

RECSEA

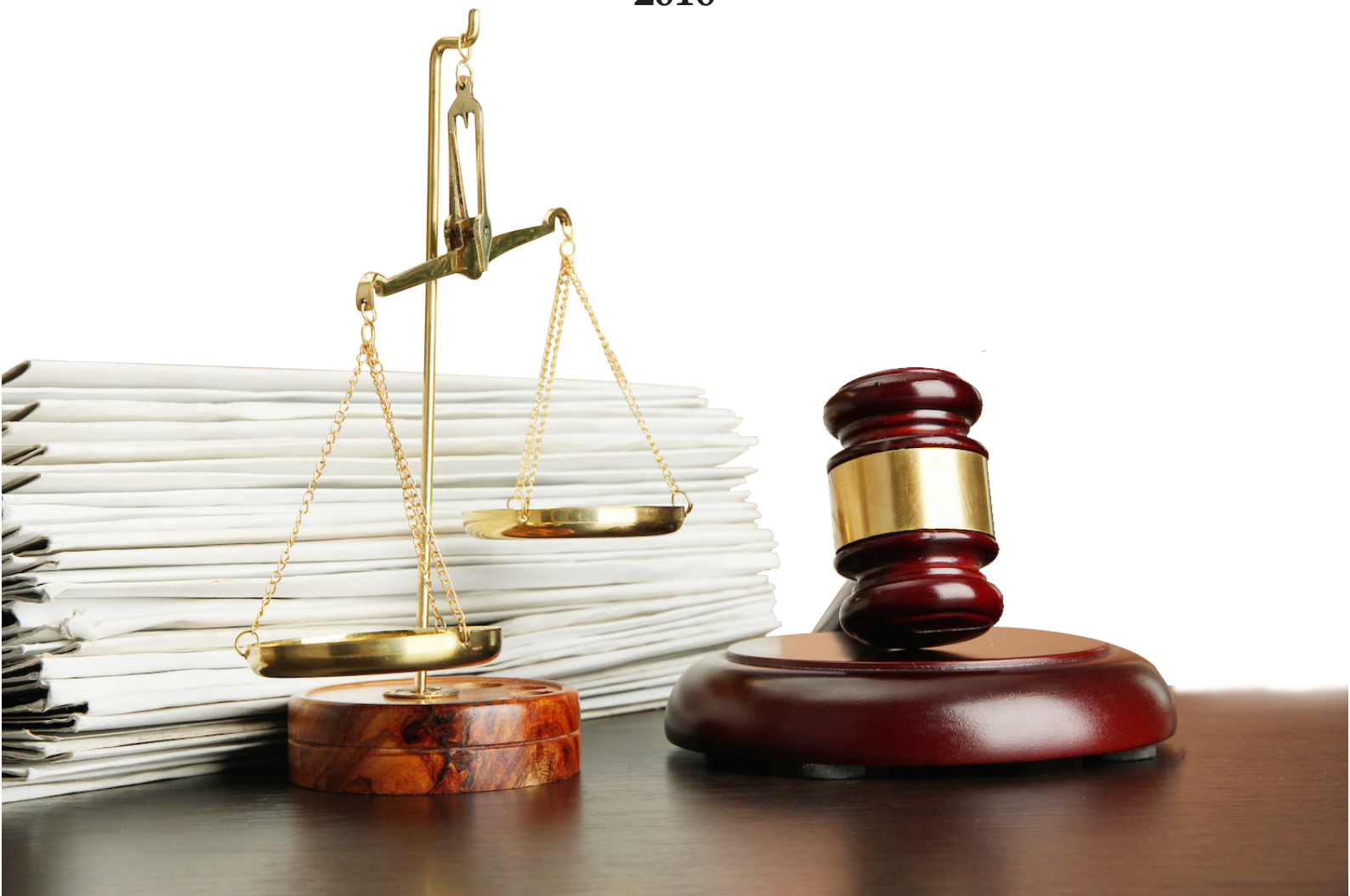


Co-operating to Disarm

**An analysis of the Harmonization of National Legislation with
International and Regional SALW Instruments**

Central African Republic, Kenya, Uganda, and Tanzania

2016





Co-operating to Disarm

VISION

"A safe and secure sub - region in a peaceful continent free from arms proliferation"

MISSION

To coordinate action against Small Arms and Light Weapons proliferation in the Great Lakes region and Horn of Africa

CORE VALUES

Flexibility

Gender Sensitivity

Integrity

Professionalism

Partnership

Team Work

Transparency

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Foreword

Illicit proliferation of Small Arms and Light Weapons (SALW) presents a direct threat to the development of our region and the African Continent at large. The easy availability of SALW continues to escalate armed conflict, sustain poaching and cattle rustling, and abet terrorism and other serious crimes. To address this serious issue a range of international and regional initiatives and agreements have been concluded that commit Member States to a series of regulatory and control measures to tackle the proliferation of SALW. In 2004, the Nairobi Protocol was put in place in 2004, setting in place the establishment of the Regional Centre on Small Arms (RECSA) whose sole mandate is the coordination of all SALW interventions within Member States. In the framework of this Protocol member states have undertaken the harmonization of their national legislation with international and regional SALW instruments.

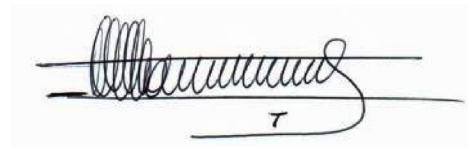
However, a number of Member States still have legislation that is out-of-date or limited in scope, which reduces the effectiveness of efforts undertaken. In this context, RECSA has commissioned a Study on the Harmonization of National Legislation with International and Regional SALW Instruments in Central African Republic, Kenya, Uganda, and Tanzania. This research has come at the opportune time since it will help understand the best practice from Member States that have successfully enacted harmonized firearms laws and challenges facing those that are yet to harmonize.

It is my sincere hope that this study report will assist national authorities, as well as practitioners, in developing an effective and comprehensive legal framework to regulate the manufacturing, possession, transfer and tracing of SALW. I also believe that findings of this study will enable national authorities to develop appropriate legislative and institutional frameworks to address effectively the issue of SALW proliferation.

I would like to congratulate the United Republic of Tanzania that enacted the Firearms and Ammunition Act during the study period and look forward to an effective implementation because the existence and enforcement of comprehensive legislative and regulatory frameworks are critical for the control of SALW.

I thank all our development partners for their continued support to the fight against the proliferation of SALW. My appreciation goes especially to the African Development Bank for supporting this study.

I commend all RECSA staff for their continued efforts, dedication, and commitment to the work of the Secretariat of coordinating the implementation of the Nairobi Protocol and hope they will keep the same engagement and support to our Member States as they engage on the harmonization of their national legislation with international and regional SALW instruments.

A handwritten signature in black ink, appearing to read 'Theoneste Mutsindashyaka', written over a horizontal line. The signature is fluid and cursive.

Mr. Théoneste MUTSINDASHYAKA
Executive Secretary

Acronyms

ACA	Armament Control Act
ADF	Allied Democratic Front
AG	Attorney General
AMDC	Arms Management and Disarmament Committee
ATT	United Nations Arms Trade Treaty
AU	African Union
CAR	Central African Republic
CAR	Central Arms Registry
CFR	Civil Firearms Registry
CLO	Chief Licensing Officer
COMESA	Common Market for Eastern & Southern Africa.
CPJP	Convention of Patriots for Justice and Peace
CSO	Civil Society Organisations
DFO	Designated Firearms Officer
DFT	District Firearms Taskforce
DG	Director General
DR	Deputy Registrar of Firearms
DRR	Demobilization, Disarmament and Re-integration
EAC	East African Community
EAPCCO	East African Police Chiefs Cooperation Organization
EASF	East African Standby Force
ECCAS	Economic Community of Central Africa States
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group.
ESO	External Security Organisation
FACA	Firearms and Ammunitions Control Act
FCB	Firearms Control Bill
FPC	First Parliamentary Counsel
GLR	Great Lakes Region
GOU	Government of Uganda
ICGLR	International Conference on the Great Lakes Region
IGAD	Intergovernmental Authority on Development
IGP	Inspector General of Police
ISO	Internal Security Organisation
ITI	International Tracing Instrument,
MFR	Military Firearms Registry
NA	National Assembly
NACAB	National Armament Control Advisory Board
NFP	National Focal Point
NP	Nairobi Protocol
NP	National Policy
NRC	National Review Committee
PSO	Private Security Organization
RECSA	Regional Centre on Small Arms
SADC	South African Development Community
SALW	Small Arms and Light Weapons
SCH	Supreme Council for Hunting
SP	State Parties
SSR	Security Sector Reform
TNOC	Transnational Organized Crime
UNPOA	UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects
UNSC	UN Security Council
UPDF	Uganda People's Defense Forces
URT	United Republic of Tanzania

Executive Summary

This report makes an assessment of the legislative framework harmonization processes in the Central African Republic (CAR), Kenya, Tanzania and Uganda. It was commissioned by the Regional Centre on Small Arms and Light Weapons (RECSA). It covers the period of September to December, 2015. The key objectives for developing the report were to:

- a) Identify milestones reached by each country in the harmonization of SALW legislation;
- b) Identify major challenges faced by Member States in the harmonization of SALW legislation;
- c) Identify the Government Organs responsible for Harmonization of Legislation and procedures followed in each country of Study; and
- d) Make strategic recommendations that will be followed to speed up the harmonization of legislation.

The report reviewed both the existing laws and draft Bills in the four countries. Tanzania's Firearms and Ammunition Control Act, the CAR's Penal Code and the draft Bills of both Uganda and Kenya were reviewed to assess the extent of their compliance and harmonization with regional and international instruments.

The report noted that harmonization of national small arms and light weapons (SALW) laws with SALW regional and instruments in the RECSA region is progressing well, albeit with varying degree of success in each of the four review countries. Tanzania has successfully harmonized its SALW laws with related international and regional instruments. It has a Firearms and Ammunition Control Act, 2015 since May 2015 but had not yet started its implementation by the time of the study. On the other hand, the CAR does not have a specific law that deals with SALW but there are provisions in the Penal Code and Wildlife Code that deal with use of firearms. CAR has also not commenced the harmonization process and has not yet established the Harmonization Committee. Both Kenya and Uganda have specific laws that deal with SALW but their Firearms Acts were enacted before Independence and are thus not harmonized with the regional and international instruments they subscribe to. The two countries have draft Small Arms Management and Control Bill, 2014 and the Firearms Control Bill, 2014 respectively which, when enacted into law will make their laws largely compliant with SALW regional and international instruments.

Specifically, each of the four review countries exhibited the following key gaps in their harmonization processes:

Kenya

- a) Lack of an independent and autonomous Agency, Organization or Commission to act as the NFP. The NFP and similar institutions are departments with the National Police or ministries responsible for interior and government coordination;
- b) The offences do not provide for minimum and maximum sentences for the listed offences as required by the UNPoA. They instead provide for either the minimum or maximum and not both;
- c) Lack of provisions relating to violation of UNSC embargoes in the Firearms Control Bill as required under the ATT and UNPOA;
- d) Lack of provisions for regional and international cooperation including mutual legal assistance in the Firearms Control Bill;
- e) Limitation of Civil Society and private security companies' participation in membership of the Firearms Vetting and Licensing Board;
- f) Lack or inadequate provisions on tracing and stockpile management in the Firearms Control Bill;
- g) Lack of a decentralized framework and clear institutional framework to deal with SALW in the Firearms Control Bill; and
- h) Lack of specific provision on reciprocal recognition of licenses and permits from other jurisdictions.
- i) The gaps identified in the Bill are however, well provided for in the National Policy on SALW, 2014.

Uganda

- a) Lack of independent Commission and autonomous NFP. The NFP is part of the Central Arms Registry which is a department in the Ministry of Internal Affairs;
- b) Lack of minimum and maximum sentences for the listed offences. The offences provide for either minimum or maximum penalties and not both as required by the UNPoA;
- c) Exclusion of Civil Society and private security companies in membership of the Arms Management and Disarmament Committee;
- d) Lack of specific provisions on stockpile management; and
- e) Lack of provisions relating to violation of UNSC embargoes.

Central African Republic

- a) Lack of a specific Firearms Control Act;
- b) Lack of a Harmonization Committee;
- c) Failure to commence the harmonization process; and
- d) No provisions on tracing, marking, manufacturing, transferring and stockpile management or storage in the existing laws.

Tanzania

- a) Lack of an independent Commission and autonomous NFP. The NFP is a department within the Tanzania Police Force and relies on the police budget;
- b) Lack of minimum and maximum sentences for the listed offences;
- c) Lack of provisions relating to violation of UNSC embargoes Firearms Control Act;
- d) Limitation of civil society and private security companies participation in membership of armament committees or vetting and licensing boards;
- e) Lack or inadequate provisions on stockpile management in the Tanzania Act;
- f) Lack of decentralized framework in the Tanzania Act; and
- g) Delays in implementation of the new Firearms Control Act, 2015.

These gaps need to be addressed by the individual countries so that they fully harmonize their laws with international and regional instruments. For this to take place RECSA should play a more active role by providing support to its members. A starting point could be provision of a model Bill that the countries can adapt to their local circumstances (See annex V). In terms of processes, countries do not have committed champions in Parliament to drive the SALW legislative agenda as was the case Rwanda. Each country needs to sensitize, lobby and identify MPs to champion the legislative process in Parliament.

The report is presented in six chapters. Chapter One gives the general background and objectives of the study including methodology. The chapter also gives a brief introduction and analysis of provisions of the main international and regional instruments. The instruments reviewed include the Nairobi Protocol (2005), the United Nations Arms Trade Treaty (ATT) (2013), the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects (UNPOA) (2001), the International Tracing Instrument (ITI), the UN Protocol against the Illicit Manufacturing of and

Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol) and the SADC Protocol on the Control of Firearms, Ammunition and Related Materials (2001). Also reviewed in Chapter One is the Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on SALW, 2005 (Best Practices Guidelines).

