international small arms agreements

Introduction

THIS SECTION PROVIDES INDIVIDUAL OVERVIEWS of the existing national legislation in each country. For each country the analysis is broken down into eleven categories within which an overview is provided of how the legislation conforms to, and falls short of, the requirements of the regional and international small arms agreements. Unlike the above regional overview section the analysis in this section relates solely to how existing national small arms legislation conforms to the regional and international agreements and does not provide any further comment or recommendations as to how minimum standards should be developed.

Burundi

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECES OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN BURUNDI

are Decree No. 1/91 of 2nd August, 1971 relating to firearms and their ammunitions and Decree No. 1/92 of August, 1971 putting in place regulations for the implementation of Decree No. 1/91 of 2nd August 1971.

The definitions contained in Decree No. 1/91, 1971 and Decree No. 1/92, 1971 – Rules, categorising arms and thus determining the controls that are applicable to different classes of arms, are somewhat unclear.⁴ A definition of arms is included, as is a definition of ammunition, but there are no separate categories for firearms or small arms. Crucially, a definition for light weapons, which would enable the enacting of legal provisions prohibiting their use, as called for by the Protocol for the GLR and HoA, is not included in the Decrees. Those responsible for developing new legislation must address this matter urgently and should introduce definitions compatible with those laid out in the Protocol for the GLR and HoA and UN Firearms Protocol.

Controls on civilian possession and use

The national legislation conforms to most of the provisions of the regional and international agreements.

- A licence is required for the possession and carriage of arms and ammunition and a 'certificate of good conduct, life and morals' is necessary to gain a licence.
- There is a limit on the quantity of ammunition that may be possessed.
- The civilian possession of certain categories of small arms is prohibited.
- There are also some limited restrictions placed on where and how arms can be used.
- The commander of the armed forces may at any time 'order the verification of the conditions of possessing arms and ammunitions'.
- There are controls on the relinquishing of small arms.

However, fundamental absences include:

- No competency testing or age restriction for licence applicants.
- No restriction on the number of small arms that may be licensed to any one civilian.
- No total prohibition on the civilian possession of all light weapons and automatic and semi-automatic rifles and machine guns.
- No provisions for the safe storage of civilian owned small arms, other than a provision that the commander of the armed forces may at any time 'order the verification of the conditions of possessing arms and ammunitions'.
- No specific provisions detailing what the safe storage of small arms should entail.

⁴ The need to translate legislation into English may lead to some inadvertent misinterpretations.

	<ul style="list-style-type: none"> ■ No explicit prohibition on the pawning and pledging of small arms.
Record keeping and marking	<p>The national legislation conforms to some of the provisions of the regional and international agreements.</p> <ul style="list-style-type: none"> ■ Provisions are made for the maintenance of permanent records of all traded arms; for the counting of arms and ammunition meant for private use; for repairers to keep a register of arms under repair; and for reporting on the import of arms. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No requirement for the centralised registration of all civilian owned small arms. ■ No requirement for the keeping of records on the manufacture of small arms. ■ No system or requirements for the marking of small arms at the time of manufacture, import or export. ■ Only information on traded arms is required to be kept for not less than ten years.
Import, export and transit	<p>The national legislation conforms to some of the provisions of the regional and international agreements.</p> <ul style="list-style-type: none"> ■ Licences are required for the import, export and transit of small arms and will not be granted for certain categories of arms. ■ Provision is made for the temporary export of small arms in certain cases. ■ Provisions exist for reporting on the import of small arms. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No requirement for the use of end-user certificates. ■ No system or requirement for the marking of small arms at the time of import. ■ No provision for record keeping on the export or transit of arms and no requirement that records on imports be maintained for not less than ten years.
Brokering	<p>There are no controls over brokering.</p>
Manufacture	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ A licence is required for the manufacture of arms and conditions of manufacture are contained on the licence. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No system or requirement for the marking of small arms at the time of manufacture. ■ No requirement for the keeping of records on the manufacture of small arms, other than a requirement that gunsmiths maintain a register of repairs. ■ No controls over the premises that may be used for the manufacture of small arms.
Trade	<p>The national legislation conforms to most of the provisions of the regional and international agreements.</p> <ul style="list-style-type: none"> ■ Applications for a permit to sell small arms and ammunition must be accompanied by a 'certificate of good conduct and morals' and a 'favourable recommendation' from the governor of the province. ■ Permanent records must be maintained of all arms and ammunition sold and transferred. ■ There are limits on the amount of arms and ammunition that may be stocked by traders, which vary according to whether or not the premises used have strong gun pits with metallic walls, an armoured metallic wall and a secret security lock. <p>However, fundamental absences include:</p>

- No prohibition on the pawning and pledging of small arms.
- Seizure, disposal and enforcement**
- The national legislation conforms to some of the provisions of the regional and international agreements:
- There are extensive provisions for the seizure, confiscation and forfeiture of small arms.
 - A commander of the armed forces may at any time order the compulsory counting of small arms meant for private use and trade.
- However, fundamental absences include:
- No provisions for the disposal or destruction of small arms.
 - No controls relating to the re-activation of de-activated small arms.
- Arms embargoes**
- There are no controls relating to the enforcement of arms embargoes.
- State-owned small arms**
- Members of the armed forces are exempt from needing a licence for the possession of arms and other categories of state employees are exempt from needing a licence to carry arms. There are no record keeping, marking, storage, destruction or disposal provisions relating to state-owned small arms contained in Decree No. 1/91, 1971 or Decree No. 1/92 – Rules.
- Penalties**
- The penalties contained in the Decrees are reasonably severe. Offences relating to the import, acquisition, keeping, transferring, abandonment, manufacture, transport, export and repair of arms are punishable with 10 years imprisonment and other offences carry a penalty of up to 5 years imprisonment. However, the fines quoted in the Act, which date from 1971, are in need of review in order to take account of inflation.

Djibouti

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECE OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN DJIBOUTI is Act 62-621 of June 1962.

The definitions contained in Act 62-621, categorising arms and thus determining the controls that are applicable to different classes of arms, are limited in comparison to those contained in the regional and international agreements. A limited definition is given for the category of firearms, but the Act contains no definitions relating to ammunition, small arms, parts and components or other related material. Crucially, a separate definition for light weapons, which would enable the enacting of legal provisions prohibiting their civilian possession and use, as called for by the Protocol for the GLR and HoA, is not included.

Controls on civilian possession and use

The national legislation conforms to some of the provisions of the regional and international agreements:

- Authorisation for the possession of small arms must be obtained from the Head of State and will only be granted in individual and exceptional circumstances.

However, fundamental absences include:

- No total prohibition on the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns.
- No competency testing or age restriction for licence applicants.
- No restriction on the number of small arms that may be licensed to any one civilian.
- No restriction on the type of small arm for which a licence may be issued.
- Only a very general and limited restriction on how, where and when small arms may be carried and used.
- No provision for the safe storage of civilian owned small arms.
- No controls on the relinquishing of small arms by civilians and no prohibition on the pawning and pledging of small arms.

