

# REGULATION OF REGULATION OF CIVILIAN POSSESSION OF SMALL ARMS AND LIGHT WEAPONS CIVILIAN POSSESSION OF SMALL ARMS AND LIGHT WEAPONS



BRIEFING 16

## BITING THE BULLET

## **I**NTERNATIONAL **A**LERT

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# REGULATION OF CIVILIAN POSSESSION OF SMALL ARMS AND LIGHT WEAPONS



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This briefing in the Biting the Bullet series is sponsored by the  
Canadian Department of Foreign Affairs and International Trade



Department of Foreign Affairs  
and International Trade

Ministère des Affaires étrangères  
et du Commerce international

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# Executive Summary

One of the more controversial outcomes of the UN Small Arms conference was the failure of states to explicitly commit to more effective regulation of civilian possession and use of small arms and light weapons (SALW). Despite clear evidence of the opportunities for diversion of SALW from civilian possession to illicit trade and the serious impact of this on human security, opposition from some states to any mention of this issue within the Programme of Action (PoA) prevented the inclusion of language concerning the regulation of privately owned SALW. Nevertheless, the Programme of Action does contain limited provisions including the criminalisation of illicit possession of SALW and a requirement that states ensure responsibility for SALW issued by them.

This Policy Briefing elaborates on how these and other international commitments should be interpreted and implemented so as to enhance human security.

## *The Impact of Civilian Possession of Arms: a Human Security Perspective.*

From a human security perspective, civilian possession of SALW poses a threat to individuals' human rights. There is a strong correlation between levels of firearms ownership and death rates, and vulnerable parts of the population, such as the poor, children and women, are often victims of firearms, and this not only in conflict situations. SALW proliferation can also become a significant obstacle to development as it usually strongly disrupts economic, political and economic situations, such as health care resources. It is also crucial to stress the harmful influence of pre-existing or emerging cultures of violence in societies, which are both a cause and an effect of firearms availability.

## *Regulation of Civilian Possession of SALW*

Regulation of civilian possession is a major issue in the control of SALW. The need for effective regulation of civilian possession is widely recognised and, despite some claims to the contrary, there is no general right to unrestricted civilian access to arms under any international instrument. However the UN 2001 Conference on the Illicit Trade in Small Arms in All Its Aspects was disappointingly unable to reach consensus on any specific international norms relating to restrictions on civilian possession.

Nevertheless, there have been important initiatives at the regional and national level to strengthen regulation over civilian possession, and States' responsibility regarding weapons issued by them as well as the control of civilian possession has been reiterated at the international level. In addition, regional and international agreements, such as the UN Security Council Resolution on Adequate Regulation of Civilian Possession and use, provide some support for the regulation of civilian possession.

### *Regulating Civilian Possession in the Interests of Human Security*

It remains important to control availability of SALW by restricting supply and limiting access to weapons by those that may misuse them. Targeted and context-specific strategies for regulation and control, which put the protection of people first, are much needed. Restrictions on civilian possession can play a key role in reducing gun crime in virtually every society. Moreover, the role of civilians in conflicts and therefore the significance of civilian possession must be integrated in reduction and control policies. Restrictions on possession must be complemented by measures that engage the causes of weapon demand as well as with the sources of supply. While controls on availability in themselves will not eradicate violence, reduction of availability of firearms can reduce the lethality of violent confrontations.

### *Strengthening International Norms*

All states recognise a responsibility to restrict civilian possession of many categories of arms. Indeed, virtually all functioning societies aim to restrict access to military style weapons, and to regulate possession of firearms. Numerous countries and regions have strengthened their legal controls on civilian possession in recent years, and strengthened their efforts to enforce them.

The UN PoA implies a strong commitment to ensure sufficient controls on civilian possession of SALW to enable implementation of explicit commitments, including to prevent and reduce illicit manufacture and trafficking of SALW, to ensure adequate marking, record-keeping and tracing of illicit SALW, and so on. However, in practice, inadequate controls on civilian possession and trade of SALW are undermining efforts to prevent and reduce trafficking and proliferation of SALW in many regions. It is therefore important to consider ways to strengthen such controls at an international level as well as at a national and regional level.

Experience during the negotiations for the UN PoA demonstrates that the process of establishing specific and adequate international norms on civilian possession of SALW is hard. National norms and regulations vary widely, and in some countries there is strong resistance to establishing specific norms. Nevertheless, efforts to establish such norms should continue. States should clarify that civilians should not have access to military assault weapons and similar military-style arms. They should further clarify agreement on the key aspects of regulations on civilian possession, to provide a basis for information exchange and co-operation in promoting high national standards.

