



Harmonising small arms control legislation

Selected case studies from the Great Lakes region and Horn of Africa



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Acronyms

| | |
|-----------------|--|
| AWEPA | Association of European Parliamentarians with Africa |
| CDS | Parliamentary Commission for Defence and Security |
| CEWARN | DDR programmes, Conflict Early Warning |
| CNC-ALPC | <i>Commission nationale de contrôle des armes légères et de petit calibre</i> (National Commission on SALW Control) |
| DDR | disarmament, demobilisation and reintegration |
| DRC | Democratic Republic of the Congo |
| FDLR | <i>Forces Démocratiques de Libération du Rwanda</i> (Democratic Forces for the Liberation of Rwanda) |
| GLR | Great Lakes region |
| GRIP | <i>Groupe de Recherche et d'Information sur la Paix et la Sécurité</i> (Group for Research and Information on Peace and Security) |
| GTZ | German Technical Co-operation |
| HoA | Horn of Africa |
| NAP | National Action Plan (for SALW management and control) |
| NFP | National Focal Point on SALW |
| RECSA | Regional Centre on Small Arms |
| SALW | small arms and light weapons |
| SARPCCO | South African Regional Police Chiefs Cooperation Organisation |
| SCLJA | Sectoral Council on Legal and Judicial Affairs |
| UNDP | United Nations Development Programme |
| UPDF | Uganda People's Defence Forces |

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Introduction

Background and rationale

THE STATES OF THE GREAT LAKES REGION (GLR) and the Horn of Africa (HoA) have been at the forefront of developing regional approaches to tackle the proliferation of small arms and light weapons (SALW)¹. In 2000, ten states signed the 'Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa' (the Nairobi Declaration).² The implementation of the Nairobi Declaration entailed the development of a Co-ordinated Agenda for Action for the sub-region to promote human security and ensure that all member states have in place adequate laws, regulations and administrative procedures to exercise effective control over the possession and transfer of SALW.

To make concrete the intent of member states, a legally binding instrument to address the problem of illicit SALW in the region was initiated. The initial member states and the Republic of Seychelles signed the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States (the Nairobi Protocol)³ on 21 April 2004. The Nairobi Protocol entered into force following ratification by two-thirds of its signatories in May 2006. Supplementing the Nairobi Declaration, the Nairobi Protocol legally binds state parties to fulfil a range of commitments relating to SALW control legislation, including ensuring that the harmonisation of laws occurs.

Many of the provisions of the Nairobi Protocol relate to the review and strengthening, where necessary, of national legislation on SALW control. The Protocol in Article 3(c) also requires state parties to ensure that, through the process of the national review and amendment of legislation, laws on SALW are harmonised across the region. Article 3(c) of the Nairobi Protocol calls for state parties to ensure that their national laws include:

- (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; and*
- (xiii) *provisions promoting legal uniformity in the sphere of sentencing.*

¹ According to the Nairobi Protocol, '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. '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.

² The signatories to the Nairobi Declaration are Burundi, Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Sudan, Uganda and United Republic of Tanzania. The Seychelles has subsequently signed the Declaration. Somalia joined RECSA in 2005 and Republic of Congo (RoC) was admitted as the thirteenth member state in April 2009.

³ Signatories to the Nairobi Protocol are the same as for the Nairobi Declaration, with Seychelles an original signatory.

Article 5 (b) similarly states that:

- (i) *state parties undertake to introduce harmonized, heavy minimum sentences for SALW crimes and the carrying of unlicensed SALW.*

Other additional requirements that states must incorporate into their national laws are provided under Article 3 (c) (i)–(iv) and (vii)–(xii). These relate to

- **Manufacture of SALW** applicant criteria; granting of licences; premises; inspections; records on manufactured arms, sales etc.
- **Control measures** provisions for proper keeping and maintenance of accurate records; stockpile management and security (planning, acquisition, possession, record-keeping, storage, control, production and disposal.
- **Movement of SALW** licensing requirement; licence application procedures; revocation, suspension and withdrawal of licences; award of end-user certificates; minimum requirements for record-keeping and arms transfer criteria.
- **Transportation of SALW** application criteria for persons wanting to transport arms; requirements for issue of transport licences and supporting documents including export, import, transit permits; restrictions on transportation.
- **Marking of SALW** types of markings required of states; marking at source; maintenance of SALW records for not less than ten years.
- **Civilian possession of firearms** criteria for applicants; licensing requirements; restrictions on possession and use; ammunition quantities, pawning and pledging.

As the mandated authority to co-ordinate the implementation of the Nairobi Protocol, the Regional Centre on Small Arms (RECSA) has been the regional focal point leading the process of regional harmonisation. In its role as the co-ordinating agency for the implementation of the Nairobi Protocol, it has sought to encourage and support the process of regional harmonisation and national review of legislation. Most significantly, RECSA has overseen the development of a series of *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons*.⁴ Developed in 2005, these Guidelines unpack in detail the provisions of the Protocol and elaborate a specific set of provisions to be included in national legislation. In this way, the Guidelines set out a framework for national laws and a guide to encourage regional harmonisation of legislation.

The introduction to the Best Practice Guidelines states that their aim and scope are as follows:

“The aim of the guide is to elaborate a framework for the development of policy, review of national legislation and general operational guidelines and procedures on all aspects of SALW required for implementation by the Nairobi Protocol. The guide covers the SALW stockpile in legal non-state possession as well as that in state possession during peacetime.”⁵

In addition to these Best Practice Guidelines, *Guidelines for Harmonisation of Legislation*⁶ were subsequently agreed in September 2005. These guidelines further elaborated best practice in relation to other areas of the Nairobi Protocol, covering: manufacture; possession; transport; and legal uniformity in sentencing.

In addition, the Guidelines for Harmonisation set out in brief elements both of the envisaged regional harmonisation process and of national review processes, including a commitment by each member state to establish a Legislative Drafting Committee by 28 April 2006. Adherence by all state parties to the Guidelines would create a high

⁴ In 2010, RECSA member states meeting in Kampala, Uganda endorsed the Best Practice Guidelines on Practical Disarmament.

⁵ RECSA, *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons*, (RECSA, 2005), p 4.

⁶ RECSA, *Guidelines for Harmonisation of Legislation* (RECSA, 2005).

degree of regional harmonisation and establish a strong legal framework for SALW control in each state.

The second element of the regional harmonisation process supported by RECSA has been support to regional review. RECSA conducted 11 in-country sensitisation meetings on regional harmonisation of SALW legislation in 11 of its 13 member states between September 2006 and December 2007. In these meetings, the review of legislation was discussed and state parties made a number of commitments to review their national legislation as part of the process to ensure harmonisation.⁷ As a result of the meetings, seven member states established *ad hoc* SALW policy/legal drafting committees, which have spearheaded the review or development of SALW policies or legislation.

Practically, it was envisaged that the process of harmonisation of legislation in the region would take the following steps:

- Drafting of a schedule and terms of reference for the national review process;
- Establishment of a legislative drafting team consisting of both technical and legal experts including a variety of key members of the National Focal Point (NFP) i.e. police, military, firearms bureau, attorney general's office, judiciary and civil society;
- The drafting team commences the process by collecting all the information that is available that would influence the content of the new legislation drawing from international, regional and national best practice; and
- Frequent provision of feedback and briefings by NFP co-ordinators to their members, relevant ministers and RECSA on the regional harmonisation process.

In February 2004, Saferworld conducted an audit of SALW control legislation in the Great Lakes region and the Horn of Africa.⁸ The study identified some of the gaps that existed between the regional and international SALW agreements to which countries of the region were party, and recommended a thorough review of legislation to address these gaps. Consequently, a number of developments took place in the years that followed with RECSA developing guidelines for harmonisation of SALW legislation in 2005. Since then, different countries have made different amounts of progress towards reviewing their SALW legislation. Using five country case studies, this report details the progress made in the region on legislative review and harmonisation since 2004 in an attempt to:

- Identify where signatory states have reviewed or amended their SALW legislation since the signing of the Nairobi Protocol, and analyse the extent to which amended or new legislation is consistent with Nairobi Protocol Best Practice Guidelines and the extent to which regional harmonisation is taking place;
- Examine how national reviews of legislation (a crucial step in the process of legislative change and regional harmonisation) have been accomplished in different signatory states and identify lessons learned and good practice;
- Identify lessons from other reviews of SALW legislation in the region and from other regional harmonisation processes; and
- Provide recommendations to support the processes of national review and regional harmonisation of SALW legislation in the GLR and HoA.

The study is intended to contribute to clearer understanding of actual progress made in national reviews and towards regional harmonisation of SALW legislation in the region, as well as to increase awareness of both challenges and good practice involved in undertaking national review and regional harmonisation of SALW legislation.

It is hoped that the study assists in creating greater awareness among key stakeholders (including RECSA, NFPs, donors and civil society partners) of the possible steps that

⁷ See RECSA, *Guidelines for Harmonisation of Legislation*, op cit.

⁸ Flew, C and Urquhart, A, *Strengthening Small Arms Controls: An Audit of Small Arms Control Legislation in the Great Lakes Region and the Horn of Africa* (Saferworld, 2004).

could be taken to improve the speed and quality of national reviews and the regional harmonisation of legislation in line with the Nairobi Protocol's Best Practice Guidelines.

Methodology

The research for this study was conducted using a range of research tools, including:

- e-mail questionnaires
- individual e-mail 'interviews' (correspondence)
- telephone interviews
- desk research and analysis of amended laws, draft bills and draft policies
- literature review on harmonisation of legislation, and
- key informant interviews and peer reviews.

The study has also been directly informed by the experiences of the researchers and of Saferworld staff who have been involved in national review processes and the regional harmonisation process. Consequently, while the study offers a detached analysis of the various processes, the reader should be aware of both the limitations and the benefits that this proximity and involvement implies.