Record keeping and marking

The national legislation conforms to some of the provisions of the regional and international agreements:

- Records are to be kept on small arms imported for sale.
- The information to be included in licences for the civilian possession of small arms should include the number marked on the arm.

However, fundamental absences include:

	<ul style="list-style-type: none"> ■ No record keeping requirements in relation to civilian owned, exported, transited or manufactured small arms. ■ No requirement that records be maintained for not less than ten years. ■ No system or requirements for the marking of small arms at the time of manufacture, import or export.
Import, export and transit	<p>The national legislation conforms to most of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Authorisation is required for the import, export and transit of small arms and ammunition. ■ Records must be maintained on the import of small arms. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ Only a limited requirement relating to the information to be included on import and export licences. ■ No requirement for the use of end-user certificates. ■ No system or requirement for the marking of small arms at the time of import.
Brokering	<p>There are no controls over brokering.</p>
Manufacture	<p>The national legislation conforms to most of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Manufacture can only take place in state establishments set up for this purpose unless express permission is given by the Head of State. ■ Restrictions exist on the transfer of small arms, which apply to manufacturers. Authorisation must be gained from the Head of State for the transfer of small arms and transfers can only be made to an individual or entity authorised to receive them. ■ The conversion of legally traded small arms, making them comparable to banned small arms, is prohibited. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No system or requirement for the marking of small arms at the time of manufacture. ■ No requirement for the keeping of records on the manufacture of small arms.
Trade	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Authorisation from the Head of State is required for the sale, transfer and transport of small arms. ■ Records must be kept on those small arms imported for sale. ■ The sale or transfer of small arms may only be made to an individual or entity authorised in advance to possess, carry or export the arms. <p>However fundamental absences include:</p> <ul style="list-style-type: none"> ■ No provisions for the safe storage of small arms. ■ No prohibition on the pawning and pledging of small arms.
Seizure, disposal and enforcement	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ A limited provision exists for the inspection of arms licences. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No provisions for the seizure, confiscation, forfeiture, disposal or destruction of small arms.

- No controls relating to the re-activation of de-activated small arms.

Arms embargoes

There are no controls relating to the enforcement of arms embargoes.

State-owned small arms

Act No. 62-621 is not applicable to small arms, munitions and other weaponry intended for use by the state armed forces. Neither does it apply to items intended for use by the law enforcement authorities or for national defence purposes. There are no provisions relating to the control of state owned small arms.

Penalties

The penalties for offences under Act No. 62-621 are reasonably severe, allowing for a custodial sentence of between one and five years, or up to ten years if the offender has a previous conviction. However, the fines that may be imposed have not been reviewed since 1962 and are in need of urgent review.

Eritrea

Overview of existing legislation and conformity to regional and international agreements

Definitions

THERE IS CURRENTLY NO PIECE OF LEGISLATION IN ERITREA devoted exclusively to the issue of small arms. Those provisions that exist in relation to small arms are contained in the transitional penal code (circa 1993).

The transitional penal code does not contain any definitions relating to arms or ammunition. This is a serious impairment to the implementation of the code, since it precludes agreement as to the categories of arms controlled by the code. Those responsible for developing new legislation must address this matter urgently and should introduce definitions compatible with those laid out in the Protocol for the GLR and HoA and UN Firearms Protocol.

Controls on civilian possession and use

The national legislation conforms to some of the provisions of the regional and international agreements:

- Special authorisation is required for the acquisition of small arms. However, there is no explanation of the circumstances under which special authorisation might be granted.
- The carriage and use of small arms is prohibited in certain places and at certain times, although such places and times are not specified.
- There are restrictions on the relinquishing of small arms. Persons who knowingly sell or deliver arms to those not entitled to receive them, in particular infants and young people, are punishable with fine or arrest.

However, fundamental absences include:

- No competency testing or age restriction for licence applicants.
- No restriction on the number of small arms that may be licensed to any one civilian.
- No total prohibition on the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns.
- No restriction on the type of small arm for which a licence may be issued.
- No restriction on the number of weapons for which authorisation might be granted.
- No provision for the safe storage of civilian owned small arms.
- No prohibition on pawning and pledging of small arms.

Record keeping and marking

The national legislation does not conform to any of the provisions of the regional and international agreements on record keeping and marking.

Import, export and transit	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Special authorisation is required to import, export or transport small arms. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No requirement for the centralised registration of all civilian owned small arms. ■ No system or requirement for the marking of small arms at the time of import or export. ■ No requirement for the keeping of records on civilian owned and manufactured small arms.
Brokering	<p>There are no controls over brokering.</p>
Manufacture	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ It is an offence to manufacture small arms without special authorisation. However, there are no further provisions regulating the manufacture of small arms and no details are provided as to the conditions under which special authorisation may be granted. <p>Further fundamental absences include:</p> <ul style="list-style-type: none"> ■ No controls relating to the storage of small arms or the premises used for their manufacture. ■ No system or requirement for the marking of small arms at the time of manufacture. ■ No requirement for the keeping of records on the manufacture of small arms.
Trade	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ It is an offence to trade in small arms without special authorisation. ■ It is an offence to sell or deliver small arms to persons not entitled to receive them. <p>Fundamental absences include:</p> <ul style="list-style-type: none"> ■ No requirement for the keeping of records on the trade in small arms. ■ No controls relating to the premises that can be used for the purpose of trading in small arms. ■ No prohibition on the pawning and pledging of small arms.
Seizure, disposal and enforcement	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Provisions exist for the seizure of small arms that have been sold, delivered or handed over to dangerous or suspect persons or that have been manufactured, imported, exported, transported, acquired, stored, hidden, offered for sale or distributed without special authorisation. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No provisions for the disposal or destruction of small arms. ■ No controls relating to the re-activation of de-activated small arms. ■ No provisions for the monitoring or auditing of small arms licences and no inspection provisions.
Arms embargoes	<p>There are no controls relating to the enforcement of arms embargoes.</p>

State-owned small arms

The transitional penal code does not contain any provisions relating specifically to state-owned small arms.

Penalties

The transitional penal code specifies that offences are punishable with a fine or arrest. However, no further details are given as to the nature of the fine or the possibility of imprisonment. The process of developing new legislation should include consultations with the governments of other countries in the region so as to ensure the introduction of harmonised, heavy minimum standards, as required by the Protocol for the GLR and HoA.

Kenya

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECE OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN KENYA is the Firearms Act 1991. Controls on small arms are also contained in the Police Act 1970 (revised 1988).

The definitions of firearms and ammunition contained in the Firearms Act 1991, categorising arms and consequently determining the controls that are applicable to different classes of arms, are broad and go beyond those laid out in the Protocol for the GLR and HoA and the UN Firearms Protocol; that is to say that a broader range of arms and ammunition is included in the definitions. Crucially, a separate definition for 'arms of war', covering arms defined as light weapons within the EAPCOO Small Arms Protocol, is provided by the Act. The inclusion of this category enables the enacting of provisions prohibiting their civilian possession and use by civilians, as called for by the Protocol for the GLR and HoA.