In the subsequent chapters, from Chapter Two to Five, an analysis is made of each of the four review countries. Beginning with Tanzania, Chapter Two reviews legislation in the country, comprising of the Firearms and Ammunition Control Act, 2015, the Explosives Act, the Armament Control Act, 1991, the Anti-Terrorism Act, 2002, the Wildlife Act, 2013, the Police Force and Auxiliary Services Act (Cap. 322), the National Defense Act, 1966 and the National Security Act (Cap. 47). Chapter Three carries out a similar analysis of the Kenyan legislation comprising the Firearms Act, 1954, the Small Arms and Light Weapons Management and Control Bill, 2014, the Security Laws (Amendment) Act, 2014, the National Police Service Act, 2011, the Prisons Act, 1966, and the Kenya Defense Forces Act, 2012. Chapter Four reviews the Ugandan legislation comprising of the Police Act (Cap 303), the Prisons Act (Cap 304), the Security Organisations Act (Cap 305), the Uganda People's Defense Forces (UPDF) Act, 2015, the Uganda Wildlife Act (Cap 200), the Amnesty Act, 2006 and the Control of Private Security Organisations Regulations, 1997. Finally in Chapter Five, CAR's legislation comprising of the 1961 Laws and Regulations on the Management of SALW in CAR, the Organic Law on Local Government, the Organic Law on Wildlife and the Penal Code (The Law No. 10,001, January 6th, 2010) is analysed.

Chapter Six provides a conclusion that describes the challenges and gaps in the analysed legislative frameworks and makes recommendations for improvement. In the subsequent parts of the report, annexes are provided to give a summary of key points. Annexes I and II give the status of harmonization and legislation in each country. Annexes III to V give the law making processes in Tanzania, Kenya and Uganda while annex VI gives the agreed regional and international instruments.

1. Introduction

This report evaluates the extent to which the existing national legislation and proposed Bills on small arms and light weapons (SALW) of the Republics of Kenya and Uganda, the Central African Republic (CAR) and the United Republic of Tanzania (URT) comply with the SALW regional and international instruments. Reviewed instruments include the Nairobi Protocol on the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States (2004), the United Nations Arms Trade Treaty (ATT) (2013), the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects (UNPoA) (2001), the International Tracing Instrument (ITI) (2005), the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol) (2001) and the SADC Protocol on the Control of Firearms, Ammunition and Related Materials (2001). These instruments have been reviewed in light of the Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on SALW, 2005 (Best Practices Guidelines).¹

These instruments complement each other and collectively aim to prevent, combat and eradicate the illicit manufacturing of, trafficking in, possession and use of SALW nationally, regionally and globally. These Instruments promote and facilitate accountability, law enforcement, efficient control and management, tracing, marking, information sharing and cooperation among stakeholders in all matters relating to the illicit trafficking and proliferation of SALW.

The report is a result of a study commissioned by the RECSA. It focuses on four countries namely, the CAR, the Republic of Kenya, the Republic of Uganda, and the United Republic of Tanzania. The choice of these countries is informed by the fact that Tanzania had just enacted a new law on firearms while both Kenya and Uganda were at advanced stage in drafting new laws and the CAR was yet to begin the process. These case studies therefore provide a whole spectrum of the review process. The review took place between September 2015 and December 2015. The objectives of the study were to:

- a) Identify milestones reached by each country in the harmonization of SALW legislation;
- b) Identify major challenges faced by Member

- States in the harmonization of SALW legislation;
- c) Identify the Government Organs responsible for Harmonization of Legislation and procedures followed in each country of Study; and,
- d) Make strategic recommendations that will be followed to speed up the harmonization of legislation.

This assignment is in fulfillment of article 5 of the Nairobi Protocol that requires States to undertake coordinated review of national procedures and criteria for issuing and withdrawing of SALW licenses, as well as establishing and maintaining national databases of licensed SALW, SALW owners and commercial SALW traders within their territories. The review also facilitates the achievement of article 3 of the Nairobi Protocol which requires each State to adopt necessary legislative and other measures to establish as criminal offences under its national law illicit trafficking, illicit manufacturing and illicit possession and misuse of SALW as well as falsifying or illicitly obliterating, removing or altering the markings on SALW and violation of UNSC mandated arms embargoes.

The review process involved preparation of an inception report which identified issues for review and consultations, preparation of research tools, visit to target countries for data collection, review of laws relating to SALW to identify their compliance and gaps, identification of specific milestones reached by each country and challenges they face in harmonizing SALW legislation. Further, a model Bill has been prepared to assist RECSA members in their harmonization process. The key challenges that were faced during the study were the political unrests in CAR that affected the team's ability to consult in the country, the General Elections in Tanzania which also affected consultation due to delay in forming a new government, language barrier in CAR that required use of translators, and change of leadership in the Kenya NFP. For the CAR the study relied on available data and web based calls with some CAR nationals in the country and in the Diaspora. In Tanzania for government stakeholders, the permission by the Permanent Secretary, Ministry of Home Affairs restricted consulting government departments within the Home Affairs Ministry specifically the police that coordinates action on SALW.

¹The Best Practices Guidelines was developed by RECSA and approved by the RECSA 3rd Ministerial Review Conference on June 21, 2005. The Guidelines are not an instrument per se but provide the precise implementation framework of the harmonization process within the RECSA region

1.1 International and Regional SALW Instruments

The Instruments provide for definitions, marking, tracing, institutional framework (including designation of focal point of contact by each state), technical assistance, development and harmonization of legislation, cooperation and mutual legal assistance, sharing of information, reporting, public awareness creation, disposal and confiscation, community and non-state actors participation, dispute settlement, licenses, ammunition, SALW, arms trade (imports and export), transportation, brokerage and offences. The Instruments also make provisions on how States can acquire, manufacture, transfer and retain SALW for their own use (See Annex VI).

1.1.1 International Tracing Instrument (2005)

The ITI was promulgated to; a) enable State Parties (SP) to identify and trace, in a timely and reliable manner, illicit small arms and light weapons; b) promote and facilitate international cooperation and assistance in marking and tracing; and c) to enhance the effectiveness of, and complement, existing bilateral, regional and international agreements to prevent, combat and eradicate the illicit trade in SALW in all its aspects (Arts. 1 & 2). The ITI recognizes the need to preserve the security and interest of States. It does not restrict the right of States to acquire, manufacture, transfer and retain SALW for their self-defense and security needs or for their participation in peacekeeping operations, in a manner consistent with the UN Charter (Art. 3). What prohibits is illicit transfer which includes transfer in violation of the UN embargo or without authorization by a competent national authority or transfer of unmarked or manufacture without a license SALW [Art. II (6)]. The ITI defines tracing as the systematic tracking of illicit SALW found or seized on the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit (Art. 5).

Articles 6 to 9 provide for marking of SALW and enjoin states to mark both legal and illegal (when captured) SALW in SP territory. Articles 11-13 provide for record keeping and require SPs to ensure that accurate and comprehensive records are established and maintained for all marked SALW within their territory. Articles 14 - 23 make provisions for cooperation in tracing by states including provisions for tracing requests and responding to requests in a prompt, timely and reliable manner (Arts. 16, 17 & 18). Article 14 requires states to undertake traces and respond to tracing requests in

a prompt, timely and reliable manner. Article 16 mandates SP to initiate tracing request for illicit SALW found within its territory while article 17 requires smooth and effective cooperation in tracing.

The ITI further requires states to ensure that SALW manufactured in their jurisdiction are marked with unique identifications (including manufacturer's name, country and year of manufacture, serial number and weapon type) to facilitate tracing (art. 8(a)). The ITI also requires States to ensure that accurate and comprehensive records are established and maintained for all marked SALW within SPs territory in order to enable their competent national authorities to trace illicit SALW in a timely and reliable manner (art. 11). Article 12 requires that record are kept for 30 years in case of manufacturing records and 20 for other records. The ITI restricts sharing of tracing information to competent authorities (art. 5(a)), while article 17 requires that tracing requests contains sufficient information including markings, type, and caliber of firearm as well as the intended use of the information being sought. Similarly States shall acknowledge receipt of the tracing request, respect all restrictions placed on information on the tracing requests and ensure that information exchanged are released only to competent authorities designated by the requesting State and/or authorized personnel (Art. 15).

Articles 24-35 provide for cooperation by states, Interpol, international agencies and UN on tracing of SALW. Article 24 requires States to put in place laws, regulations and administrative procedures needed to ensure the effective implementation of the ITI. Article 25 provides for designation of focal point of contact by each state, article 26 for regional and international cooperation, article 27 for technical assistance, article 28 for technology, article 29 for cooperation to implement the UNPoA, article 30 for cooperation with the UN, and article 34 for cooperation with Interpol.

Articles 36 to 38 provide for reporting and follow up. Article 36 requires SPs to report on a biennial basis to the UN Secretary-General on their implementation of the ITI including, where appropriate, national experiences in tracing illicit SALW. Article 37 provides for biennial meeting of States to consider their reports and article 38 for review the implementation and future development of the ITI using the UNPOA review conference framework.

1.1.2 Arms Trade Treaty (2013)

The ATT was promulgated to establish the highest possible common international standards for regulating or improving the regulation of the

international trade in conventional arms. It also aims at preventing and eradicating illicit trade in conventional arms and/or their diversion in order to contribute to international and regional peace, security and stability, reduce human suffering and promote cooperation, transparency and responsible action by States Parties in international trade of conventional arms. The ATT applies to all conventional arms, such as missiles and missile launchers, battle tanks, armoured combat vehicles, calibre artillery systems, combat aircraft, attack helicopters, warships and SALW. The Treaty does not apply to the international movement of conventional arms by, or on behalf of, a SP for its use provided that the conventional arms remain under that SP's ownership.

The Treaty provides for control and regulation of sale of ammunition (art. 3), trade in parts and components (art. 4) and requires its implementation to be broad, consistent, objective and non-discriminatory (art. 5). The Treaty requires SPs to establish and maintain a national control system, including a national control list that shall be provided to the ATT Secretariat (art. 3).

ATT's article 6 provides for prohibitions. It prohibits a SP from authorizing a transfer of conventional arms or items, if the transfer would violate a UN Security Council resolution or imposed arms embargo. The transfer is also barred if there is suspicion or knowledge that the arms or parts would be used to commit genocide, crimes against humanity, war crimes or used against civilian objects or civilians in protected areas. The ATT further provides for export and export assessment (art. 7), imports (art. 8), transit and trans-shipment (art. 9), brokering (art. 10), record keeping (art. 11), prevention of diversion (art. 12), reporting (art. 13), and enforcement (art. 14).

Regarding exports a SP is obliged to assess whether the conventional arms or items would contribute to or undermine peace and security and/or could not be used to commit or facilitate a serious violation of international humanitarian law or human rights, and commit or facilitate terrorism or transnational organized crime (TNOG). While for transportation, transit and transshipment the Treaty requires each importing state to take measures to regulate transit or trans-shipment and to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting state, to assist the exporting SP in conducting its national export assessment.

The Treaty specifically promotes international cooperation of states in its implementation. Article

15 provides for international cooperation, article 16 for international assistance, article 17 for conference of states within one year of the Treaty coming into force and Article 18 establishes a secretariat to facilitate effective implementation of the Treaty.

1.1.3 Firearms Protocol (2001)

The Firearms Protocol is the primary global legally binding instrument that establishes common procedures, for the prevention and suppression of the illicit manufacture of firearms. The purpose of the Firearms Protocol is to promote, facilitate and strengthen cooperation among State Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (art. 2). The Protocol defines key SALW issues including firearms, ammunition, illicit manufacturing, illicit trafficking, and tracing (art. 3). The Protocol applies to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of transnational offences (arts. 4 & 5). Article 5 provides for criminal acts and requires SPs to adopt legislative and other measures as may be necessary to establish as criminal offences certain conducts when committed intentionally. The conducts include; a) illicit manufacturing of firearms, their parts and components and ammunition; b) illicit trafficking in firearms, their parts and components and ammunition; and falsifying or illicitly obliterating, removing or altering the marking(s) on firearms.

Similarly articles 6 provides for confiscation, seizure and disposal of state-owned, confiscated or unlicensed SALW by State Parties. It requires states to adopt legislative measures for confiscation, seizure and disposal of SALW. Articles 7 - 15 provide for preventive measures to control illegal acquisition, possession and use of SALW. Article 7 provides for record keeping, article 8 for marking, article 9 for deactivation, article 10 for export, import and transit licensing or authorization systems and article 11 for Security and preventive measures to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in firearms. Article 12 provides for sharing of information by State Parties on SALW regulations and activities, article 13 for cooperation by State Parties, article 14 for training and technical assistance necessary and article 15 for Brokers and brokering. All the articles enjoin SPs to make legislative measures to deal with the issues identified. Article 16 provides for dispute settlement.

1.1.4 Nairobi Protocol for the Prevention, Control and Reduction of SALW in the Great Lakes Region and Horn of Africa (2004)

The primary objective of the Nairobi Protocol (NP) is to prevent, combat and eradicate the illicit manufacturing, trafficking, possession and use of SALW in the sub-region. The Protocol also aims to prevent excessive accumulation of SALW, promote information sharing, cooperation, accountability, law enforcement, control and management of SALW held by governments and civilians (art. 2). The Protocol has very elaborate and comprehensive provisions of SALW control and management.

Article 3 of the NP requires States to adopt legislative measures to establish as criminal offences under their national law acts of illicit trafficking, illicit manufacturing and illicit possession and misuse of SALW, falsifying or illicitly obliterating, removing or altering the markings on SALW and violation of UNSC mandated arms embargoes on SALW. Article 4 provides for the strengthening of operational capacity of national law enforcement and security agencies to enhance combating of SALW proliferation in the Member States and region. Article 5 provides for control of civilian possession of SALW while Article 6 provides for control and accountability of State-owned SALW and Article 12 provides for voluntary surrender of SALW by illegal holders and destruction thereof by the State.

Article 7 enjoins State Parties to Marking and Tracing of SALW at the time of manufacture, import, and all SALW in the possession of the State. Articles 8 and 9 make provisions for Disposal of State-owned, Confiscated or Unlicensed SALW by State Parties. Article 13 deals with public awareness. It requires States Parties to develop local, national and regional public and community education and awareness programmes to enhance the involvement of the public and communities and support for efforts to tackle the proliferation and illicit trafficking of SALW.

The Protocol also provides for regional cooperation on SALW issues. Article 14 provides for mutual legal assistance and requires State Parties to create a mutual legal assistance system to enhance their cooperation in mutual legal assistance in a concerted effort to eradicate the illicit manufacturing and trafficking, and control the possession and use of SALW. Article 15 enjoins SPs to establish appropriate mechanisms for cooperation among law enforcement agencies to promote effective law enforcement. Articles 16 and 17 provide for mechanisms for cooperation through transparency, information exchange and harmonization.