Regional harmonisation and national reviews

The processes of regional harmonisation of SALW control legislation and the national review of SALW control legislation are inseparable. While the regional harmonisation of legislation is achieved through the revision of national laws, national reviews of legislation will (or at least should) be informed and shaped by commitments to regional harmonisation. For the states of the GLR and HoA, the harmonisation of their national laws with those of their neighbours is an explicit commitment of the Nairobi Protocol. This study examines the process and outcomes of national reviews of legislation within the broader context of a process to achieve the regional harmonisation of legislation. Below we provide a broad overview of some of the key elements and issues relating to both the national review and regional harmonisation of legislation as a background to the detailed case studies that follow in later sections of the report.

National reviews

This report examines in detail the processes of national reviews of SALW control legislation in five selected countries. Consequently, on the one hand, Kenya and Uganda represent case studies of countries that embarked on first developing national policies on SALW to inform review of legislations. On the other hand, Rwanda, DRC and Burundi represent examples of an approach that directly reviewed firearm laws without necessarily developing a policy framework to inform the review. The following observations about national reviews of legislation are intended to provide some context and a point of general reference for the country case studies.

Firstly, national reviews of legislation can vary greatly in scope. They may be limited to amending one element of a specific law (such as the updating of penalties), or may include the wholesale revision of one or more acts and the enactment of entirely new pieces of legislation. Reviews may also be targeted at different types and levels of law, including substantive and procedural law.

Secondly, national reviews may be pursued for a range of different motivations. In this regard, the harmonisation of legislation stemming from regional or international commitments (in conventions, protocols and agreements) may be only one of many potentially competing interests in a national review process.

Thirdly, a national review process is likely to include a range of different elements. In relation to SALW control legislation, the United Nation Development Programme's (UNDP) *How to guide: Small arms and light weapons legislation* identifies ten possible elements of a national review process: information collection; objective setting; policy

development; gauging the extent of review; consultation processes; enforcement and implementation; training; awareness-raising and communications; harmonisation of legislation; and monitoring and evaluation.⁹

Defining harmonisation of legislation

This study has not attempted to provide a detailed survey of how harmonisation is defined. Nonetheless, for the purpose of this study the term harmonisation of legislation is used to refer to:

The process of reviewing national firearms laws and related pieces of legislation to accomplish agreed upon common minimum standards which are compatible across the region and which reduce the possibility of exploitation of variations in the legal and regulatory systems governing management and control of SALW in different countries signatory to the Nairobi Protocol and its accompanying Best Practice Guidelines for the implementation of the Nairobi Protocol of 2005 and Guidelines for Harmonisation of Legislation of September 2005.

In seeking to develop a theory of harmonisation of criminal laws, in an individual context – like that of the Nairobi Protocol and the attempts of the states of the GLR and HoA to strengthen controls on SALW – the success of a process of harmonisation is likely to be dependent on the degree of clarity about what ‘harmonisation’ means in that context.¹⁰

The harmonisation process within the framework of the Nairobi Protocol has a clear geographic scope, encompassing the states of the GLR and HoA. In reflecting upon how the process of harmonisation has proceeded, there are perhaps some key questions that can be identified to help guide and interrogate that process of harmonisation occurring within the framework of the Nairobi Protocol:

- Is the problem that the harmonisation of SALW control legislation in the GLR and HoA is seeking to address clearly analysed and defined? And stemming from this, is the goal of the harmonisation process clearly analysed and defined? Is there common understanding among all member states and key officials from each state about this problem?
- Related to the problem analysis and goal-setting, is there consideration of how amendments to law will impact on and be dependent upon other elements of the legal system?
- On the basis of the process of problem analysis, have the types of law that are to be harmonised been clearly identified?
- Is there clarity among all the key stakeholders of the elements of the harmonisation process?

⁹ Bureau for Crisis Prevention and Recovery, *How to guide: Small arms and lights weapons legislation* (UNDP, 2008), p 8.

¹⁰ Tadic, Felicitas M, ‘How harmonious can harmonisation be? A theoretical approach towards harmonisation of (criminal) law’, in *Harmonisation and harmonisation measures in criminal law*, eds A Klip and H van der Wilt (Royal Netherlands Academy of Arts and Sciences, 2002).

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Case studies

Legislation first

IN BURUNDI, THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC) AND RWANDA, new SALW control legislation has been drafted in an attempt to fulfil the commitments of the Nairobi Protocol. This is in contrast to Kenya and Uganda, where the development of a national SALW policy is planned to precede and inform the review of legislation. Progress towards the actual enactment of new laws has been, perhaps unsurprisingly, significantly quicker in Burundi, DRC and Rwanda. Indeed, these countries have either passed or are in the process of passing new legislation. As such, Burundi, DRC and Rwanda ‘appear’ to be at the forefront of efforts to implement the legislative commitments of the Nairobi Protocol. However, this study highlights that despite these important achievements, significant challenges have constrained these processes. Moreover, this report suggests that while many important improvements have been made to the SALW control legislation in these three countries, the new legislation may not fulfil all of the requirements of the Nairobi Protocol.

Between 2003 and 2005, following the Mombasa Conference of November 2003, the review of national SALW control legislation for these three countries was co-ordinated within a parliamentary initiative organised by the Association of European Parliamentarians with Africa (AWEPA) and UNDP. During this period a number of international consultations took place to review the substance of existing national laws, consider issues of harmonisation between the laws of participating states, and develop initial draft laws. These consultations included:

- **Bujumbura Conference (29–30 March 2004)** Parliamentarians from Burundi, DRC and Rwanda met in Bujumbura for the follow-up of their joint declaration in Mombasa. They adopted the ‘Parliamentary Plan of Action of Bujumbura on the harmonisation of legislations on SALW’. After having noted several gaps in existing legislation, parliamentarians decided to identify themes and chapters to harmonise and reinforce for their next meeting.
- **Brussels Conference (18–22 October 2004)** The next parliamentary conference was held in Brussels with delegations from all three countries. Themes and chapters to be harmonised in national legislations were established and existing laws examined.¹¹ Parliamentary participants decided that their work should be guided by the then newly adopted Nairobi Protocol and that they should therefore collaborate with the NFPs on SALW and seek to sensitise their respective governments and parliaments.

¹¹ Such as: definitions, import/export authorisations, possession, marking and registration, tracing, brokering and regional co-operation.

- **Kigali Conference (18–19 April 2005)** At this parliamentary conference, national experts presented new draft laws that provided recommendations for modifying existing national laws. These proposed draft laws were examined in working groups. The delegations from Burundi, DRC and Rwanda agreed to promote regional co-operation in enforcing new laws and to rapidly ratify the Nairobi Protocol.¹²
- **Kinshasa Conference (2–4 November 2005)** The final AWEPA- and UNDP-organised parliamentary conference was held in Kinshasa.¹³ Provisions on marking and tracing were added to the draft harmonised laws informed by the recently adopted UN Tracing Instrument. Draft laws were reviewed according to the analysis made by the *Groupe de Recherche et d'Information sur la Paix et la Sécurité* (Group for Research and Information on Peace and Security – GRIP) in its report presented to the conference.¹⁴ Parliamentarians declared that the draft bills would be developed and presented to their *ad hoc* parliamentary commissions in March 2006.

This study now examines the progress of Burundi, DRC and Rwanda since 2005 in accomplishing their SALW control legislative review and harmonisation goals.

¹² "Conférence parlementaire sur les armes légères et de petit calibre, tenue à Kigali le 18 et 19 avril 2005 – Engagements des délégations du Burundi, de la République Démocratique du Congo et du Rwanda sur les améliorations à apporter aux textes de loi afin d'obtenir des législations actualisées et harmonisées", in *From Mombasa to Mombasa: A Parliamentarians' Handbook on The Small Arms Issue* (AWEPA, 2006), Annex 7b.

¹³ "Conférence interparlementaire sur les Armes Légères et de Petit Calibre et sur l'Intégration Régionale – Conclusions sur l'Intégration Régionale", in *ibid*, Annex 7c.

¹⁴ Huybrechts P and Berkol I, 'Afrique centrale: Harmonisation des législations nationales sur les armes légères', Les rapports du GRIP, no. 2005/6: www.grip.org/pub/rapports/rg05-6_legafce.pdf.

Burundi

Existing SALW control legislation

Existing laws relating to the control of firearms and ammunition are:

- Law-decree no. 1/91 of 2 August 1971 on firearms and ammunition
- Presidential-decree no. 1/92 of 2 August 1992 for the implementation of the Law-decree no. 1/91, and
- Law no. 1/09 of 15 March 2006 on the ratification of the Nairobi Protocol on SALW.

Review of legislation

In Burundi, elections and the subsequent revival of ethnic conflict in 2006 served to stall the review process, launched within the framework of the AWEPA and UNDP parliamentary initiative, for more than two years. However, in October 2006, the Cabinet of Ministers of the Government of Burundi adopted a *National Strategy to Combat the Proliferation of SALW and Civilian Disarmament*. The principal objectives of the strategy are to consolidate peace, reinforce security, reduce armed violence, and fight against poverty. Specific actions envisioned in the National Strategy include the establishment of an adequate institutional and legal framework for the strategy's implementation. They also include measures to control SALW. Issues to be addressed in this context include stockpile management, SALW registration, border controls, and strengthening the capacity of state actors to control SALW.

In 2007, a report on the SALW situation in Burundi, written by Small Arms Survey and supported by the UNDP and *La Ligue ITEKA*,¹⁵ reinvigorated the process of reviewing the national legislation. A committee was established to review SALW control legislation, under the auspices of the NFP¹⁶ and the UNDP. The committee was composed of representatives of the NFP, the UNDP, civil society, parliament, army, police and the Ministry of Justice. The law drafted during the AWEPA and UNDP Parliamentary initiative was further developed with the Nairobi Protocol serving as the primary point of reference. The review process was financially supported by the German Technical Co-operation (GTZ) organisation. RECSA organised meetings on the development of a NAP in March 2007 and April 2008 where the strengthening of national legislation was discussed and recommendations made on the way forward. The UNDP office in Burundi has played a proactive role in the process in particular through the provision of technical support. The draft was examined in the Ad Hoc Committee of Parliament and the new law was finally adopted in Parliament and promulgated on 28 August 2009. In the following months, additional 'textes d'application' were adopted in order to complete the renewed legal framework, establishing the provisions related to:

¹⁵ *Les armes légères au Burundi* (Small Arms Survey, 2007). The report referred to the Parliamentary initiative and to its preliminary draft on the law.