Controls on civilian possession and use

The national legislation conforms to most of the provisions of the regional and international agreements:

- Licences are required for the civilian possession of small arms and will not be granted to people whom the licensing officer believes to be unfit to be entrusted with small arms.
- It is an offence to provide false information with a view to obtaining a small arms licence.
- The civilian possession of certain small arms, including automatic and semi-automatic self-loading military assault rifles, is prohibited.
- It is an offence to carry a small arm when drunk or to use a small arm with intent to commit a criminal offence.
- Failure to store small arms safely and securely is an offence and licences will only be granted to people whom the licensing officer believes will keep their small arms safely and in secure custody.
- Small arms can only be relinquished to those possessing a licence entitling them to the receipt of the arms.
- The pawning and pledging of small arms is prohibited.

However, fundamental absences include:

- No competency testing or age restriction for licence applicants.
- No restriction on the number of small arms that may be licensed to any one civilian.
- No total prohibition on the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns.

Record keeping and marking

Limited record keeping and marking provisions exist.

- Licensing officers may refuse to grant licences with regard to unmarked small arms.
- Registers must be maintained of small arms dealers.

However, fundamental absences include:

- No standardised system for the marking of small arms at the time of manufacture, import or export.
- No specification of the information that markings should contain or of where on the small arms markings should be placed.
- No provisions for the centralised registration of all civilian owned small arms.
- No requirement for the keeping of records on civilian owned and manufactured small arms.
- No specification that records should be maintained for not less than ten years.

Import, export and transit

The national legislation conforms to some of the provisions of the regional and international agreements:

- Licences are required for the import, export and transit of small arms and the import and export of certain small arms is prohibited.

However, fundamental absences include:

- No specification of the information to be included on licences.
- No requirement for the use of end-user certificates.
- No system or requirement for the marking of small arms at the time of import.
- No requirement for the keeping of records on the import, export and transit of small arms.

Brokering

There are no controls over brokering.

Manufacture

The national legislation conforms to some of the provisions of the regional and international agreements:

- Small arms should only be manufactured on behalf of the Government and in premises designated for that purpose.

However, fundamental absences include:

- No system or requirement for the marking of small arms at the time of manufacture.
- No requirement for the keeping of records on the manufacture of small arms.

Trade

The national legislation conforms to most of the provisions of the regional and international agreements:

- Small arms dealers must be registered as such and must be in possession of a licence.
- Small arms dealers must maintain a record of transactions.
- Premises used for the trading of small arms must be registered as such, and small arms and ammunition stores must have only one means of entry and two locks, with master keys retained by the Licensing Authority.

However, fundamental absences include:

- No requirement that records be maintained for not less than ten years.
- No prohibition on the pawning and pledging of small arms.

Seizure, disposal and enforcement

The national legislation conforms to some of the provisions of the regional and international agreements:

- There are provisions for the seizure of small arms from individuals who do not have licences for their possession.

- Police and the licensing authorities have the power to inspect small arms stocks and registers.
- Police and the licensing authorities may destroy, sell or otherwise dispose of small arms which are abandoned or in respect of which fees have not been paid for a period exceeding four years.
- The police may destroy or dispose of ammunition that is found in an arms store and believed to be dangerous or ‘imminently likely to become dangerous’.

However, fundamental absences include:

- No controls relating to the re-activation of de-activated small arms.

Arms embargoes

There are no controls relating to the enforcement of arms embargoes.

State-owned small arms

Police officers and persons in the service of the Government and acting in their capacity as such are exempt from some of the provisions of the Firearms Act 1991.

However, the Police Act 1970 (revised 1988), stipulates some controls over the possession and use of small arms by the police.

- Provisions exist for the punishment of police inspectors and subordinate officers who ‘sell, pawn, lose by neglect, make away with or wilfully damage’ any small arms belonging to the government.
- Police officers leaving the force must deliver to the police all arms that were supplied to them as public property.
- There are restrictions on the conditions under which police officers may use arms against another person.
- It is an offence for a police inspector or subordinate officer to discharge weapons without orders or ‘reasonable or lawful cause.’

Penalties

The penalties specified for offences committed under the Firearms Act 1991 range from imprisonment for a term not exceeding six months or a fine not exceeding two thousand shillings for the majority of offences, to imprisonment for a term not exceeding fifteen years for the possession of a prohibited small arm.

Rwanda

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECES OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN RWANDA

are Decree No. 12/79 of 7 May 1979 on Firearms and Ammunition and Presidential Decree No. 111/02 of May 1979 on the ways of executing decree no 12/79. Law no. 13/2000 of 14/06/2000, modifying the decree-law no 12/97 of May, 1979 concerning firearms and their ammunitions, has also been incorporated in this study.

The definitions contained in Decree No. 12/79 of 7th May 1979 on Firearms and Ammunition, categorising arms and consequently determining the controls that are applicable to different classes of arms, are narrower than those contained in the international and regional agreements. There is no separate definition for small arms and the definition on firearms is narrow. Crucially, a separate definition for light weapons, which would enable the enacting of the Protocol for the GLR and HoA, which requires a prohibition on their civilian possession, is not included.

Controls on civilian possession and use

The national legislation conforms to most of the provisions of the regional and international agreements:

- Permits are required for the civilian possession of small arms and for the carriage of small arms across Rwanda.
- Arms like those used by the Armed Forces will only be issued in exceptional circumstances.
- The possession of certain types of small arms is prohibited completely.
- It is forbidden to carry, possess or keep small arms in some territorial areas or to carry loaded small arms through or close to towns or other inhabited areas.
- Small arms that are not in use should be well stored
- There are restrictions on the relinquishing of small arms.

However, fundamental absences include:

- No competency testing or age restriction for licence applicants.
- No restriction on the number of small arms that may be licensed to any one civilian.
- No total prohibition on the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns.
- No prohibition on the pawning and pledging of small arms.

Record keeping, marking and tracing

The national legislation conforms to some of the provisions of the regional and international agreements:

- Provisions exist for the centralised registration of all civilian-owned small arms by the Ministry of Defence and customs procedures appear to stipulate some record keeping at the time of import.
- The process of centrally registering small arms requires their marking with letters of registration and a registration number, however this provision does not appear to allow for the identification of the name and place of manufacture or the place of import, as required by the regional and international agreements, and neither does it stipulate where the marking should be placed. Further, there is a specific requirement that arms in transit should not be stamped.

Other fundamental absences include:

- No requirement for the keeping of records on manufactured small arms.
- No requirement that records be maintained for not less than ten years.
- No system or requirement for the marking of small arms at the time of manufacture, import or export.
- No provisions making it an offence to alter, falsify or remove markings.

Import, export and transit

The national legislation conforms to some of the provisions of the regional and international agreements:

- Authorisation is required from the Minister of Defence to import small arms and permission to import arms like those used by the Armed Forces will only be granted in exceptional circumstances.
- The transport of arms and ammunition within Rwanda is subject to the production of an end-user certificate stating that the arms are only to be used by the state or other individuals specified on the declaration form.
- Administrative procedures exist for verifying the importation of small arms and for the holding of permanent records by the final importer.