# Introduction

The majority of small arms and light weapons currently in circulation are in civilian possession.<sup>1</sup> An estimated fifty-nine percent of weapons around the world are in civilian hands and in some regions such as Europe this is closer to eighty per cent.<sup>2</sup> While the majority of these arms are used for lawful purposes a significant percentage are not. The misuse of these arms by civilians can cause major damage to people's livelihoods, health and security as well as broader repercussion such as hampering economic, social and political development and the provision of health care.

In the immediate aftermath of the 2001 Conference on the Illicit Trafficking in Small Arms in All Its Aspects, there was considerable disappointment that no explicit provisions had been made to tackle the issue of civilian possession. During the Conference, opposition from some states to any mention of this issue within the Programme of Action (PoA) resulted in all explicit references to civilian possession being deleted from the final PoA. Other countries were, and remain, equally forceful in their insistence that without adequate controls on civilian possession, a global strategy to combat illicit trafficking of small arms in all its aspects is flawed.

Since the 2001 UN Conference there has been growing attention to the need to address the problem of regulating civilian possession. At the national level, where legislation is changing regarding weapons possession, the movement has been towards increased rather than decreased control over civilian possession. Regional instruments are more frequently addressing problems of illicit trafficking of weapons, implying the need for clarity about legality in possession and transfers. In addition civil society groups are maintaining pressure on states and multi-lateral organisations to keep the issue of civilian possession alive and developing and are emphasising the need to maintain a human security focus.

Human security symbolises freedom from pervasive threats to people's rights, safety and lives.<sup>3</sup> This concept is universal and stresses the interdependence of all its components. In addition, it aims to focus as much as possible on early prevention and emphasises the importance of a people-centred approach - it equates security with people rather than territories. This concept has been developed as a result of the realisation that holistic approaches to tackling issues related to humanitarianism, human rights, development and conflict resolution may prove more effective than work in the past which tended to tackle them in isolation. While human security can be affected by numerous factors such as poverty, underdevelopment, economic and social consideration and lack of health care, the proliferation of weapons, and in particular the issue of civilian possession, is regarded as the leading threat to Human Security. Maintaining a focus on the reduction of small arms death and injury in the context of international Human Rights is widely seen as critical.<sup>4</sup>

Subsequently, increased control and thus regulation of weapons are an essential way to improve human security. This implies stricter governmental controls over small arms, though some make the argument that where democratic institutions are weak, curtailing civilian possession may simply be a means of strengthening the control of authoritarian regimes. However while there is potential for such abuse the maintenance of a human security focus throughout discussions and the strengthening of the regulation should safeguard against this.



# 1 Defining Civilian Possession:

For the purposes of this briefing it is important to clarify what is meant by 'civilian' and 'civilian possession'. In the context of conflicts traditional distinctions have rested on the dichotomy between civilians and military personnel and it is on this model that the Geneva Conventions, part of the International Humanitarian Law (IHL) framework, were based. However the dichotomy is now being challenged in many conflict zones as the distinction between non-combatant civilians and identifiable warring parties has become blurred and there has been a need to look at the role of civilians in war.

Parties involved in conflicts are becoming less likely to be easily categorised as military personnel, as with the increasing ease of access to weapons, private armies, militias and insurgent groups, all made up of 'civilians', have become involved in fighting. For example, it would be difficult to use these traditional distinctions for specifying 'civilians' and 'military personnel' in such cases as the Revolutionary United Front (RUF) in Sierra Leone, the National Resistance Movement (NRM) in Uganda and the Rwanda Patriotic Front (RPF).

While it is acknowledged that there is some room for debate with regard to this issue, for the purposes of this paper civilian will be defined as a non-military, non-combatant i.e a person who is not involved in any organised fighting group, be it military, militia or rebel based. A civilian may however possess a weapon but not as a result of involvement in such a group, but rather for such purposes as self-defence, recreational activities or to satisfy cultural traditions. For example in the southern cities of Jordan the level of civilian possession is very high as the area is populated by tribes who are traditionally very heavily armed.

More generally, and beyond the context of conflict, a 'civilian' may be taken to include all those citizens who are not employed within the state 'security sector' agencies (including the police, military, and other law enforcement agencies) on official duties that involve the carrying, and possible use, of firearms. Thus, ordinary citizens, private security company personnel, judges and off-duty police officers are all regarded as civilians in this context, even though their different contexts may imply differential restrictions of gun possession.





## **The Impact of Civilian Possession of Arms: a Human Security Perspective**

The absence of any substantial information about the impact of small arms possession, especially in the developing world, makes it difficult to develop comprehensive statements about civilian possession that are applicable across all communities. In some cases, like Sri Lanka or Colombia, lax regulation and high numbers of weapons accompany very high levels of violence. In other countries, such as Jamaica, South Africa and the Russian Federation, strict laws over firearms possession are not sufficient to stem the flow of illegal weapons. Furthermore countries such as Botswana, Costa Rica or Great Britain with strict domestic regulations are vulnerable to the flow of weapons from less regulated areas.