¹⁶ In Burundi, the Technical Commission on Disarmament is acting as National Focal Point.

- The disposal of firearms and ammunition, and
- The nature of the information to be included in the national register on SALW.¹⁷

Finally, it is worth underlining that during the legislative review process, the existing legal architecture (articulated in conformity with Law no. 1/91 of 2 August 1971) has not been repealed. Article 62 of the 2009 Law nevertheless establishes that both legal frameworks should coexist and that the most recent legislation should apply in cases of discrepancy.

Analysis of the new law

The new Law no. 1/14 was promulgated on 28 August 2009, and makes significant strides towards the fulfilment of Burundi's commitments under the Nairobi Protocol. The overall scope of the law is good, covering the range of SALW control issues required by the Nairobi Protocol, with provision made for regulating civilian possession, the international transfer of SALW, brokering activities, manufacturing, marking and tracing, stockpile management and destruction. The extent of the coverage in each of these areas varies, and while all of the main areas for control are addressed, in many cases the degree of conformity to the Nairobi Protocol is only partial; that is, there are requirements of the Nairobi Protocol that are not reflected fully in the text of the new law. Moreover, there are very few cases where the provisions of the law are consistent with the Best Practice Guidelines.

The following examples are intended to illustrate the general trends identified above.

- **Civilian possession** Consistent with the Nairobi Protocol, the pawning and pledging of SALW is prohibited. However, there is confusion throughout the section on possession between the 'carriage' and 'possession' of arms which weakens many of its provisions. In addition, a critical weakness of the law and in stark contradiction to the terms of the Nairobi Protocol, is the sanctioning of the possession of light weapons by civilians for security, hunting and sport shooting purposes.
- **International transfers** The law provides a solid foundation for licensing and record-keeping of the international transfer of SALW, fully conforming to articles of the Nairobi Protocol. However, some aspects of the Nairobi Protocol, for instance Art 10 relating to informing exporting states of the receipt of shipments, are absent. Furthermore, many aspects of control are included on a minimal basis and do not reflect the provisions of the Best Practice Guidelines, for instance relating to the establishment of a detailed set of criteria against which to assess licensing decisions for international transfers.
- **Brokering activities** Provision exists in the new law to register and license brokers which conforms to the Nairobi Protocol. However, financiers and transporters are not regulated.

Considerations and conclusions

The introduction of new, stronger SALW legislation in Burundi is a notable achievement. In many areas the new legislation fulfils in part or in full the provisions of the Nairobi Protocol. However, the new law contains some inconsistencies and gaps, and provisions in certain areas could be strengthened further. The national and international experts who worked on the initial AWEPA and UNDP parliamentary process that launched the review of legislation were not closely involved in the final stages of drafting the new law. It appears that there was a reluctance to engage with international experts. While acknowledging that the review of legislation is a national prerogative, the involvement of external expertise at key moments in the process could have helped to ensure that the new law did not include some of the inconsistencies and gaps that this analysis has highlighted.

¹⁷ Email correspondence with a member of the Commission Nationale Permanente de Lutte contre la Prolifération des Armes Légères et de Petit Calibre, July 2010.

Democratic Republic of the Congo

Existing SALW control legislation

Existing laws relating to the control of firearms and ammunition are:

- Ordinance-Law no. 85-035 of 3 September 1985 governing arms and ammunition, and
- Ordinance no. 85-212 of 15 September 1985 governing execution measures of the Ordinance-Law no. 85-035.

Review of legislation

In the Democratic Republic of the Congo (DRC), as in Burundi, the domestic political situation involving presidential elections in 2006 and subsequent governmental changes in 2008 interrupted the process to develop new SALW control legislation. In addition, progress towards reviewing the existing bill¹⁸ was also slowed by the crisis that paralysed the National Assembly after the joint Rwandan and Congolese operation against the FDLR¹⁹ in Kivu and that led to the resignation of the Bureau of the Parliament. During this conflict period there appeared to be a lack of political will to support the development of a new bill.

In 2008, driven by the initiative of two parliamentarians²⁰ who have expertise on SALW and are members of the Parliamentary Commission for Defence and Security (CDS) of the Assembly, the process of developing the draft legislation was re-launched. Parliamentarians proposed that a new law should be promulgated rather than merely amending the existing law from 1985. The CDS adopted a first draft of the bill and sent it to the Parliament. Comments on the draft bill were subsequently received from the Assembly, the draft was then amended accordingly and the text adopted by the CDS on 27 November 2008.

The process of wider consultation on the draft legislation appears to have been relatively limited. An *ad hoc* committee to support and inform the draft of a new bill has not been established, unlike in other countries in the sub-region. However, some consultations have taken place, with the NFP holding workshops with military, police, administration representatives and civil society in 2007. Beyond these workshops, national consultation meetings were organised by the NFP and RECSA with a broad range of stakeholders in March 2008. However, the focus of these meetings was not

¹⁸ Ordinance-Law no. 85/015 of 3 September 1985 on the regime on firearms and ammunition, and Ordinance no. 85-212 of 3 September 1985 (Official Journal no. 18 of 15 September 1985, respectively page 7 and page 13) on the implementation measures.

¹⁹ *Forces démocratiques de libération du Rwanda* (Rwandan Liberation Democratic Forces).

²⁰ Honorable Fabien Emery Zulu, who has participated to the Parliamentary Initiative as DRC's focal point, and Honorable Raymond Luete Katembo.

specifically on SALW legislation. Rather, they aimed to draft a feasibility study for the development of a National Action Plan (NAP) in DRC as well as a concept paper for a possible project on the development of an NAP in DRC.²¹ The main impetus for reviewing the legislation has come from the Assembly and the CDS, stemming from the original above-mentioned AWEPA and UNDP Parliamentary initiative.

The bill was adopted by the National Assembly in November 2010 and awaits the second reading by the Senate before the definitive approval. Agreement in the Senate may take up several months. It is also likely that some new amendments will be requested as the present study will also highlight that some weaknesses remain, such as the exclusion of all state weapons from its scope. If the bill has to be revised, the National Commission on SALW Control (CNC-ALPC)²² and UNDP will be assisting the CDS.

Analysis of the new draft law

The proposed title of the new law is: ‘Bill on the prevention, control and reduction of small arms and light weapons in the Democratic Republic of the Congo.’ It was adopted by the CDS on 27 November 2008 and is awaiting examination in plenary session at the National Assembly. We will briefly analyse its conformity to the Nairobi Protocol and/or to its Best Practice Guidelines.

The new bill makes reference to the Nairobi Protocol and its ratification by DRC, to the obligation to harmonise national laws according to Article 3 of the Protocol, and to the fact that the present law from 1985 regulating the trade and possession of firearms and ammunition is out of date in light of the requirements of the Protocol and other international instruments to which DRC is now party. The new bill draws several articles from the Nairobi Protocol, in particular chapters on definitions, marking, transit and brokering. The new bill touches upon most of the areas of SALW control required by the Nairobi Protocol, addressing issues of civilian possession, international transfer, marking and tracing and manufacture. Notably, there is no provision made for a centralised database nor does the bill address the control of state holdings of SALW. The overall structure of the bill, with the bulk of provisions covering a range of different issues drawn together in only two sections on ‘possession and carrying’ and ‘common provisions’, makes interpretation of the law difficult, and often presents controls on a particular issue, for instance the control of international transfers, in a dispersed and slightly incoherent manner.

The overall picture is of a law that addresses many of the areas of SALW control but with varying degrees of rigour. As such, the bill conforms to elements of the Nairobi Protocol and on occasion to the more detailed provisions of the Best Practice Guidelines, but conformity in many areas is only partial and in others is completely absent. In many areas the bill does not include the specific detail included in the Best Practice Guidelines that could make for a significantly more comprehensive and effective control regime.

The following examples are intended to illustrate the general trends identified above.

- **Civilian possession** The bill requires that a licence for carrying is necessary to possess arms (as in Burundi, where similar confusion is apparent between ‘carrying’ and ‘possession’). The bill also conforms to the Nairobi Protocol by requiring that licences are periodically reviewed, in this case every five years. However, the bill does not elaborate detailed criteria against which the suitability of an applicant for a licence should be assessed, for instance, no competency testing of knowledge of firearms use or of the law is required, as the Best Practice Guidelines propose.

²¹ A preliminary draft programme of the NAP, with three-year budget estimates, was produced in May 2009 by the CNC-ALPC: ‘Renforcer la capacité de lutte contre la prolifération des ALPC en RDC’. The programme foresees: I. Institutional framework. II. Regional and international co-operation and co-ordination. III. Legislative measures (review of the law). IV. Operational capacity. V. Registers and exchange of information. VI. Control, seizure and confiscation, destruction. VII. Public awareness.

²² Commission Nationale de Contrôle des armes légères et de petit calibre, which was promulgated on 30 May 2008 by Inter-ministerial Decree and mandated to act as the NFP referred to in the Nairobi Protocol.

- **Import, export, manufacture and trade** The bill conforms to the Nairobi Protocol by requiring that these acts may only be conducted with authorisation from the competent authority. However, this is the extent of these provisions and no further detail is provided relating to how such activities will be authorised and what procedures will be followed. For example, the bill makes no mention of any criteria against which decisions to authorise the international transfer of arms will be assessed, something called for in the Best Practice Guidelines.
- **Marking** Provision is made in the bill for marking at the time of manufacture and import, conforming in part to the Nairobi Protocol. However, the bill does not differentiate between the marking required at the time of manufacture and that required at the time of import. Such markings should be different. Nor does the bill state that the markings given must be unique.

