



Community security and small arms controls

**Developing a legislative framework
for Southern Sudan**

October 2010



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Saferworld's programme in Sudan

Saferworld has been working in Sudan since 2002, initially through a regional programme focusing on EU development assistance and conflict prevention in the region, and in particular supporting civil society capacity to influence policies and programming. Saferworld also conducted contract-based work on conflict sensitivity and humanitarian assistance in Darfur in 2004 and on community-based policing in Kassala State in 2006–2007. Since the signing of the Comprehensive Peace Agreement (CPA) in 2005, Saferworld has developed an in-depth programme of work in Southern Sudan, based on the recognition that intra-Southern conflicts need to be resolved for the CPA to succeed. Saferworld's programme in Southern Sudan focuses on community security and small arms control and consists of the following elements:

- Strengthening the capacity of the Government of Southern Sudan (GoSS) and key security and law enforcement authorities to respond to community security and small arms and light weapons (SALW) control concerns
- Strengthening the capacity of Southern Sudanese civil society to influence and co-ordinate action to address community security and SALW control concerns
- Developing and promoting community-level approaches to SALW control that contribute to community stability and peacebuilding
- Supporting the GoSS and international agencies to integrate SALW control and community security into policies and programmes related to security and justice sector development and peacebuilding
- Supporting GoSS and Southern Sudanese civil society stakeholders to develop strengthened co-operation with the region to address cross-border SALW control and insecurity.

Saferworld's programme of work is implemented by its team based in Juba, with support from senior management and thematic advisers in Kampala and London.

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This report was researched and written by Clare da Silva, Sarah Parker and Howard Varney. It was then used as the basis for consultation with a number of key government and non-government stakeholders, and revised by Saferworld staff based on comments received.

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Contents

Acronyms	
Executive summary	i
1. Introduction	1
2. Methodology	2
3. Development of the Bureau	3
4. Challenges	5
5. Review of relevant existing legislation	8
6. Overview of legislation in force	10
7. Developing the legislative framework	13
8. Proposal for a legal framework for small arms control in Southern Sudan	16
9. The way forward	23
10. Conclusion	25
ANNEX 1 Legislation and regulations affecting firearms in Southern Sudan	26

Acronyms

AAEA	1986 Arms, Ammunition and Explosives Act
CPA	2005 Comprehensive Peace Agreement
CSAC	community security and arms control
CSSAC	community security and small arms control
DDR	demobilisation, disarmament, and reintegration
GoSS	Government of Southern Sudan
ICSS	2005 Interim Constitution of Southern Sudan
INC	2005 Interim National Constitution of the Republic of Sudan
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
SAF	Sudan Armed Forces
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SSDDRC	Southern Sudan's DDR Commission
SSPS	Southern Sudan Police Service
UN	United Nations
UNPOL	United Nations Police

Executive summary

THE PURPOSE OF THIS REPORT is to support Southern Sudan's Bureau of Community Security and Small Arms Control ('the Bureau') in developing a small arms policy and associated legislation. It also aims to support a process of consultation with relevant actors from the Government of South Sudan (GoSS), its Legislative Assembly and supporting partners.

Southern Sudan is facing severe challenges: a fragile security situation, porous borders, high numbers of weapons in circulation, endemic inter-communal violence, and the stark reality that both the police and the security forces lack basic infrastructure and enforcement capacity. It is within the context of these challenges that the Bureau must develop small arms legislation that is meaningful for Southern Sudan's people.

This report outlines existing legal controls over firearms in Southern Sudan. However, Southern Sudan lacks primary legislation – such as a Firearms Act – to govern the possession of firearms by civilians. In setting out guiding principles and proposing a framework for small arms controls, the report stresses that an effective small arms control system must ensure responsible management of arms possessed by civilians and provide an effective guarantor of community security.

Hard realities, including a lack of security, make it impossible to implement a comprehensive firearms law – if one were to be enacted – fully and immediately in all areas of Southern Sudan. Such an approach would run the risk of discrediting and undermining the law's objectives. For this reason, the law should be implemented incrementally as and when effective security can be afforded to communities, and when the state is capable of enforcing the law's provisions. A state of lawlessness is not acceptable pending the full implementation of the law. Transitional arrangements should be accommodated in a schedule to the law. These arrangements might include creating or authorising some form of (probably armed) auxiliary policing capacity, operating at the local community level and coming under the formal authority of the Southern Sudan Police Service (SSPS). This approach recognises that many people in Southern Sudan face very real threats, that the state is currently not able to afford them effective protection, and that they have the right to defend themselves in accordance with the law. A firearms control law that takes into account difficult security realities will stand a greater chance of gaining respect and support from the population at large. The success of such an approach will depend on close collaboration between the Southern Sudanese authorities and the affected communities and their representatives.

There is a danger that the proposed transitional arrangements could turn into a long-term exercise. For this reason, it is important that the implementation of such a legal framework be subject to certain checks and be monitored and overseen by different

stakeholders, both within and outside the government. Such an approach will help the emerging state of Southern Sudan build respect for the rule of law rather than belief in the rule of the gun.

1

Introduction

IN 2007, at a policy workshop on community security and arms control (CSAC), representatives of the Government of Southern Sudan (GoSS) and other participants agreed that the GoSS should control arms in civilian hands and, to do so, develop an arms control policy and law.¹ The GoSS assigned the task of developing this policy and law to the Bureau of Community Security and Small Arms Control ('the Bureau'). Among its other activities, the Bureau is tasked with leading "the development and review [of] Southern Sudan's small arms control policy and legislation"²

The main objective of this report is to support the Bureau in fulfilling this task. The report's purpose is to provide constructive guidance and recommendations for designing and implementing a small arms³ control regime in Southern Sudan, taking into account significant challenges that must be met in addressing community security after decades of war. The report first briefly sets out the background to the Bureau and some of the main challenges confronting community security. It then examines the existing legislation applicable to small arms control to identify legislative gaps that should be addressed. General principles for developing the framework for small arms legislation are elaborated. The report concludes by suggesting a legal framework that could contribute to the development of effective small arms legislation.

¹ Principles, Guidelines, Commitments of Support and Follow-on Action, adopted at CSAC Policy Workshop, 26–27 February 2007. Please note that 'community security and small arms control (CSSAC)' and 'community security and arms control (CSAC)' are used interchangeably by involved stakeholders and in this report.

² Draft Mandate of the Southern Sudan Bureau for Community Security and Small Arms Control, Section 8(1)(d). The draft mandate also states that another key function and duty of the Bureau is 'to design a Community Security and Small Arms Control Program (CSSACP) that will include a range of complementary interventions, including small arms control, development and rule of law, that together aim to improve community security' (Section 8(1)(a)).

³ The terms 'small arms' and 'firearms' are used interchangeably in this report. Generally speaking, the term 'firearms' is used in the context of domestic or civilian use of or access to weapons such as handguns, while the term 'small arms' is more commonly used in the context of arms trading and to describe the use of and access to handguns as well as other types of individually-held weapons by state and non-state armed groups such as rebel groups and insurgents.

2

Methodology

THIS REPORT IS BASED ON RESEARCH undertaken by the authors over a two-month period. This research includes interviews conducted from 10–19 March 2010 with Bureau staff members, staff members of Saferworld in Juba and Kampala, the GoSS, local authorities, and representatives of civil society organisations. The report also draws on the extensive written documentation on Southern Sudan as well as a review of existing legislation, and builds on the content of a 2008 preliminary Saferworld report entitled *Reviewing Arms Control Legislation in Southern Sudan*.

The Head of the Bureau, Major-General Daniel Deng Lual, endorsed the aims and purpose of the research, and later contributed to its content and recommendations. The general content of the recommendations were also discussed and are reflected in this report. In June and July 2010, the final draft report was reviewed by a small number of issue experts, and some revisions were made by Saferworld staff. The report will now be used for further consultations in a broader process of developing primary firearms legislation for Southern Sudan.

3

Development of the Bureau

A LITTLE MORE THAN FIVE YEARS HAVE PASSED since the signing of the Comprehensive Peace Agreement (CPA) between the Sudan People's Liberation Movement (SPLM)/Sudan People's Liberation Army (SPLA) and the Government of Sudan, which officially ended Africa's longest civil war.⁴ The CPA established *de facto* autonomy for Southern Sudan, a six-year transition period, a new constitution, and a unity government in Khartoum. The CPA also incorporated agreements on security, boundaries, revenue-sharing from southern oil fields, and the administration of three contested areas straddling North and South. The CPA sets out important timelines that will have a significant impact on Southern Sudan's future: elections for all levels of government in Southern Sudan were held in April 2010⁵ and a referendum on the independence of Southern Sudan is scheduled for January 2011.