Nonetheless, from a human security perspective, the civilian possession of weapons increases the risk of gun violence in a way that potentially infringes on individuals' freedom, their human rights and indeed sometimes their lives.

It is widely acknowledged that the simple availability of arms does not in itself lead to violence. However, easy access to weapons does make a significant difference to the way tensions are managed. There is strong evidence both in countries at peace and in areas of conflict that the easy availability of small arms tends to escalate and prolong violence and increases the lethality of violent encounters. Regulating civilian possession of weapons in itself will not eradicate violence and it is certainly not a panacea. However, a reduction in the availability of firearms can reduce the lethality of violent confrontations and reduce the impact on human security issues such as those outlined below.

### **Mortality and Morbidity**

Despite the lack of data it has been estimated that there are approximately 300,000 deaths from small arms in conflict zones each year. A comparable number of people, at least 200,000, are killed with firearms in contexts which are not deemed "conflict", almost all of whom are civilians.<sup>5</sup> Among the countries with the highest firearm death per 100,000 are Colombia, Brazil, Jamaica, the United States, and Estonia.<sup>6</sup> For every death there are additional injuries requiring hospitalisation, some resulting in permanent disability. Levels of firearms ownership and death rates also vary significantly but in general when other factors are held constant (for example income) there is a correlation between levels of civilian ownership of firearms and death rates.<sup>7</sup>

### **Vulnerable Populations**

The costs of widespread civilian possession of weapons for vulnerable populations are particularly high in both industrialised and developing contexts. Women are seldom users of firearms but are often victims in the context of war, communal conflict, crime and domestic violence where they are

subject to intimidation, violence and rape. Guns figure prominently in the cycle of violence against women and children, whether in Cambodia, Australia or South Africa.<sup>9</sup> From the perspective of women, the current constructions of the small arms issue tend to overlook the problem of domestic violence, although women world-wide are as much at risk of violence with firearms from intimate partners as they are from strangers or combatants. The patterns of weapons' use in domestic violence are remarkably consistent across many cultures.

In many developed countries, firearms are also a leading cause of mortality among children and youth.<sup>9</sup> Indeed, the rate of children under the age of fifteen killed with firearms in the United States has often been much higher than the rate of children killed with guns in some countries deemed "conflict" zones.<sup>10</sup> In addition, studies have revealed that the poor are more likely to be victims of violence with a decrease in social ties and community spirit being directly linked to crime and violence both within and outside the home.<sup>11</sup>

### **Impacts on Economic, Social and Political Development**

Violence fuelled by firearms also represents a significant threat to the reinstatement of democratic governance, which is essential to sustainable development. Criminal violence in South Africa has been defined as "the greatest threat to human rights" facing the young democracy.<sup>12</sup> In Latin America, criminal violence dwarfs political violence and has a huge impact on individual security, economic development and governance. The economic costs of violence, including costs of policing as well as those of the lives lost, have been estimated to consume twenty four per cent of GDP in this region.<sup>13</sup> Even in developed countries, the economic costs of violence are staggering. For example in Canada, the cost of death and injury has been estimated at 6.6 billion dollars per year.<sup>14</sup>

### **Diversion and Disruption of Health Care Resources**

Firearms associated violence has been identified as a major impediment to the provision of basic health care as well as diverting resources from other health and social services. In South Africa, scarce hospital resources are absorbed in dealing with such violence, health care personnel are increasingly themselves the target of firearms related attacks, and even hospital wards are not safe.<sup>15</sup> Treating firearms injuries absorbs considerable emergency room resources in developing countries.

### **Fear and the Culture of Violence**

Violence and the prevalence of weapons in civilian environments can create psychological stress that fuels other health problems and creates insecurity. In some areas which have experienced high levels of weapons proliferation, there have been observable symptoms of post-traumatic stress disorder, such as overwhelming anxiety and a lack of motivation. Linked to this theme armed robberies and other crimes also have a whole range of consequences for the victims' health, including insomnia and short and long-term psychological disturbances.<sup>16</sup>

The development of a culture of violence is both a cause and an effect of firearms availability. A culture of arms possession created and normalised during the militarisation of societies, or during periods of conflict and insecurity, can contribute to civilians resorting to firearms more widely as an early instrument for responding to threats or pursuing crime resolving problems, as studies of South Africa demonstrate.<sup>17</sup> The wide availability and misuse of firearms can contribute to a cycle of violence which is difficult to break: fear leads to arming which breeds violence, leading to insecurity and to further arming. Firearms possession can thus undermine long-term efforts to build civil society, whether in war-torn areas or in urban or rural areas damaged by gun crime in so-called peaceful countries. Once guns become widely available, the problems can become hard to reverse, as 'gun cultures' develop that are re-inforced by violent movies and television which tend to link heroism with guns and violence,<sup>18</sup> and by sub-cultures where display of guns become symbols of social status.