Considerations and conclusions

The drafting of new, strengthened SALW control legislation is a notable achievement for DRC. The CDS has played a crucial role in driving the process forward and in presenting a draft bill to the National Assembly. While the existence and imminent approval of the new law is an important step forward, the proposed law does contain a number of inconsistencies and gaps. It is apparent that the proposed law does not closely correspond to the Nairobi Protocol and its associated Best Practice Guidelines nor to existing modern laws in other countries. Indeed, it does not reflect the plan developed during the AWEPA and UNDP parliamentary initiative mentioned above, despite the review process itself being led by parliamentarians involved in this initiative. Using the existing templates developed by the regional parliamentary process and being guided more closely by the contents of the Nairobi Protocol could have helped to produce a stronger and more coherent piece of legislation.

There is however a window of opportunity for CNC-ALPC and parliamentarians to review the bill and strengthen it in line with the provisions of the Nairobi Protocol, as it awaits discussion in the Senate. Civil society representatives and international organisations, such as RECSA and the UNDP representative in Kinshasa, could help in the process of reviewing the bill. Indeed, the UNDP Kinshasa representative on SALW expressed his concerns about the existing text and proposed to officials that the existing draft bill be reviewed without delay.²³ Assistance of at least one international expert would seem to be desirable, perhaps involving some of the national and international experts who worked on the initial parliamentary process that launched the review of legislation, in drafting the final text of the bill.

²³ Email correspondence and phone conversation with Damien Callamand, chief of SALW Team, UNDP Kinshasa.

Rwanda

Existing SALW control legislation

Existing laws relating to the control of firearms and ammunition are:

- Decree-Law no. 12/79 of 7 May 1979 on firearms and ammunition, as confirmed by Law no. 01/82 of 26 January 1982 and reviewed by Law no. 13/2000 of 14 June 2000 (O.J. no. 2 of 15 January 2001)
- Presidential-decree no.111/02 of 7 May 1979 on execution measures of the Decree-Law no. 12/79, and
- Law no. 09/2000 of 16 June 2000 on National Police.

Review of legislation

The adoption of the Nairobi Protocol and the ratification of the UN Firearms Protocol in October 2006 highlighted the need to review the national legislation on firearms in Rwanda.

The review process that was launched through the AWEPA and UNDP parliamentary initiative has continued in Rwanda within the framework of Parliament. Parliamentarians and officials, including the Rwanda NFP, who participated in the AWEPA and UNDP parliamentary initiative drafted a new bill in 2007 with the ongoing assistance of AWEPA, which has also provided financial support to the review process.

The new bill was adopted in the House of Deputies on 17 March 2008 and in the Senate on 31 July 2008. Amendments were proposed by both Chambers and a compromise had to be found. In accordance with the Constitution, a parity committee of the two chambers proposed a final text including certain amendments. This final text was transferred on 21 October 2009 to the competent authority and promulgated on 18 November 2009 (Law no. 33/2009). The subsequent publication of the law in the Official Gazette of the Republic of Rwanda on 28 December 2009 sanctioned the entry into force of the new legal framework.

Concurrently with the process to review national SALW legislation, the Rwanda National Focal Point, supported by RECSA, has since 2007 been working to develop a NAP that will complement the enactment of the new legislation.

Analysis of the new law

The law entered into force on 28 December 2009. We will briefly analyse its conformity to the Nairobi Protocol and/or to its Best Practice Guidelines.

Despite the review and revisions made during the discussion of the new bill in Parliament, it still contains some inconsistencies and does not reflect all of the requirements of the Nairobi Protocol. Nonetheless, the new law conforms in many areas to

the Nairobi Protocol and establishes a legal control regime that covers most of the issues identified for legal control by the Nairobi Protocol, including civilian possession, international transfers, record-keeping and marking, brokering and destruction. The most significant gaps in the law are the absence of a centralised database, provisions on tracing and detailed international transfer control criteria. The law also seems to confuse provisions relating to trade and manufacturing and in so doing excludes any requirement to license manufacturing and conditions to control manufacturing activities. There also appear to be important inconsistencies between the French and English versions of the law. As with the new laws developed in Burundi and DRC, where provisions have been included in a particular area, the level of control tends to lean towards a minimum standard and in few cases conforms with the more rigorous standards established in the Best Practice Guidelines.

The following examples are intended to illustrate the general trends identified above.

- **Civilian possession** The law distinguishes between ‘possession’ and ‘carrying’, a distinction not made in the Burundi and DRC laws. In conformity with the Nairobi Protocol a licence is required to possess a firearm and a number of criteria are established to determine the suitability, or otherwise, of an applicant to possess a firearm.
- **International transfers** A licence is required for the import and export of SALW, transit declarations are required from the country of final destination, and brokers are required to register and obtain authorisation for transactions. All these elements are in conformity with the Nairobi Protocol. However, a notable gap in the law is the absence of any requirement to license state imports of arms, unless a special licence is required by the competent ministry. In addition, the law does not establish any criteria, for instance relating to the end use of exported arms or the potential for exported arms to contribute to human rights abuses, against which licences to internationally transfer arms will be assessed.
- **Registration/record-keeping** Information is to be held on illicit firearms, on firearms being transported through Rwanda and by dealers, all in conformity with the Nairobi Protocol. However, there is no centralised database in which all information relating to SALW would be held. Nor is any provision made for controlling and registering state holdings of SALW, or for the harmonised marking of SALW held by the armed forces and other security agencies.

Considerations and conclusions

The promulgation of new, strengthened SALW control legislation in Rwanda is a significant achievement. However, the new bill contains several inconsistencies and gaps. The structure of the law does not correspond closely to the Nairobi Protocol and its associated Best Practice Guidelines, and the content does not closely reflect the requirements of existing international instruments such as the Nairobi Protocol and the UN Firearms Protocol. The new law also diverges from the initial work undertaken during the AWEPA and UNDP parliamentary process. The involvement of the national and international experts who worked on the initial AWEPA and UNDP parliamentary process in the drafting of the final text of the law, or at least in its review, could have helped avoid some of the inconsistencies and gaps that the law now contains.²⁴ The involvement of these experts might also have helped to promote closer harmonisation of Rwanda’s law with those of other countries in the sub-region.

²⁴ See GRIP report no. 2005/6 op cit.

3

Case studies

Policy framework first

THE APPROACH TAKEN BY KENYA AND UGANDA has differed from that of Burundi, DRC and Rwanda. Rather than directly reviewing and amending existing SALW legislation, the governments of Kenya and Uganda have decided to develop national SALW policies as a first step towards amending their respective laws. This approach foresaw the development of a detailed national policy document with accompanying guidelines for the revision of legislation, which would then be followed by the re-drafting of existing SALW laws.

While the processes in both countries have involved a relatively wide degree of consultation and resulted in detailed and progressive draft policy documents, only Uganda has produced a new draft which in effect has been approved by the cabinet. Kenya's SALW draft policy still awaits approval by cabinet. Therefore, this study highlights the challenges that have constrained these policy-led processes, as well as some of the positive aspects of the work undertaken in Kenya and Uganda.

Kenya

Existing SALW control legislation

Existing laws relating to the control of firearms and ammunition are:

- Firearms Act Revised Edition 1991 (1982)

Other acts containing provisions on SALW control include:

- Police Act 1970 (Revised 1988),²⁵ Explosives Act, Armed Forces Act, Customs and Excise Act, Wildlife Act, Extradition Act, Penal Code, Immigration Act, Administration Police Act,²⁶ Prisons Act, Forests Act and Refugee Act²⁷

Reviews of legislation and national policy framework

In Kenya, guidelines for the revision of SALW control legislation have been developed through the drafting of a national policy on SALW, which aims “to put in place a framework for effective legislative, institutional and regulatory measures on control and management of SALW in Kenya”.²⁸ In doing so the policy calls for the review of all relevant legislation in line with the provisions of the policy.²⁹ The policy considers, in detail, a broad range of issues relating to SALW control legislation covering the issues of: civilian possession and use; record-keeping and marking; international transfers; manufacture; domestic trade and repair; stockpile management; state-owned SALW; powers of enforcement; and offences and penalties.

The development of the national policy began in 2005. The development of a national policy and the review of SALW control legislation were identified as priorities through a process of national SALW assessment and feature as objectives of Kenya’s NAP for Arms Control and Management.³⁰ A final draft national policy was submitted to the minister in charge of Provincial Administration and Internal Security in December 2009, and is now awaiting submission to cabinet and official sign-off. The drafting of new legislative provisions, as called for in the National Policy, is anticipated to begin upon approval of the national policy by Cabinet. However, no timeframe has as yet been established for this process.

The development of the national policy has been led by the Co-ordinator of the Kenya NFP. The process co-ordinated by the Kenya NFP has included a number of different elements:

²⁵ Following the promulgation of the constitution in Kenya in August 2010, Kenya is now to have a National Police Service under one Inspector General. The provisions under the National Police Service Bill which is one of the priority pieces of legislation under the new constitution has provisions on use of firearms which are also set to be reviewed to be in line with international best practice.

²⁶ Ibid.

²⁷ *National Policy on Small Arms and Light Weapons* (draft June 2009), Office of President, Ministry of State for Provincial Administration and Internal Security, Republic of Kenya, para 1.4.

²⁸ Ibid, para 1.5.

²⁹ Ibid, para 3.2.

³⁰ Government of Kenya (2006), *Kenya National Action Plan for Arms Control and Management* Nairobi: Oakland Media Service pp 57–58.