The CPA establishes the core security arrangements for Southern Sudan, including the redeployment of troops, the formation of joint, integrated military units, and the incorporation of other armed groups into the organised armed forces of either the SPLA or the Sudan Armed Forces (SAF). The CPA sets out institutional arrangements for the demobilisation, disarmament and reintegration (DDR) of ex-combatants and provides for the establishment of a National DDR Co-ordination Council as well as for DDR Commissions in the North and South and at the State level.

The Bureau is itself an indirect creation of the CPA's provisions relating to DDR. While the CPA says little on the issue of disarming civilians or controlling weapons in civilian hands⁶, community security and arms control was included as a component of the mandate of Southern Sudan's DDR Commission (SSDDRC). The decision to include this arose from the wartime blurring of the boundary between military and civilian actors and from the recognition that there was a need to address the many local conflicts in the South that the CPA does not specifically address.⁷ Given the huge size of the DDR task, however, community security and arms control was not given equal focus or programming attention. At the urging of a number of agencies involved in community security and arms control⁸, the Bureau was established as an independent

⁴ For a detailed history of the conflict see Johnson D, *The Root Causes of Sudan's Civil Wars*, (Indiana University Press, 2003).

⁵ The elections were originally scheduled in the CPA for 2009, but took place in April 2010 with the SPLM boycotting the elections in most of North Sudan.

⁶ There is one specific reference to civilian disarmament in the CPA in the Ceasefire Joint Monitoring Commission (CJMC) stating it will "monitor and verify the disarmament of all Sudanese civilians who are illegally armed". CPA, Chapter VI: Security Arrangements, Annexure 1: Permanent Ceasefire and Security Arrangement Implementation Modalities and Appendices, Part I: The Ceasefire Arrangements, Article 14.6.5.15, p 104.

⁷ For further discussion on the rationale to initially include CSAC programming with DDR, see Saferworld, *Developing Integrated Approaches to Post-conflict Security and Recovery* (July 2008), p 11.

⁸ This included United Nations Development Program (UNDP) and Saferworld.

government body in February 2008. The Bureau is presently under the jurisdiction of the Ministry of Internal Affairs. Its establishment as a separate institution aims to enable it to focus specifically on promoting and co-ordinating community security and arms control in Southern Sudan. As part of this, the Bureau received a number of crucial and challenging tasks, including the responsibility to “lead the development and review [of] Southern Sudan’s Small Arms Control Policy and Legislation”⁹

⁹ Draft Mandate of the Bureau, Section 8(d).

4

Challenges

IN FULFILLING ITS RESPONSIBILITY for developing small arms legislation, the Bureau is faced with a number of challenges, some of which are outlined below.

Ongoing instability

Security is extremely fragile throughout the territory of Southern Sudan. Disputes over the border between North and South, including the oil-rich territory of Abyei, are fuelling mistrust and have resulted in ongoing violent clashes between the SAF and the SPLA. In addition, attacks by the Lord's Resistance Army continue to destabilise areas along Southern Sudan's borders with Uganda, the Democratic Republic of Congo, and the Central African Republic. These attacks have resulted in civilian deaths, abductions, and displacement of populations. Overlaying these various security concerns is the perception by the GoSS that the North is actively undermining the CPA. As a result, "security continues to be understood in terms of the need to prepare for a possible future war".¹⁰ Perhaps even more critical is the ongoing conflict and violence between tribes and ethnic groups in several states. These conflicts are occurring both across state-borders, for example, Warrap/Lakes/Unity, and within states, for example in Jonglei. The violence often takes the form of cattle raiding and abductions, and the number of casualties is considerably heightened due to easy access to small arms by the civilian population.

High number of weapons in circulation

After decades of war and the arming of proxy militias by all sides involved in the conflict, small arms and light weapons ownership is widespread in Southern Sudan. Rough estimates indicated that, as of 2007, between 1.9 million and 3.2 million small arms of varying calibre were in circulation. It is widely recognised that at least two-thirds of the weapons circulating in the country are outside of government control and in the hands of civilians. Given the popular perception of a possible return to war and the precarious security environment, demand for small arms and light weapons by state and non-state actors is rising. The approach of the referendum on independence (set for January 2011) will probably keep the supply of and demand for weapons high.¹¹

¹⁰ Small Arms Survey, *Conflicting Priorities: GoSS Security Challenges and Recent Responses*, Sudan Issue Brief, Human Security Baseline Assessment (Number 14, May 2009), p 1.

¹¹ Small Arms Survey, *Supply and Demand – Arms Flows and Holding in Sudan*, Sudan Issue Brief, Human Security Baseline Assessment (Number 15, December 2009), p 1. See also McEvoy C., "Powder keg: Unfettered arms flow reflect Sudan's instability", *Jane's Intelligence Review*, December 2009), p 8: "Arms flows to Sudan fuelled by oil revenues have escalated since the signing of the 2005 Comprehensive Peace Agreement (CPA)... Almost five years later, the optimism that followed has been replaced by active preparations for the military confrontation..."

Endemic inter-communal violence

Since the signing of the CPA, the GoSS has been unable to reduce outbreaks of inter-communal and inter-ethnic violence in various parts of its territory. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), inter-ethnic violence escalated in 2009 and is continuing into 2010. During 2009, an estimated 64,710 people were displaced as a result of such clashes in Jonglei state alone.¹²

Competition over grazing lands and water resources, as well as land ownership disputes, political disputes, and cattle rustling, have all triggered conflicts.¹³ A more recent example is the fighting between Dinka and Nuer in northern Jonglei, where several clashes were reported from 15-21 January 2010 following a cattle raiding incident. It is estimated that 15,000 people fled their homes. Violence is continually perpetrated through cycles of attacks and counter-attacks. The high numbers of small arms among the civilian population contributes both to high casualty rates and to ongoing tensions.

Disarmament campaigns

In an attempt to defuse a security situation that has become increasingly precarious since the signing of the CPA, the GoSS has undertaken numerous campaigns to disarm civilians. The GoSS has turned to the SPLA to carry out these campaigns. The results have been mixed, but there is little evidence to suggest that these campaigns have had any meaningful impact on improving community security, particularly for those persons involved in inter-communal clashes.

Reports have noted that in some instances, the campaigns have resulted in brutal violence while acquiring very few weapons and further antagonising communities determined to resist being disarmed.¹⁴ For example, an assessment of the 2008 disarmament campaign in Eastern Equatoria states:

“About 1,000 weapons were collected through November and an additional 360 in December. In early June, at least eight SPLA members and 11 civilians were killed and some 4,300 people forced to flee as a result of resistance to disarmament in Iloli and Oguruny villages in Hiyala payam (district).”¹⁵

Other disarmament campaigns led to attacks on some communities by their neighbours, either because the victim communities were disarmed and their neighbours were not, or because the victim communities did not receive adequate protection from the authorities.¹⁶

The GoSS has the primary responsibility to provide security for communities that have been disarmed. The GoSS is not able to fulfil this responsibility, however, because it does not yet have police or other security forces that have the capacity to provide a security presence to deter such attacks or the capability to respond to such attacks in an effective manner. Given this reality, it is not surprising that communities arm (or rearm) themselves.

Lack of civilian protection

The infrastructure and enforcement capacity of both the police and the security forces in Southern Sudan is not yet adequate. The GoSS aims to turn the SPLA into a

¹² United Nations Office for the Coordination of Humanitarian Affairs (OCHA), ‘Sudan Humanitarian Overview’ (Volume 6, Issue 2, January – February 2010).

¹³ A series of clashes occurred in Jonglei, the largest state in Southern Sudan, between March and August 2009. OCHA estimates that 21,000 people in Jonglei were displaced in January and February 2010 as a result of continuing clashes.

¹⁴ O’Brien A, *Shots in the Dark: The 2008 South Sudan Civilian Disarmament Campaign*, (Small Arms Survey: Human Security Baseline Assessment, January 2009), p 10: “The approach was militaristic, poorly planned, and included few security guarantees. For these reasons, some of the target community rebelled and more than 1,600 lives were lost in the ensuing battle. The Jonglei campaign turned into one of the bloodiest military actions in South Sudan since the end of the second civil war and failed to improve long-term security”.

¹⁵ Ibid p 19.

¹⁶ Ibid p10.

professional army, but it will require many years to achieve this due to the slow pace of training and a lack of financial resources.