The statistical relationship between small arms, culture and violence is a complex one. However the situation in societies such as those in the Horn of Africa, West Africa, and the Pacific Islands, and the cities of Latin America like Rio de Janeiro show a clear change in social practices, structures, and people's lives as the prevailing order in tribes, clans, villages, cities and regions is challenged by the widespread availability of weapons.

In general, men are more likely to be victims of firearm violence while women report higher levels of concern about their safety and that of their families.<sup>19</sup> But even where weapons-carrying behaviours are endemic, research shows that the youth, often carrying firearms, would prefer to live in a society without them.<sup>20</sup>

Policies that regulate civilian possession while ensuring that they do not dispossess the very people who need protection are fundamentally necessary, especially in parts of the developing world where the clashes these weapons make possible undermine all aspects of development, stability, and human security.



## 3 Regulation of Civilian Possession of SALW

The regulation of civilian possession and misuse of firearms is largely based on the notion that firearms do not cause violence but do increase its lethality.<sup>21</sup> The heart of the policy response to gun violence focuses on efforts to reduce gun use in crime by restricting supply and thus making it more difficult, time-consuming or costly for a violent individual to obtain a gun. By limiting access to guns by people who may misuse them one can reduce the occurrence and lethality of certain types of crime. Domestic firearms regulation also reduces the ease with which legal arms are diverted to illicit markets.

Although controls on availability in themselves will not eradicate violence, the reduction of the availability of firearms can reduce the lethality of violent confrontations. Assaults with firearms are more likely to result in deaths than assault with other weapons.

While many factors contribute to levels of lethal violence, there is sufficient evidence to conclude that rates of firearms death and injury are linked to access to firearms.<sup>22 23 24</sup> Empirical evidence on the impact of tightening gun controls on violence remain disputed. Some studies indicate that stricter controls on firearms reduce gun death and injury.<sup>25</sup> However others have even suggested that increasing access to firearms through arming for self-protection saves lives and reduces injury in some contexts.<sup>26 27</sup>

More studies however have shown that access to firearms is more likely to be a risk to the owner than a protective factor. South African studies, for example, have shown that victims carrying firearms were less likely to be robbed but more likely to be injured in crime.<sup>28</sup> A study in El Salvador indicated that individuals who had owned a firearm for more than a year were twice as likely to be victims of armed crime (than those who had not) and this figure rose to three times as likely if the weapon had been obtained in the last twelve months.<sup>29</sup>

More research could illuminate the interaction between the range of factors shaping the demand for firearms at the societal level and at the individual level (criminal activity, drug use, parental factors and the like).<sup>30</sup> However, existing research reveals a relationship between access to firearms and the firearms death rates and crime.<sup>31 32 33 34 35</sup> Although this relationship is not absolute, and other factors play a role, rates of death and injury tend to increase with the availability of arms. In some cases there is a strong link between the interventions focused on controlling access to firearms and impact. The impact of legislative measures seems clearest in industrialised countries but there are studies suggesting that controlling access to firearms may have a positive impact. For example, in Colombia, the effects of a ban on the carrying of firearms on weekends after pay days, holidays and election days in Bogotá and Cali coupled with rigorous enforcement lowered the incidence of homicide by thirteen per cent in Bogotá and fourteen per cent in Cali.<sup>36</sup>

The relationship between accessibility and lethality is well documented. It cannot however be made simply as a general claim but must be situated within the context of communities facing different

types of problems (post-war, urban violence, etc). This will lead to refined strategies and allow us to start comparing solutions in different contexts for the benefit of human security solutions. We have seen, for example, that the effects of particular interventions are highly contextual and tied very closely to implementation. Nonetheless, regions or countries that implement stricter controls on civilian possession remain vulnerable to the flows of weapons from those with less regulation.

The nature of civilian possession of small arms and the role of civilians in conflict is in part influenced by the availability of weapons. Small arms are not only possessed by civilians, but often are (and have been) *provided to* civilians by their own states. During the war that raged in Angola for over forty years the government distributed an estimated million weapons to civilians with the aim of obstructing advances by rebel groups. Similarly the Mozambican government handed out over a million AK47's and organised communal defence villages in an attempt to defend itself from RENAMO (Resistencia Nacional Mocambicana) troops.<sup>37</sup> Facing Iraqi aggression in 1980, the Iranian government armed the *basesej* as something akin to a national guard, and state officials have often provided weapons to tribes, clans or warlords in return for loyalty or carrying out proxy violence in other neighbouring countries. In Cambodia, over 250,000 militia soldiers outnumbered the official military. Other examples of deliberate and direct efforts of governments to arm their own civilians are widely available. Whatever temporary advantages distribution of arms to civilians may bring during conflict, the overall consequences of such wide distribution of SALW to civilians have generally been a relatively long-lasting increase in gun-crime and violence across society.