- Establishment of a policy drafting committee in February 2005 to develop a policy document. Members of the committee included: The State Law Office (Attorney General's Office), Kenya NFP secretariat, National Crime Research Centre, Central Firearms Bureau, National Security and Intelligence Service, Kenya Police, Administration Police, Ministry of Trade, Kenya Wildlife Service, Department of Defence, Department of Mines and Geology, Ballistics/ Forensic Experts from the Criminal Investigation Department (CID), independent legal expert and civil society organisations, who met periodically between February 2005 and June 2009.
- Prior research conducted in the form of a national assessment of the SALW problem in Kenya – undertaken between March 2003 and April 2004³¹
- Full draft policy document developed by drafting committee by the end of 2005
- Public consultations, including:
 - Invitation to submit written comments given to 80 stakeholders, including government ministries, provincial commissioners, provincial police officers, Kenya NFP members and a range of civil society organisations, between January and March 2006
 - Six one-day public consultations held around the country between September 2006 and March 2007, involving local government and civil society representatives
 - A series of one-to-one consultations with government departments and private companies (including private security companies)
 - Final validation by Kenya NFP and other key stakeholders in May 2009
- External expertise: International NGOs Saferworld and SaferAfrica provided advice, guidance and drafting support in the development of the policy document, including facilitating discussions of the Drafting Committee. They also provided financial support for activities of the Drafting Committee and for consultations on the draft policy document.

Analysis of the new draft national policy

No new SALW control laws or amendments have been passed and no new bills have been drafted in Kenya. Therefore, analysis regarding Kenya's fulfilment of Nairobi Protocol commitments for legislation review and regional harmonisation can only be made through examination of the provisions of the draft national policy document. The policy, while containing detailed guidelines, does not elaborate on provisions to the same level of detail as legislation typically would, although in some cases the policy provides a high level of specificity on the nature of proposed legal controls. The interpretation and manner in which the provisions of the policy are elaborated in legislation will therefore ultimately determine the extent to which any new legislation is consistent with the provisions of the Nairobi Protocol and its associated Best Practice Guidelines. However, on the assumption that the provisions of the existing draft national policy document are translated in full into new legislation, such legislation would be wholly consistent with the provisions of the Nairobi Protocol and its associated Best Practice Guidelines. Indeed, the most notable and laudable achievement of the process to develop a national policy in Kenya is the extent to which the content of the policy provides a progressive approach to the review of SALW legislation that fulfils Kenya's commitments under the Nairobi Protocol. Conversely, the most notable shortcoming of the process is that the policy has yet to be formally agreed and its provisions have yet to inform any actual revisions of the legislation.

The policy provides for new legislation to be enacted covering the following areas of SALW control: civilian possession and use; record-keeping and marking; international transfers; manufacture; domestic trade and repair; stockpile management; and state-owned SALW. In its formulation the Government of Kenya has used the Nairobi

Protocol and its Best Practice Guidelines as the framework around which to build their proposals for revised legislation. Particularly notable elements of Kenya's policy include:

- **Controls on international transfer of SALW** Consistent with the Best Practice Guidelines of the Nairobi Protocol, the policy establishes that licences will be required for individual transfers of SALW and each decision to grant or reject a licence application will be made against a set of criteria. These criteria include consideration of whether the arms would be likely to be used in the commission of human rights violations or violations of international humanitarian law, and whether they might be used for terrorist acts.³²
- **Civilian possession** The policy calls for the licensing of all arms held by civilians, prohibits the civilian possession of all light weapons, and establishes a centralised database to record data on all civilian held arms.³³

Considerations and conclusions

The analysis that follows has sought to examine a number of questions relating to the process to develop a national SALW policy and review SALW legislation in Kenya, focusing on the relevance, effectiveness, efficiency, impact (actual and potential), coherence with other initiatives, and manner and degree of participation of the policy process. It concludes by seeking to identify a number of lessons learned that could inform other similar processes.

The first consideration is the extent to which the development of a national SALW policy and the intended, though not yet realised, subsequent review of SALW legislation were relevant and appropriate initiatives. SALW control has been identified by the Government of Kenya as a priority in its NAP, with the development of a national policy and subsequent review of legislation identified as key objectives of this plan. SALW control has also been considered as an important aspect of security to address in Kenya's Vision 2030 document, within which the development of a SALW policy framework is identified as a priority issue in the first Medium Term Plan (2007–2012).³⁴ As such, the policy initiative seems well considered and relevant.

The development of the national policy has further been informed by research. The existence of a broad body of research should help to ensure that the detail of the national policy is relevant. However, the time taken to finalise the policy has meant that the relevance and immediacy of the research findings have diminished. A final consideration regarding the relevance and appropriateness of the policy process is the considerable amount of time and already limited capacity within the Government of Kenya that the process has absorbed. Actual changes in legislation and consequent changes in enforcement, attitude and practice have yet to be achieved. Given the absence of other tangible action to address problems related to SALW control by the Kenya NFP, the policy process could be perceived as abstract and time-consuming, at a time when serious threats to peace and individual security associated with SALW misuse are being experienced by the Kenyan population. While in many ways a relevant process, the speed with which it has proceeded and the absence to date of any tangible outcomes are significant shortcomings.

The second consideration is the extent to which the process has been effective and achieved its desired outcomes. In this regard, it is an achievement of the process that a broad, detailed and comprehensive draft policy document has been produced. From a legislative perspective it calls for the review of existing legislation and provides detailed guidance on the form and content of revised legislation. In addition, the

³² *National Policy on Small Arms and Light Weapons* (draft June 2009), Office of President, Ministry of State for Provincial Administration and Internal Security, Republic of Kenya, para 2.4 (e).

³³ *Ibid*, para 2.5.

³⁴ First Medium Term Plan of the Kenya Vision 2030 – Ministry of Planning and National Development and the National Economic and Social Council, 2007, Government Printers, pp 53–55.

priority issues identified in Kenya's national SALW assessment appear to have been addressed in the policy. And, the provisions of the policy appear to be consistent with those of the Nairobi Protocol and its associated Best Practice Guidelines. These achievements point towards an effective process. However, critically, as highlighted above, the sound provisions of the policy have yet to be elaborated, agreed and enter into force as sound provisions of national law.

The third consideration relates to the efficiency with which the process has been conducted. Kenya's NAP, which mandated the development of a national policy and the review of SALW control legislation in Kenya, was approved in June 2004. It has since taken five years to submit the national policy to Cabinet, and approval is still pending. No revised legislation has been developed, and while reviewing relevant legislation is envisaged as the first step in implementing the policy, no detailed plan for the drafting of new legislation has been drawn up.

In reviewing the policy process to date there are a number of ways that the process could have been made more efficient. Firstly, a more detailed and systematic work plan, in particular, considering when, with whom and how consultations on the draft policy document should have taken place, could have been developed. Secondly, there was a lack of clarity at the outset about the form that the policy document should take and the process for attaining formal Cabinet approval, which created some delays and uncertainty as the process moved forward. Thirdly, consideration from the outset of how changes in legislation stemming from the development of policy could most efficiently have been developed into draft legislation might also have enhanced the process. One option might have been to draft new legislation alongside the development of the policy itself and therefore to have submitted revised legislation to accompany the draft national policy.

The fourth consideration relates to the impact, or likely impact, of the policy process. Starkly, there is little tangible impact that can be identified to date. Any identifiable changes in practice or attitude among participants in the policy process are difficult to pinpoint and attribute to the policy process. If the policy's provisions are translated into revised legislation, there is potential for a notable change in practice and attitude in relation to SALW that could have a significant long-term impact on safety and security in Kenya. There is a relatively high likelihood that the policy will be agreed by cabinet given the commitments made by government to this end in the 2007–2012 Medium Strategy of the Vision 2030 process.³⁵ Given the breadth of the policy and the number of pieces of legislation that may need revising, there is more doubt about the extent of the likely revisions of legislation and the speed with which they will be concluded.

Assuming that the provisions of the national policy are translated consistently and in their entirety into revised legislation, Kenya's SALW laws will provide a relatively progressive set of controls. How sustainable their impact will be is, necessarily, contingent on a whole range of other factors. Three of the most pressing would appear to be: 1) whether there is sufficient political will, and as a product of this, whether resources are made available for implementation; 2) the broader approach and policy that is adopted to the implementation of revised legislation, in particular, in pastoralist areas where the nature of gun possession and use would be significantly altered; and 3) the extent to which the changes in law are accompanied by a more progressive and effective approach to the provision of security throughout Kenya and in particular to reform of the security services.

The fifth consideration relates to the broader context within which the development of the national policy and envisaged review of legislation take place. The national policy and any revised legislation will not be implemented in a vacuum and the impact of these initiatives is likely to be dependent on how well they complement and 'fit' within

³⁵ First Medium Term Plan of the Kenya Vision 2030 – Ministry of Planning and National Development and the National Economic and Social Council, 2007, Government Printers, pp 53–55.

the broader governmental context. While initially the SALW policy appears to have been developed in isolation from other seemingly related government initiatives, attempts have been made to improve its coherence and consistency with other policies. The final draft national policy makes specific reference to ensuring its implementation is consistent with other government policies.³⁶ Specific analysis and discussion has also taken place to compare and ensure the consistency of the national policy on SALW with the Peace-Building and Conflict Management Policy and draft Community-Based Policing Policy. At times during the development of the SALW policy there would appear to have been inconsistencies in approach to SALW control between different areas, and perhaps levels, of government. The more progressive approach to SALW control evidenced in the draft national policy and promoted by the Kenya NFP has at times been contradicted by Government of Kenya action, for instance in attempts to conduct disarmament operations in pastoralist communities during 2006 and 2007. In part this might reflect the slight isolation of the Kenya NFP, which has taken responsibility for the development of the national policy, from other areas of government concerned with SALW control.

The last consideration relates to the manner and degree of participation of different stakeholders, including government departments, law enforcement agencies, and provincial and local government actors, as well as a broad range of civil society representatives. In general, participation has been good with a broad range of stakeholders included in the development of the national policy, through membership of the Policy Drafting Committee and the consultations organised to enable external comment (see section on 'Reviews of legislation and national policy framework' above).

In this regard, the involvement of regional actors is also relevant given the desire to ensure the harmonisation of SALW control laws across the sub-region. While the development of the national policy has had a strong internal rationale, considerations of Kenya's position within the sub-region have not been ignored. Kenya's role as a leader of the regional process has influenced its decision to develop its national policy and to ensure that the policy fully reflects its regional commitments under the Nairobi Protocol. As such, there was a strong desire to ensure that the provisions of the Nairobi Protocol and its associated Best Practice Guidelines were fully reflected in its national policy.