Despite this lack of capacity, the SPLA is routinely deployed to locations where civilians face security threats. These deployments include disarmament campaigns. In many instances, the result is an aggravation of the security situation and not the protection of civilians. In describing the human rights consequences of using the SPLA to keep public order, Human Rights Watch states:

“In practice, the soldiers often employ military tactics in civilian law enforcement functions, such as surrounding villages and using heavy weaponry and otherwise intimidating civilians. The strategy often backfires, leading to violent clashes with armed civilians and soldiers committing serious human rights violations in the process, often with ethnic dimensions.”¹⁷

The law enforcement capacity of the Southern Sudan Police Service (SSPS) is also still weak, and in many areas too few police officers and units are deployed.¹⁸ There is also a continuous need for police training, although several actors – including United Nations Police (UNPOL) and the U.S. and British governments – have committed significant resources to addressing this. At present however, the police are not yet able to offer ongoing security and effective policing to most people living outside Southern Sudan’s few urban centres. As a result the police are not everywhere recognised by communities as security providers.¹⁹ There is potential for this to change, though, as many people are keen to see a more effective and accessible police service – to the extent that many chiefs have stated that they would disarm if effective government security forces would provide security in the communities.²⁰

The GoSS recognises the many challenges it is facing in providing security to Southern Sudan’s communities. In response, the government has developed a number of security policy documents to engage these challenges. One such policy document is the Southern Sudan Security Strategy (2009), which elaborates the GoSS’s public security priorities and addresses both external and internal security challenges. The strategy stresses the pressing need to address inter-communal conflicts, which is of direct relevance to the Bureau’s work. Another policy document of relevance to the Bureau is the Defence White Paper (2008), which focuses on the future role of the SPLA as a professional army. Significantly, the White Paper gives the SPLA a mandate to assist in matters of internal law and order in support of the National Security and Intelligence Services, the South Sudan Police, the Prison Services and the Wildlife Protection Service.

¹⁷ Human Rights Watch, *There is No Protection – Insecurity and Human Rights in Southern Sudan*, (February 2009), p 22. The report also states (p 20) that there ‘are just as many examples where authorities have not deployed security forces to protect civilians from violent criminal acts or conflict situations.’

¹⁸ Ibid p 21 states: “The Southern Sudan Police Service (SSPS), established under a separate command from the Khartoum-based police service, is still in very early stages of development. Most police are former SPLA soldiers, poorly trained and lacking basic education. Challenges of training them include lack of infrastructure, lack of command and control and low levels of literacy”.

¹⁹ In a recent survey of households in Eastern Equatoria State, while 84% of households sampled recognised the existence of a security provider in their community, the vast majority did not cite the police or the SPLA. Rather, the majority considered the security provider to be their *boma* chief or community leader. See Danish Demining Group, *Armed Violence Reduction in Eastern Equatoria State, South Sudan: Situational Analysis and Recommendations for Action*, (draft paper based on preliminary survey results, undated), p 2.

²⁰ Saferworld draft report, unpublished, 2010.

5

Review of relevant existing legislation

UNDER THE TERMS OF THE INTERIM CONSTITUTION OF SOUTHERN SUDAN

(ICSS), the GoSS has exclusive executive and legislative powers with respect to firearms licences within Southern Sudan.²¹ However, the GoSS has not yet enacted legislation regulating the granting or issuing of firearms licences in Southern Sudan. Some legislation has been enacted by the GoSS that *contemplates* the issuance of or need for a firearms licence or permit in Southern Sudan. For example, the 2008 Penal Code provides that it shall be a defence to the charge of possessing a dangerous weapon if the accused person holds a licence or permit issued under any law to possess the weapon.²² Additionally, the 2009 Southern Sudan Police Service Act provides that the Southern Sudan Police Service is responsible for issuing licences for the possession of firearms.²³ However, there is currently no primary legislation – such as a Firearms Act – in place in Southern Sudan governing the issue of civilian access to firearms, including licensing and registration.

The question that thus arises is whether and to what extent the firearms legislation predating the CPA and the establishment of GoSS is still applicable in Southern Sudan.

The primary pieces of legislation governing small arms control in Sudan predate the CPA and are the 1986 Arms, Ammunition and Explosives Act (AAEA) and the 1993 Arms, Ammunition and Explosives Regulations, incorporating Amendment No.1 of 1997.²⁴ This legislation is not reviewed in detail here, as it was previously reviewed by Saferworld in a separate study (see Box 1 for main findings).²⁵ While the INC and ICSS could be interpreted to suggest that pre-CPA national laws, including the AAEA could apply provided that they be amended to reflect the new constitutional dispensation, the view of most GoSS officials was that Southern Sudan should develop a new small arms control policy and law that meets the needs and requirements of the south. The formal position according to a 2007 judicial circular is that such national laws could apply in certain cases in Southern Sudan (i.e. cases arising in territory controlled by the Sudan Government that arose before 10 July 2005). However, it is unlikely that such cases concerning arms control issues would arise in practice.²⁶

²¹ ICSS Schedule B, section 19(7). This provision echoes Schedule B, section 19(7) of the Interim National Constitution of the Republic of Sudan 2005 (INC).

²² 2008 Penal Code, section 72(2). See Annex 1 for details.

²³ Article 10.

²⁴ Flew C and Urquhart A, *Strengthening Small Arms Control: An Audit of Small Arms Control Legislation in the Great Lakes Region and the Horn of Africa. Regional Overview*, (SaferAfrica and Saferworld, Feb 2004); Government of Sudan, *Report of the Sudan on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, English translation (2008).

²⁵ Ibid.

²⁶ Saferworld, *Reviewing Arms Control Legislation in Southern Sudan*, unpublished preliminary report (September 2008).

BOX 1**Overview of 1986 Arms Ammunition and Explosives Act – Controls on civilian possession and use**

The national legislation conforms to most of the provisions of the regional and international agreements on civilian possession and use of small arms:

- A licence is required for the possession, use or carrying of a small arm, 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 small arms possessed by civilians
- No explicit prohibition on the pawning and pledging of small arms.

Source: Flew C and Urquhart A, *Strengthening Small Arms Control: An Audit of Small Arms Control Legislation in the Great Lakes Region and the Horn of Africa. Regional Overview*, (SaferAfrica and Saferworld, February 2004).

6

Overview of legislation in force

The SPLA Act 2009

The SPLA Act 2009, which repealed the SPLA Act 2003 that formed part of the Laws of the New Sudan, was designed to provide for the establishment, governance and discipline of the SPLA. The SPLA comprises officers of the SPLA, those enrolled or enlisted in the SPLA prior to and under the SPLA Act 2009, and non-commissioned officers serving with and on the rank and file of the SPLA, as well as reserves when in training and actual military service.²⁷

The Act creates various offences expressly related to arms and ammunition:

- “cowardice in action” including casting away of any material under enemy attack²⁸ or premature, unauthorised firing (punishable by death or imprisonment for up to ten years)²⁹
- “breach of concealment”, including premature or unauthorised shooting (punishable by death or imprisonment for up to ten years)³⁰
- “failure to protect war material and equipment” (punishable by up to 14 years imprisonment), including:
 - failing to guard arms or ammunition
 - malicious damage to arms or ammunition
 - tampering with or mishandling of arms or ammunition resulting in damage
 - giving or allowing arms or ammunition to be handled by an unauthorised person
 - losing arms or ammunition or parts of them
 - unauthorised disposal of arms or ammunition³¹
- carelessly shooting any person or handling arms or ammunition in such a manner to endanger lives of other persons in operation (punishable by imprisonment for up to seven years)³²
- converting to personal benefit or losing arms, ammunition and other equipment (punishable by imprisonment for up to seven years)³³

²⁷ SPLA Act 2009, s. 4(2) & (3).

²⁸ SPLA Act 2009, s. 53(1)(h). Presumably ‘any material’ includes arms and ammunition.

²⁹ SPLA Act 2009, s. 53(1)(i).

³⁰ SPLA Act 2009, s. 54(1)(f).

³¹ SPLA Act 2009, s. 55(1)(a)–(f).

³² SPLA Act 2009, s. 57(1)(h).

³³ SPLA Act 2009, s. 78(1)(c).

- acquiring possession of arms or ammunition without authority (punishable by imprisonment for up to seven years)³⁴
- intentionally furnishing a false return or report of the number or state of any money, arms, ammunition, clothing, equipment, stores, or other property in one's charge, or omitting or refusing to return such a report (punishable by imprisonment for up to three years).³⁵

There are also more general provisions relating to the theft of public or military property that would also implicitly cover arms and ammunition. Additionally, the Act provides that arms and other equipment belonging to a person accused or convicted under the Act may not be seized or attached.³⁶

Penal Code Act 2008

The Penal Code Act 2008, which repealed the Penal Code Act 2003, contains a number of offences expressly relating to small arms, including:

- supplying weapons (including firearms) to insurgents, bandits, saboteurs or terrorists³⁷
- possessing weapons for the purposes of insurgency, banditry, sabotage or terrorism³⁸
- unlawful possession of a dangerous weapon³⁹
- the offence of public violence (which includes a disturbance of the peace or invasion of the rights of others where the person involved was armed)⁴⁰
- possession of an offensive weapon (including a firearm) at a public gathering without lawful authority (i.e. a person may only have/carry a weapon at a public gathering if the person is acting in his or her capacity as a police officer, a member of the Defence Forces, or an employee of the State, Government of National Unity, Government, or a local authority)⁴¹
- voluntarily causing hurt using 'any instrument for shooting, stabbing or cutting'⁴²
- robbery using a firearm⁴³
- committing or attempting to commit a robbery or brigandage⁴⁴ using a deadly weapon.⁴⁵

Additionally, if a person employs or uses weapons in the course of committing the offence of unlawful dealing in a dangerous drug, this constitutes an aggravating circumstance, which has the effect of increasing the penalty from imprisonment for 14 years and/or a fine to death or life imprisonment.⁴⁶

Code of Criminal Procedure Act 2008

The Code of Criminal Procedure Act 2008, which repealed the Code of Criminal Procedure Act 2003, contains three provisions expressly relating to small arms:

- Where an arrest warrant is for a minor offence, the person specified in the warrant may be issued with a citation in lieu of a physical arrest provided, *inter alia*, the incident did not involve the use of a firearm.⁴⁷

³⁴ SPLA Act 2009, s. 78(1)(f).