Subsequently it appears that from a normative and legal standpoint, the regulation of civilian possession is clear and necessary. But from an empirical and political standpoint, civilian possession remains complex. The strength exerted by demand factors may undermine any efforts to control supply, and consequently policy initiatives must be expanded to include the realities, reflected in these factors, that people face all over the world today.

## Regulatory Overview

Most countries have legislation governing the civilian possession of firearms, although the nature of this legislation varies considerably. The UN, through the Commission on Crime Prevention and Criminal Justice (operating under the auspices of the Economic and Social Council), has conducted a study of the extent of such regulation in member states. Seventy-eight member states have responded to the survey from countries – industrialised and developed. Most require licensing of all new firearms purchases, but only six require licensing for pre-existing guns. Import and export controls are virtually universal, although their enforcement varies. A significant majority register firearms, and there are safe storage regulations in approximately three-quarters of the responding countries.<sup>38</sup> While the approaches vary, the underlying principles remain the same: regulate possession and use in an effort to prevent misuse and diversion. The following outlines some of the key elements found in the review of international legislation: defining lawful purposes for the possession and the regulation of the sale of weapons; screening and licensing; controlling access to ammunition; marking, tracing, registration and record-keeping; safe storage and law enforcement.

## Civilian Possession - a right?

In most societies, the right, indeed duty, of governments to restrict possession of firearms is widely accepted in society. However, this is not the case in some countries, where significant sections of society assert a right for citizens to have at least some access to firearms. The specific limits on the rights of civilians to possess firearms need to be established in each society, according to their specific traditions and circumstances.

Efforts to regulate civilian possession of firearms often raise the questions of rights.

While rights to legitimate national security, self-determination, and national sovereignty have been reaffirmed several times, there is no evidence of a general right to unrestricted civilian access to arms under any International Human Rights instrument.<sup>39</sup> Even within the United States, where constitutional claims of the civilian right to bear arms are often invoked, courts repeatedly and unanimously have maintained that the US Constitution does not guarantee individuals the right to possess or carry guns. The Second Amendment only protects “the right to form militias under the control of state authorities” (independent of national/federal authorities). It does not impede local, state, or national legislatures from enacting or enforcing gun control laws. Many other jurisdictions, including in South Africa, the United Kingdom, New Zealand, Canada and the Philippines, have explicitly rejected the notion that such a right exists, arguing that the right to life, liberty and security of the person under Article 3 of the Universal Declaration of Human Rights supports efforts to reduce access to arms.

Indeed the UN recently issued a working paper on small arms which reinforced the responsibility of states under International Human Rights law to address the problems associated with misuse of firearms by civilians generally and particularly from the perspective of the rights of women. In the past the UN Special Rapporteur on Violence Against Women has raised this issue in the context of the Declaration on the Elimination of Violence Against Women (DEVAW). In a recent report, the Special Rapporteur adds further momentum to international efforts to develop norms around civilian possession of small arms and suggests that states which fail to enact reasonable regulations to limit the availability and misuse of small arms by individuals within their borders may be failing in their obligations under International Law:<sup>40</sup>

*46. Under International Human Rights law, the State is responsible for violations committed with small arms by private persons who, because they are operating with the express or implicit permission of authorities, are considered to be State agents. Under this theory, the State would be responsible for failing to prevent, investigate or prosecute vigilante groups or private militias that carry out ethnic or religious massacres, or “social cleansing” of street children. There is also growing pressure to hold States accountable for patterns of abuses, such as the State’s failure to establish reasonable regulation regarding the private ownership of small arms that are likely to be used in homicides, suicides and accidents; its failure to protect individuals from a pattern of domestic violence; and its failure to protect individuals from organised crimes including kidnapping and killing for ransom.<sup>41</sup>*

By re-reading the discussion on regulation of civilian possession of small arms in the context of the right of civilians to be protected from small arms violence, the Special Rapporteur has provided new and important support for efforts to move in this direction which counter claims casting opposition to the regulation of civilian possession as an exercise of rights.