In conclusion, there are four key lessons that can be learned from the process to develop the national policy in Kenya. The first, as has been highlighted many times already, is the issue of timing and the importance of having a clearly defined, well thought-through and resourced work plan that is completed within a realistic time-frame. While external factors have contributed to delays in the development of the national policy, the speed with which the process has moved forward, and the absence, five years from its inception, of formal sign-off on the national policy, is the single greatest shortcoming of the process.

The second lesson is the importance of a broad consultation process. One of the strengths of the process in Kenya has been the engagement with a wide range of stakeholders at both the national and local level and from government and civil society. Although the consultation process was not clearly defined from the outset, the flexibility of the Drafting Committee and the Kenya NFP to organise additional consultations, as the need and demand for them arose, proved successful. One shortcoming though was the apparent lack of involvement of members of parliament in these consultations thereby missing an opportunity to introduce the process to the relevant legislative institution from the start and to reinforce the active involvement of parliamentarians in the SALW control national mechanism.

The third lesson, relevant specifically to the development of a national policy, is to consider how and when revised legislation will be developed in relation to the policy

³⁶ See, *National Policy on Small Arms and Light Weapons* (draft June 2009), op cit, para 1.11.

process. In particular, consideration should be given to how to ensure that the process produces revised legislation as quickly as possible.

The final lesson is the importance of producing tangible change. A long process of policy development and subsequent legislative drafting produces very few if any tangible impacts on the ground. This can attract criticism for inaction and failure to address the most pressing SALW-related issues. Ensuring that the development of policy and revised legislation is the best use of limited resources must be the first consideration. Where such an evaluation has been made, ensuring that there is a very clear strategy to communicate why energy and resources are being directed towards a potentially drawn-out policy and legislative drafting process will be important. As has been highlighted, while the development of policy and legislation can be a slow process, every effort should be made to ensure that it is undertaken as quickly as possible. In this regard, consideration should be given to both developing short-term interim responses to outstanding legal loopholes and to implementing other SALW control initiatives concurrently with the development of policy and legislation that address the most pressing SALW-related challenges.

Uganda

Existing SALW control legislation

Existing laws relating to the control of firearms and ammunition are:

- Firearms Act 1970 (the primary piece of SALW control legislation)

Other acts containing provisions on SALW control include:

- Uganda People's Defence Force Act 2005; Police Act 1994 and Standing Orders (1984); Anti-Terrorism Act 2002; Civil Aviation Authority Act 2002; East African Community Customs Management Act 2004; Draft Lake Victoria Transportation Bill 2007; Public Procurement and Disposal of Public Assets Act 2003; Public Finance and Accountability Act 2003; Uganda Citizenship and Immigration Control Act; Control of Private Security Organisations Regulations 1997

Reviews of legislation and national policy framework

The review of Ugandan national SALW control legislation has been undertaken as part of a broader process to develop a National Policy on Firearms, Ammunition and Other Related Materials. A draft narrative policy document has been developed along with accompanying technical guidelines on the proposed content of revised legislation. There was an amendment of the Firearms Act 1970 by Parliament in 2005 which was designed to strengthen the penalties for possession of firearms and other firearms offences.

The development of a national policy on firearms in Uganda was intended to set out a comprehensive strategy to strengthen controls on and reduce the negative impact of firearms. Within this broad goal one of its objectives was "to inform such reviews of national legislation, regulations and administrative procedures governing firearms as may be deemed necessary on the basis of this Policy, and ensure that all pieces of legislation pertaining to firearms control are in conformity with each other".³⁷ As such the scope of the policy is broad and covers all of the following areas of SALW control: civilian possession and use; record-keeping and marking; international transfers; manufacture; domestic trade and repair; stockpile management; state-owned SALW; powers of enforcement; and offences and penalties.

The development of the national policy and proposals for review of legislation were mandated on 6 November 2003 by the National Security Committee (NSC), having been identified as priorities through a process of national SALW assessment (or mapping) and subsequently featuring as objectives of Uganda's NAP for Arms

³⁷ Republic of Uganda, *Uganda National Policy on Firearms, Ammunition and Other Related Materials* (draft February 2009), para 2.6.

Control and Management.³⁸ While the mandate to draft the policy was given towards the end of 2003, drafting did not begin in earnest until 2005.

To date a narrative policy document and accompanying technical guidelines for the review of legislation have been drafted, and these were submitted by the Uganda NFP Secretariat to the Minister of Internal Affairs for approval by Cabinet, in October 2009. In October 2010, the cabinet approved the policy, making Uganda the first country to finalise an official government policy on SALW within the RECSA region. The Uganda NFP Secretariat signalled its intention in November 2009 to constitute the Legal Drafting Committee to undertake the national legislative review process.

The policy drafting process has been led by the Co-ordinator of Uganda NFP. This process has included the following elements:

- Establishment of a Policy Drafting Committee in 2005 to develop a policy document. Members of the committee included: Police, Uganda People's Defence Forces (UPDF), Internal Security Organisation, External Security Organisation, Ministry of Justice and Constitutional Affairs (including First Parliamentary Council, Uganda Law Reform Commission), Ministry of Foreign Affairs, Office of the Prime Minister, Customs Department of Uganda Revenue Authority, Immigration Department of the Directorate of Citizenship and Immigration, and civil society organisations (People with Disabilities and Ugandan Joint Christian Council). The committee met periodically between 2005 and 2009.
- Prior research conducted in form of a national assessment of the SALW problem in Uganda – undertaken between September 2003 and March 2004
- Full first draft of policy document developed by Drafting Committee by December 2005
- Public consultations:
 - Two-day national consultation meeting with 40 participants from government ministries and agencies, civil society organisations, private companies, firearms dealers, hunters and development partners in December 2005
 - Six one-day regional consultations were held between October 2007 and February 2008 around Uganda with local government and law enforcement officials and civil society representatives.
 - National consultation meeting held in March 2008 for senior officials of key government ministries and departments to review revised draft policy document.
- External expertise: International NGOs Saferworld and SaferAfrica provided advice, guidance and drafting support in the development of the policy document, including facilitating discussions of the Drafting Committee. Saferworld also provided financial support for activities of the Policy Drafting Committee and for consultations on the draft policy document.

Analysis of the new draft national policy

Apart from the amendments of the Firearms Act in 2005 to strengthen penalties and sentences, no new SALW control laws have been passed and no new bills have been drafted in Uganda. Therefore, analysis regarding Uganda's fulfilment of Nairobi Protocol commitments for legislation review and regional harmonisation can largely be made only through examination of the provisions of the national policy document and its accompanying technical guidelines.

The technical guidelines provide a high level of detail from which it is possible to assess their consistency with the provisions of the Nairobi Protocol and its accompanying Best Practice Guidelines. Obviously, in the absence of final or draft bills assessment

³⁸ Objectives 4 & 5, 'Uganda's National Action Plan on Small Arms and Light Weapons' in Uganda National Focal Point on Small Arms and Light Weapons, *Mapping the small arms problem in Uganda: The development of Uganda's National Action Plan on Small Arms and Light Weapons* (Government of Uganda, May 2007), pp 58–60.

can only be made of the likely changes in legislation based on the assumption that the provisions of the policy are translated fully into legislation. With this caveat in mind, the likely content of new legislation should be a significant improvement on the existing legal controls on SALW that currently operate in Uganda. Indeed, the proposals for new legislation contained within the policy document set out a progressive and comprehensive control regime that would see Uganda implementing legislation wholly consistent with the Nairobi Protocol and its accompanying Best Practice Guidelines.

The Uganda policy provides for new legislation to be enacted covering the following areas of SALW control: civilian possession and use; record-keeping and marking; international transfers; manufacture; domestic trade and repair; stockpile management; and state-owned SALW. The following examples are intended to illustrate notable examples where the policy includes particularly far-reaching provisions:

- **Licensing regime** The policy calls for the establishment of a new licensing system in Uganda that will involve two stages – the declaration of intent to possess a firearm, and the physical possession of the weapon. The structure of the licensing system is the same for all types of licence and involves a competency test as a part of the first phase of licensing. The nature of the competency test will depend upon the type of licence for which an application has been made (for instance, civilian possession or manufacturing). The competency test will include elements of theory and practice (for civilians relating to the safe use of a firearm). Applicants will be able to receive a competency certificate only on successful completion of the test and on meeting a set of criteria, covering factors such as minimum age, mental and physical capacity and criminal record, among others.³⁹ The policy also makes provision for a ‘national re-licensing process’ to ensure that the Central Firearms Register is accurate and complete, and all licences conform with the new legislation.⁴⁰
- **International transfers** As in Kenya licences are to be required for individual transfers and these are to be assessed against a detailed set of transfer control criteria.⁴¹
- **Marking and record-keeping of state-owned weapons** The policy calls for “the implementation of systematic marking and electronic record-keeping of all firearms in the possession of the UPDF [(Uganda People’s Defence Force)], UPF [(Uganda Police Force)] and other state agencies, any auxiliary forces and PSOs [(Private Security Organisations)]”⁴².

Considerations and conclusions

The analysis that follows has sought to examine a number of questions relating to the process to develop a National SALW Policy and review SALW legislation in Uganda, focusing on the relevance, effectiveness, efficiency, impact (actual and potential), coherence with other initiatives, and manner and degree of participation of the policy process. It concludes by seeking to identify a number of lessons learned that could inform other similar processes.

The first consideration in analysing Uganda’s development of a national SALW policy and accompanying guidelines of legislative review is the extent to which this process was and has remained relevant to the specific context of Uganda. SALW control has been identified by the Government of Uganda as a priority in its NAP with the development of a national policy and the subsequent review of legislation identified as key objectives within this plan. The relevance and appropriateness of the policy process was enhanced initially by the use of research findings to inform and shape the policy document. However, the time taken to finalise the policy has meant that the relevance

³⁹ Republic of Uganda, *Uganda National Policy on Firearms, Ammunition and Other Related Materials* (draft February 2009), para 3.1.1 & 3.1.2.