It also commits States to establish National Focal Points to facilitate the rapid information exchange to combat cross-border small arms and light weapons trafficking. In Article 17 State Parties commit to institute appropriate and effective measures for cooperation between law enforcement agencies to curb corruption associated with the illicit manufacturing of, trafficking in, illicit possession and use of SALW.

Articles 16 and 18 deal with institutional arrangements. Article 16 requires States Parties to establish National Focal Points, while in Article 18 State Parties mandate the Nairobi Secretariat (RECSA) to oversee the implementation of this Protocol.

1.1.5 The Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Related Materials (2001)

The SADC Protocol on SALW (2001) is applicable to RECSA because of the dual membership of some states.² The Protocol aims at preventing, combating and eradicating the illicit manufacturing of firearms and their excessive and destabilizing accumulation, trafficking, possession and use in the Region. It promotes and facilitates cooperation and exchange of information. State Parties undertook to consider becoming parties to international instruments relating to the prevention, combating and eradication of illicit manufacturing, of, excessive and destabilizing accumulation of, trafficking in, possession and use of firearms, ammunition and other related materials and to implement such instruments within their jurisdictions.

The Protocol requires Member States to enact necessary legislation and take other measures to establish as criminal offences under their national law to prevent, combat and eradicate the illicit manufacturing of firearms and ammunition [Art. 5(1)]. The national legislation should have provisions on legal uniformity and minimum standards for sentencing, manufacture, control, possession, import, export and transfer of firearms. It should also have prohibition of unrestricted possession of small arms by civilians, total prohibition of the possession and use of light weapons by civilians, co-ordination of procedures for the import, export and transit of firearm shipments and regulation and registration of all civilian owned firearms. It should provide for manufacturing of SALW and ammunition, marking and identification, monitoring and audit, seizure, confiscation and forfeiture of SALW, pawning and pledging and storage and brokering [Art. 5(3)].

²Angola, DRC, Seychelles, Tanzania and Zambia are signatories to both SADCC and Nairobi Protocols.

. The Protocol provides for licensing of civilian SALW (Art. 7), control of state owned firearms (art. 8), marking and record keeping (Art. 9), disposal of SALW (Art. 11), public education and awareness (Art. 13), mutual legal assistance (Art. 14) and cooperation in law enforcement (Art. 15).

1.1.6 UN Programme of Action to Prevent, Combat and Eradicate Illicit Trade in SALW in all its Aspects (2001)

The UNPoA was adopted in 2001 by the resolution of UN Member States who attended the UN Conference on Illicit SALW in New York in 2001. The UNPoA provides actions and commitments by the Member States during the Conference. During the Conference the State Parties bearing in mind the different situations, capacities and priorities of States and regions, agreed to undertake national, regional and international levels measures to prevent, combat and eradicate the illicit trade in SALW in all its aspects. Some of the measures are similar to those provided in the Nairobi Protocol, ATT, Firearms Protocol, and ITI.

The key actions under UNPoA include: putting in place legislative measures to prevent, control and regulate SALW (art.2). In article 3, it asks for establishment as criminal offences acts of illegal manufacture, possession, stockpiling and trade of SALW. Article seeks to have established or designated as appropriate, national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in SALW. In Articles 5 and 24, the Protocol asks State Parties to establish or designate, as appropriate, a national point of contact to act as liaison between States on implementation of the UNPoA. Article 6 calls for identifying, where applicable, groups and individuals engaged in illegal manufacture, trade, stockpiling, transfer, possession, as well as financing for acquisition, of illicit SALW and taking action under national law against such groups and individuals. Articles 7, 8 and 16 provide for marking, tracing (art.10&36), keeping comprehensive and accurate records on the manufacture, holding and transfer of SALW (art.9), assessing applications for export authorizations (art.11&12), regulating the export, transit, brokerage, licenses, storage, stocking and use of SALW (art.14).

The UNPoA also provides for actions on disarmament, demobilization and re-integration (DDR) (art.21, 30 & 35), stockpile management, disposal and destruction (art.19 & 21), regional and international cooperation (part III (2)), public awareness, ratification of instruments, information sharing, UN Security Council (UNSC) arms

embargoes (art.32) and management of security agencies' SALW.

The instruments outlined above have the single aim of controlling illegal use of firearms. Whereas the instruments address various related issues, there is one core difference between the ATT and the UNPoA. This is in the objectives of both instruments. Whereas the UNPoA principally aims to regulate the availability of SALW within country jurisdictions, the ATT on the other hand is broader and aims to regulate international transfers of all conventional arms.

For the four countries CAR, Kenya, Tanzania and Uganda under review, the study established that the regional Instruments that best suit them are the Nairobi Protocol and the SADC Protocol (Tanzania). The Nairobi Protocol and SADC Protocol are very advanced and specific on the regulation of firearms in the hands of civilians. One of the objectives of the Nairobi Protocol is to 'encourage accountability, law enforcement and efficient control and management of Government and civilian owned firearms.' Each RECSA Member State is responsible for incorporating into their national law, provision for [Art. 3(c)] of the Nairobi Protocol:

- Prohibition of unrestricted civilian possession of small arms;
- Total prohibition of civilian possession and use of all light weapons and automatic rifles, semi-automatic rifles, and machine guns;
- Regulation and registration of all civilian-owned small arms in their territories;
- Effective storage and use of civilian-held firearms, including competency testing of prospective owners;
- Monitoring and auditing of licenses held and restriction of the number of firearms that may be owned by individuals;
- Prohibitions on pawning or pledging of small arms; and
- Registration to ensure accountability and effective control of all firearms owned by private security companies.

On the other hand the UNPoA provides for specific actions and guidance required at the national, regional and international levels to combat illicit manufacturing, illicit trafficking and proliferation of SALW. The UNPoA provisions are further emphasized in the Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on SALW. The Best Practice Guidelines' aim is to elaborate a framework for the development of policy and review of national legislation, 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 Government Stockpile. It provides for national database, marking, disposal, export, import, transfer and transit, tracing, brokerage, legislative measures, public awareness, regional cooperation and mutual legal assistance.

The key actions envisaged by UNPoA include putting in place legislative measures to prevent, control and regulate SALW (Art. II.2) and to establish as criminal offences acts of illegal manufacture, possession, stockpiling and trade of SALW (Art. II.3). The UNPoA also requires States to establish, or designate national coordination agencies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in SALW (Art. II.4). Similarly, States should establish or designate a national point of contact to act as liaison between States on matters relating to the implementation of the POA (Art. II.5). It further requires States to identify groups and individuals engaged in the illegal manufacture, trade, stockpiling, transfer, possession, as well as financing for acquisition of illicit SALW (Art. II.6), and to take action under appropriate national law against such groups and individuals.

The UNPoA requires States to ensure marking of manufactured SALW (Art. II.7), tracing of SALW (Art. II.8) and confiscation, seizure and destruction of illegal SALW (Art. II.16). It further requires States to keep comprehensive and accurate records on the manufacture, holding and transfer of SALW (Art. II.9). States are also to regularly review military and police SALW stockpile (Art. II.18), destroy excess SALW (Art. 19), assess export permit applications and regulate the export, transit, brokerage, licensing, storage, stocking and use of SALW (Art. II.11 & 12). States are further required to develop and implement effective disarmament, demobilization and reintegration (DDR) programmes, including the effective collection, control, storage and destruction of SALW (Art. II.21).

1.2 Harmonization of SALW National Legislation in the RECSA Region

The harmonization process in the RECSA Member States has had mixed results. The process started several years ago with the preparation of the Best Practices Guidelines in 2005. Since then the Guidelines for Harmonization have been developed and several harmonization workshops and trainings taken place. Legal drafting committees have been established in RECSA Countries including three of the four countries under review (the exception being CAR).

The harmonization process in the RECSA sub-region has however been slow. Since the proclamation of the Nairobi Protocol and development of the Best Practices Guidelines, only three countries have successfully harmonized their laws with regional and international instruments and guidelines. Burundi and Rwanda were the first to harmonize their legislation and most recently Tanzania.

Other countries are in various stages of harmonization. For example Parliament in the Democratic Republic of Congo passed a bill, but this is awaiting Presidential assent. Other member states such as South Sudan, Kenya and Uganda have draft Bills. The draft Bills that have been accessed during the review largely conform to the regional and international instruments but consensus is still being built on some of the issues. For example in South Sudan there is still disagreement on whether the draft Firearms Control Bill, 2015 should have provisions for the institutional framework including the NFP or this should be established in a separate and specific law in tandem with the country's legislative development practice. In Uganda there is still no consensus by the Harmonization Committee on the lead government ministry of SALW while in Kenya the Bill lacks key provisions that have been elaborated in the draft National Policy on SALW, 2014. There is need for concerted effort to reach consensus on outstanding issues and accelerate the pace of harmonization.

1.3 Lessons from Rwanda

Rwanda was the first country to successfully harmonize its legislature with international and regional instruments. Rwanda's success was due to a number of reasons but the main one was the political will by the country's leadership that was generated by involvement of Members of Parliament (MPs) from the early stages, identifying of champions within Parliament and the financial and technical support it got from the Association of European Parliamentarians with Africa (AWEPA).³ In terms of process Rwanda set up an inter-agency drafting committee comprising of NFP, Police, Prisons, Public Prosecution Office, Ministry of Justice, Judiciary and the Ministry of Defense. This Committee managed the process and prepared the draft Bill. The draft Bill was presented to the stakeholders in a workshop that included MPs from the Parliamentary Peace and Security Committee. The members of the Committee showed political will by embracing the Bill and became its promoters.⁴ The Committee members were able to sell the Bill to their colleagues in Parliament and had the Bill into law. The lessons

from Rwanda are mainly five. First, it is important to form a multi-disciplinary inter-agency committee to drive the process. Secondly, political will is critical for legal harmonization to succeed. from Rwanda are threefold. First, it is important to form a multidisciplinary inter-agency committee to drive the process. Secondly, political will is critical for legal harmonization to succeed. Thirdly, it is important to involve parliament from the onset Thirdly, it is important to involve Parliament from the onset in order to mobilize champions within Parliament to drive the legislative enactment process. Fourth, there is need to create awareness of the Bill for the MPs to appreciate the issues and embrace the Bill. Lastly, there is need to mobilize the support needed both internally and externally. Rwanda particularly benefited from external support from the AWEPA.

³The European Parliament organized a regional workshop in Mombasa for the Great Lakes Parliamentarians to sensitize them on harmonization of SALW process. This created awareness among the Rwandan MPs who attended the workshop (interview with Eric former NFP Coordinator for Rwanda on April 20, 2016).

⁴This helped given that the Committee had former members of the security forces in its rank

2. *The Case of Tanzania*

2.1 *Background to Harmonization in Tanzania*

Tanzania is member to several regional and international institutions, with cooperation frameworks in the field of SALW control. The country is a member of the UN⁵ and the East African Community (EAC). It was part of the countries in the Great Lakes Region (GLR) that developed the Nairobi Protocol for the Prevention, Control and Reduction of SALW in the Great Lakes Region and the Horn of Africa and Bordering States (2004) (Nairobi Protocol). It is a founder and active member of the RECSA and the International Conference on the Great Lakes Region (ICGLR). The country is also a member of the Southern African Development Community (SADC) and thus bound by the SADC Protocol on the Control of Firearms, Ammunition and other related Materials in the Region of the Community (2001).

This report reviewed Tanzania's Firearms and Ammunitions Control Act (FACA) (2015) and other laws relating to SALW. Specifically, it evaluated the extent to which the legislation complies with the regional and international instruments on SALW. It should be noted, however, that even though the focus is on how Tanzanian law complies with the regional and international instruments, the SALW concerns date back to 1950s. The establishment of the first SALW legislation coincides with the aftermath of Independence, when the country was hosting liberation movements and refugees, particularly from the RECSA region and southern Africa. Although the repealed Armaments and Ammunition Act, 2007 did not have all the provisions envisaged in the regional and international instruments, it enabled the country establish appropriate mechanisms to deal with SALW. The Act had provisions on licensing, possession, manufacturing and dealing with SALW as well as offences and overall institutional framework.

The Firearms Act, 2015 was passed so as to control ownership and transfer of firearms and ammunitions in the country (Firearms and Ammunition Control Act 2015: 46). The Act was also passed to complement regional and international efforts to curb SALW circulation and proliferation, in light of the prevailing situation in the GLR and the Horn of Africa.

2.2 *Harmonization and SALW Law Reform in Tanzania*

Tanzania has finally succeeded in harmonizing its SALW legislation with the Nairobi Protocol and other regional and international instruments on SALW. In May 2015 Tanzania enacted a comprehensive Firearms and Ammunition Control Act, 2015 that largely domesticated most of the provisions of the Regional and International Instruments that it is party to. The FACA was enacted after a seven-year review process.⁶ The key challenge faced by the review team was lack of financial resources that delayed the consultation process to develop a national consensus on the Bill that cater for the interest of the URT. Other challenges included lack of SALW experts, competitive interest with other national priority legislation, and the fact that the Committee members were working part time and could not therefore give full attention to the harmonization process.

The process was spearheaded by a National Review Committee (NRC) coordinated by the Police and Ministry of Home Affairs (Office of the NFP). The Committee comprised of representatives of the Police, the Army, the Intelligence Services, the President's Office, the Attorney General, Civil Society and Private Security Firms. The Committee prepared a conceptual framework and studied instruments and conducted a nationwide consultation. After the national consultations the Committee prepared a report that made proposals that were included in the Firearms and Ammunition Control Bill, 2014. The Bill was drafted in accordance with the Best Practice Guidelines standard and regional and international Instruments relating to SALW and reflected views and proposals from the national consultations. The Committee then presented the bill in various regional and national consultative workshops for scrutiny, to collect further inputs and develop consensus. The draft Bill was presented to the Minister of Home Affairs for submission to Cabinet for approval.

At the end, a Cabinet Memorandum was prepared to facilitate the presentation of the Bill to the Cabinet and Parliament for approval. The Memorandum set out the objectives of the Bill, the lacuna in the law, how the Bill was going to address the identified gaps and the impact of the Bill on the people and crime in addition to other key provisions. The Bill was submitted to the Cabinet for approval by the Minister of Home Affairs. Upon the Cabinet's approval, it was then submitted and successfully debated in Parliament in 2015. Parliament passed it

⁵Tanzania is signatory to the UN Programme of Action of 2001 and the Arms Trade Treaty (2013).