## UN Commission on Crime Prevention and Criminal Justice Resolution

The United Nations Commission on Crime Prevention and Criminal Justice recognised the need for these efforts in its resolution of 1997. At the May 1997 meeting of the UN Crime Prevention and Criminal Justice Commission, a resolution sponsored by 33 countries was voted, which explicitly linked access to firearms to increased levels of death and injury, and acknowledged the important role of domestic legislation in controlling the flow of guns from less-regulated to more-regulated areas.<sup>42</sup> The resolution *“Requests the Secretary-General to promote, within existing resources, technical co-operation projects that recognise the relevance of small arm regulation in addressing violence against women, in promoting justice for victims of crime and in addressing the problem of children and youth as victims and perpetrators of crime and in re-establishing or strengthening the rule of law in post-conflict peace-keeping projects.”*<sup>43</sup>

The Firearms Protocol of the UN Convention on Transnational Organised Crime does address elements of this resolution with respect to import/export/in transit shipments, marking and tracing but does not address the elements related to civilian possession and use.

## International Agreements

A draft version of the PoA adopted during the *UN 2001 Conference on the Illicit Trade in Small Arms in All its Aspects* made explicit the reference to the need for states to regulate civilian possession and use, highlighted below:

*“To put in place adequate laws, regulations and administrative procedures to exercise effective control over the legal manufacture, stockpiling, transfer and possession of small arms and light weapons within their areas of jurisdiction. To ensure that those engaged in illegal manufacture, stockpiling, transfer and possession, can and will be prosecuted under appropriate penal codes.*

*To seriously consider the prohibition of unrestricted trade and private ownership of small arms and light weapons specifically designed for military purposes.”*<sup>44</sup>

However, these explicit references were dropped in the final version.<sup>45</sup> Nevertheless, the PoA does contain limited provisions including the criminalisation of illicit possession of SALW and a requirement that states ensure responsibility for SALW issued by them. However, it has been suggested that obligations contained within the PoA cannot be easily fulfilled without appropriate controls over the sale, possession and use of civilian weapons.<sup>46</sup> This is particularly true with respect to obligations for record-keeping and tracing. There has been considerable

governmental and NGO support for regional initiatives, many of which focus on strengthening controls over civilian possession. Consequently work done for the review conference, scheduled in July 2003, should include a comprehensive review of state progress towards appropriate regulation of civilian possession of firearms.

### Other International Agreements



Other international agreements also provide support for regulation of civilian possession as part of a strategy to prevent the illicit trade. Key elements remain:

- 1) Adequate regulation of civilian possession and use (UN Security Council Resolution 1209 adopted November 1998)
- 2) "Prohibition of the unrestricted trade and private ownership of small arms specifically designed for military purposes, such as automatic guns" (UN Disarmament Commission, reviewed at the UN General Assembly in December 1999).<sup>47</sup> Specifically, it says:

*36. States should work towards the introduction of appropriate national legislation, administrative regulations and licensing requirements that define the conditions under which firearms can be acquired, used and traded by private persons. In particular they should consider the prohibition of the unrestricted trade and private ownership of small arms specifically designed for military purposes, such as automatic guns (e.g. assault rifles and machine guns).*

### Regional Agreements

The lack of any specific reference in the UN PoA to regulating civilian possession has not prevented the development of a number of regional initiatives aimed at tackling the issue. It is interesting to note that a number of these are focused on areas where member countries were particularly vocal in their disappointment at what they perceived as the failure of the PoA in this aspect of international norm setting. In particular the issue has gained considerable support in Africa, and South Africa for example has been very active in promoting regional developments.



## Other Regional Agreements



Regional agreements also reinforce the importance of domestic regulation.

The following state-endorsed outcome documents address the issue:

- The First Ministerial Review Conference of the Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (Nairobi, Kenya, 7-8 August 2002)
- Council Joint Action on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons and Repealing Joint Action 1999/34/CFSP (12 July 2002)
- Workshop on Implementation of the OSCE Document on Small Arms and Light Weapons (Vienna, Austria, 4-5 February 2002)
- Small Arms and Light Weapons in Central America: Implementing the UN Programme of Action's Aspects for Control and Regulation of Arms Transfers, Selected Recommendations for National and Regional Implementation (San José, Costa Rica, 5 December 2001)
- Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) Region (14 August 2001)
- The OAU International Consultation on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (June 2000)
- The Southern Africa Regional Programme on Light Arms and Illicit Trafficking (May 1998).

## National Regulation on Civilian Possession

As noted the UN PoA does not include any specific commitments to maintain or strengthen national regulations relating to civilian possession. However, in the last two years, many governments in a variety of different contexts have strengthened controls on firearms possession by civilians. The nature of these changes has varied according to the priorities of the governments and the specific problems that have been highlighted. Yet viewed together they seem to indicate a shift in many governments' attitudes and a gradual recognition of the importance of such regulation. Increasing national action may also provide impetus to develop further regional and international agreements.