However, fundamental absences include:

- No specific provisions relating to the export of small arms.
- No details on the specific information to be included on import and export licences.
- No system or requirement for the marking of small arms at the time of import.
- No requirement for the keeping of records on the export and transit of small arms.

Brokering

There are no controls over brokering.

Manufacture

The national legislation conforms to some of the provisions of the regional and international agreements:

- The manufacture of prohibited small arms (silencer guns, folding guns, multi-barrelled guns and guns with toxic effects) is forbidden. However, no provisions, standards or controls exist in relation to the manufacture of other small arms.

Other fundamental absences include:

- No system or requirement for the marking of small arms at the time of manufacture.
- No requirement for the keeping of records on the manufacture of small arms.

Trade

The national legislation conforms to most of the provisions of the regional and international agreements:

- A permit issued by the Minister of Defence is required to trade in small arms and only a fixed number of such permits are issued each year.
- The transfer of prohibited arms (silencer guns, folding guns, multi-barrelled guns and guns with toxic effects) is not allowed.

	<ul style="list-style-type: none"> ■ Those trading in arms are required to maintain a permanent record of stocks and transactions. ■ Trading is only to be carried out in registered establishments. ■ There is a limit on the number of bullets that traders may stock, which varies according to whether or not the premises have a strong room with gun pits, reinforced concrete walls, an armoured door and a secret security lock. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No prohibition on the pawning and pledging of small arms.
Seizure, disposal and enforcement	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Small arms that have been imported, transported, acquired, sold or abandoned in violation of the provisions of Decree 12/79 may be confiscated. ■ Inventories may be ordered of all small arms meant for trade or individually kept and authorities may demand that small arms traders produce for verification their licences to sell or transport small arms and their register of transactions. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No provisions for the disposal or destruction of small arms. ■ No controls relating to the re-activation of de-activated small arms.
Arms embargoes	<p>There are no controls relating to the enforcement of arms embargoes.</p>
State-owned small arms	<p>The requirement for a licence for the possession of small arms does not apply to those small arms belonging to the National Army and Police and neither do the restrictions on where small arms may be carried.</p>
Penalties	<p>Decree No. 12/79 appears to offer penalties of varying severity. Importing, transporting, possessing, selling, giving out or abandoning small arms and ammunition in violation of the provisions of the decree is punishable with imprisonment of between seven days and one year or a fine. These penalties appear very weak. However, if the offence is committed in an area where there are military operations, the length of imprisonment may be up to 10 years.</p>

Seychelles

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECES OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN THE SEYCHELLES are the Firearms and Ammunition Act 1973 and the Firearms and Ammunition Regulations 1973.

The definitions contained in the Firearms and Ammunition Act, categorising arms and consequently determining the controls that are applicable to different classes of arms, are broad and go beyond those laid out in the Protocol for the GLR and HoA and the UN Firearms Protocol. Crucially, a separate definition for ‘arms of war’, covering arms defined as light weapons within the Protocol for the GLR and HoA, is provided by the Act. The inclusion of this category enables the enacting of provisions prohibiting their civilian possession and use by civilians, as called for by the Protocol for the GLR and HoA.

Controls on civilian possession and use

The national legislation conforms to most of the provisions of the regional and international agreements:

- A licence is required for the possession of small arms.
- The civilian possession of certain categories of small arms is prohibited.
- It is an offence to act in a drunk or disorderly manner whilst carrying a small arm or to use or attempt to use a small arm or imitation small arm to resist or prevent the lawful apprehension or detention of oneself or any other person.
- Small arms must be at all times kept in safe custody and in a safe condition and, when not in use, in a locked fireproof steel box or other locked fireproof receptacle approved by the Licensing Authority.
- There are controls on the relinquishing of small arms by civilians.

However, fundamental absences include:

- No competency testing or age restriction for licence applicants.
- No restriction on the number of small arms that may be licensed to any one civilian.
- No total prohibition on the civilian possession and use of automatic and semi-automatic rifles and machine guns.
- No prohibition on the pawning and pledging of small arms.

Record keeping and marking

The national legislation conforms to some of the provisions of the regional and international agreements:

- The President may make provisions for the establishment and maintenance of a central registry of small arms.

- The licensing authority must maintain a register of small arms dealers.
- Small arms dealers must maintain a register of transactions.
- The Licensing Authority may issue directions for the marking of small arms.
- Small arms dealers must not trade in unmarked small arms.
- Licences for the civilian possession of small arms will not be granted with respect to arms which do not bear a mark or number of identification.
- Small arms dealers must maintain equipment for the marking of small arms.

However, fundamental absences include:

- No requirement for the keeping of records on the manufacture of small arms.
- No requirement that records be maintained for not less than ten years.
- No standardised system for the marking of small arms at the time of import, export or manufacture.
- No specification of the information that markings should contain or of where on the small arms markings should be placed.
- No provisions making it an offence to alter, falsify or remove markings.

Import, export and transit

The national legislation conforms to some of the provisions of the regional and international agreements:

- Licences are required for the import, export and transit of small arms.

However, fundamental absences include:

- No details on the specific information to be included on import and export licences.
- No requirement for the use of end-user certificates.
- No system or requirement for the marking of small arms at the time of import.
- No requirement for the keeping of records on the import, export and transit of small arms.

Brokering

In the Seychelles it is possible to charge someone with trading or trafficking in small arms, which would cover brokering activities, and the law does make allowance for extra-territorial control, although brokering itself is not defined as a specific crime.

Manufacture

The national legislation conforms to some of the provisions of the regional and international agreements:

- Manufacture of small arms can only take place on behalf of the government and in premises designated for this purpose by the Licensing Authority.
- Only registered small arms dealers may act as gunsmiths.

However, fundamental absences include:

- No requirement for the marking of small arms at the time of manufacture.
- No requirement for the keeping of records on the manufacture of small arms.

Trade

The national legislation conforms to most of the provisions of the regional and international agreements:

- Licences are required to trade in arms and these must be renewed annually.
- Traded small arms must be marked.
- Small arms dealers must maintain a record of transactions.
- All premises used for the purpose of trading in small arms must be registered as such and must satisfy the standards of the Licensing Authority.
- There are limits on the types of small arms that can be transferred and the people whom they can be transferred to.

However, fundamental absences include:

- No requirement that records be maintained for not less than ten years.
- No prohibition on the pawning and pledging of small arms.

Seizure, disposal and enforcement

The national legislation conforms to most of the provisions of the regional and international agreements:

- There are extensive provisions for the seizure, confiscation and forfeiture of arms, as well as for the inspection of small arms and licences.
- Provisions also exist for the disposal and destruction of small arms which have been seized by the police on the grounds that they are believed to have been connected with an offence or which have been held for a period exceeding three months in a store maintained by the Seychelles Police Force.

However, fundamental absences include:

- No controls relating to the re-activation of de-activated small arms.