³⁵ SPLA Act 2009, s. 79(1)(b).

³⁶ SPLA Act 2009, s. 93.

³⁷ Penal Code Act 2008, s. 70.

³⁸ Penal Code Act 2008, s. 71.

³⁹ Penal Code Act 2008, s. 72.

⁴⁰ Penal Code Act 2008, s. 79.

⁴¹ Penal Code Act 2008, s. 85.

⁴² Penal Code Act 2008, s. 233(a).

⁴³ Penal Code Act 2008, s. 305(1)(c).

⁴⁴ Under the Penal Code Act 2008, 'brigandage' is robbery involving five or more persons (s. 308).

⁴⁵ Penal Code Act 2008, s. 310.

⁴⁶ Penal Code Act 2008, s. 383(3)(b).

⁴⁷ Code of Criminal Procedure Act 2008, s. 74(b).

- A police officer making an arrest may take from the person arrested any offensive weapon he or she has on them and must deliver the weapon to the Public Prosecution Attorney, Magistrate, Court or officer, before whom the person arrested is required to be produced.⁴⁸
- When setting bail, the Public Prosecution Attorney or Magistrate of the Court must take into account the use of a firearm or other deadly weapon in the commission of the offence charged in determining the seriousness of the offence.⁴⁹

Southern Sudan Police Service Act 2009

The Southern Sudan Police Service Act 2009 repealed the Police Act 2003, which was enacted as part of the New Laws of Sudan. The purpose of the Act is to provide for “the establishment and governance of the Police Service in Southern Sudan and to enable it to prevent, combat and investigate crime, maintain law and public order, protect the people in Southern Sudan, their properties, uphold and enforce the Interim Constitution of Southern Sudan, 2005 and the law”.⁵⁰ The Act notes that one of the functions of the Police will be to combat smuggling and illegal trading in firearms⁵¹ and that one of the competencies of the Southern Sudan Police Service will be to issue licences for the possession of firearms.⁵²

New regulations accompanying the Southern Sudan Police Service Act 2009 have not yet been passed, and so the Police General Regulations 2003 enacted as subsidiary legislation to the Police Act 2003 remain in force. The Regulations provide that each officer in charge of a unit is responsible for the armaments and other equipment allocated to his unit and that he must ensure such armaments and other equipment are in good condition and are inspected periodically according to the inspector-general’s instructions, to enable him to give reports about its soundness for use.⁵³ The Regulations also stipulate that members of the Police Service must return any armaments and ammunition upon dismissal.⁵⁴

The existing legislative provisions specifically addressing arms control and civilian access to firearms are sparse, to say the least. They presuppose the existence of primary legislation establishing a system of licensing and other restrictions, which either does not exist or, at most, is not being implemented.

⁴⁸ Code of Criminal Procedure Act 2008, s. 95.

⁴⁹ Code of Criminal Procedure Act 2008, s. 128(2).

⁵⁰ The Southern Sudan Police Service Act 2009, s. 3.

⁵¹ The Southern Sudan Police Service Act 2009, s. 7(k).

⁵² The Southern Sudan Police Service Act 2009, s. 10(e).

⁵³ The Police General Regulations 2003, s. 25.

⁵⁴ The Police General Regulations 2003, s. 26.

7

Developing the legislative framework

ULTIMATELY, THE GOSS'S LONG-TERM OBJECTIVE should be to have both effective small arms legislation and effective controls on the ground. While there are many challenges and it will take many years before both elements of this objective can be achieved, the development of a detailed legislative framework is the first step and deserves immediate focus. The GoSS could develop such a framework as other security sectors are strengthened, while also ensuring that relevant small arms control provisions are included in legislation governing the SPLA and SSPS. This would be an important step towards enabling the GoSS to plan for the referenda and for the post-referenda periods, and towards creating conditions for longer-term security. The following section sets out some suggestions to guide the development of the legislative framework.

Southern Sudan-specific

Given the challenges and priorities it is facing, Southern Sudan will need to develop its own, tailor-made approach to the small arms control problem. Southern Sudan's existing constitutional and legal framework, its bureaucratic processes and national policies, and the nature and extent of the small arms problem are some of the factors that will influence how the country's arms legislation will take shape.

Two hard realities stand out. First, communities need protection. In the absence of an effective state security apparatus, an instinctive urge for security is still motivating people to obtain and keep weapons. Second, the alarming prevalence of small arms in local communities exacerbates the danger of violence erupting and escalating, because people are inclined to resort to using these weapons when they believe they need to protect themselves either pre-emptively or in reacting to an attack. The link between the factors motivating people to possess weapons and the violence that results are crucial problems that effective small arms legislation must address.

Work towards compliance with the Nairobi Protocol

In addition to ensuring that the legislation is specific to Southern Sudan and appropriate to meet conditions in Southern Sudan, the drafters should consider standards contained in the key regional and international small arms agreements. These agreements include:

- The Bamako Declaration on an African Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, 1 December 2000
- 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, 15 March 2000
- The Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (the ‘Nairobi Protocol’), 21 April 2004.

While these documents each emphasise the effective and responsible management of arms possessed by civilians, the Nairobi Protocol is the only legally binding instrument of relevance to the specific task of developing a small arms legislative framework addressing possession of arms by civilians.⁵⁵ The pertinent obligations in the Nairobi Protocol are set out in Box 2. The Protocol affirms the principle of ‘license the owner, register the weapon’, and encourages voluntary weapons surrender programmes alongside the implementation of national regulation of civilian possession of small arms.

BOX 2

Relevant obligations under the Nairobi Protocol

National regulations on ownership and licensing

- Prohibition of unrestricted civilian possession of small arms
- Total prohibition of the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns
- Regulation and centralised registration of all civilian-owned small arms in territory
- Provision for the effective control of small arms and light weapons, including the storage and usage thereof; competency testing of prospective small arm owners; and restrictions on owners’ rights to relinquish control, use and possession of small arms
- Monitoring and auditing of licences held in a person’s possession, and restriction on the number of small arms that may be owned

Voluntary surrender

- Introduce programmes to encourage small arms and light weapons in lawful civilian possession to be voluntarily surrendered for destruction/disposal by the state
- Illegal small arms and light weapons holders shall surrender their small arms and light weapons for destruction

Record-keeping

- Consider establishing and maintaining a national database of licensed small arms owners
- Holding of records on licences granted to civilians to possess small arms
- Maintenance of records for a minimum of ten years

Penalties

- ‘Heavy’ minimum sentences for the carrying of unlicensed small arms and light weapons

Source: Articles 5 and 12, *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*, entered into force on 5 May 2006.

Recognise the role of informal security providers in the legislative regime

The Bureau Director has stated that an important principle for strengthening community security is the “empowerment and consolidation of the role of traditional authorities and leaders”.⁵⁶ A recent research study on reducing armed violence underscores the importance of this approach. It notes that *boma* chiefs and community leaders were widely regarded as security providers; the researchers found that “as the trust put in these community leaders by households increases, the chances that these households will experience crime were shown to decrease”.⁵⁷ The report suggests that

⁵⁵ All thirteen Member States have signed the Protocol; nine States, including Sudan, have ratified it.

⁵⁶ Major General Daniel D Lual, *Community Security and Community-based Policing Interconnection in Southern Sudan*, (unpublished, March 2010), p 2.

⁵⁷ Danish Demining Group, *Armed Violence Reduction in Eastern Equatoria State*, (draft paper, undated), p 3.

“as *boma* [village] chiefs and community leaders gain the trust of their constituents, they are better able to engage with them to resolve issues or gain the local level knowledge needed to find practical solutions to security concerns; thus they can have a measurable impact on the security of their communities”.⁵⁸ However, it should also be recognised that *boma* chiefs may not be universally trusted or seen as legitimate in all communities, and so this status cannot always be assumed without further consultations in local communities. Furthermore, other informal security providers exist that may be a positive influence or may in fact be a threat to the security of the community, such as youth groups and self-styled militia groups.