## Examples of National Action



- In Afghanistan the government has attempted to control the ownership of arms by requiring people whose job involves carrying a gun to get ID cards in order to register their arms with the police.
- The Government of the Philippines banned the carrying of guns in public in what was considered the most drastic measure in decades to control the use of firearms. About 800,000 people in the Philippines have been issued with gun licences but only half of these have been renewed. Additionally the National Police have been authorised to track down and confiscate unlicensed firearms.
- In Zimbabwe the Government issued a proclamation prohibiting the capital's residents from carrying weapons on the streets and the National Police have been given mandate to confiscate weapons including assault rifles.
- In late 2002 the Defence Minister in Lebanon announced the imminent cancellation of all firearms licences, pending new regulations that would restricts ownership to "justified and pressing cases".
- The Yemeni Government has banned the carrying of guns on the streets in all the cities of the country.
- In Rio de Janeiro the State Assembly has severely restricted the sale of SALW to civilians by introducing a drastic increase in tax, documentation from authorities that the buyer requires the use of the weapon, demonstration of technical training of a firearm as well as a psychological assessment.
- The Ministry of the Interior in Uruguay has tightened the legislation on carrying and possessing SALW.
- The German Parliament has passed legislation that restricts the rules of gun ownership.
- South Africa has introduced new legislation that increases penalties for illegal possession of weapons and the age limit for the ownership of a firearm has been raised from 16 to 21. An audit of all privately owned firearms in South Africa will be conducted in February 2003, under the new Firearms Control Act. Previously, gun owners applied only once for a licence and renewals were not essential.



# 4 Regulation of Civilian Possession and Human Security

The widespread availability and misuse of small arms and light weapons is associated with terrible impacts on citizens and communities across the world, as discussed above. These SALW pose a major threat to human security in many areas. While inadequate legal control of civilian possession is only one of the several factors threatening human security, for the benefit of stability and human security, there is a need for societies to make explicit the parameters of legitimate use through legal instruments at the state level. However there is also the risk that regulations are merely words on paper if there is inadequate enforcement or attention to demand factors.

In order to establish effective policies dealing with the civilian control of small arms there is also a need to address the many other factors driving demand and misuse of SALW, including economic inequality, fear of security forces or crime, corruption, hopelessness, injustice or oppression, cultures of violence. Similarly supply factors, which enable availability and access to SALW, need to be addressed.

The regulation of civilian possession is integrally linked to issues of human security and although it has been acknowledged that regulation alone is not a simple solution it is certainly seen as a positive step. Using a bottom-up approach to understand the demand factors of SALW complemented with national legislation regulating civilian possession is an effective way of reducing uncontrolled SALW and avoiding generic policies with little impact.

There is also a further link between human security and the regulation of civilian possession. Not only is it hoped that regulation will improve human security but there is also considerable emphasis on using this focus to emphasise the need for people-centred regulation. In many multi-lateral and formal small arms processes this dimension has been lost and there is a real need to highlight the human impact of decisions that are or are not taken rather than grounding them in national interests and security. If a people-centred approach to regulation can be linked to other efforts to improve human security then this could work as mutually enforcing influences.



## 5 Establishing and Strengthening International Norms

All states recognise a responsibility to regulate civilian possession of weapons. In practice, every society places restrictions on access by civilians to a wide range of categories of weapons, even if these restrictions break down during periods of civil war. The focus for debate is the precise nature of such restrictions. There is wide agreement that civilian access to military-style weapons should be restricted, if not completely banned. However, most societies allow civilians regulated access to at least some categories of firearm for the purposes of sporting, hunting or self-protection.

As discussed in this briefing, there have been numerous national and regional initiatives in recent years to strengthen controls on civilian possession of SALW. These are welcome. What does this imply for the prospects of developing international norms on such controls, particularly through the process of implementing and further developing the UN PoA?

As is well-known, no consensus could be established on specific international norms relating to civilian possession of SALW at the 2001 UN Conference on Small Arms. However, this does not imply that any countries were strictly opposed to establishing such norms. It rather reflected the problems of finding agreement on any specific standards.

As discussed above early drafts of the PoA made explicit reference to the need for states to regulate civilian possession and use of SALW. In fact, the final PoA implies that all states should ensure sufficient controls on civilian possession of SALW to enable implementation of the explicit commitments that are contained in the PoA. These include the commitments to prevent and reduce illicit manufacture and trafficking of SALW, to ensure adequate marking, record-keeping and tracing of illicit SALW, and so on.