Arms embargoes

There are no controls relating to the enforcement of arms embargoes.

State-owned small arms

The Act excludes those acting on behalf of the state. The Act does not specify controls over state-owned small arms.

Penalties

The penalties contained in the Act were reviewed in 1991. However, the penalties, in particular the fines, are fairly lenient.

Sudan

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECES OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN SUDAN are the Arms, Ammunition and Explosives Act, 1986 and the Arms, Ammunition and Explosives Regulations, 1993, incorporating Amendment No. 1 of 1997.

The definitions contained in the Act, categorising arms and consequently determining the controls that are applicable to different classes of arms, group all small arms, ammunition and explosives under the title of “arms.” Crucially, a separate definition for light weapons, which would enable the enacting of legal provisions prohibiting their possession and use by civilians, as called for the Protocol for the GLR and HoA, is not included.

Controls on civilian possession and use

The national legislation conforms to most of the provisions of the regional and international agreements:

- A licence is required for the possession, use or carrying of a small arms and the legislation contains extensive details on the process for obtaining licences and specific regulations stating which categories of people are entitled to possess which types of small arm.
- A provision exists for the competency testing of licence applicants.
- With some exceptions, no person is allowed to possess more than two small arms.
- There are detailed restrictions on the quantity of ammunition that is authorised annually to civilians and diplomats.
- Restrictions exist on the relinquishing of small arms.
- Extensive provisions exist relating to the depositing in and withdrawing of small arms from public warehouses.

However, fundamental absences include:

- No total prohibition on the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns.
- No provision for the safe storage of civilian owned small arms.
- No explicit prohibition on the pawning and pledging of small arms.

Record keeping and marking

The national legislation conforms to some of the provisions of the regional and international agreements:

- Records are maintained of licences issued for the civilian possession of small arms and also on the deposit in and retrieval of small arms from public warehouses.

- Provisions exist for the marking of small arms at the time of deposit in a public warehouse and the licensing authority will only issue licences for small arms that have identifying marks.

However, fundamental absences include:

- No system or requirements for the marking of small arms at the time of manufacture, import or export.
- No specification of the information that markings should contain or of where on the small arm markings should be placed.
- No provisions making it an offence to alter, falsify or remove markings.
- No requirement for the keeping of records on the manufacture of small arms.
- No requirement that records be maintained for not less than ten years.
- No provisions making it an offence to alter, falsify or remove markings.

Import, export and transit

The national legislation conforms to most of the provisions of the regional and international agreements:

- Permits from the licensing authority are required for the import, export and transit of small arms and the Act contains a list of those categories of arms that may be imported – the importation of any other type of arms is prohibited.
- The Act lists the quantities of ammunition that arms dealers are permitted to import.
- Records are to be maintained on those small arms imported for the purpose of trading therein.
- There are limited requirements for the information to be included on import licences, however, these fall short of the requirements laid out in the Protocol for the GLR and HoA and UN Firearms Protocol.

Fundamental absences include:

- No requirement for the use of end-user certificates.
- No system or requirement for the marking of small arms at the time of import.
- No requirement for the keeping of records on the export and transit of small arms.

Brokering

There are no controls over brokering.

Manufacture

The national legislation conforms to some of the provisions of the regional and international agreements:

- Small arms can only be manufactured, assembled or altered in premises specially licensed for such purpose.

However, fundamental absences include:

- No system or requirement for the marking of small arms at the time of manufacture.
- No requirement for the keeping of records on the manufacture of small arms.

Trade

The national legislation conforms to most of the provisions of the regional and international agreements:

- Trading in small arms requires a licence and the legislation contains details on the licensing procedure.
- Records must be maintained on all small arms imported for the purpose of trading therein and small arms dealers must keep records on those small arms deposited in or withdrawn from public warehouses.
- Small arms dealers may only carry out business in the premises specified in the licence.
- Dealers can only sell small arms and ammunition to those with a permit to receive it, in accordance with the type and number of arms specified in this permit.

However, fundamental absences include:

- No requirement that records be maintained for not less than ten years.
- No prohibition on the pawning and pledging of small arms.

Seizure, disposal and enforcement

The national legislation conforms to some of the provisions of the regional and international agreements:

- Provisions exist for the state authorities to seize and confiscate those small arms with respect to which a contravention of the provisions of the Act has been committed.
- Premises and possessions used to facilitate the contravention of the Act may also be confiscated.
- The licensing authorities may demand the production of licences for the possession of small arms and may inspect warehouse registers.

However, fundamental absences include:

- No provisions for the disposal or destruction of small arms.
- No controls relating to the re-activation of de-activated small arms.

Arms embargoes

There are no controls relating to the enforcement of arms embargoes.

State-owned small arms

The Regulations contain a detailed list stating which types of small arms may be owned by various groups such as ministers, provincial governors, members of the judicial authority, army officers, police forces and public service and quasi-governmental establishment workers. The Act also contains provisions for the disposal of small arms and ammunition used by the armed forces. However, it does not state the form of disposal that should be used. Further, there is no provision for the rendering of small arms as surplus or obsolete.

Penalties

The penalties to be imposed for various contraventions of the Act are listed. They range from imprisonment for a term not exceeding five years, plus a fine, for the import of small arms without a licence, to death or imprisonment for not less than ten years for the possession, use or carrying of small arms without a licence in certain areas, as specified by the President of the Republic.

Tanzania

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECE OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN TANZANIA is the Arms and Ammunition Act of 1991.

The definitions contained in the Arms and Ammunition Act 1991, categorising arms and consequently determining the controls that are applicable to different classes of arms, are adequate and meet the provisions laid out in the international and regional agreements; that is to say that the range of arms included in the definitions, and therefore controlled under this Act, includes the classes of arms detailed in these agreements. The Act also contains definitions for items that are not small arms, including spears, bayonets, daggers, pikes, fighting irons, flick knives, gravity knives and other deadly weapons. Crucially, however, a separate definition for light weapons, which would enable the enacting of the Protocol for the GLR and HoA, which requires a prohibition on their civilian possession, is not included in the Act. In the Act no distinction is made between a small arm and a light weapon and both categories of arms are included under the same definition of 'arms' and 'armaments.'

Controls on civilian possession and use

The national legislation conforms to some of the provisions of the regional and international agreements:

- A licence is required for the possession, use and carriage of small arms.

However, fundamental absences include:

- No competency testing or age restriction for licence applicants.
- No restriction on the number of small arms that may be licensed to any one civilian.
- No total prohibition on the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns.
- Other than a requirement that licences be obtained, no restrictions on how, where and when small arms may be used.
- No provision for the safe storage of civilian owned small arms.
- No controls on the relinquishing of small arms and no prohibition on the pawning and pledging of small arms.

Record keeping and marking

The national legislation conforms to some of the provisions of the regional and international agreements:

- The Act makes reference to the registering of small arms held in civilian possession, imported for the purpose of sale or deposited in public warehouses or police stations.