Any legislative framework for arms control should therefore recognise the existence of informal security providers, and recognise the links between state and non-state security and justice providers. However, it should not grant them authority over small arms management.



Proposal for a legal framework for small arms control in Southern Sudan

A LEGAL FRAMEWORK FOR SMALL ARMS CONTROL IN SOUTHERN SUDAN will have to recognise the hard realities that persist in many parts of Southern Sudan and the wider region. A legislative framework that includes all the typical or ‘best practice’ firearms control provisions for immediate implementation is likely to be discredited in the eyes of most people in Southern Sudan, because such a law will have little or no meaning outside of Juba and a few other urban settlements. Its enforcement in the bulk of Southern Sudan will at best be sporadic and highly selective, if not discriminatory. This will lead to a great deal of resentment and probably resistance by those experiencing such selective enforcement.

As mentioned above, the GoSS is at present unable to provide sufficient security and effective policing on an ongoing basis to most persons living outside a few urban centres. Arms control efforts, including campaigns to disarm the population that expose people and communities to attack, criminal activity and loss of livelihoods will undermine respect for the rule of law.

Incremental approach

Until Southern Sudan is able to put in place security structures that provide the population with reasonably effective protection, arms control mechanisms of a more conventional nature will not be appropriate for most parts of its territory. It is therefore recommended that an incremental approach is taken to small arms control in Southern Sudan. The proposed working principles underpinning such a graduated approach should be:

- The degree or intensity of small arms control depends on the ability of the state to provide protection to communities.
- The people of Southern Sudan have a right to be protected by the state. However, in the absence of such protection, they retain a right to self-defence as stipulated in the Penal Code articles 40 to 47. (See Article 40 (1): “No act is an offence which is done in

the lawful exercise of the right of self-defence”. (2) Every person has a right, subject to the restrictions hereinafter contained to defend (a) his or her own body and the body of any other person against any offence affecting the human body and (b) property...”. In some circumstances this right may include the use of firearms, as exemplified by the illustration under article 47, which refers to firing upon a crowd which is attacking a person.

- The formulation of a legal framework and its implementation must be done in consultation with representatives from affected communities throughout Southern Sudan.
- In the absence of effective policing, options should still be explored for accountable and monitored mechanisms for small arms control at the local level while ensuring a linkage to formal SSPS command and control.

Comprehensive law with progressive implementation

While a new and comprehensive small arms control regulatory regime should be put in place for Southern Sudan, we propose that it be implemented incrementally in different parts of the territory when the appropriate authorities of Southern Sudan deem it suitable to do so. The timing should depend upon conditions on the ground within the identified areas, and the risk of political manipulation of the enactment of the bill should be borne in mind. For example, if the bill is enacted in one particular state, but not in the neighbouring state, this effectively means that people living in the area where the law is enacted are suddenly subject to stricter arms control legislation than their neighbours. In tense situations, this can create perceptions of disadvantaging some communities in terms of their ability to protect themselves.

From a procedural perspective, careful thought has to be given to the mechanism chosen to set out the enactment schedule of the law. For example, according to the Interim Constitution of Southern Sudan, if a bill is officially announced but the president (a) does not sign the bill within 30 days and (b) does not offer a reason for not signing the bill, then the bill is considered signed and becomes law. However, if within the 30 day period, the president (a) does not sign the bill but (b) offers a reason for not signing it, then the bill does not become law. If the intention is to have a bill that does not automatically come into law across Southern Sudan, the bill will therefore have to contain wording or a schedule to that effect.

Such a law should establish a comprehensive and effective system of small arms control in Southern Sudan. The purpose of the law should be to set the parameters for the definition of legally owned firearms. It should provide the framework for controls on the ownership, possession and use of firearms by civilians. Given the history of Southern Sudan and the blurring of the lines between ‘civilians’ and ‘combatants’, it will be important to clearly define who constitutes a ‘civilian’ and therefore falls within the purview of the law. The controls should ensure that firearms are handled responsibly and stored securely to prevent their misuse and prevent them from moving into illicit circulation. The basic provisions for such a law are set out in Box 3.

In many jurisdictions, a firearms control act would also contain provisions governing the import, export and transit of arms. Controls over manufacturing and those engaged in the trade in small arms (dealers) would also be included. However, given the seriousness of the firearms situation in Southern Sudan and the challenge that implementing a firearms act will entail, it is recommended that the legislation focuses solely on regulating possession of small arms by civilians as a first step. Further, given the complexity of the flow of weapons into and within Southern Sudan, it would be important that a separate legislative approach is developed to begin addressing this issue.⁵⁹

⁵⁹ Disarmament is a separate issue from small arms possession controls, and if the Bureau or other institutions within the GoSS are going to carry out disarmament activities, a clear legal framework must be developed for their implementation. Disarmament also should not be a part of the primary legislation addressing firearms.

BOX 3	
Basic provisions for a firearms act	
Institutions	<ul style="list-style-type: none"> ■ Identification of a centralised institution responsible for implementing the licensing or authorisation system
Definitions	<ul style="list-style-type: none"> ■ Clear definition of 'firearms' and what is excluded from the coverage of the legislation
Prohibitions	<ul style="list-style-type: none"> ■ A general prohibition against the possession of firearms unless individuals hold a licence or authorisation issued in terms of the law ■ The total prohibition of the civilian possession and use of certain types of firearms and other weapons unless specifically authorised in terms of law, including fully automatic and semi-automatic rifles and machine guns ■ The total prohibition of the civilian possession and use of light weapons
Licensing or authorisation process	<ul style="list-style-type: none"> ■ Clearly stipulated process to be completed in requesting licence or authorisation to possess a firearm ■ Establishment of a detailed and standardised system specifying the conditions under which licences or authorisation will be granted, and the basic information that must be contained on the licence ■ Requirement for separate licences for each firearm ■ Requirement for explanation/proof for the need for a firearm – applicants should be required to prove their need for the specific type of firearm when applying for a licence ■ Imposition of age limits for legal ownership of a firearm ■ Assessment of the competency and fitness of individuals to own and possess firearms – this could include an assessment of applicants' ability to use, carry and store firearms safely; checks to ensure that applicants are of sound mental health; and checks to ensure that licences are not issued to applicants with previous convictions for small arms-related offences ■ A process for renewing licences and clear provisions as to when a licence can be terminated
Conditions on licence	<ul style="list-style-type: none"> ■ A limit on the number of firearms that a person can legally possess ■ Imposition of a limited time period of validity for licences or authorisation ■ Detailed restrictions on the manner in which firearms may be carried in a public place and used
Centralised record-keeping	<ul style="list-style-type: none"> ■ Recording of who is licensed to possess firearms, and in what quantity ■ Registration of weapons (including details of markings)
Controls on ammunition	<ul style="list-style-type: none"> ■ Prohibition on possessing ammunition unless in possession of firearm capable of discharging that ammunition or holding a separate licence/authorisation to possess ammunition
Sales/transfers	<ul style="list-style-type: none"> ■ Authorisation of firearms transactions between individual citizens ■ Prohibition of unauthorised private sales of weapons
Safe storage requirements	<ul style="list-style-type: none"> ■ Conditions for the proper and safe storage of firearms and ammunition by licence holders
Criminal sanctions	<ul style="list-style-type: none"> ■ Provisions creating offences for contravention of the act and setting out penalties or administrative fines ■ Powers of search and seizure by appropriate authorities ■ Where necessary, provision of the police (and/or other appropriate authorities) with powers to destroy small arms that are misused or in illicit circulation

In developing the law's provisions, consideration should be given to how they might be realistically implemented in Southern Sudan. For example, in many jurisdictions the power/authority to grant civilians licences to possess weapons is given to a designated officer within the police force. Another example relates to security and storage of weapons. While robust requirements, such as keeping firearms locked in fireproof steel boxes or use of safety devices, might be feasible in some jurisdictions, in all likelihood

very few people in Southern Sudan would be able to meet such requirements. Drafters of the firearms control law might consider a minimum mandatory provision requiring that firearms be stored in locked areas or containers accompanied by recommendations for other, more rigorous security methods.

Implementation of such a comprehensive law is likely to be limited in its early days. With the possible exception of Juba,⁶⁰ most areas of Southern Sudan would have neither the capacity nor the resources to implement the full extent of its provisions; nor would the state be in a position to concurrently provide effective security in such places. Both of these conditions would be necessary prerequisites for the successful implementation of the law's provisions. We nonetheless propose the placing of the full law on the statute books for purposes of public education and awareness-raising. In so doing, the GoSS will put the population on notice that it intends to control the ownership and use of firearms throughout its territory.