⁶Interview with Charles Ulaya, NFP Tanzania on November 12 2015 at 10.00 a.m.

into law in May 2015 and the President assented to it in July 2015. The Act awaits implementation which provides an entry point for the RECSA to support Tanzania in its implementation.

2.2.1 *Assessment of the Review Process in Tanzania*

The Tanzania review process was comprehensive and inclusive and involved key stakeholders on SALW. The Committee involved and/or consulted government security agencies, Civil Society, Private Security Organizations (PSOs), Faith-based groups, the Media, the Judiciary, the Parliament, regional and district officials, community leaders and the public from the whole of Tanzania in the review process.⁷ It met the minimum standard for carrying out law reform/review. The only process that was missed out was the economic and financial regulatory assessment of the Bill to ascertain the costs of implementing the enacted law. This is likely to impede the implementation.

2.3 *Legal and Institutional Framework on SALW in Tanzania*

The primary legislation that governs SALW in Tanzania is the Firearms and Ammunition Control Act, 2015 (FACA) that repealed the Arms and Ammunitions Control Act. Other laws relevant to SALW include the Explosives Act (1963), the Armament Act (1991), the Anti-Terrorism Act (2002), the Wildlife Act (2013), the Police Force and Auxiliary Services Act (Cap. 322), the National Defense Act and the National Security Act (NSA) (Cap. 47).

⁷Interview with Charles Ulaya, NFP

2.3.1 *Firearms and Ammunition Control Act, 2015*

The Firearms and Ammunition Control Act was enacted to provide for control and management of firearms.⁸ The provisions in the Act are largely consistent with the provisions of the regional and international SALW instruments. Aspects of some of the provisions are discussed in the following.

2.3.1.1 *License and record keeping*

The FACA establishes the office of a Registrar of Firearms⁹ which is responsible for granting license,¹⁰ permit and certificates. In consultation with the National Armament Control Advisory Board (NACAB), the Registrar is empowered to issue permits for manufacturing, assemble, gunsmith or brokering (section 8). This complies with the provisions of the Best Practice Guidelines (2005:11) on the establishment of the national register with the national database led by a registrar.

Consistent with (article 4 (c)) of the Nairobi Protocol, the FACA empowers the Registrar to establish and maintain the Central Firearms Database (section 8 (c)).

The FACA further establishes the Central Firearms Registry (CAR) (s.9),¹¹ within the Police Head Quarters and a sub-registry in Zanzibar (s.58).¹² This practice domesticates the UNPoA and ATT. Under article 11 (9) of UNPoA State Parties are committed to keeping detailed and comprehensive records of manufacture, holding or transfer of SALW under their jurisdiction. Article 3 of the ATT requires State Parties to establish and maintain a national control system that will regulate the export of ammunition fired, launched or delivered by the conventional arms within the category of SALW. Likewise, Article 5(2) of the ATT and article 5 of the NP require State Parties to establish and maintain national databases of licensed SALW owners and commercial traders. For state-owned SALW, article 6 of the NP requires States to “establish and maintain complete national inventories of SALW held by security forces and other State bodies, to enhance their capacity to manage and maintain secure storage of state-owned SALW.” On the duration of records, article 7 of the Firearms Protocol requires records to be kept for at least 10 years.

Each State commits to produce a national control list to the Secretariat, to be availed to the other states (Article 5 (4)). It should be noted, however, that the Tanzanian legislation does not specify the timeframe for keeping the records, as required by the Best Practice Guidelines (2005:10) and article 7 of the Firearms Protocol.

2.3.2 Possession and Licensing

Articles 11, 15-16 of the FACA regulates the permission and qualifications¹³ to own firearms be it either permanently or temporarily or for private or business purposes. The legislation further determines procedures for permit application, for example, obtaining the certificate of competency after going through a special training. This complies with the Nairobi Protocol and Best Practices Guidelines.

⁸Preamble and Long Title to the Firearms and Ammunition Control Act, 2015

⁹The Registrar is appointed by the IGP, in consultation with the relevant authority in Zanzibar. For the case of Zanzibar, the Commissioner of Police for Zanzibar can occupy the position of the Registrar.

¹⁰The legislation further specifies the firearms License granted in Mainland Tanzania to obtain another endorsement by the Registrar or an authorised firearms and ammunition officer for the case of Zanzibar.

¹¹The registry contains registers with names, address and other particulars of the owner as well as details and particulars of the dealer, gunsmith, broker, transporter, importer and exporter.

¹²According to the legislation, the CAR shall be under the control of the IGP or any other appointee by the Minister.

¹³For instance, to obtain a firearm license the person should be aged 25 or above.

Article 3 (c) (i-iii)) of the Nairobi Protocol requires State Parties to incorporate in their national laws, among others, measures to control civilian possession of SALW. States undertake in Article 5 (a) of the Protocol to review national procedures and criteria for issuing and withdrawing licenses and maintaining the national database of licensed SALW, owners and dealers. To complement regional initiatives to control SALW, the Tanzanian FACA empowers the Minister of Home Affairs to recognize firearms licenses issued in neighbouring countries.¹⁴ Although Tanzanian legislation does not mention stockpile management¹⁵ as specified in the Best Practice Guidelines (2005), the law addresses most of stockpile management elements.

2.3.3 Marking

To comply with the international and regional regulations on marking, the FACA (s.18) stipulates that for one to obtain a firearm license, it is compulsory to present the manufacturer’s serial number or any other identification. Likewise, the UNPoA (II (2)) requires the manufacturer to engrave a unique marking¹⁶ on each SALW. At the national level, the Tanzanian law empowers the Arms Management and Disarmament Committee to determine the national identification code, to be incised by the Registrar on firearms (Article 19). The Law further provides for the unlawful possession of a firearm or ammunition unless a dealer’s, a manufacturer’s or a gunsmith’s license or an import, export, on-transit or transporter’s permit is produced. Article 3 (c) (iv), (v) of the Nairobi Protocol provides for the same on controlling the manufacture of SALW. Parallel to the Best Practice Guidelines, the Tanzanian legislation (section 19 (1)) specifies that the Arms Management Committee determines the national identification code. The law further specifies the form of penalty¹⁷ to persons who erase, alter or tamper with the manufacturer’s serial number and stipulates for both unlawful possession of both, firearms (section 20) and ammunition (section 21).

2.3.4 Transfer¹⁸

The FACA largely reflects the Nairobi Protocol, the Best Practice Guidelines on Implementation and

¹⁴The ten countries identified with reciprocal recognition include all of the GLR/EAC members, five from the SADC region and one from Central Africa. The law requires the Registrar to submit to the IGP an annual report showing all issued permits.

¹⁵According to Best Practice Guidelines stockpile management include planning, acquisition, possession, record keeping, safe storage, control, maintenance, production and disposal of SALWs stockpiles.

¹⁶According to the UNPoA the marking has to indicate the country of manufacture and also provide information that enables the national authorities to identify the manufacturer and the serial number for tracing purposes.

¹⁷According to the law, the person commits an offence will be charged a fine not exceeding ten million Tshs or imprisonment for a term not exceeding 5 years, or both.

¹⁸This refers to import, export, transit and transport/trans-shipment.

other key regional and international Instruments on transfer. Every importer, exporter or a transit of firearms and ammunition through the United Republic of Tanzania (URT) is required to obtain a permit (Article 45 (1) and (3)). To import firearms and ammunition, the Registrar is empowered to issue an end-user certificate to the importer who is supposed to be a licensed dealer. Similarly, a person importing or exporting firearms or ammunition on transit, through the URT for trade or personal use is required to get a separate permit.

Similarly, Article 10 of the Firearms Protocol (2001)¹⁹ empowers the Tanzanian Minister of Home Affairs to grant, suspend, refuse, renew or cancel a transit permit for the importation of arms or ammunition, whether in whole or in parts to contiguous States. This provision echoes Articles 3 (c) (v) and 10 of the Nairobi Protocol that provide for the import, export, transfer and transit of the SALW. Likewise, in the UNPoA States commit to effectively control the manufacture of SALW within their areas of jurisdiction and import, export, transit or transfer [Art. II (2)].²⁰ In article II (12) of the UNPoA States are to control the transfer of SALW using the end-user certificate and implement effective legal enforcement mechanisms. The ATT also provides for the establishment and implementation of national control systems in each state. States also commit to effectively regulate international trade in conventional arms and prevent their diversion.

2.3.5 *Brokering*

The Tanzanian law allows and regulates brokering. The provisions of the FACA reflect the provisions of key Instruments on SALW. The Tanzania's Armament Control Advisory Board approves the brokers (s.44). The Minister of Home Affairs, in consultation with the relevant authority in Zanzibar is mandated to prescribe procedures for the issuance, suspension, cancellation or renewal of a broker's permit (sections 42-44). The Tanzania's legislation (Sections 38 and 44) provides specifically for brokers, manufacturers and gunsmiths. This is in compliance with Article II (14) of the UNPoA where State Parties commit to regulate activities of those who engage in SALWs brokering including registration, licencing or authorization and the appropriate punishments for illicit brokering. States further are committed to consider steps (Article IV (1) (d)) to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALWs. The Tanzanian law also echoes the Best Practice Guidelines (2005:30) on registration, licencing of individuals and/or companies involved in brokering transaction.

2.3.6 *Tracing*

The FACA specifies that the Arms Management and Disarmament Committee (s.5) determine the national identification code²¹ of the SALW (s 19 (1)). The Registrar is empowered to engrave (s. 19 (2)) the national identification code on firearms. The Nairobi Protocol also provides for a unique marking in addition to that of the manufacturer, which would indicate the country where the SALWs are imported. As it is the case with Article 3 of the Nairobi Protocol, section 19(8) of Tanzania's FACA articulates a punishment to a person who erases, alters or tampers with the manufacturer's serial number or any other identification code mark on a firearm with the intention of changing its identity (section 19(5)).²²

In the provision of UNPoA, States are encouraged in Article III (10) to consider international cooperation and assistance to examine technologies that would improve the detection of illicit trade and measures to facilitate technology transfer. Article 7 of the Nairobi Protocol provide for marking, tracing and record keeping. While there is a provision on state-owned SALW, (Article 7 (d)) of Tanzania's legislation largely provide for control of ammunition privately owned or those owned by individuals.²⁴

2.3.7 *Manufacture and Repair*

The FACA has adequate and elaborate provisions of SALW manufacture and repairs that are in compliance with the Best Practice Guidelines and the UNPoA. The manufacture or assembly of firearms and ammunition in the URT requires an authorisation of the Armament Control Advisory Board²³ - upon compliancy with the required qualifications (s. 38 (1)). On armaments repair, the gunsmith's permit issued under the Act is required (s. 39 (1)). Again, section 39(3) specifies that firearms repair is to be done by government arsenals or Licensed gunsmith. While there are specific provisions in Tanzanian legislation, the Best Practice Guidelines and the UNPoA do not give a direct reference on repair. It is hoped that the provisions in the new law will help to regulate the booming local manufacture of SALW common referred to as "magobore". During the May 2015 Tokomeza Operation out of 136 SALW seized only 16 weapons are legally owned and 114 traditionally made weapons.²⁴

¹⁹The protocol on Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition supplements the UN Convention against Transnational Organised Crime (2000), which has not yet entered into force.

²⁰States commit to control in order to prevent illegal manufacture and illicit trafficking in SALW or their diversion to unauthorized recipients.

²¹Article 71 (b) of Tanzania's FACA empowers the Minister of Home Affairs to make regulations regarding stamping, marking, numbering and registering of firearms and ammunition.

²²A person will be fined, imprisoned or both. The same applies to illicit manufacturing of SALW and illicit trafficking in SALW and illicit possession and misuse of SALW.

2.3.8 Disposal

Part VII (sections 55-57) of the Tanzanian FACA stipulates the disposal of firearms, especially in cases of the death of the firearm License holder. Furthermore, the Tanzanian law provides for the destruction – by a court order – of any firearm or ammunition found in any building, vessel, aircraft or any place without owner. Again, Article 36 specifies on firearms disposal once they have ceased to carry on business. States are required in Article 8 (a) and (b) of the Nairobi Protocol to design and adopt programmes for collection, storage and destruction of obsolete SALW. Moreover, Article 12 of the protocol provides for voluntary surrender of both SALW in lawful civilian possession for destruction/disposal by the state (Article 12 (a)) and the illegal holders to surrender (Article 12 (b)). Under UNPoA States are to ensure that all confiscated, seized or collected SALW are destroyed (II (16)). Article II (18) requires states to regularly review stocks of SALWs held by defence and security forces so that destruction of such stocks is implemented and such stocks are adequately safeguarded until disposal.

2.4 Other National Legislation on SALW

Other laws reviewed in the framework of the present study, included Explosives Act, Armament Control Act, 1991, Anti-Terrorism Act, 2002, Wildlife Act, 2013, the Police Force and Auxiliary Services Act (Cap. 322), National Defence Act, 1966 and National Security Act (Cap. 47). These have complimentary provisions to the Firearms and Ammunition Control Act.

2.4.1 Police Force and Auxiliary Services Act (Cap. 322)

The Police Force and Auxiliary Services Act aims at providing for the organisation, discipline, powers and duties of the Police Force, a Police Reserve and an Auxiliary Police Force and for related matters. The Act has several provisions on SALW relating to the police by the police and their role on control of firearms and ammunition to complement the FACA. Section 5 (1) of the Act grants the police force the power to carry arms for preservation of peace, maintenance of law and order, prevention and detection of crime, apprehension and guarding of offenders and the protection of property. While section 29 (1) provides for restrictions on use of arms by the force and section 47 for taking charge of unclaimed firearms or ammunition to the

²³The Registrar is prohibited from issuing a gunsmith's permit until approved by the National Armament Control Advisory Board.

²⁴Mr Pereira Ame Silima, Deputy Minister for Home Affairs, made the revelation while answering questions raised by Hon. John Chiligati (Manyoni East-CCM) accessed on 17/02/2016 at <http://allafrica.com/stories/201506012138.html>

magistrate. Section 26(1) provides for forfeiture of all arms and ammunition entrusted into the care of a police officer that are property of the government when he ceases belonging to the force. Section 26 (2) provides for establishment as an offence, the failure to deliver up arms and ammunition as mentioned in section 5 and provides for liability on conviction to a fine not exceeding four hundred shillings or to imprisonment for three months or to both such fine and such imprisonment, and the court may issue a warrant to search for and seize all such arms, ammunition, which shall not have been delivered up.