However, in practice, inadequate controls on civilian possession and trade of SALW are undermining efforts to prevent and reduce trafficking and proliferation of SALW in many regions. For example, it is simply unrealistic to declare that border controls will be sufficient to prevent damaging illicit flows of arms from a state in which civilian possession of SALW is widespread and weakly regulated and monitored. This is true across virtually all of the developing world and the countries of the former USSR. It is also true for developed countries.

It is therefore important to consider ways to strengthen such controls at an international level as well as at a national and regional level.

Experience during the negotiations for the UN PoA demonstrates that the process of establishing specific and adequate international norms on civilian possession of SALW is hard. National norms and regulations vary widely, and in some countries there is strong resistance to establishing specific international norms in this area. Nevertheless, it is important to continue to strive for such norms, to provide a framework for international co-operation on this issue and to establish minimum standards against which states can be held accountable.

One approach towards establishing international norms in this area might be to aim at least to establish certain minimum standards. One that has been widely discussed is to firmly establish that civilians should not have access to military-style SALW, or SALW specifically designed for military purposes. For many countries, such a standard would be an extreme example of 'lowest common denominator' commitments. For others, it might present alarming ambiguities (what exactly does 'military-style' mean?). Defining standards in terms of weapons that are specifically designed for military purposes raise problems relating to the production of highly capable automatic or semi-automatic weapons for the civilian market.

Nevertheless, it does not appear to be impossible to find formulations that clearly express the intention of preventing civilian access to types of SALW whose capabilities go far beyond those required for hunting, sport or individual self-defence. The key aim is to establish international politically-agreed norms, not to define rules capable of prosecution in a court of law, which is the prerogative of national laws.

Another approach would be to develop international norms specifying the elements of adequate national controls on civilian possession. These include national regulations and systems for licensing, registering, record-keeping, safe-storage, carrying, and trade of SALW by civilians. Under each of such headings, specific national controls would differ. For example, licensing regulations will differ profoundly between states where licences for civilian possession might be issued for the purposes of self-defence, and those states where only hunting and sporting purposes are acceptable. However, information exchange and development of good practices relating to each aspect of controls on civilian possession could help states to develop effective regulations that at least are adequate to enable other aspects of the PoA to be implemented effectively.

This approach is similar in some respects to the approach adopted in the PoA towards international norms of SALW stockpile management and security. Although each state is responsible for the ways in which it maintains and stores authorised holdings of SALW, the basic norms of secure management and safety are clearly established, and guidelines on the elements of good controls are established to facilitate national implementation and international co-operation.

# Conclusion:

In the wake of the 2001 UN Conference there was significant disappointment that no specific provisions were made with regard to regulating civilian possession of weapons. However this Briefing has shown that there has been progress at the national, regional and international level to start to tackle the problem. The efforts to establish international norms with regard to civilian possession must be maintained and strengthened in order to strengthen other efforts to prevent and reduce trafficking and proliferation of weapons. States, regional and international bodies must strive to build on the progress made at the UN 2001 Conference and on the momentum generated by the UN PoA and events surrounding the Biennial Meeting of States to establish a real commitment to tackling the issue of civilian possession. Widespread civilian possession has been shown to have a devastating impact on societies, not only on mortality and casualty rates but on the overall human security situation. In light of these huge costs in terms of human security there is a real need to build and maintain a people-centred approach to devising regulation.

Establishing international norms is not going to be easy. However this does not mean it is impossible. With careful thought and taking into account various political sensitivities it should be possible to at least establish a set of minimum standards of control or elements of adequate national control. Given the huge costs that unregulated civilian possession can have, in both developed and developing countries, it is vital that some form of comprehensive action is taken.

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# notes



# BITING THE BULLET FOLLOW-UP PROJECT

The Biting the Bullet Follow-up Project is a joint project between Saferworld, International Alert and the University of Bradford which seeks to build upon the successful first phase of the Biting the Bullet project. This facilitated a wide-ranging and well-informed debate between governments and civil society with a view to advancing the agenda of the UN 2001 Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects in July 2001. Following the agreement of the Programme of Action, Biting the Bullet is now working to promote international understanding of key issues relating to the implementation of the Programme of Action while creating opportunities to discuss the critical issues that proved controversial at the 2001 UN Small Arms Conference. In order to facilitate discussion on these issues, an informal Consultative Group Process involving government officials, international experts and non-governmental organisations was created and has met twice already to discuss in particular, export controls and the issue of non-state actors.

Subsequent to the first series of policy briefings, the Follow-up Project has published further research papers for the Biennial Review focusing on civilian possession, and the implementation of embargoes.

In addition, the Biting the Bullet Follow-up Project has prepared a substantial report on States' implementation of the commitments set out in the Programme of Action. This monitoring report analyses progress at the national, regional and international level. It was researched by partners from all world regions and produced by Biting the Bullet for IANSA.

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