The development and implementation of a firearms control law should be complementary to existing initiatives on defence sector transformation, policing and the rule of law. If these processes are not co-ordinated, they run the risk of at best missing opportunities for comprehensive security, rule of law and arms control, and at worst undermining each other.

Transitional legal framework

Where full implementation of the law is not possible, it is proposed that a transitional legal framework be devised. Such a framework would reflect the current lack of capacity of the authorities to implement a comprehensive arms regulation framework as part of a broader framework to protect citizens. This framework could include a confirmation of existing criminal law under, which citizens have the right to defend themselves against any offence affecting the human body and their property (article 40) as long as the response does not inflict more harm than necessary for the purpose of defence (article 42). Such transitory provisions could be included as a schedule to the firearms control law.⁶¹

There should also be discussion about whether to include a provision in the transitional schedule for an auxiliary reserve police force, accountable to the SSPS and possessing certain stipulated powers to control, issue and use arms and provide basic protection on the ground.

Principles

The transitional schedule should set out certain guiding principles. It should recognise at the outset that adequate protection of fundamental rights to life and security of the person is fundamental to the well-being and social and economic development of every person in Southern Sudan. If it contains reference to auxiliary policing, then the schedule should also affirm the principle of providing accountable and legitimate security provision at the local community level, and that all policing must act in accordance with the principles contained in the Interim Constitution of Southern Sudan and other applicable law. The details of what such a force may look like need not be captured in the firearms act, but should be set out in a legal framework, for example, a separate bill. Details should include reference to the authority managing any auxiliary police; the exact role and mandate of auxiliary police reserve; their right (or lack thereof) to bear arms; the limits on their power; and mechanisms for redress from civilians should they exceed such limits, oversight and accountability.

⁶⁰ The Deputy Inspector-General for Police, Lt. General Gordon Micah Kur Lualla, has advised that with sufficient material support, the police might even be able to enforce a gun-free zone within the municipal boundaries of Juba.

Dangers and risks

Authorising additional groups of people to act as police reserves and possibly bear fire-arms, even for limited purposes, carries with it certain dangers and risks. These should be recognised upfront and properly monitored and managed.

A system of auxiliary police reserves could lead to the legitimisation of a popular view that the authority to employ force, including lethal force, rests not only with the state but with civilians as well. This will particularly be the case where there is no state regulation, monitoring and/or meaningful accountability in respect of such initiatives.

Auxiliary police units also could evolve into fully-fledged security departments that go well beyond protection of communities. Delegating law enforcement and security responsibilities to poorly trained (or untrained) and inadequately screened paramilitary and defence volunteer forces – among them persons who have little regard for law and human rights – will give such persons opportunities to pursue their own interests and strategies,⁶² and in the long term contribute to insecurity and violence.

Auxiliary police units further could end up wielding undue influence and power in civil affairs. They could be abused and manipulated for political aims, private economic interests, or criminal ends. Many civil defence or self-protection units elsewhere in the world have been used for ulterior purposes and have committed gross human rights violations against civilians, provoking hostility and retribution. Indeed there are already examples of this within Southern Sudan. One of the greatest sources of armed insecurity in Lakes State has been the *gelweng* (cattle guards), which were formed following internal splits within the SPLM/A in the early 1990s.⁶³ These splits fuelled civil conflict and a massive growth of militias. The SPLA armed local youths to protect their cattle and communities from internal threats in order to allow the army to combat the threat posed by the North. When the war ended, the *gelweng* lost their protector status but retained their weapons. These youth now face dire economic conditions, and many use their weapons in ongoing factional fighting and criminal activity.⁶⁴

At its forty-ninth session, the United Nations (UN) Commission on Human Rights adopted resolution 1993/54, entitled “Civil defence forces”. In that resolution, and with reference to the report on the subject submitted by the UN Secretary-General pursuant to Commission resolution 1992/57 (E/CN.4/1993/34), the Commission, while recognising that there might be a need for the establishment of civil defence forces in exceptional circumstances, notes that such forces, particularly in areas of conflict, had in some cases jeopardised the enjoyment of human rights and fundamental freedoms. The report of the Commission notes that several countries had provided for formal legal authority and recognition for entities such as:

- ‘Rondas Campesinas,’ a traditional form of peasant organisation with the primary aim of protecting the social and economic interests of their communities, legally recognised by the Government of Peru in the mid-1980s and placed under the control of the Ministry of the Interior. These were intended to serve the community to ensure the defence of their land, cattle, and other goods and to co-operate with the authorities in the elimination of crime. In 1991, they were entitled to possess and use weapons and ammunition, subject to prior authorisation by the Armed Forces Joint Command;
- “Voluntary non-military institutions within communal self-administering bodies” to deal with “civil and territorial defence activities, disasters and emergency situations” in the Russian Federation.

The Commission report quotes a conclusion drawn by the Inter-American Commission on Human Rights, which states that, in general, “the creation of unregimented and

⁶² Sarosi D and Sombutpoonsiri J, *Rule by the Gun: Armed Civilians and Firearms Proliferation in Southern Thailand*, Nonviolence International Southeast Asia (May 2009).

⁶³ O’Brien A (2009).

⁶⁴ *Ibid.*

undisciplined security forces, without the kind of structure, training and internal and external supervision that all forces of law and order must have, engenders conflict and human rights violations". The report also makes reference to the 1994 annual report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (E/CN.4/1994/7, paras 719 and 720), which states that:

"In several countries, civilians, particularly in rural and/or remote areas, have formed groups of self-defence in situations where they feel that their lives or property are threatened. While such threats may emanate from common criminality, for example cattle thieves, civil defence forces are frequent in areas where armed opposition groups operate. Often, they are supported or even set up by the security forces and integrated into the Governments' counter-insurgency strategy... The Special Rapporteur received numerous reports about extrajudicial, summary or arbitrary executions committed by members of such groups, either in co-operation with units of the security forces or with their acquiescence. With very few exceptions, they were said to enjoy impunity for their actions. Often, the victims of such killings were said to be peasants suspected of being members or sympathizers of the armed opposition because they refused to join the, ostensibly voluntary, civil defence groups."

Lessons from past experiences

In the report cited above, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions appealed to the governments of all countries where such civil defence structures exist to ensure full respect of human rights by the members of these groups. In particular, the Rapporteur urged that:

- Such groups should be trained to act in conformity with the restrictions on the use of force and firearms for law enforcement officials set out in relevant international instruments.⁶⁵
- All arms used by such groups, particularly if provided by the military, should be registered, and their use subjected to strict control.
- All abuses should be punished, and effective measures should be taken to prevent their occurrence.
- Nobody should be forced to participate in civil defence groups.
- Acts of reprisal against those who refuse to take part in such groups, such as extra-judicial killings, death threats or any other act of harassment, should be subject to an independent investigation and justice should be allowed to take its course.
- The distribution of weapons and ammunition must take place under strict control and be restricted to a minimum.

Other experiences suggest that the following steps and measures should also be implemented to help ensure a more effective system of auxiliary police protection:

- The legal status of auxiliary police members must be clearly defined in law to prevent any ambiguity developing around their perceived roles and to reduce the possibility of their being used for unlawful ends.
- Their activities must be monitored and controlled by a formal authority to make sure they are accountable to the executive and legislature, and to wider civil society.
- Training should emphasise post-conflict roles for the purposes of supporting the broader community and the wider society, rather than narrow or factional interests.
- As much as possible, community views should be solicited about the suitability of potential members of such auxiliary police, including about whether potential members had committed human rights abuses in the past and whether they are trusted to act in the best interest of the community. This requires communities and local leaders to be closely consulted.

⁶⁵ For example, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990.

- It will be necessary to publicise the rationale behind such a programme, both within local communities and nationally. The legal requirement of civilian oversight should help to allay fears of human rights abuses.
- Monitoring of auxiliary policing activities should take place not only through state structures but also through local civil society actors, NGOs and international organisations.
- As conventional policing and security structures are introduced in certain areas, the auxiliary policing system should be phased out or redesigned. Members should be offered retraining for possible inclusion in the police service or other continuing roles in the area of community security.
- The decommissioning of the system of auxiliary policing in any given area should be done in consultation and co-operation with the auxiliary police units themselves, the affected communities, and other interested stakeholders.

9

The way forward

Fundamental elements of a legal framework for firearms control should be put in place as soon as possible. The Bureau and its supporters will need to develop its own clear work plan to move the development of small arms legislation forward. Saferworld could provide support to this process, based on its experiences elsewhere (see Box 4). The following are suggested areas of focus in this process:

1. **Develop a basic, rudimentary structure of a firearms act schedule:** Such a document can serve as the basis for consultations with a range of stakeholders (local communities, state and local government authorities, state legislators, other ministries and institutions, etc.) and can evolve as input is received.