2.4.2 National Defense Act, 1966

The NDA does not have direct provisions on the use, storage and management of arms by the armed forces. Neither the less the NDA provides for the management of the armed forces. It ensures that materials and weapons used by the armed forces are those that are authorized by the Defense Forces Committee (s.27). The Act prohibits attachment of any material and arms used by a member of the armed forces for settlement of a judgement debt (s.64).

2.4.3 National Security Act (Cap. 47)

The NSA provides for management of state security, espionage, sabotage and other activities prejudicial to the interests of the URT. On SALW the Act prohibits unauthorized possession of offensive weapons or materials [s.8(1)]. The offensive weapons or materials includes explosives, acid, gas, firearms and ammunition. The Act has extraterritorial application and is applied outside Tanzania (s.20). The Act prohibits unlawful dealing with service property and on conviction one is liable to up to two years imprisonment (s.97).

2.4.4 Wildlife Act, 2013

The Wildlife Act (2013) regulates the sustainable utilisation and management of wildlife resources and to provide for other related matters. The Act is very restrict and officers authorized to manage wildlife is a wildlife officer discharging duties in the Wildlife Division, the Tanzania Wildlife Management Authority, the Tanzania National Parks, the Ngorongoro Conservation Area, a District Game Officer and include any wildlife officer, warden and wildlife ranger discharging duties under the District Game Officer. On SALW section 13 grants power to a wildlife officer to possess and use firearms for the purposes of carrying out their functions and duties. It further provides for restrictions on use of firearms by wildlife officers.

2.4.5 *The Armament Control Act, 1991*

The Armament Control Act (ACA), 1991 provide for the machinery and mechanism of controlling and managing the acquisition, manufacture and dealings in arms of war. The Act construes a broad meaning of armament that includes SALW and ammunition. Section 4(1) defines armaments to mean arms of war, whether complete or in parts and ammunition for them, namely, firearms, artillery, apparatus for the discharge of all kinds of explosive or gas-diffusing projectiles, flamethrowers, bombs, grenades, machine guns, rifles, and small-fire breech-loading weapons of all kinds.

The ACA vests control of armament on the President of the Republic. Section 6 states that "...the President shall have and may exercise all functions and power necessary for the control, management and use of armaments in the United Republic of Tanzania and may, by notice published in the Gazette delegate any such functions and power to such person or body of persons as he may specify in the notice". The Act establishes the National Armaments Control Advisory Board to advice the government on formulation and implementation of the national policy on control of armaments, regulate and conduct research on armament.

The ACA prohibits possession, conveyance, carrying (section 11), importation and exportation (s.12) and manufacture or assemble (s.13), of armaments in Tanzania without the Boards approval. The Act in section 13(3) makes it clear its superior to the FACA by stating that even Licenses issues under FACA to allow manufacture of arms and ammunitions is not sufficient to allow one to manufacture or assemble armaments. Section 13(3) states, "For the avoidance of doubt, a License or other permit granted under the Arms and Ammunition Act²⁵ enabling the holder to manufacture arms or ammunition shall not be deemed as sufficing for the purposes of this Act, save that the holder of such License or permit shall not be required to pay any fee under this Act for the purposes of obtaining an authorization under this section". The Act also allows searches of premises and vessels with warrant (14), provides for forfeiture of armaments connected to crime (s.16) or without owner (s.17).

Other laws such as the Explosives Act, Anti-Terrorism Act, and Prisons Act do not offer any

substantively difference from the laws reviewed and so the review sought not to elaborate on their provisions.

2.5 *Offences and Penalties*

The Tanzanian legislation relating to firearms have made provisions for several offences in compliance with international and regional instruments as well as Best Practices Guidelines. The penalties however, do not comply with the Instruments since they do not provide for minimum sanctions. Section 50(1) of the Police Force and Auxiliary Services Act establishes as an offence the pawning, selling, losing, damaging of arms, and ammunition.

However, it is the Firearms and Ammunition Control Act which has substantive prohibitions and penalties. Section 19 (5) prohibits people from erasing, altering or in any other manner tampering with the manufacturer's serial number or any other identification code mark on a firearm with the intention of changing its identity. A person who contravenes this provision commits an offence and is liable upon conviction, to a fine not exceeding ten million shillings or imprisonment for a term not exceeding five years or to both. The Act prohibits illicit manufacturing, illicit possession and misuse (s.20&21), illicit trafficking, and illegal brokerage of SALW. The Act further prohibits importation, exportation and/or carrying of firearms or ammunition without a permit (s.45 (1).

The FACA establishes omnibus sentences for offences providing specific penalties. Section 60 (1) creates a general offence and provides that a person who contravenes any provision of the Act, commits an offence. The section provides for either a fine not exceeding fifteen million shillings or imprisonment for a term not exceeding ten years or both. The Armament Control Act creates offences under section 18 for any person who contravenes, refuses or fails to comply with its provisions and if found guilty one shall, if no penalty is expressly stated by the provision contravened, be liable on conviction to imprisonment for a term not exceeding fifteen years nor less than seven years or to a fine not exceeding three million shillings or to both fine and imprisonment.

²⁵This was repealed by the Firearms and Ammunition Control Act, 2015.

The provisions of the Armament Control Act provides for stiffer minimum and maximum penalties which conforms with the provisions of the Nairobi Protocol, UNPOA and Best Practices Guidelines. However, the FACA does not comply with these provisions as it does not have stiffer and minimum provisions. Its maximum provision of 10 years is far short of the 15 years envisaged in the UNPOA.

The Nairobi Protocol urges State Parties to make provisions promoting legal uniformity in the sphere of sentencing and should introduce harmonised, heavy minimum sentences for SALW crimes and the carrying of unlicensed SALW. The UNPOA provides as follows; the following offences due to their transnational character should have harmonised sentences: illicit manufacture of SALW; illicit trafficking of SALW; illicit stockpiling and trade of SALW; illicit possession and misuse of SALW; Falsification/illicit obliteration/removal/alteration of markings on SALW; violations of UN or regional organisations embargoes, illicit brokering; failure to properly safeguard stockpile; or adding and facilitating the commission of the above crimes. The minimum sentence for the offences should be from 2-5 years, and the maximum sentence should be from 15-25 years imprisonment. No administrative penalties and fines are allowed for the above offences. Suspended sentences may only be imposed in cases where the court is of the opinion that there are major mitigating factors such as the first time offender.

2.6 Institutional Framework

The key institutions in Tanzania dealing with SALW are the National Focal Point (NFP), the Arms Management and Disarmament Committee (s.5), the Registrar of Firearms (s.8), the Central Firearms Registry (s.9), the Armament Control Advisory Board (s.9), and the Inspector General of Police (IGP) (s.4).

2.6.1 National Focal Point (s.4)

The FACA in section 4 establishes the National Focal Point as the institution to deal with SALW. The Act designates the Inspector General of Police as the NFP. The NFP is the national point of contact and is responsible for liaising with the other states [or actors] at the regional and international levels on the implementation of the national POA on control of firearms and ammunition. This is also in line with the UNPOA (II (5)) whereby states are committed to establish a coordination point on matters related to the implementation of the POA. Likewise, in the ATT (Art. 5 (6)) the State Parties undertake to specify one or more national points of contact²⁶ – to

be communicated to the Secretariat. The problem with the current legislation is that it maintained the status quo by designating the IGP as the NFP. Leaving the IGP as the NFP will suffocate the office and denies it room to work independently since it coordinates all security agencies that possess and use SALW. It also diverts from the provisions in other countries which establishes the NFP as a separate department or autonomous agency under the ministry responsible for interior.

2.6.2 The Registrar of Firearms (s.8)

The FACA in section 8(1) creates the office of the Registrar of Firearms appointed by the IGP in consultations with the relevant authority in Zanzibar. The Registrar is responsible for granting, renewing or cancelling License,²⁷ permit and certificates, establish and maintain a Central Firearms Database and conduct investigations. In consultation with the National Armament Control Advisory Board (NACAB)²⁸, the Registrar is empowered to issue permits for manufacturing, assembling, gunsmith or brokering (Section 8). This conforms to the provisions of the Best Practice Guidelines (2005:11) on the establishment of the national register with the national database led by the registrar. Consistent with (Article 4 (c)) of the Nairobi Protocol, the Tanzanian law empowers the Registrar to establish and maintain the Central Firearms Database (s.8 (c)). The Tanzanian law further establishes the Central Firearms Registry (s.9),²⁹ to be located at the Police Head Quarters and a sub-registry in Zanzibar (section 58).³⁰

2.6.3 The Arms Management and Disarmament Committee (s.5)

Sections 5 and 6 of the Tanzanian Firearms and Ammunition Control Act establishes the Arms Management and Disarmament Committee (AMDC) chaired by the IGP. Even though the Best Practice Guidelines suggests seven committee members, the Tanzanian law specifies 15.³¹ The Committee coordinates all national activities³²

²⁶The Treaty specifies that the national point of contact is mandated to exchange information on matters related to the Treaty execution as well as regularly update the information on SALW.

²⁷The legislation further specifies the firearms License granted in Mainland Tanzania to obtain another endorsement by the Registrar or an authorised firearms and ammunition officer for the case of Zanzibar.

²⁸National Armaments Control Advisory Board was established under section 7(1) of the Armament Control Act, 1991 to regulate armament.

²⁹The registry contains registers with names, address and other particulars of the owner as well as details and particulars of the dealer, gunsmith, broker, transporter, importer and exporter.

³⁰According to the legislation, the Central Arms Registry shall be under the control of the IGP or any other appointee by the Minister.

³¹Additional members are from the Ministry responsible for East African affairs, the Ministry of Foreign Affairs and International Cooperation; the Ministry of Finance, a representative from prison service, the AG's Chambers; a representative from the Ministry responsible for wildlife conservation and the Ministry of Trade and Industry.

³²The Committee is also responsible for organising the development, implementation, resourcing and monitoring of the national action plans and evaluation measures to address SALWs problems.

relating to the implementation of the Act; the execution of international and regional agreements on the prevention, combating and eradication of illicit proliferation of SALWs; as well as for coordinating research on illicit SALWs (section 7 (1) (j)). The AMDC is further tasked to advise the Minister of Home Affairs on the harmonization of regional and international legislations (sections 5-7).

2.6.4 The Armament Control Advisory Board (s.7.1 of Armament Control Act)

The National Armaments Control Advisory Board was established under section 7(1) of the Armament Control Act (ACA), 1991 to advise the government on formulation and implementation of the national policy on control of armaments, regulate and conduct research on armament. The Board is comprised of a chairman from the army and representatives from the army (3), police (2), prisons (2), Chuo cha Mafunzo Services (Rehabilitation Centre), Kikosi Maalum cha Kuzuia Magendo (Anti-Smuggling Unit), Jeshi la Kujenga Uchumi (National Service) (Zanzibar) and three other members one of whom shall be from the President's Office.

The NACAB supervise and regulate the manufacture, importation, conveyance and disposition of armaments in the Tanzania, receive and consider all requests by any department for acquisition of armaments, evaluate and recommend acquisition and importation of armaments by any department, taking into account the establishment of that department and its Defense and security requirements and commitments; evaluate and recommend on the efficacy, need and quality of any armament equipment donations to any department; administer rules and regulations trade under this Act and, regulate the manufacture, importation, exportation, distribution, control and management of armaments made in or imported into the URT.

Related to Tanzanian law provision, Article II (4) of the UNPoA directs the member states to designate institutions responsible for policy guidance, research and monitoring of SALW prevention and eradication. The Nairobi Protocol, however, does not give reference to researching on illicit small arms and light weapons. Tanzania is therefore compliant in harmonization of its laws to regional and international standards. The only setback of the new law is that it has not sought to divorce the NFP with the IGP to make it an independent institution as was envisaged in the Best Practice Guidelines. The NFP has also not been elevated to a directorate or independent agency as guided by the Best Practice Guidelines. This means that the NFP ability to implement its programmes is dependent on the IGP in terms of guidance, prioritisation and financing.

2.7 Regional and international cooperation ³³

The FACA provides under section 68 for international cooperation in areas of information sharing, mutual legal assistance and joint operations. Section 13 provides for reciprocal recognition of firearms issued by neighbouring countries. According to section 67, to combat illicit proliferation of firearms and ammunition, the IGP may – in consultation with the responsible Minister – authorise any person to participate in regional joint operations. Provisions are in accordance with the Nairobi Protocol and UNPOA. Indeed, to combat illicit trade in SALWs states commit in Article III (7) of the UNPOA to foster cooperation and exchange experience and conduct joint training among officials³⁴ at the national, regional and global levels.

The FACA also gives the IGP the discretion to disclose any information in his/her possession at the request by the appropriate authority of a foreign state, as well as receive and act upon any information obtained in the course of investigations relating to a firearm or ammunition unlawfully possessed (Articles 67 and 68). This echoes the Nairobi Protocol objective (Article 2 (c)) which encourages governments to promote and facilitate information sharing and cooperation in the sub-region as well as between the governments and other key stakeholders. Likewise Article 4 (a) and (b) of the Nairobi Protocol provides for strengthening sub-regional cooperation among law enforcement and security agencies in suppressing criminal activities related to circulation and trafficking in SALWs. Again, in the UNPoA (III (11)) states commit to cooperate through existing global and regional frameworks in tracing illicit SALWs especially exchange of relevant information. In Article III (12) of the UNPoA states are encouraged to exchange information on a voluntary basis on their national marking systems on SALWs.

2.8 Other Stakeholders

The non-state actors have also been identified as important stakeholders in combating illicit trafficking and proliferation of SALWs. Article 2 (c) of the Nairobi Protocol provides for the involvement of the civil society organisations to promote information sharing and cooperation in issues related to illicit trafficking and proliferation of SALW. The Tanzanian government sought to incorporate a representative from the civil society organisations (CSO) as a member of the Arms Management and Disarmament Committee (s.6(1) (0)).

³³This aspect covers issues such as joint training and information sharing.

³⁴They include customs and crime control officials, police, intelligence.

In addition, the committee has been tasked to ensure coordination and support of the NGOs activities, associations and dealers engaged in the control of firearms (s.7(1)(i)). This reflects the UNPoA whereby, states commit to encourage NGOs and the Civil Society IV (2) (c) to engage in all aspects of international, regional and sub-regional and national efforts to implement the POA.