However, fundamental absences include:

	<ul style="list-style-type: none"> ■ No explicit requirement for the centralised registration of all civilian owned small arms. ■ No requirement for the keeping of records on the manufacture of small arms. ■ No requirement that records be maintained for not less than ten years. ■ No system or requirements for the marking of small arms at the time of manufacture, import or export. ■ No provisions making it an offence to alter, falsify or remove markings.
Import, export and transit	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Licenses are required for the import and export of small arms and transit licences may be granted for the importation of small arms to ‘contiguous States.’ ■ Arms imported solely for the purpose of sale must be registered as such. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No details on the specific information to be included on import and export licences. ■ No requirement for the use of end-user certificates. ■ No system or requirement for the marking of small arms at the time of import. ■ No requirement for the keeping of records on the export and transit of small arms.
Brokering	<p>There are no controls over brokering.</p>
Manufacture	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ Small arms can only be manufactured or assembled at arsenals established by the Government. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No system or requirement for the marking of small arms at the time of manufacture. ■ No requirement for the keeping of records on the manufacture of small arms.
Trade	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ A permit is required to trade in arms. ■ Records must be kept on small arms deposited in and withdrawn from private warehouses. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No requirement that records be maintained for not less than ten years. ■ No prohibition on the pawning and pledging of small arms.
Seizure, disposal and enforcement	<p>The national legislation conforms to some of the provisions of the regional and international agreements:</p> <ul style="list-style-type: none"> ■ The police have the power to search for and seize small arms. <p>However, fundamental absences include:</p> <ul style="list-style-type: none"> ■ No provisions for the disposal or destruction of small arms. ■ No controls relating to the re-activation of de-activated small arms. ■ No provisions for the monitoring and auditing of small arms licenses.
Arms embargoes	<p>There are no controls relating to the enforcement of arms embargoes.</p>

State-owned small arms

State employees and those acting on behalf of the state are exempted from the Act. The Act contains no controls on state-owned small arms.

Penalties

The penalties to be imposed for contravention of the Act are imprisonment for a period of up to six years or a fine not exceeding three million shillings (US\$3,000).

Uganda

Overview of existing legislation and conformity to regional and international agreements

Definitions

THE PRIMARY PIECE OF NATIONAL LEGISLATION ON SMALL ARMS CONTROL IN UGANDA is the Firearm Act 1970. Controls on small arms are also contained in the National Resistance Army Statute 1992, the Police Statute 1994, the Control of Private Security Organisations Regulations 1997 and the Amnesty Act 2000, which are also considered here.

The definitions contained in the Firearms Act 1970, the Control of Private Security Organisations Regulations 1997, the Police Act 1994 and the National Resistance Army Statute 1992, categorising arms and consequently determining the controls that are applicable to different classes of arms, are very limited. The primary piece of legislation, the Firearms Act 1970, appears to contain no definitions, seriously undermining the enacting of the regional and international agreements. Whilst a definition of 'war materials' is included in the National Resistance Army Statute, this is not sufficient to provide for the prohibition of the civilian possession and use of light weapons, as called for the Protocol for the GLR and HoA. Any review of the national small arms control legislation should give careful consideration to this lack of definitions and take into account those definitions contained in the regional and international agreements.

Controls on civilian possession and use

The national legislation conforms to most of the provisions of the regional and international agreements:

- Licences are required for the purchase and possession of small arms and ammunition.
- Private security organisations must obtain authorisation for the possession of small arms and ammunition.
- The possession of certain categories of small arms is prohibited.
- Applicants for small arms licences must meet a number of set criteria, including competence to use small arms and being of 'sound mind and temperate habits'.
- It is an offence to act in a drunk or disorderly manner while carrying small arms and to use a small arm to resist arrest, threaten another person or cause public alarm. There are also restrictions and controls on the circumstances under which private security organisations may use small arms.
- Small arms must be stored safely and securely.
- There are restrictions on the relinquishing of small arms – small arms can only be sold or transferred to registered small arms dealers or authorised licence holders.
- The pawning and pledging of small arms is prohibited.

However, fundamental absences include:

- No competency testing or age restriction for licence applicants.

- No restriction on the number of small arms that may be licensed to any one civilian.
 - No total prohibition on the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns.
 - No specific provisions detailing what safe storage of small arms should entail.
- Record keeping and marking**
- The national legislation conforms to some of the provisions of the regional and international agreements:
- Small arms licences will not be issued for unmarked small arms.
 - Registers of small arms certificates holders and of small arms dealers and gunsmiths are required and small arms dealers must also maintain a record of all transactions.
 - Private security organisations must submit quarterly reports on their operations, maintain a small arms register and submit accounts to the Inspector General of Police.
- However, fundamental absences include:
- No requirement for the centralised registration of all civilian owned small arms.
 - No requirement for the keeping of records on the import, export and transit of small arms.
 - No requirement that records be maintained for not less than ten years.
 - No system or requirements for the marking of small arms at the time of manufacture, import or export.
 - No specification of the information that markings should contain or of where on the small arms markings should be placed.
 - No provisions making it an offence to alter, falsify or remove markings.
- Import, export and transit**
- The national legislation conforms to some of the provisions of the regional and international agreements:
- Import, export and transit permits are required for the international transfer of small arms.
 - The import or export of prohibited small arms is forbidden.
- However, fundamental absences include:
- No details on the specific information to be included on import and export licences.
 - No requirement for the use of end-user certificates.
 - No system or requirement for the standardised marking of small arms at the time of import.
 - No requirement for the keeping of records on the import, export and transit of small arms.
- Brokering**
- There are no controls over brokering.
- Manufacture**
- The manufacture of small arms and ammunition is prohibited and subject to life imprisonment.
- Trade**
- The national legislation conforms to most of the provisions of the regional and international agreements:
- Small arms dealers must register with the chief licensing officer before trading in small arms and ammunition. They must be deemed competent to carry on the business of a small arms dealer and to respect public peace and safety.
 - Small arms dealers must maintain a record of transactions.
 - The premises used by small arms dealers must also be registered and a suitable enclosed store with one means of entry and two different locks must be provided.
 - Small arms dealers may only sell or transfer small arms to other registered dealers or to persons possessing a valid small arms licence.