BOX 4

Supporting a firearms legislation drafting process in Uganda

In Uganda, Saferworld has been supporting the National Focal Point on Small Arms and Light Weapons (NFP) and other government and non-government stakeholders since 2003 to develop a national firearms policy in line with the recommendations of the national mapping exercise that was conducted across Uganda in 2002–3.

The national firearms policy contains detailed technical guidelines that are consistent with the provisions of the Nairobi Protocol and its associated Best Practice Guidelines, and that draw on other relevant international and regional instruments on small arms and light weapons. The policy was submitted to the Ugandan Cabinet for approval in late 2009. At the same time, Saferworld has also supported the NFP in initiating the process of drafting firearms legislation, drawing on the technical guidelines contained in the firearms policy and eventually providing a legislative basis for the implementation of the policy.

Saferworld has supported the process throughout by providing technical input and facilitating discussions between relevant stakeholders, in order to strengthen inter-agency collaboration and supported and conducted public consultations to inform the firearms policy and legislation. This has included commenting on drafts of the policy document and legislation, assisting in writing terms of reference and guidelines for the legal drafting committee, convening and facilitating consultations between relevant stakeholders, and identifying additional experts to provide practical support at critical points in the process.

2. **Continue the community assessments undertaken by the Bureau:** Development of the legal framework should be accompanied by accurate research, which can positively contribute to the policy- and decision-making process.⁶⁶ Verifiable, fact-based information, such as the security assessments already undertaken, will assist the Bureau in its own submissions, advocacy and community consultations. These assessments should continue to gain a wide-ranging and geographically dispersed perspective on community security through Southern Sudan.

⁶⁶ See experiences described in Shung King M, Proudlock P and Michelson L, 'From fieldwork to facts to firearms control: Research and advocacy towards stricter firearm control legislation in South Africa', *African Security Review* (Vol. 15 No. 2, June 2005).

- 3. Develop community dialogues:** An effective community consultation strategy should be designed to explain the rationale and basic content of the firearms act and its provisions for community protection.
- 4. Form a multi-ministry committee:** A policy- and law-making steering committee from relevant ministries and commissions (including, for example, the police, the SPLA, the Peace Commission, the SSDDRC, and the Human Rights Commission) will help to ensure coherence with other legislation and also help build a strategic alliance in order to advance the legislation through the legislative assembly. This should be part of a broader advocacy strategy to influence policy development and the legislative drafting process.
- 5. Strategic alliances with international partners:** The Bureau should continue to develop and strengthen strategic alliances with credible local and international civil society and donor groups in order to benefit from technical and financial assistance to advance its law reform objectives.

10

Conclusion

A LEGISLATIVE FRAMEWORK for the control of small arms in Southern Sudan will face enormous obstacles and difficulties. It is a challenge that must be met. Southern Sudan's long-term security and prosperity depends on its ability to properly regulate the ownership and use of firearms and other dangerous weapons. The commitment of the GoSS to the rule of law, constitutionalism, and the safety and security of its citizens demands that a comprehensive firearms control law be introduced.

Throughout this report, the challenges in creating effective and meaningful small arms legislation have been highlighted. The legislative framework has to address two pressing realities. The first is that communities need protection, and that in the absence of a viable alternative, civilians understandably feel the need to protect themselves. The second is that the alarming prevalence of small arms in communities heightens insecurity and exacerbates violence, and that some system for managing the possession of small arms by civilians must be put in place.

A comprehensive firearms act focusing on licensing of civilian-possessed weapons will be an important step forward in creating the necessary conditions for longer-term security in Southern Sudan. Complementing this with some form of auxiliary policing may help address the immediate need for protection and help fill the vacuum until the SSPS is able to formally step in.

ANNEX 1

Legislation and regulations affecting firearms in Southern Sudan

Act	Section/Article	Provision (cited verbatim)
1. Protocol on Power Sharing 2004	Schedule (B): Powers of the Government of Southern Sudan	The exclusive legislative and executive powers of the Government of Southern Sudan shall be: ... 19. Any matter relating to an item referred to in schedule D that cannot be dealt with effectively by a single State and requires GOSS legislation or intervention including, but not limited to the following: ... 19(7) Firearm licenses within Southern Sudan; ...
	Schedule (B): Powers of the Government of Southern Sudan	The exclusive legislative and executive powers of the Government of Southern Sudan shall be: ... 19. Any matter relating to an item referred to in schedule D that cannot be dealt with effectively by a single state and requires Government of Southern Sudan legislation or intervention including, but not limited to the following: ... 19(7) Firearm licenses within Southern Sudan; ...
2. Interim National Constitution of the Republic of Sudan 2005	Schedule (C): Powers of States	The exclusive legislative and executive powers of a state of the Sudan shall be as follows: ... 44. Firearms Licenses; ...
	Schedule (B): Powers of the Government of Southern Sudan	The exclusive legislative and executive powers of the Government of Southern Sudan shall be: ... 19. Any matter relating to an item referred to in schedule D that cannot be dealt with effectively by a single state and requires Government of Southern Sudan legislation or intervention including, but not limited to the following: ... 19(7) Firearm licenses within Southern Sudan; ...
3. Interim Constitution of Southern Sudan 2005	Schedule (C): Powers of States	The exclusive legislative and executive powers of a state of the Sudan shall be as follows: ... 44. Firearms Licenses; ...
	Schedule (B): Powers of the Government of Southern Sudan	The exclusive legislative and executive powers of the Government of Southern Sudan shall be: ... 19. Any matter relating to an item referred to in schedule D that cannot be dealt with effectively by a single state and requires Government of Southern Sudan legislation or intervention including, but not limited to the following: ... 19(7) Firearm licenses within Southern Sudan; ...
4. Penal Code Act 2008	5. Interpretations	'Weaponry' means any of the following kinds of offensive material: ... (b) a firearm or other apparatus for the discharge of bullets or other kinds of projectiles which are designed to be lethal, whether solid, explosive or gas diffusing; ...
	70. Supplying Weaponry to Insurgents, Bandits, Saboteurs or Terrorists	Whoever, whether inside or outside Southern Sudan, supplies weaponry to an insurgent, bandit, saboteur or terrorist, knowing that the weaponry will be used in the commission of an act of insurgency, banditry, sabotage or terrorism in Southern Sudan, or realising that there is a real risk or possibility that the weaponry will be so used, commits an offence, and upon conviction, shall be sentenced to life imprisonment or any other shorter term.
	71. Possessing Weaponry for Insurgency, Banditry, Sabotage or Terrorism	(1) Whoever has any weaponry in his or her possession or under his or her control with the intention that such weaponry will be used in the commission of an act of insurgency, banditry, sabotage or terrorism, commits an offence, and upon conviction, shall be sentenced to life imprisonment or any other shorter term. (2) Whoever possesses weaponry for insurgency, banditry, sabotage or terrorism, and if it is proved that: (a) the accused was in an unlawful possession of any weaponry; (b) the weaponry consists of any weapon, firearm or ammunition for the purchase, acquisition or possession of which the accused has no good ostensible reason; or (c) that was part of a cache or was found in the possession of the accused in such a quantity as cannot be accounted for by reason of personal use alone, it shall be presumed, unless the contrary is proved, that the accused possessed the weaponry with the intention that it should be used in the commission of an act of insurgency, banditry, sabotage or terrorism in Southern Sudan. (3) A person charged with possessing weaponry for insurgency, banditry, sabotage or terrorism may be found guilty of possessing a dangerous weapon, if such facts are proved.