2.9 Conclusion and Recommendation

This report reviewed Tanzania's compliance with international instruments on SALW, particularly the Firearms and Ammunitions Control Act. It was found that collectively to a larger extent Tanzania's legislation conforms to the regional and international SALW instruments. There are, however, variations on the implementation on issues such as the size of the Arms Management and Disarmament Committee, arms repair and sentencing of SALW related offences. This is to some extent influenced by Tanzania's environment and the fact that some matters are to be handled at Mainland and Zanzibar level.

The Tanzania laws also do not have provisions that address the issue of violations of regional and international bodies' arms embargoes that are provided for in the ATT and UNPOA. The UNPOA urges SPs to take appropriate measures, including all legal or administrative means, against any activity that violates a UNSC arms embargo (Art. II article 15). The ATT Article 6(1) states, "State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the UNSC on arms embargoes". The laws also lack provisions on how long records should be kept as required by the Best Practices Guidelines and article 7 of the Firearms Protocol.

The laws also do not have harmonized penalties as the provisions of the FACA and the ACA have different penalties. The ACA has stiffer penalties with minimum (7 years) and maximum (15 years) which are consistent with the Nairobi Protocol and UNPOA. The same cannot be said of the FACA which does not only provide for a minimum but provide for a lower maximum of ten years.

Additionally, to effectively implement FACA there is need to create awareness and support from the public who are the first line of Defense and information on possession, manufacturing and dealing in SALW.

Lastly, the NFP is part of the police in terms of finance and operations which limits its effective

functioning. There is need to give the NFP financial and operations autonomy for it to effectively implement the new FACA.

2.9.1 Identified gaps of the current act

a) Tanzania should embark on the implementation of the Firearms and Ammunition Control Act.

b) The NFP should be given autonomy as a separate agency or department under Ministry of Home Affairs with separate financial vote and governance from the Police.

c) In conformity with the Nairobi Protocol and UNPOA, the Arms Management and Disarmament Committee and the NFP should create public awareness to key stakeholders and the public about the new law

d) Tanzania should include in its law provisions on violation of UNSC embargoes.

e) Tanzania should review and harmonise its penalties to ensure that sentences are categorized according to the offences committed and that emphasis is put on setting minimum and maximum sentences for the listed offences according to the Best Practices Guidelines and UNPOA.

3 The Case of Kenya

In matters of SALW management and control, Kenya is a member of the UN,³⁵ the AU, RECSA, EAC, ICGLR, and IGAD among others. The country hosted the process of developing Nairobi Protocol and currently hosts RECSA Secretariat. In addition, Kenya co-authored the UN General Assembly Resolution 61/89 of the 6th December 2006 on Arms Trade Treaty and played a leading role in the international and regional efforts in negotiating and developing the ATT³⁶.

This section reviews Kenya's firearms and ammunition legislation to assess their conformity with the international and regional Instruments on SALW. The review focusses on the Firearms Act, Cap 114, the Security Laws (Miscellaneous) Amendment Act, 2014, and the proposed draft Small Arms and Light Weapons Management and Control Bill, 2014. Specifically the review evaluates the extent to which the legislation complies with the regional and international instruments on SALWs especially the Nairobi Protocol, ATT, UNPOA, ITI, and Firearms Protocol.

The review also looked at the harmonization and law review process in Kenya and especially how the draft Small Arms and Light Weapons Management and Control SALW Bill, 2014 comply with the regional and international instruments.

Considering that the Firearms Act and the SALW Bill aims at effectively controlling ownership and transfer of firearms and ammunitions in the country, they therefore intend to complement regional and international efforts to curb SALWs circulation. The harmonization of national SALW legislation in Republic of Kenya

The harmonization process in Kenya remains to be completed and still requires lot of efforts. Suffice to note that the country is currently reviewing its laws relating to control and regulating SALW. The country has established the Law Review Committee under the Ministry of Interior and Coordination. The Committee coordinated by the NFP is comprised of representatives from Ministry of Interior, Office of the President, Police, Military, Law Reform Commission, AG Chambers, Intelligence Services, PSOs and civil society.

The Committee has collected views from the public through holding consultative workshops. The views were consolidated and used to prepare the draft National Policy on SALW in 2014 and the SALW Management and Control Bill in 2014³⁷.

The development of the National Policy on SALW is a good step towards harmonization of existing legislative and regulatory frameworks in accordance with the regional and international requirements. The SALW Policy provides a framework with guidelines to manage and coordinate all actions addressing the problem of SALW in all its aspects in Kenya. It further provides for an implementation and monitoring framework of all matters relating to SALW. The policy seeks to attain the following five objectives: reduce all forms of proliferation of illicit SALW and other related materials; provide synergy and coordination for the management and control of SALW through legal, institutional and regulatory frameworks; coordinate and promote public awareness raising, education and sensitization on SALW; provide for measures to harmonize legislation relating to SALW; and enhance international cooperation and information exchange on SALW.³⁸ These policy objectives conform to regional and international instruments.

Similarly, the draft SALW Management and Control Bill (drafted after a six year harmonization and law review process), will domesticate most of the provisions of international and regional SALW Instruments such as the Nairobi Protocol, ATT, Firearms Protocol, ITI and UNPOA.. The Bill shares some similar provisions with the Ugandan

³⁵Kenya is signatory to the UNPoA of 2001 and the Arms Trade Treaty (2013).

³⁶Foreword to the draft Kenya National on SALW, 2014, pg. ix

³⁷The Bill is still with the Cabinet Secretary for Interior and yet to be submitted to the AG for final drafting in preparation for submission to Cabinet.

Firearms Control Bill and the Tanzanian FACA that will bridge the harmonization and uniformity of laws gap within the region. The only significant SALW law reform attempt was in 2014. In 2014 section of 3 of the SALW Management and Control Bill was extracted and included in the Security Laws (Amendment) Act, 2014 to create the Firearms Licensing Board and regulate manufacture, possession and sale of armoured cars.³⁹ This move showed the government is not fully committed to the comprehensive harmonization, otherwise it would have enacted the entire Bill instead of doing piece meal amendments.

The review process in Kenya has taken long due to the constitutional changes occasioned by the promulgation of the 2010 constitution that has transformed the governance and law making processes in Kenya (see annex II). Unlike in the past where Bills were originated from the government departments and presented by the responsible Minister, currently Bills may originate from departments or MPs but are presented by an MP and not the Cabinet Secretary. The Constitution also devolved powers to counties and any reform process shall take this into account.⁴⁰ Most importantly, the constitution requires national consultation before drafting and enacting Bills. All these requires more human and financial resources that affected the harmonization process.

The other challenge is the high turnover of staff at the NFP which affects the review momentum. The NFP coordinator and other staff are seconded from the police and are transferred like any other police officers. At the time of the review the coordinator was very new and only one month old in the job. Other challenges includes the NFP is not autonomous with own budget vote but rely on resources from the Ministry of Interior and National Coordination that sets its priority. The review process was also affected by competition from other urgent national priority actions that require legislation such as corruption, devolution, unemployment and implementation of the new constitution.⁴¹

Lastly, there are significant differences between the draft National Policy on SALW and the draft Bill. Whereas the draft policy is comprehensive and complies with international and regional SALW instruments, the Bill on the other hand has many serious omissions.

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³⁹The Security Laws (Amendment) Act, 2014 was enacted in the height of the terrorist attacks in Kenya to combat terrorism. Section 35 of the Security Laws (Amendment) Act establishes the Firearms Licencing Board and regulates manufacture, possession and sale of armoured cars.

⁴⁰Art. 109(1) states that Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President. Section 21(1) of the County Government Act 2012 states that "a county assembly shall exercise its legislative power through Bills passed by the county assembly and assented to by the governor."

⁴¹Interview with NFP Coordinator on November 5 2015

3.1 Assessment of the Review Process in Kenya

The Kenya review process is fairly inclusive and comprehensive involving key stakeholders on SALW. The review involved government agencies, counties, PSOs and civil society that are the major stakeholders. It meets the minimum standard for carrying out law reform/review. Consultations are still required to fill missing gaps and reach consensus. This can be done through stakeholder consultative workshops or meetings.

The window of opportunity for Kenya harmonization process is almost closing with the country approaching general elections in August 2017. There is need to engage and lobby the Cabinet Secretary for Interior and Parliament especially the Parliamentary Committees on, security and legal affairs. Retreats should be organized for members of the Defense and Security Committee, all chairpersons' of Parliamentary committees and their clerks. The retreat should discuss the reform process, international and regional instruments, key provisions of the Bill and its rationale. The retreat should discuss and reach consensus on the Bill clause by clause.

3.2 Legal and Institutional Framework

The major law governing firearms and ammunition in Kenya is the Firearms Act Cap. 114 as amended by the section 35 of the Security Laws (Amendment) Act, 2014. This is expected to be replaced by the Small Arms and Light Weapons Management and Control Bill, 2014 once enacted into an Act. Other laws include the Prisons Act, Wildlife Act and Police Act. These laws are reviewed in this section to ascertain their harmonization and conformity with regional and international Instrument.

3.2.1 The Kenya's Firearms Act, 1954 (Cap 114)

The Firearms Act Cap 114 purpose is for regulating, licensing and controlling the manufacture, importation, exportation, transportation, sale, repair, storage, possession and use of firearms, ammunition, air guns and destructive devices and for connected purposes. The Act was amended by the Security Laws (Amendment) Act, 2014 to create the Firearms Licensing Board and regulate manufacture, possession and sale of armoured cars.

The Firearms Act (Cap 114) as amended complies partly with the regional and international recommendations for seizure, disposal and enforcement of SALW. There are however, fundamental gaps in the Firearms Act, and also in the proposed Small Arms and Light Weapons Management and Control Bill, 2014 in regards to

seizure; disarmament and disposal. There are also no controls relating to the re-activation of de-activated small arms and no explanation for the disarmament process. The proposed bill just like the law refers slightly to disarmament but it does not elaborate the process in detail. This creates ambiguity in regards to what is supposed to be the process followed during the disarmament process and also the controls become hard to enforce because the regulations supposed to implement the law are not in place.

3.2.2 Small Arms and Light Weapons Management and Control Bill, 2014

The SALW Management and Control Bill provides for the management, control, regulation and licensing, manufacture, importation, exportation, transfer, trans-shipment, transportation, sale, repair, storage, possession and use of SALW. The objects and purpose of this Act is to;-

- a) Enhance public safety and security by preventing the proliferation of illegally possessed SALW;
- b) Improve State control over legally possessed small arms;
- c) Tackle specific arms related crimes;
- d) Establish a comprehensive and effective system to control and manage and ammunition; and
- e) Comply with regional and international commitments.

3.3 Assessment of the Firearms Act and the Small Arms and Light Weapons Management and Control Bill, 2014

3.3.1 License and Record Keeping

The Firearms Act provides for lots of discretionary powers to the licensing officer in respect to granting of firearms Licenses. The licensing officer shall grant a license if he or she is satisfied that the applicant has a good reason for purchasing, acquiring or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace (s. 5(2)). In contrast to the Firearms Act, the proposed SALW Management and Control Bill provides for an elaborate and consultative process. The Bill provides for the establishment of small arms and light weapons licensing vetting board (s. 4(1)) and the office of the Chief Licensing Officer (CLO) (sections 20(1)⁴².

⁴²The CLO is appointed by the Inspector General of Police by notice in the Gazette, in consultation with the National Police Service Commission.

⁴³The chief licensing officer will- i) implement the decision of the Board ii) renewing of license iii) revocation of license iv) liaising with officer commanding station(OCS) throughout Kenya to keep track with arms within their jurisdiction.

The CLO is responsible for executing duties with powers conferred by the act (s. 20(2)).⁴³ In consultation with the vetting and licensing Board, the chief licensing officer is empowered to issue and revoke permits for possession, dealership, manufacturing, assembling, gunsmith or brokering (section 20). This harmonizes the law with the provisions of the Best Practice Guidelines (2005:11) on the establishment of the national register with a national database led by the registrar. In accordance with (Art. 4 (c)) of the Nairobi Protocol, the proposed Bill provides for the establishment and maintenance of national database for SALW (Article 78&79).

Unlike the current law, the Bill provide for a national SALW database. It requires dealers, exporters, importers or in-transit permit holders to have records of their stock and transaction which are linked to the national database on SALW [section 58(3&6), 66(1,2&3)]. The creation of a national database complements the UNPoA provision (11 (9)) whereby member states are required to keep detailed and comprehensive records of manufacture, holding or transfer of SALW under their jurisdiction. Further, article 5 (2) of the ATT obliges states to establish and maintain a national control system. Each state also undertakes to produce national control list to the Secretariat, to be availed to the other states (Article 5 (4)).

Both the current Kenyan Firearms Act and the proposed Bill don't specify the timeframe for keeping records, as required by Firearms Protocol (art. 7) and the Best Practice Guidelines (2005:10). The Firearms Protocol (Art. 7) provides that each SP shall, through their national legislation, ensure the maintenance of records and information (for at least 10 years, but, wherever possible, for up to 25 years) on firearms, their components and ammunition, to facilitate their identification, tracing and to prevent and detect their illicit manufacture and trafficking.

3.3.2 Possession

In contrast to the country's Firearms Act which had limited provisions, the draft SALW Management and Control Bill, 2014 contains better and more comprehensive provisions on control of possession and ownership of firearms. Part III clauses (22-45) of the Bill provide regulations for civilian possession of firearms and also make a provision for suitability of possession of firearms and age restrictions. The Bill prohibits unlawful possession of a firearm or ammunition for civilians, dealers or manufactures. The Bill ties the acquisition of other Licenses to first having possession of a competence certificate. The Bill requires that a dealer's,

manufacturer's, gunsmith's, import, export, in-transit or transporter's permit or License is granted to a person who is allowed to have a firearms License. Article 3 (c) (iv & v), of the Nairobi Protocol provide for the same on controlling the manufacture of SALW.

The proposed bill unlike the Firearms Act which was complacent with the age restrictions on SALW possessions puts age limits. It requires individuals to be at least 25 and not more than 75 years of age (section 23(2)(e) before seeking for a License to own firearms. The Bill further specifies procedures for permit application, for example, obtaining the certificate of competency after going through a special training (section 24(1)). This complies with the Nairobi Protocol (Article 3 (c) (i-iii)) whereby states are to incorporate in their national laws, among others, measures to control civilian possession of small arms. States commit in Article 5 (a) of the Protocol to review national procedures and criteria for issuing and withdrawing licenses and maintaining the national database of licensed SALW, owners and dealers. The Kenyan legislation and unfortunately the proposed Bill does not mention stockpile management⁴⁴—as specified in the Best Practice Guidelines (article 1.1). The Bill address most of elements of stockpile management nor it provide for interpretation of stock pile management. This will continue to cause ambiguity and vagueness while dealing with stockpile management in Kenya.