- The pawning and pledging of small arms is prohibited.
 - However, fundamental absences include:
 - No requirement that records be maintained for not less than ten years.
- Seizure, disposal and enforcement**
- The national legislation conforms to most of the provisions of the regional and international agreements:
- Small arms possessed without a licence or authorisation must be forfeited to the state.
 - The disposal of forfeited small arms is provided for.
 - Arms surrendered under the Amnesty Act 2000 are to be handed to the Sub-County Chief of the area.
 - Police officers have the power to seize and detain any person, small arm or ammunition if they have reasonable cause to suspect that the provisions of the Firearms Act are being breached.
 - Provisions exist allowing for the verification of small arms licences and their corresponding small arms, as do provisions for the monitoring of import permits and the activities and permits of small arms dealers.
- However, fundamental absences include:
- No controls relating to the re-activation of de-activated small arms.
- Arms embargoes**
- There are no controls relating to the enforcement of arms embargoes.
- State-owned small arms**
- The Firearms Act 1970, the Police Statute 1994 and the National Resistance Army Statute 1992 contain some limited controls over state-owned small arms.
- There are restrictions on the circumstances under which police officers may resort to the use of small arms.
 - Those in possession of arms ordinarily belonging to the Armed Forces are subject to military law and are to be sentenced to death for the misuse of war materials or for failure to protect war materials.
- There are however significant absences in terms of controls over state-owned small arms, which include:
- No requirement for the establishment and maintenance of complete national inventories of small arms owned by the security forces and other state bodies.
 - No requirement for strict national accountability in relation to all small arms owned and distributed by the state.
 - No provisions relating to the management, security and review of state-held stocks.
 - No provision for the marking of small arms which are transferred from government stocks to civilian use.
 - No programmes for the collection, safe-storage, destruction and responsible disposal of weapons rendered surplus, redundant or obsolete.
- Penalties**
- Penalties for the contravention of the Firearms Act 1970 range from imprisonment for a term not exceeding six months or a fine not exceeding twenty thousand shillings for various offences including the purchase of ammunition without a permit and the pawning or pledging of small arms, to life imprisonment for the manufacture of small arms or for the import or export of small arms which are prohibited or for which a permit has not been obtained. Whilst the terms of imprisonment appear reasonably severe, the fines have not been reviewed since 1970 and are therefore in need of revision in line with inflation. Under the National Resistance Army Statute 1992, those persons subject to military law, that is those found in possession of small arms, ammunition, equipment and other prescribed classified stores ordinarily being the monopoly of the Army, are liable to a sentence of death for the misuse of war materials or the failure to protect war materials.

4

Regional and international small arms agreements

How to use the table

THIS TABLE PROVIDES A GUIDE to the requirements contained within each of the relevant regional and international small arms agreements, broken down into ten analytical categories.

For each analytical category only those parts of the regional and international agreements directly relevant to the analytical category have been included. Certain clauses of a particular article have therefore been omitted. For instance, under ‘Record keeping and marking’, only sub-section (f) of Article 3 of the UN Firearms Protocol has been included, as the other sub-sections of Article 3 do not refer to record keeping and marking. Consequently, there are instances where requirements that are not directly relevant to the analytical category under consideration appear. For instance, under ‘Manufacture’ UN Programme of Action II Article 3 has been included which refers not only to establishing illegal manufacturing as a criminal offence but also illegal possession, stockpiling and trade.

This table is intended to be used in conjunction with the individual country tables – included in the full version of this study – in which the requirements of the regional and international small arms agreements are not reproduced in full but are reflected in a brief summarised comment.

Definitions

Nairobi Declaration,
Co-ordinated Agenda for Action
and Implementation Plan

Bamako Declaration

UN Firearms Protocol

UN Programme of Action

Protocol for the GLR and HoA

Article 3

Use of terms

For the purposes of this Protocol:

(a) "Firearm" shall mean any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;

(b) "Parts and components" shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;

"Ammunition" shall mean the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State Party;

Article 1

Definitions

"light weapons" shall include the following portable weapons designed for use by several persons as a crew, heavy machine guns, automatic canons, howitzers, mortars of less than 100 mm calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder-fired rockets, anti-tank weapons and launchers, and air defense weapons.

"small arms" are weapons designed for personal use and shall include: light machine guns, sub-machine guns, including machine pistols, fully automatic rifles and assault rifles, and semi-automatic rifles.

"small arms" shall also include:

– "firearms", meaning:
(a) any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;
(b) any other weapon or destructive device such as an explosive bomb, incendiary bomb or gas bomb, grenade, rocket launcher, missile, missile system or mine

– "ammunition", meaning the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a small arm or light weapon, provided that those components are themselves subject to authorisation in the respective State Party;

– and "other related materials", meaning any components, parts or replacement parts of a small arm or light weapon, that are essential to its operation.

Controls on civilian possession and use

Nairobi Declaration,
Co-ordinated Agenda for Action
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Nairobi Declaration Article iv

Encourage a concrete and co-ordinated agenda for action for the subregion to promote human security and ensure that all states have in place adequate laws, regulations and administrative procedures to exercise effective control over the possession and transfer of small arms and light weapons through measures *inter alia*, to:

Urge the strengthening and where they do not exist, the adoption of national laws, regulations and control mechanisms to govern civilian possession of arms;

Call on states to co-ordinate and publicise their policies, regulations and laws relating to the possession of arms by civilians;

Co-ordinated Agenda for Action Preamble

Pursuant to the Nairobi Declaration on the problem of the proliferation of illicit small arms and light weapons in the Great Lakes Region and the Horn of Africa of 15th March 2000 in which States Parties decided to:

Encourage a concrete and Co-ordinated Agenda for Action for the sub-region to promote human security and ensure that all states have in place adequate laws, regulations and administrative procedures to exercise control over possession and transfer of small arms and light weapons;

Article 3 Legislative measures

3.1 Promote legal uniformity and minimum standards to govern the manufacture, possession, import, export, transfer, transit, transport and control of small arms and light weapons.

3.2 Undertake to incorporate, as a matter of priority, the following elements in their national laws:

3.2.1 Regulations governing and prohibitions related to possession and use of small arms and light weapons.

3.2.2 Regulations for the manufacture, possession, import, export, transfer, transit, transport and control of small arms and light weapons.

Bamako Declaration

Article 3

We recommend that Member States should:

A. At the National Level **iii)** adopt, as soon as possible, where they do not exist, the necessary legislative and other measures to establish as a criminal offence under national law, the illicit manufacturing of, trafficking in, and illegal possession and use of small arms and light weapons, ammunition and other related materials; **ix)** enter into binding bilateral agreements, on a voluntary basis with neighbouring countries, so as to put in place an effective common system of control, including the recording, licensing and collection of small arms and light weapons, within common frontier zones.

B. At the regional level **ii)** Encourage the codification and harmonization of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition. Common standards should include, but not be limited to, marking, record-keeping and control governing imports, exports and the licit trade;

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II Article 3

To adopt and implement, in the States that have not already done so, the necessary legislative or other measures to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction, in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes.

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Article 3 Legislative Measures

(a) Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its national law the following conduct, when committed intentionally:

(iii) Illicit possession and misuse of small arms and light weapons.

(c) States Parties undertake to incorporate in their national laws:

(i) the prohibition of unrestricted civilian possession of small arms;

(ii) the total prohibition of the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns;

(v) provisions promoting legal uniformity and minimum standards regarding the manufacture, control, possession, import, export, transit, transport and transfer of small arms and light weapons.