⁴⁰ *Ibid*, para 3.6.

⁴¹ *Ibid*, para 3.18.

⁴² *Ibid*, para 3.17.

and immediacy of the research findings have diminished, and also potentially therefore the relevance of certain aspects of the policy.

More broadly it is important to consider the context within which the national policy has been developed, in particular as this relates to challenges associated with SALW use. Uganda faces a number of active and pressing threats from the uncontrolled proliferation of SALW, for instance in the north-eastern Karamoja region of the country. The development of a national policy and the subsequent revision of legislation that this foresees should address many of these challenges. However, it has taken over five years – indeed closer to seven since the mandate to develop a national policy and review legislation was given by the National Security Council – to complete a policy document. The adoption of the policy by the Government of Uganda now provides an opportunity for the legal drafting committee to embark on a review of existing firearm laws to be in line with the policy.

The development of both policy and legislation are undoubtedly necessary. They are also inherently complex and broad processes aimed at instituting long-term change. Nevertheless, the process in Uganda has been slow and has consumed considerable amounts of time and limited human resources. In addition, other more short-term initiatives focused on producing more tangible short-term impacts have been largely absent. It is therefore reasonable to question whether the significant focus on a long-term policy process without other accompanying short-term actions, including perhaps making interim revisions to legislation, has been the right approach. At the least, when it became apparent that the policy and subsequent review of legislation would not happen within a reasonable time-frame, accompanying actions could have been taken. These questions are important both for the Uganda NFP and for the organisations such as Saferworld that have supported this process.

The second consideration relates to the effectiveness of the process in achieving its objectives. Although the policy has been formally approved, the subsequent review of legislation has yet to take place. However, the process has produced a detailed and comprehensive policy document and detailed and progressive technical guidelines to inform that review of legislation. These documents provide a detailed and progressive foundation, consistent with the provisions of the Nairobi Protocol and its associated Best Practice Guidelines, for the subsequent amendment of national SALW control legislation. Now that the policy has been agreed, there is a strong likelihood that this will result in a significant strengthening of national SALW control legislation, in line with regional and international commitments and addressing identified national needs. However, given the lengthy period taken to complete the policy document, and with the process of revising, passing and implementing legislation still to be negotiated, it is difficult at this point to fully assess how effective Uganda policy development process has been in creating a strengthened legal framework for SALW control.

The third consideration relates to the efficiency with which the process has been conducted. As noted above, the process of developing Uganda's national policy has been protracted. It has also occupied a significant amount of the time of the NFP Co-ordinator and Secretariat. While much of the work has been done in developing the detail of legislation, both working through the technical content and consulting with a broad range of stakeholders to ensure its relevance and acceptability, there is no detailed work plan and deadline for the drafting, agreement and implementation of revised legislation. As a consequence, the efficiency of the process in achieving changes in legislation, and therefore in practice and attitudes, has been reduced.

The fourth consideration relates to the impact, or likely impact, of the policy process. It is likely that a positive contribution will be made to levels of violence and insecurity associated with SALW misuse if the policy adopted by the government is translated into legislation. However, the potential for impact is of course dependent on the likelihood that the legislation will be effectively implemented and this, in turn, will affect the attitudes, political will and availability of resources within the Government of

Uganda. While the adoption of the policy signalled Uganda's government's commitment to address the problem of SALW, the generally slow progress made in the policy and legislative review process means it is reasonable to question whether the legislative changes proposed by the draft policy guidelines will be fully translated into legislation in the short term, and whether they would then be implemented effectively.

More positively, slow progress notwithstanding, the strong participation by a wide spectrum of government and security agencies, as well as civil society organisations, in the development of the policy guidelines, coupled with the broad consultations across a wide audience at national and regional levels, has contributed to increased understanding of SALW issues and enhanced the technical skills and awareness within government bodies and civil society. However, as in Kenya, lack of involvement of members of parliament in these consultations meant that a significant opportunity was missed. The involvement of parliamentarians in the process could have facilitated the last stage of the legislative review process, and it would also have represented a valuable opportunity to progressively include parliamentarians within the national SALW-control mechanisms.

Following the approval of the policy, the NFP Secretariat convened the Legal Drafting Committee to commence the legislative review process. A work plan was developed and agreed by the members of the committee. Consequently, the committee agreed on the Terms of Reference (ToRs) for the review process and having developed guidelines for drafters hired a consultant to take the process forward. It is expected that the consultant will finish the work by March 2011 after which a meeting with the legal drafting team will be convened to review progress and pave the way for stakeholders' consultations. The final step will be to submit review proposals to the National Security Council for approval and eventual forwarding to parliament. It is clear that this review process will need to be expedited in order to capitalise on the government's approval of the policy.

On the assumption that the policy guidelines are expeditiously and fully translated into legislation, the sustainability of these changes will be dependent on a number of factors. Two issues are likely to be particularly important. Firstly, the approach taken to the implementation of revised legislation in those areas suffering the most serious SALW-related instability; in particular, that associated with cattle rustling and banditry in Karamoja. The success of other interventions addressing the problems of armed violence in these areas and the ability to develop a creative and appropriate approach to the implementation of revised laws (which will directly challenge received cultural, economic and social practices related to arms), will be critical to the success of any revised laws.

Secondly, the manner in which the law is enforced will be important. For the proposed changes in law to have a sustained impact, the roles and practices of the defence and law enforcement services may have to change. Again, this will be particularly true for law enforcement in the Karamoja region, where previous approaches to law enforcement have had limited success in addressing armed violence. The UPDF and Uganda Police Force, both key law enforcement/security agencies responsible for the implementation of the NAP and the national policy, have completed the process of developing institution-specific work plans which will enable the two agencies to implement their responsibilities under the NAP. These work plans enshrine commitments by these agencies to effectively implement the national policy as well as the prospective legislation on firearms upon being enacted by parliament.

The fifth consideration relates to the broader context within which the national policy and envisaged review of legislation have taken place. The national policy and any revised legislation will not be implemented in a vacuum and the impact of these initiatives is likely to depend on how well they complement and 'fit' within the broader governmental context. In this regard, the relationship between the National Policy on Firearms and other Ugandan policy frameworks has been considered during the

drafting process. The strategy to ensure effective linkages between the national policy and other development/security policies will be articulated in the yet to be developed implementation strategy of the national policy. Meanwhile, both the UPDF and the police work plans, mentioned above, have articulated steps for how they are going to undertake this process.

At a wider governmental level, Uganda has a number of development frameworks which recognise the need to control SALW as being essential for security and development. The Government of Uganda has recognised conflict and insecurity as key challenges to poverty reduction in its National Development Plan, the principal strategic framework for development and poverty reduction in Uganda, which identifies firearms control and disarmament as a priority. Alongside this, the government has established a set of policies to address conflict and security issues, including Karamoja Integrated Disarmament and Development Programme, Northern Uganda Peace, Recovery and Development Plan, IDP Policy, Disaster Management Policy, DDR programmes, Conflict Early Warning (CEWARN) and Mines Action Programme. As such, the national policy and review of legislation appear to fit reasonably coherently with broader government policy.

The last consideration relates to the manner and extent of participation of relevant stakeholders in the process to develop the national policy and its legislative guidelines. In general, participation of relevant stakeholders appears to have been good. A broad range of government departments and agencies have participated in the work of the Policy Drafting Committee. In addition, consultations have been held nationally and in locations around Uganda with a broad range of government, civil society and private representatives (see section on 'Reviews of legislation and national policy framework' above). These consultations have occurred periodically with revisions being made as a result of consultations. Key government stakeholders have been consulted at points throughout the process at both a middle- and senior-management level.

There has also been some involvement of regional actors, an important factor given the broader goal of achieving the harmonisation of SALW controls throughout the sub-region. In July 2007, RECSA supported a meeting of legal and senior government officials to review progress in the development of the national policy. An outcome of the meeting was a work plan setting out the steps towards the policy finalisation and formal agreement. Indeed, an explicit objective of the policy is "[t]o provide a mechanism for the harmonisation of legislation on the basis of the regional agreed common minimum standards, to ensure national systems which are compatible across the region and which reduce the possibility of criminals exploiting variations in the legal and regulatory systems in different countries".⁴³

In conclusion, there are three key lessons that can be drawn from the experience of Uganda in developing its national SALW policy and legislative guidelines. The first lesson is the importance of developing a long-term and detailed strategy and work plan, which includes consideration of how to secure sufficient funding for activities. Such a plan was not developed at the outset in Uganda but could have helped reduce the risk of the process of developing policy and guidelines for legislation becoming unnecessarily protracted. The second lesson, notwithstanding the first, is to allow sufficient time for consultations to take place, as well as staggering those consultations to enable revisions to draft guidelines and further consultations on the revised document to take place. While the process in Uganda has been unnecessarily slow, the manner in which consultations have taken place has contributed to the creation of a detailed and comprehensive policy document. The third and final lesson is to consider, in situations where capacity (both human and financial) is limited, how other shorter-term, quicker win activities can be conducted to accompany the longer-term policy

⁴³ Republic of Uganda, *Uganda National Policy on Firearms, Ammunition and Other Related Materials* (draft February 2009), para 2.6.

development and legislative revision process. Obviously, ensuring that any policy or legislative review process is completed as quickly as possible is critical. However, by their very nature they can be complex processes, particularly where broad consultation takes place. This being the case, it may be important both to meet pressing challenges alongside the development of policy and legislation, as a means of demonstrating action and dynamism to others, which can be a potentially significant factor in maintaining support and buy-in for a broader SALW control process.

4

Challenges and issues

THIS SECTION SEEKS TO HIGHLIGHT SOME OF THE ISSUES AND CHALLENGES that need to be considered in taking forward the processes of national review and regional harmonisation.