3.3.3 Marking and Accountability

With regards to marking of firearms there are serious gaps in the Kenyan Firearms Act. These include: Lack of standardized system for the marking of SALW at the time of manufacture, import or export; no specification of the information that markings should contain or of where markings should be placed on the small arms; and does not specify that it is an offence to alter or remove marks on firearms. However, the proposed SALW Management and Control Bill, 2014 makes provision for marking and penalties for alteration of firearms markings [Part VI (72-79)].

Section 72(1) of the Bill reads, "all SALW entering or manufactured in Kenya must bear a number and a unique identification mark, and in particular must reflect the following: a) country of manufacture; b) the logo of the manufacturing industry; c) the year of manufacture; d) the serial number placed at the appropriate position or at the position that cannot be erased; and e) the manufacturing company.

⁴⁴According to Best Practice Guidelines stockpile management include planning, acquisition, possession, record keeping, safe storage, control, maintenance, production and disposal of SALWs stockpiles.

All SALW in the possession of any person resident, or travelling to or through, Kenya must be registered, bear a number and a unique identification mark [s. 72(2)]. All manufacturers, dealers' importers and exporters of small arms and light weapons must possess permanent books of inventory in their factory, or armory (s. 78(1)). The Bill further requires manufacturers, dealers, importers and exporters of SALW to possess permanent books of inventory in their factory, or armory (s. 78(2)). Section 76(1) prohibits owning, possessing, or carrying any small arm that has not been specifically marked. The Bill also makes provisions for accountability by state agencies for the SALW in their possession and requires the agencies to take inventory of all small arms and ammunition in their possession and control including those owned by civilians, once every year (s.79).

These provisions are consistent with the Nairobi Protocol (art 3(c)(iv)) which requires State Parties to have provisions for standardized marking and identification of SALW at the time of manufacture, import or export. The UNPoA (II (2)) requires the manufacturer to engrave a unique marking⁴⁵ on each SALW. In contrast to the Best Practice Guidelines the Kenyan Bill doesn't specify that the Arms Management Committee determines the national identification code. The Bill further specifies the form of penalty to persons who erase, alter or tamper with the manufacturer's serial number. This harmonizes with article 3 (a) (iv) of the Nairobi Protocol that requires provisions that explicitly criminalize the illegally falsification, obliteration or removal or alteration of marks on a firearm.

3.3.4 *Import, Export, and Transit*

According to the proposed Bill, every importer, exporter or person in transit with firearms and ammunition through Kenya is required to obtain an import, export or in-transit permit (section 62(1, 2 & 3)). Section 62(1) provides that no person may import into or export from Kenya any small arm or light weapon and ammunition without an import or export permit issued in terms of this Act. While section 62(3) states no person may carry in transit through Kenya any small arm, light weapon, ammunition or accessory without an in-transit permit issued in terms of this Act.

The Bill establishes minimum qualification for a person to import, export or transport firearms and ammunition. The CLO is required to issue import, export or in-transit permit to a person who qualifies to be a dealer or manufacturer (s. 62(2)) and a fit and proper person (s. 63(1)).

⁴⁵According to the UNPoA the marking has to indicate the country of manufacture and also provide information that enables the national authorities to identify the manufacturer and the serial number for tracing purposes.

A person importing or exporting firearms or ammunition on transit, through Kenya for trade or personal use is required to get a separate permit. Being a State Party Article 10 of the UN Protocol (2001)⁴⁶ empowers the Kenyan Minister of Interior to grant, suspend, refuse, renew or cancel a transit permit for the importation of arms or ammunition, whether in whole or in parts to contiguous states.

These provisions echo Articles 3(c)(v) and 10 of the Nairobi Protocol whereby, article 10 provides for the import, export, transfer and transit of the SALW. The ATT requires Each State Party shall establish and maintain a national control system to regulate the export of ammunition fired, launched or delivered by the conventional arms (art. 3). Likewise, in the UNPoA State Parties commit to effectively control the manufacture of SALW within their areas of jurisdiction and over the import export, transit or transfer (Art. II (2)).⁴⁷ Article II (12) of the UNPoA obliges States to control transfer of SALW using the end-user certificate, conducting export application assessment and implementing effective legal enforcement mechanisms. The ATT also provides for the transfer of control of SALW whereby, all states are responsible for establishing and implementing national control systems (art. 5). States further commit to effectively regulate international trade in conventional arms and prevent their diversion [art. 11(1)]. The Kenyan SALW Management and Control Bill largely reflects the Best Practice Guidelines provisions on import, export, transfer and transit.

3.3.5 *Brokering and Dealership*

The Kenyan Firearms Act and the Bill contains good provisions on dealership. The Firearms Act prohibits dealing with SALW without a dealer's License and contravention of this attracts imprisonment for a term of not less than five, but not exceeding ten years (s. 12). The Act provides for registration of dealers (s. 13) and issuance of dealer's License (s. 14), registration of dealers place of business (s. 15), registration of transactions (s. 17), storage and safe custody (s.18), and restricts sell, transfer or repair of firearms to dealers (s. 16). The SALW Management and Control Bill, 2014 re-echoes the provisions of the Act which prohibits dealing without a License (s. 54(1)) and providing for registration of dealers (s. 55(1)), requiring dealing in specified place (s. 56(1)), renewal (s. 57), replacement (s. 61) and revocation (s.60) of dealer's License. The Bill is short in that it does not provide for age limit for applicants as well as the length for record keeping and criminal record of applicants.

Regarding brokering the Kenya's vetting and licensing Board approves the brokers. Neither the

Firearms Act nor the SALW Management and Control Bill has good provisions on brokering. Article II (14) of the UNPoA commit to regulate the activities of those who engage in SALWs brokering including registration, licensing or authorization and make appropriate punishments for illicit brokering. States further committed to consider steps (Article IV (1) (d)) to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALWs. The ATT also requires State Parties to regulate brokering including registration of brokers (art. 10).

3.3.6 *Transfer⁴⁸, Renting, Lending or Pawning of SALW*

The Firearms Act prohibits pawning of firearms (s. 20(1) and contravention attracts a minimum of 3 years and maximum of 5 years imprisonment. The Act also prohibits conversion by non-dealers and imitation of firearms (s.21). Though the Firearms Act does not provide for renting or lending of small arms the Draft Bill contains some provisions in that effect. Section 38 prohibits renting, lending, loaning, pawning or otherwise transferring possession of any small arm or ammunition to a third party.

3.3.7 *Tracing*

Both the current Kenyan Law and proposed Bill do not elaborate on tracing of firearms. The manufacturer is empowered to engrave the national identification code on firearms. The Nairobi Protocol also provides for a unique marking in addition to that of the manufacturer, which would indicate the country where the SALWs are imported. As it is the case with article 3 of the Nairobi Protocol, article 91⁴⁹ Kenya's Bill articulates a punishment to a person who erases, alters or tampers with the manufacturer's serial number or any other identification code mark on a firearm with the intention of changing its identity (Article 19 (5)).⁵⁰ States are encouraged in Article 10 of the UNPoA to consider international cooperation and assistance to examine technologies that would improve the detection of illicit trade and measures to facilitate technology transfer. Article 7 of the Nairobi Protocol provide for marking, tracing and record keeping.

3.3.8 *Manufacture and Repair*

The Firearms Act provisions on manufacture of SALW and ammunition are inadequate and do not comply with the requirements of the Best Practice Guidelines and the UNPoA.

⁴⁶The protocol on Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition supplements the UN Convention against Transnational Organized Crime (2000).

⁴⁷States commit to control in order to prevent illegal manufacture and illicit trafficking in SALW or their diversion to unauthorized recipients.

The manufacture or assembly of firearms and ammunition in Kenya is prohibited (s.9). Manufacture of small arms is only allowed on behalf of the Government and in premises designated for manufacturing (s.9 (1)). Any person who contravenes this provision is guilty of an offence and liable to imprisonment for a term of not less than ten, but not exceeding fifteen, the fundamental gaps in the Act include:

- the lack of requirement to put a mark on SALW at manufacture; the lack precision on age limit for License applicant; no details of what information is supposed to be submitted for licenses; and
- No requirement for the keeping of records by the manufacturers of SALW and length for keeping records.

The shortcomings in the Firearms Act will be addressed by the SALW Management and Control Bill once enacted into law. The Bill has elaborate provisions to regulate manufacture and repairs of SALW. Section 46(1) of the Bill prohibits manufacture of SALW, components, accessories or parts including ammunition without a Manufacturer's license. The manufactured SALW, components, accessories, parts and ammunition are only sold to registered dealers or the State from a designated place (s. 46(2)). A manufacturer's License shall be granted to authorised persons and manufacture shall be done from secure and healthy premises. The Bill further provides for marking, details in license application, record keeping by the manufacturers, renewal, replacement and revocation of manufacturer's License (s. 49 – 52). The Bill does not provide for the length of time for to keep SALW records.

3.3.9 *Disposal and Destruction of SALW*

The SALW Management Bill adequately provides for disposal of firearms (sections 73-75). Section 73(1) stipulates, "All illegal SALW impounded by the national police service shall be specially marked and recorded in the appropriate register before they are destroyed, disposed off or decommissioned as the case maybe. The section also provides for disposal of illegally manufactured SALW and state owned but unused, malfunctioning or obsolete SALW.

⁴⁸Transfer refers to hire, give, loan, lend, pawn or otherwise part with possession.

⁴⁹A person who, erases, alters, conceals or otherwise tampers with any unique identification marks or numbers affixed on any SALW in accordance with this Act commits an offence and is liable upon conviction to a sentence of not less than 10 years.

⁵⁰A person will be fined, imprisoned or both. The same applies to illicit manufacturing of SALW and illicit trafficking in SALW and illicit possession and misuse of SALW.

Under the section all unmarked SALW earmarked for destruction shall be specially marked and recorded in the appropriate register before they are destroyed, disposed off or decommissioned. Section 73(2) provides a timeframe of destruction of SALW forfeited to the State and these shall be destroyed by the State within six months of the date of the forfeiture. Unlike the Firearms Act the Bill provides for the destruction – by the court order – for any firearm or ammunition found in any building, vessel, aircraft or any place without owner.

These provisions are consistent with the Nairobi Protocol, Firearms Protocol and UNPOA. Article 9(c) of the Firearms Protocol requires the marking of deactivated firearms with a clearly visible mark attesting to its deactivation, According to UNPoA states are to ensure that all confiscated, seized or collected SALW are destroyed (II (16)). While article II.16 of the UNPOA requires the marking and registering of all confiscated, seized or collected small arms prior to their destruction or disposal. Article II (18) requires states to regularly review stocks of SALWs held by Defense and security forces so that destruction of such stocks is implemented and such stocks are adequately safeguarded until disposal. States are required in Article 8 (a) and (b) of the Nairobi Protocol to design and adopt programmes for collection, storage and destruction of obsolete SALW. Article 12 of the Nairobi Protocol provides for voluntary surrender of both SALW in lawful civilian possession for destruction/disposal by the state (Article 12 (a)) and the illegal holders to surrender (Article 12 (b)).

Similar provisions are found in article 6 of the Firearms Protocol. Article 6 states, “States Parties shall adopt, within their domestic legal systems, such measures as may be necessary to prevent illicitly manufactured and trafficked firearms, parts and components and ammunition from falling into the hands of unauthorized persons by seizing and destroying such firearms, their parts and components and ammunition unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded”.

3.4 Review and Analysis of Other Legislation on SALW

Other laws reviewed include the Security Laws (Amendment) Act, 2014 which established the Firearms Licensing Board (section 35), the Wildlife Conservation and Management Act, 2013, Prisons Act, 1962, Kenya Defense Forces Act, 2012 and the National Police Service Act, 2011 all of which allow their officers to possess and use firearms.

3.4.1 Security Laws (Amendment) Act, 2014

Section 35 of the Security Laws (Amendment) Act, 2014 amends the Firearms Act by repealing section 3 and replacing it with a new section 3 that established the Firearms Licensing Board (s. 35(1). The Board shall be appointed by the Cabinet Secretary for Interior and shall consist of a Chairman and two representatives from the National Police Service one of whom shall be from the Directorate of Criminal Investigation. Other members are from AG’s office, registered gun owners, Wildlife Service and NFP (s. 35(2). The functions of the Board shall be to:

- a) Certify applicants suitability and periodically assess proficiency of firearms holders;
- b) Issue, cancel, terminate or vary any issued License or permit;
- c) Register civilians firearm holders, dealers and manufacturers of firearms;
- d) Register, supervise, and control all registered shooting ranges; and
- e) Establish, maintain and monitor a centralized record management system.

To service the Board section 35(3) establishes a Secretariat of the Board which shall consist of such officers as may be necessary to discharge its duties under this Act. The persons serving as licensing officers immediately before the commencement of this section shall be deemed to be officers of the Secretariat referred to in subsection. The amendments prohibits certain acts that were not covered under the existing Firearms Act. Section 36 prohibits manufacture, assembling, purchase, acquisition or possession of an armoured vehicle without a certificate of approval.

3.4.2 Wildlife Conservation and Management Act, 2013

The Wildlife Conservation and Management Act is another law that allows use of firearms by wildlife officers. The uniformed and disciplined officers of the Wildlife are allowed to use firearms necessary for performing their duties as directed by the President through the IGP [s. 112(1)]. The officers shall undergo proper training and may use firearms for specific actions that include;

- a) Law enforcement against any person charged with an offence punishable under this Act, when that person is escaping or attempting to escape lawful custody;
- b) Against any person who, by force, removes or attempts to remove any other person from lawful custody;
- c) Against any person who, by force, attempts to prevent the lawful arrest of himself or any other

person; or (iv) any person unlawfully hunting any wildlife using a firearm; (b) in self-defense or in defense of another officer or other person;

d) For the protection of people, property and animals against bandits or any animal causing destruction to human life or crops or livestock or property; and

e) For wildlife veterinary activities.