(viii) provisions for effective control of small arms and light weapons including the storage and usage thereof, competency testing of prospective small arms owners and restriction on owners' rights to relinquish control, use, and possession of small arms;

(ix) the monitoring and auditing of licenses held in a person's possession, and the restriction on the number of small arms that may be owned;

(x) provisions prohibiting the pawning and pledging of small arms and light weapons;

(xi) provisions prohibiting the misrepresentation or withholding of any information given with a view to obtain any license or permit;

Article 5 Control of Civilian Possession of Small Arms and Light Weapons

(b) State Parties undertake to –

(i) introduce harmonised, heavy minimum sentences for small arms and light weapons crimes and the carrying of unlicensed small arms and light weapons;

(iii) prohibit the civilian possession of semi-automatic and automatic rifles and machine guns and all light weapons.

Controls on civilian possession and use *continued*

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3.3 Adopt the necessary legislative and other measures to establish as criminal offences under national law the illicit manufacturing of, trafficking in, and possession and use of small arms and light weapons, including home made weapons.

Article 5. Control, Seizures, Forfeiture, Distribution, Collection and Destruction

5.4 Ensure strict accountability and effective control of all weapons owned by private security companies and dealers.

Implementation Plan

Article 3 Legislative measures

[with regard to Articles 3.1, 3.2, 3.2.1, 3.2.2 and 3.3 of the Co-ordinated Agenda for Action]

Implementation:

States Parties further agree, within 18 months of the signing of this Agenda for Action, to review their respective legislation to ensure that all regulations and provisions recommended in items 3.2, 3.3 and 3.4 of the Agenda for Action are incorporated, taking into account the agreed minimum standards in para. 3.1 above.

Record keeping and marking

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Co-ordinated Agenda for Action

Article 5. Control, Seizures, Forfeiture, Distribution, Collection and Destruction

5.3 Ensure strict accountability and the effective tracing of all weapons owned by the state

5.4 Ensure strict accountability and effective control of all weapons owned by private security companies and dealers.

Article 3

We recommend that Member States should:

- A.** At the National Level
iv) develop and implement, where they do not exist, national programmes for: the responsible management of licit arms;
- B.** At the regional level
ii) Encourage the codification and harmonization of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition. Common standards should include, but not be limited to, marking, record-keeping and control governing imports, exports and the licit trade;

Article 3 Use of terms

(f) "Tracing" shall mean the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analysing illicit manufacturing and illicit trafficking.

Article 5 Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally:

II Article 7

To ensure that henceforth licensed manufacturers apply an appropriate and reliable marking on each small arm and light weapon as an integral part of the production process. This marking should be unique and should identify the country of manufacture and also provide information that enables the national authorities of that country to identify the manufacturer and serial number so that the authorities concerned can identify and trace each weapon.

Article 3 Legislative Measures

- (a)** Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its national law the following conduct, when committed intentionally:
- (iv)** Falsifying or illicitly obliterating, removing or altering the markings on small arms and light weapons as required by this Protocol.
- (c)** States Parties undertake to incorporate in their national laws:
- (iii)** the regulation and centralised registration of all civilian-owned small arms in their territories (without prejudice to Article 3 c (ii));

Record keeping and marking *continued*

Nairobi Declaration,
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4. WE STRONGLY APPEAL to the wider international community and, particularly, to arms supplier countries, to:

v) Enact stringent laws, regulations and administrative procedures to ensure the effective control over the transfer of small arms and light weapons, including mechanisms with a view to facilitating the identification of illicit arms transfers.

UN Firearms Protocol

(c) Falsifying or illicitly obliterating, removing or altering the marking(s) on firearms required by article 8 of this Protocol.

Article 7 Record-keeping

Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(a) The appropriate markings required by article 8 of this Protocol;

(b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Article 8 Marking of firearms

1. For the purpose of identifying and tracing each firearm, States Parties shall:

(a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture;

(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the

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II Article 9

To ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of small arms and light weapons under their jurisdiction. These records should be organized and maintained in such a way as to ensure that accurate information can be promptly retrieved and collated by competent national authorities.

II Article 10

To ensure responsibility for all small arms and light weapons held and issued by the State and effective measures for tracing such weapons.

II Article 16

To ensure that all confiscated, seized or collected small arms and light weapons are destroyed, subject to any legal constraints associated with the preparation of criminal prosecutions, unless another form of disposition or use has been officially authorized and provided that such weapons have been duly marked and registered.

II Article 17

To ensure, subject to the respective constitutional and legal systems of States, that the armed forces, police or any other body authorized to hold small arms and light weapons establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons. These standards and procedures should, *inter alia*, relate to: appropriate locations for stockpiles; physical security measures; control of access to stocks; inventory management and accounting control; staff training; security, accounting and control of small arms and light weapons held or transported by operational units or authorized personnel; and procedures and sanctions in the event of thefts or loss.

II Article 18

To regularly review, as appropriate, subject to the respective constitutional and legal systems of States, the stocks of small arms and light weapons held by

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(vi) provisions ensuring the standardised marking and identification of small arms and light weapons at the time of manufacture, import or export;

Article 7 Marking of Small Arms and Light Weapons and Record Keeping

States Parties undertake to –

(a) mark each small arm or light weapon at the time of manufacture, with a unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number. The marking should be on the barrel, frame and, where applicable, the slide.

(b) mark each small arm or light weapon at the time of import, with a simple marking permitting identification of the country of import and the year of import, and an individual serial number if the small arm or light weapon does not bear one at the time of import so that the source of the small arm or light weapon can be traced.

(c) ensure that all small arms and light weapons in the possession of the state are marked with a unique mark.

(d) ensure the maintenance, for not less than ten years, of information in relation to small arms and light weapons that is necessary to trace and identify those small arms and light weapons which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(i) the appropriate markings required by this Article;

(ii) in cases involving international transactions in small arms and light weapons, the issuance and expiration dates of the appropriate licenses or authorisations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Record keeping and marking *continued*

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firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;

(c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.

2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings.

**Article 9
Deactivation of firearms**

A State Party that does not recognize a de-activated firearm as a firearm in accordance with its domestic law shall take the necessary measures, including the establishment of specific offences if appropriate, to prevent the illicit reactivation of de-activated firearms, consistent with the following general principles of deactivation:

(c) Verification by a competent authority is to include a certificate or record attesting to the deactivation of the firearm or a clearly visible mark to that effect stamped on the firearm.

**Article 10
General requirements for
export, import and transit
licensing or authorization
systems**

3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

armed forces, police and other authorized bodies and to ensure that such stocks declared by competent national authorities to be surplus to requirements are clearly identified, that programmes for the responsible disposal, preferably through destruction, of such stocks are established and implemented and that such stocks are adequately safeguarded until disposal.

Record keeping and marking *continued*

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**Article 12
Information**

1. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition.

2. Without prejudice to articles 27 and 28 of the Convention, States Parties shall exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Organized criminal groups known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(c) Methods and means, points of dispatch and destination and routes customarily used by organized criminal groups engaged in illicit trafficking in firearms, their parts and components and ammunition; and **(d)** Legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

3. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

SaferAfrica is a not-for-profit organisation that assists governments and civil society to implement agreed policy on peace and security.

Saferworld is a non-governmental organisation that works with governments and civil society internationally to promote and implement new strategies to increase human security and prevent armed violence.

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