- **Different legal systems** In East Africa, as is the case in most regions, countries have different legal systems or traditions largely influenced by their respective colonial ties. Harmonising different laws from different legal traditions is therefore an inherently political process which needs to be handled by the countries themselves with sensitive diplomacy and appropriate legal expertise.
- **Competing needs** SALW control is but one of many pressing issues that states in the GLR and HoA face. Issues such as primary health care, housing and food security are in many African countries a higher priority than dealing with the problem of SALW. This particular issue has manifested itself in other regions of the world. In Mozambique for example, (which was until recently one of the poorest countries in the world) the issue of arms control competing with other basic needs such as primary health care and food security was dealt with by demonstrating the close link between these competing needs, in this manner showing that none of the needs could be ignored because it would directly impact the others. Simply put, without security it is virtually impossible to provide health care as the health care specialists do not want to go to areas that are unsafe. By removing arms and arms caches one opens up land that could be cultivated again. By improving food security causes of unrest or dissatisfaction diminish.
- **Lack of political commitment** Although in east Africa there appears to be a high level of rhetorical political commitment to the implementation of the Nairobi Protocol, the question remains whether this translates into action. While the annual ministerial meetings appear to make the ministers aware of what is happening it seems that this willingness to participate in high regional discussions is not always or consistently translating into support for domestic initiatives on SALW control, such as the review of legislation. NFPs, the primary agencies through which national action on SALW control are co-ordinated, often lack high-level political support, and with this the financial and institutional support that is necessary to develop and sustain practical SALW control interventions.
- **Lack of ownership by individual states of the process** It appears at times that some of the states that are signatories to the Nairobi Protocol do not actually have ownership of the process. They seem to be happy to leave it in the hands of RECSA and wait for RECSA to take the initiative. This can partly be ascribed to the strong role that RECSA has played and is playing. Nonetheless, RECSA is bound to act only on behalf of and at the instigation of its member states. It is important that states take ownership of that part of the process that must take place domestically and this specifically includes activities that will lead to the harmonisation of legislation.

- **Lack of financial and technical resources** For many countries severely limited financial and technical resources inhibits progress. While it seems that sufficient financial resources are reaching international and regional structures, it appears that not enough arrive at the national level. Critically, it is at the national level where most of the activities must now take place. Whether through governmental or external channels, funds should be made available to the NFPs for specific tasks that have been identified and properly budgeted for. This means that the NFPs must have the capacity to manage the funds given to them and to properly account for their spending. Having said this, individual countries must also realise that they must create budgets for the NFPs and the work they must do. RECSA and other donors cannot provide the funding indefinitely.
- **Competing demands of more than one regional body** In East Africa, many countries are members of a number of regional bodies that have an interest in SALW control issues. The two most prominent are RECSA, a body established solely to deal with the SALW issues, and the East African Community, which promotes economic and political co-operation between Burundi, Kenya, Rwanda, Tanzania and Uganda. The DRC and Tanzania are both member states of the Southern African Development Community (SADC) and signatories to the SADC Protocol of Firearms, Ammunition and Other Related Materials adopted in 2001 and also containing some provisions related to legislative measures and reviews. The DRC also signed the Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components (known as the 'Kinshasa Convention') in November 2010 in Brazzaville along with ten other central African States. The Convention will become a legally binding instrument after the sixth ratification by a member states and might therefore create addition obligations, including some of a legislative nature, for the DRC.

The result of such a trend to overlapping regulation is that states commit to different, although similar, regimes on a single issue – SALW control. The existence of more than one structure in the same region also splits available funding between several stakeholders, reducing the impact of assistance and international co-operation. Duplication in structures might equally generate duplication in activities and initiatives, unless frameworks of close co-ordination between all relevant actors are created, something that has proven to be challenging. Finally, such a situation might create confusion when identifying and establishing responsibilities, mandates and prerogatives of all relevant partners.

- **The legislative drafting process is the prerogative of a single department/structure, often not the one requiring or initiating the legislative changes.** In some countries the prerogative of drafting legislation falls under a single entity, usually the Office of the Attorney General or a similar structure depending on a country's particular type of legal system. In such a case, the legislation will be recognised as being important by a particular department, such as Internal Affairs (police) and a draft may even be prepared. However, from here the draft is sent to the central point at which all legislation is drafted. Deciding which legislative draft receives priority is left to a person outside the department that initiated the draft. This could mean that legislation seen by the police (on firearms) as being of high importance is not seen in the same light by the attorney general. In countries with larger departments one finds that each department is responsible for drafting its own legislation and amendments. Thus an amendment to the Firearms Control Act in South Africa will fall under the South Africa Police Service's Legal Division. This in-house method of drafting legislation means that the priority afforded to the drafting is not lost at any stage.
- **Parliamentarians** The involvement of parliamentarians, ultimately those who will vote on the enactment of legislation, can be critical to successfully reviewing legislation. The best example comes from the role of parliamentarians in Burundi, the Democratic Republic of the Congo and Rwanda. Parliamentarians can ensure that the issue retains

the necessary political attention, oversee the drafting process to ensure that draft does not stall at any point, and act as the champion of the process. The legislation review process should be perceived by states as a useful opportunity to reinforce parliamentarians' direct involvement with the national SALW-control system. In general terms, African parliamentarians rarely play an active role and their participation in SALW-related initiatives does not appear to emerge from their institutional prerogatives. Improving parliaments' role would contribute to increased public awareness on armed violence-related challenges and improve transparency of national practices in terms of SALW management and control.

- **NFP staff rotation** A huge challenge faced in implementing the provisions of the Nairobi Protocol is the fact that the staff of the NFPs are in some instances being changed on a regular basis. While it must be accepted that civil servants will be transferred by their governments, such transfers should in the case of NFPs be limited as far as possible. The reason for this is that most of the staff of NFPs have been trained to do their work. As soon as one is transferred the training has to start all over again, and often considerable institutional knowledge is lost.

It must be accepted that such transfers will take place as part of the administration of the civil service of a country. However, certain guidelines should be put in place to ensure that such transfers have the minimum impact on the operations of the NFP. For example, there should be a minimum period of five years for any person stationed at an NFP. This will allow for the person to be trained and then have time to use that training for the benefit of the NFP. Replacements should as far as possible come from within the NFP, such as the deputy chair taking over the chair position. This will help limit the loss of institutional knowledge. If this not possible the replacement should serve alongside the current chair for a period of time.

In many structures there are guides for succession. An example of this is Eastern African Police Chiefs Co-operation Organisation. Here the chair consists of a troika – outgoing chair, current chair and the next chair. Although this might be a bit elaborate for an NFP it does give a possible solution.

5

Conclusion

THIS STUDY BEGAN BY ANALYSING THE FOUNDATIONS PUT IN PLACE to pave the way for review and harmonisation of SALW legislation in the region. Examples of countries that started by developing national polices on SALW have been discussed. Similarly, examples of countries that have directly embarked on reviewing national legislation on SALW have been explored. It should be noted that each member state in the region is unique, manifested by its legislation. This helps inform and influence the scope of political will, the environment and support for regional harmonisation of legislation on firearms and ammunition. This study did not seek to establish which approach would be appropriate and effective. However, for purposes of the common objectives in the region, all member states should progressively endeavour to implement the best practices according to the Nairobi Protocol.

It has been observed that the reinforcement of legislation with minimum harmonisation is already a considerable success for Burundi, DRC and Rwanda and will certainly provide a good example to other countries that are also signatories to the Nairobi Protocol in the region. The further strengthening of laws to promote greater harmonisation may yet still occur at a later stage. By analysing these new laws the remaining Nairobi Protocol signatories may rapidly harmonise their national legislation. In Uganda, the goal of regional harmonisation has been considered. The National Policy on Firearms makes specific reference to the goal of regional harmonisation as informing the development of the policy document. If the adoption of the policy by the government of Uganda translates to progressive review of firearms laws, Kenya could learn lessons and expedite the adoption of its policy and embark on review of its national legislation related to firearms.

A key consideration in reviewing the process to develop the new law is the role that RECSA and external experts played. In Burundi, It appears that there may have been an over-reliance on the expertise of one person thereby potentially missing a broader range of inputs into the draft law that could have helped to fine-tune the final law if the NFP had initiated a closer working relationship with RECSA. Given the commitment to harmonise legislation between the signatories of the Nairobi Protocol, the government of the DRC should have had a key liaison and support role with RECSA to ensure that harmonisation was occurring effectively. In Rwanda, involvement of the national and international experts who worked on the initial parliamentary process in the drafting of the final text of the law would have ensured consistent application of the provisions of the Nairobi Protocol and its associated Best Practice Guidelines. Kenya and Uganda national policies would also have benefited from a closer and more direct linkage with RECSA, although RECSA envisages its role as provider of general guidance and not as a direct participant.

It is obvious that regional harmonisation of legislation requires more collaboration at the sub-regional level and more proactive involvement of RECSA in the future. Indeed, given the commitment to harmonise legislation between the signatories of the Nairobi Protocol, the more pro-active involvement of RECSA – which should be requested by national authorities, as the Secretariat itself does not have the prerogative to impose it – and a closer working relationship between the NFPs and RECSA, are of even greater importance.

Whereas some progress has been made in individual member states through the development of national policies and the review and drafting of new legislation, overall progress has not been as swift as originally envisioned. Agreed deadlines for establishing and completing reviews of legislation have not been met and little or no action has been taken in some signatory states. Where progress has been made, as yet few attempts have been made to examine the extent to which regional harmonisation is occurring.

Significant resources have been expended by various actors since the agreement of the Nairobi Protocol to encourage and assist the process of national review and regional harmonisation of SALW legislation in the region. The challenge of raising or accessing sufficient resources for NFPs to sustain the process of harmonisation is likely to remain as donors and development partners continue to make considerations for continued support based on delivery of commitments within set timeframes. However, all member states have the potential to identify resources, determine their needs and priorities in relation to the necessary support for national legislation review processes and eventual harmonisation. Some might usefully strive to become models within the region both on legislative matters and SALW control and information exchange more broadly. Such examples would encourage other member states to put right and speed up the drafting, review, implementation and harmonisation of SALW legislation and policies in the region.

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