Act	Section/Article	Provision (cited verbatim)
	72. Possession of a Dangerous Weapon	<p>(1) Whoever is in unlawful possession of:</p> <p>(a) artillery of any kind or any shell or other ammunition therefore; ...</p> <p>(c) a bomb, grenade or similar missile or device, whether capable of use with a firearm or not, including any fuse, detonator or timing device therefore;</p> <p>(d) a machine gun or sub-machine gun;</p> <p>(e) any automatic or semi-automatic firearm other than a pistol, that is being used by the Defence, other organised forces, Police or other forces of any neighbouring states; commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both.</p> <p>(2) It shall be a defence to a charge of possessing a dangerous weapon for the accused to prove that:</p> <p>(a) he or she was the holder of a license or permit issued under any law authorizing his or her possession of the weapon concerned; or</p> <p>(b) he or she possessed the weapon concerned in the course of his or her duties as a member of the defence or other organised forces or as an employee of the State duly authorised to possess the weapon.</p>
	79. Public Violence	<p>(1) Whoever, acting in concert with one or more other persons, forcibly and to a serious extent:</p> <p>(a) disturbs the peace, security or order of the public or any section of the public; or</p> <p>(b) invades the rights of other people; intending such disturbance or invasion or realising that there is a real risk or possibility that such disturbance or invasion may occur, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years or with a fine or with both.</p> <p>(2) In determining whether or not a disturbance of peace, security or order or an invasion of rights is sufficiently serious to constitute the offence of public violence, a Court shall take into account all the relevant factors, including the following: ...</p> <p>(d) whether or not the persons involved in the disturbance or invasion were armed and, if so, the nature of their weapons; ...</p>
	85. Possession of Offensive Weapons at Public Gatherings	<p>(2) Whoever, while present at a public gathering, has with him or her any offensive weapon⁶⁷, otherwise than in pursuance of lawful authority, commits an offence, and upon conviction, shall be subject to imprisonment for a term not exceeding five years or a fine or with both.</p> <p>(3) For the purposes of subsection (2), above, a person shall be deemed to be acting in pursuance of lawful authority only if the person is acting in his or her capacity as a police officer, a member of the Defence Forces, or an employee of the State, Government of National Unity, Government, or a local authority.</p>
	233. Voluntarily Causing Hurt by Dangerous Weapon or Means	<p>Except in the case provided for by section 231 of this Act, whoever voluntarily causes hurt by using any one of the following means:</p> <p>(a) any instrument for shooting, stabbing or cutting;</p> <p>(b) any instrument, which if used as a weapon of offence is likely to cause death; ...</p> <p>(e) any corrosive or explosive substance; ...</p> <p>commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding three years or with a fine or with both.</p>
	305. Robbery	<p>(1) Whoever, intending to take dishonestly any movable property, from a person's body in his or her presence, using criminal force or intimidation, commits the offence of robbery, and upon conviction, shall be sentenced as follows: ...</p> <p>(c) if the robbery is committed with the use of fire arm, shall be sentenced to life imprisonment and may also be liable to a fine.</p>
	310. Robbery or Brigandage with Attempt to cause Death or Grievous Hurt	<p>If, at the time of committing or attempting to commit robbery or brigandage, the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person, upon conviction, shall be sentenced to imprisonment for a term not less than two and not exceeding seven years or with a fine or with both.</p>

67 An 'offensive weapon' is defined to include 'any weaponry'.

Act	Section/Article	Provision (cited verbatim)
	383. Unlawful Dealing in Dangerous Drugs	<p>(2) Whoever commits the offence of unlawful dealing in a dangerous drug, upon conviction, shall be sentenced as follows:</p> <p>(a) if the offence was committed in any of the aggravating circumstances described in subsection (3), below, and there are no special circumstances in a particular case as provided for in subsection (4), below shall upon conviction be sentenced to death or life imprisonment; and</p> <p>(b) in any other case, to imprisonment for a period not exceeding fourteen years or with a fine or with both.</p> <p>(3) For the purpose of subsection (1), above, the offence of unlawful dealing in a dangerous drug is committed in aggravating circumstances if the dangerous drug in question was a dangerous drug other than cannabis and the convicted person: ...</p> <p>(b) employed weapons or engaged in violence in the course of committing the offence; ...</p>
5. Code of Criminal Procedure Act 2008	74. Limited Application	<p>A person, who is specified in a warrant of arrest for a minor offence, may be released upon the issuance of a citation, in lieu of physical arrest; provided that, the incident or act cited in the warrant does not involve: ...</p> <p>(b) the use of a firearm; ...</p>
	95. Search of an Arrested Person	<p>(1) The police making the arrest or receiving an arrested person from a person by whose name the arrest was made shall search the arrested person or cause him or her to be searched and place him or her in a safe custody...</p> <p>(4) The person making an arrest may take from the person arrested any offensive weapons which he or she has about his or her person and shall deliver all weapons so taken to the Public Prosecution Attorney, Magistrate, Court or officer, as the case may be, before whom the person arrested is required by the warrant of arrest or by this Act to be produced.</p>
	128. Considerations in Setting, Reducing or Denying Bail	<p>(1) In setting, reducing or denying bail, the Public Prosecution Attorney, and in his or her absence, the Magistrate or the Court shall take into consideration the protection of the public, the seriousness of the offence charged, the previous criminal record of the accused, and the probability of his or her appearing at inquiry or trial of the case. The public safety shall be the primary consideration.</p> <p>(2) In considering the seriousness of the offence charged, the Public Prosecution Attorney, Magistrate or Court shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the offence charged, the use of a firearm or any other deadly weapon, in the commission of the offence charged.</p>
6. Southern Sudan Police Service Act 2009	Article 6. Establishment of Police Service	<p>(2) The Southern Sudan Police Service shall be a regular service the primary responsibility of ensuring the security of citizens and maintaining public order, implementing the law, in full neutrality and honesty and adherence to the law, national and international standards.</p>
	Article 7. Functions and Powers of the Police Services Personnel	<p>The functions of the Police shall be, but not limited to:</p> <p>(k) combat smuggling and illegal trading in firearms...</p>
	Article 10. Competences	<p>The Southern Sudan Police Service shall have the following competences:</p> <p>(e) issue license for possession of firearms...</p>
	Article 14. Movement and Integration of Forces	<p>(1) The President may at any time issue a decree ordering any SPLA force to assist the Police Service in internal security operations...</p>
7. The Police General Regulations 2003	Section 23. Quantities and Scales of Armament and Ammunition	<p>All equipment, armament and ammunition shall be in accordance with the qualities and scales approved from time to time, by the Chairman.</p>
	Section 25. Responsibility for storage of Equipment	<p>(1) All Officers and other ranks in any unit shall be responsible to the Officer in charge of the unit who shall be directly responsible to the Inspector General in all matters concerning storage and distribution of armament and ammunition issued to them.</p> <p>(2) The Officer in charge of the unit shall be responsible for all other armament and equipment concerning his unit which is meant for a collective use by his force. He shall keep all armament and other equipment for collective use by his force in good condition and have it inspected periodically according to the Inspector General's instructions, to enable him give reports about its soundness for use.</p>

Act	Section/Article	Provision (cited verbatim)
	Section 26. Return of Equipment in Case of Dismissal	(1) Every member of the Police Force shall, on dismissal, return all equipment in his custody, including clothes, armaments and ammunition and all the Police properties.
8. SPLA Act 2009	Chapter VIII Offences of a Military Nature 53. Cowardice in Action	(1) Cowardice in Action means: ... (g) premature unauthorised firing; or ... (h) casting away or abandoning of any material under enemy attack. (2) Any SPLA personnel who commits the offence of cowardice in action, where it results in failure of operation or loss of life, shall on conviction be sentenced to death or, in any other case, to imprisonment for a term not exceeding ten years.
	54. Breaching Concealment	(1) Breach of concealment in operation means: ... (f) premature or unauthorised shooting; ... (2) Any SPLA personnel who commits the offence of breach of concealment in operation, where it results in loss of life, shall on conviction be sentenced to death or, in any other case, to imprisonment for a term not exceeding ten years.
	55. Failure to Protect War Material and Equipment	(1) Failure to protect war material and equipment means: (a) failing to guard arms or ammunition; (b) malicious damage to arms or ammunition; (c) tampering with or mishandling of arms or ammunition resulting in damage; (d) giving or allowing arms or ammunition to be handled by an unauthorised person; (e) losing arms or ammunition or parts of them; (f) unauthorised disposal of arms or ammunition; (g) failing to do any other similar act necessary for the protection of any war material and equipment. (2) Any SPLA personnel who fails to protect war material or equipment, commits an offence and shall on conviction be sentenced to imprisonment for a term not exceeding fourteen years.
	57. Offences Relating to Operations	(1) Any SPLA personnel who: ... (h) carelessly shoots any person or handles arms or ammunition in such a manner to endanger lives of other persons in operation; ... commits an offence. (2) Any SPLA personnel who commits an offence under subsection (1) above, shall on conviction be sentenced to imprisonment for a term not exceeding seven years.
	78. Offences in Relation to Property	(1) Any SPLA personnel who intentionally or through negligence: ... (c) converts to his or her personal benefit or lo[oses] his or her arms, ammunition, equipment, instruments, clothing or regimental necessaries; ... (f) without authority acquires possession of arms or ammunition; ... commits an offence. (2) Any SPLA personnel who commits an offence under subsection (1) above, shall on conviction be sentenced to imprisonment for a term not exceeding seven years.
	79. False Accusation or Statement or Return or Report	(1) Any SPLA personnel who: ... (b) intentionally furnishes a false return or report of the number or state of any personnel under his or her command or of any money, arms, ammunition, clothing, equipment, stores, or other property in his or her charge, whether belonging to such personnel or to the force, or to any person in or attached to the force, or who through design or neglect, omits or refuses to make or send a return or report of any of the matters aforesaid, ... commits an offence. (2) Any SPLA personnel who commits an offence under subsection (1) above, shall on conviction be sentenced to imprisonment for a term not exceeding three years.

Saferworld works to prevent and reduce violent conflict and promote co-operative approaches to security. We work with governments, international organisations and civil society to encourage and support effective policies and practices through advocacy, research and policy development and through supporting the actions of others.



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