Regarding poaching the Wildlife Conservation and Management Act applies both stick and carrot to address the vice. The coercive measures includes the use of prohibition activities and imposing punitive sanctions for violations. The Act has created several offences that attracts stiff penalties of up to imprisonment for life. The Act prohibits import, export, re- export, or otherwise trade in any wildlife species without a permit issued by the Wildlife Service [s. 85(1)] and anyone who contravenes this will on conviction be liable to 2 - 5 years imprisonment or a fine of 1 million to 10 million shillings or both [s. 99(3)]. The Act also prohibits dealing in trophies without a License (s. 84) whose contravenes can lead to a minimum prison sentence of 5 years or fine of 1 million shillings or both (s. 95). If the offence relates to endangered species the fine is 20 million shillings or imprisonment for life or both (s. 92). Similar penalty applies to anyone who engages in sport hunting or any other recreational hunting without a License [s. 96(1)]. To ensure proper enforcement of the law, the Act mandates the Director of Public Prosecutions to designate special prosecutors to prosecute wildlife offences [s. 107(1)].

To complement these measures the Act provides incentives that encourages the community, private sector and general population to participate in wildlife activities and prevention of poaching. Under section 70(1) of the Act every person has the right to practice wildlife conservation and management as a form of gainful land use. To effect this the Act allows for the creation of community or private conservancies (s. 39) and Community Wildlife Associations and Managers (s. 40). The Act further provides for incentives and benefit sharing between the Wildlife Service and other stakeholders (s. 76). These are good initiatives that gives people additional stake in management of wildlife and fighting poaching.

3.4.3 National Police Service Act, 2011

The National Police Service Act, 2011 was enacted to give effect to the Kenyan 2010 Constitution; to repeal and replace the law relating to Police Service; to provide for the functions, organization and discipline of the National Police Service; to provide for the powers and responsibilities of police officer; and to ensure the efficient and transparent

management of the Police Service. Section 61(2) of the National Police Service Act allows the police officers to sue firearms in accordance with the rules on the use of force and firearm contained in the 6th Schedule. Under the 6th Schedule the use of arms or force shall be proportional to the objective to be achieved, the seriousness of the offence, and the resistance of the person against whom it is used, and only to the extent necessary while adhering to the provisions of the law and the Standing Orders (rule 2 of the 6th Schedule). When the use of force results in injuries the police officers present shall provide medical assistance immediately and unless there are good reasons, failing to do so shall be a criminal offence; and shall notify relatives or close friends of the injured or affected persons (rule 3).

3.4.4 Prisons Act, 1962

The Prisons Act allows use of force and firearms by prison officers. A prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders or in order to maintain discipline in a prison. A prison officer may use any weapons which have been issued to him or her, including firearms, against a prisoner the use of weapons, including firearms, is the only practicable way of controlling the prisoner. A firearm may be used against a prisoner who is escaping or attempting to escape, breaking out or attempting to break out, engaged in prison riots or endangering the life of other prisoners, persons or prison officers (s. 12).

3.4.5 Kenya Defense Act, 2012

The KDF Act provides for the functions, organization and administration of the Kenya Defense Forces pursuant to Articles 232 and 239(6) of the Constitution, gives effect to Article 241 and other relevant Articles of the Constitution, and provides for disciplinary matters. The Act does not specifically provide for use of firearms by the KDF but provides for their deployment internationally or domestically. Under the Act the KDF is responsible for the Defense and protection of the sovereignty and territorial integrity of Kenya, shall assist and co-operate with other authorities in situations of emergency or disaster; and may be deployed to restore peace in areas of Kenya affected by unrest or instability with approval of the National Assembly (s. 8).

3.5 Offences and Penalties

Both the Firearms Act and the proposed Bill have good criminal provisions for serious offences and penalties that comply with the requirement of the Nairobi Protocol and UNPOA on stiffer

penalties with minimum and maximum sentences. The Firearms Act provides for offence of making false statement (s. 5(9), 8(15), failure to return revoked permits [s. 7(14)], illegal possession of firearms [s. 4(1)(a)], use of firearm for crime[s.4(1) b)], illegal purchase, acquiring or possession of a firearm or ammunition without holding a firearm certificate. The Act prohibit manufacture of firearms unless for government and contravention of this provision attract a minimum sentence of 10 years and maximum of 15 years. For illegal possession and use of firearm to commit crime the Act provide for a maximum imprisonment of life but without a minimum (s. 4(1). For illegal purchase, acquiring or possession of a firearm or ammunition the penalty if a minimum of 7 years and maximum of 15 years imprisonment for prohibited weapons and 10 years for non-prohibited weapons.

The SALW Management Bill also provides for substantive criminal provisions in Part VII, sections 80 to 97. The Bill prohibits giving away or lending of SALW in one's possession (s.80(2), an unauthorized way due to influence of alcohol or drugs (s.80(3), reckless or negligence loss of SALW (s.81), failure to secure SALW or exposure of it to the public without lawful cause (s.82), illegal manufacture (s.83), illegal possession (s.84), illegal import or export (s.85) and illegal circulation (86), defacing and failure to report loss (s.89), failure to disclose information (s.90), tampering with special marks on SALW (s.91), obstruction (s.92) and imitation of SALW (s.94). It is also an offence to aid and abet the commission of any of these offences and this attracts sanctions like committing the offence itself (s.87).

The Bill provides for stiffer penalties ranging from 2 years for non-disclosure of information (s.90) to 20 years for illegal possession (s.84&93), illegal import/export (s.85), or fines ranging from 2 to 20 million shillings. The contradiction is that the Bill does not provide minimum and maximum penalties for the same offences. Instead for some it has minimum and others it provides maximum.

3.6 Institutional Framework

The key institutions dealing with SALW in Kenya are both a creation of the law and administrative actions. The institutions are the National Focal Point, Firearms Licensing Board (section 35 of the Security Laws (Amendment) Act, 2014), the Chief Licensing Officer (CLO) (section 20(1).

3.6.1 National Focal Point

The NFP was created as the national Secretariat for SALW within the Office of the President but

currently it is under the Ministry of Interior and Coordination of National Government. The Bill creates the Firearms Vetting and Licensing Board and the CLO. The membership of the Board includes the NFP which means the NFP will continue to exist and the Board or its Secretariat will not perform that role. The Bill mandates the Board to establish a Secretariat and appoint such officers as may be necessary to discharge its duties (s.15). The Bill should explicitly establish the NFP with proper mandate and TOR to avoid ambiguity and potential institutional rivalry. The lack of clear provisions for the NFP are in contravention with the Nairobi Protocol, UNPOA and ATT provisions.

State Parties according to UNPoA (art. 5)) are committed to establishing a coordination point on matters related to the implementation of the POA. Article II (4) of the UNPoA directs States to designate institutions responsible for policy guidance, research and monitoring of SALW control. Likewise, in the ATT (art. 5 (6)) states promise to specify one or more national points of contact⁵¹ - to be communicated to the Secretariat. At the regional level the Nairobi Protocol requires States to establish NFPs to, inter alia, facilitate the rapid information exchange to combat cross-border SALW trafficking [Art. 16(a)]. The parties also agreed to establish or enhance inter-agency groups, involving police, military, customs, home affairs and other relevant bodies, to improve policy co-ordination, information sharing and analysis at national level [Art. 4(d)].

Where the Bill is short the National Policy on SALW has provided elaborate institutional framework on SALW that are in tune to the current devolution framework in the country. Chapter 3 of the Policy articulates the various implementation frameworks that should be put in place to facilitate management and coordination of SALW and further enable agencies responsible for SALW control and management affairs to work in congruence. The agencies established by the policy include the SALW Directorate, Inter-Agency Committee on SALW, SALW Inspectorate, County and Sub-County Task Forces on SALW. It also defines the transitional mechanisms from the current secretariat to the envisaged directorate. The annexure to the Policy illustrates the proposed organizational structure which is required for effective policy implementation. These provisions unlike those of the Bill are in consonant with the regional and international instruments. The Bill should be reviewed to incorporate the provisions in the Policy.

⁵¹The treaty specifies that the national point of contact is mandated to exchange information on matters related to the Treaty execution as well as regularly update the information on SALW.

3.6.2 *Firearms Licensing Board*⁵²

Kenya established a Firearms Licensing Board under section 35 of the Security Laws (Amendment) Act, 2014. This provision was extracted from the draft Small Arms and Light Weapons Management and Control Bill, 2014. The board comprised a chairperson and representatives from the police, CID, Attorney General, Private Sector, Kenya Wildlife Authority and National Focal Point. The Board has a Secretariat which consists of such officers as may be necessary to discharge its duties.

The Board represented by the members appointed to the Secretariat is charged with : (a) certifying suitability of applicants and periodically assessing proficiency of firearms holders; (b) issuing, canceling, terminating or varying Licenses or permits issued; (c) register civilians firearm holders, dealers and manufactures of firearms under this Act; (d) register, supervise, and control all shooting ranges that are registered under this Act; (e) establish, maintain and monitor a centralized record management system under this Act; (f) perform such other functions as the Cabinet Secretary for Interior and National Coordination⁵³ may prescribe from time to time. During the review the Board members had not been appointed.⁵⁴

3.6.3 *Chief Licensing Officer*

The Bill in section 20(1) establishes the office of the Chief Licencing Officer. Section 20(1) states, “the IGP shall, by notice in the Gazette, appoint in consultation with the National Police Service Commission a CLO to perform the duties and exercise the powers conferred by this Act”. The CLO performs the functions of: a) implementing the decision of the Board, b) renewing and revoking of license; c) liaising with officer commanding station(OCS) throughout Kenya to keep track with arms within their jurisdiction [sections 20(2), 46(2), 49, 51, 52(2), 57(1)]. The Bill is quiet on the powers of the CLO to issuing Licenses or permits yet he or she has renewal and revocation powers. This needs to be clarified and harmonized to avoid ambiguity.

3.7 *Regional and International Cooperation*⁵⁵

In order to combat illicit trade in SALWs States parties commit in Article III (7) of the UNPOA to foster cooperation, exchange experience and conduct joint training among officials⁵⁶ at the national,

⁵²In 2014 Kenya extracted the section on firearms licencing and inserted it in the Omnibus Security Laws (Amendment) Act, No. 19 of 2014. The section still remains in the draft SALW Management and Control Bill, 2014

⁵³Cabinet Secretary responsible for Immigration, (s.3 of the Bill)

⁵⁴The members of the Board were appointed in March 2016 by the Cabinet Secretary for Interior

⁵⁵This aspect covers issues such as joint training and information sharing.

⁵⁶They include customs and crime control officials, police, intelligence

regional and global levels. This is emphasized in the Nairobi Protocol objective (Article 2 (c)) which encourages governments to promote and facilitate information sharing and cooperation in the sub-region as well as between the governments and other key stakeholders. Likewise Article 4 (a) and (b) of the Nairobi Protocol provides for strengthening sub-regional cooperation among law enforcement and security agencies in suppressing criminal activities related to circulation and trafficking in SALWs. Again, in the UNPoA (III (11)) states commit to cooperate through existing global and regional frameworks in tracing illicit SALWs especially exchange of relevant information. In Article III (12) of the UNPoA states are encouraged to exchange information on a voluntary basis on their national marking systems on SALWs.

Kenyan legislation is not in line with these international and regional instruments. The existing legislation and the Bill do not provide for international cooperation as specified by the above provisions of the Nairobi Protocol and UNPOA. They also do not provide for embargoes and violation of arms embargoes mandated by the UNSC and/or regional organisations

3.8 *Other Stakeholders*

The non-state actors have also been identified as important stakeholders in combating illicit trafficking and proliferation of SALWs. Article 2 (c) of the Nairobi Protocol provides for the involvement of the civil society organizations to promote information sharing and cooperation in issues related to illicit trafficking and proliferation of SALW. The UNPoA provides that states commit to encourage NGOs and civil society IV (2) (c) to engage, as appropriate, in all aspects of international, regional and sub-regional and national efforts to implement the POA. The Kenyan current legislation and Bill fall short of the provisions of UNPOA and Nairobi Protocol. The only non-state actor recognized in the Bill are SALW dealers whose representation is provided for [Art. 4(2)(e)]. Although civil society continue to be a major player in SALW matter it is unfortunate that neither the Kenyan law nor the bill refer to the involvement of a representative from the civil society as a member of the Firearms Licensing Board. The only little room where a member of the civil society may participate is provided in section 4(3) which allows the Board to co-opt not more than three persons to be ex officio members of the Board if they deem it necessary for the discharge of their mandate. The bill should be reviewed to specifically provide for other relevant stakeholders to serve on the Board.

3.9 Conclusion on Kenya

This report reviewed Kenya's compliance to the international instruments on SALW, particularly the Firearms Act and SALW Management and Control Bill (2014). It was found that to a certain extent Kenya's current legislation conforms to the regional and international protocols. The Bill once enacted will greatly improve Kenya's compliance. There is an existing gap in the bill in that it does not provide for a fully-fledged institutional framework for its implementation. Yet the National SALW Policy provides for a decentralized implementation frameworks that comprise of the SALW Directorate, Inter-Agency Committee on SALW, SALW Inspectorate, County and Sub-County Task Forces on SALW. The Bill should further explicitly determine the role of the Board Secretariat. The existing legislation and the Bill also do not provide for international cooperation which is provided for by most of international and regional instruments as an important intervention in the fight against SALW proliferation. Lastly, under the Bill the NFP is not specifically established and the NFP or directorate shall continue to have financial dependence on the Ministry of Interior which affects its operations.

3.10 Existing gaps

a) To promote regional harmonization and uniformity of provisions, Kenya may consider the inspiration from the provisions of the Tanzania Firearms and Ammunition Control Act and Uganda's Firearms Control Bill, 2015 and further review and harmonize the draft SALW Management and Control, 2014 with the regional and international instruments as well as with the Tanzanian Act and Ugandan Bill.

b) To comply with the provisions of the ATT, UNPOA, Firearms Protocol, Nairobi Protocol and Best Practices Guidelines the Bill should provide for the establishment of the Directorate of SALW management and control with clear mandate and TORs, participation of civil society and tracing

c) The Bill should incorporate decentralized implementation frameworks and the more compliant provisions provided in the draft National Policy on SALW to facilitate management and coordination of SALW and further enable agencies responsible for SALW control and management affairs to work in congruence. The institutional framework should provide for the establishment of the SALW Directorate or autonomous agency, Inter-Agency Committee on SALW, SALW Inspectorate, County and Sub-County Task Forces/Committees on SALW.

d) The NFP or SALW Directorate should be given autonomy in terms of budget and operations by granting it a financial vote.

e) To ensure inclusivity of players outside government there is need to amend the composition of the Firearms Licensing Board to include civil society representation (sections 3(2) of the Firearms Act as amended and 4(2) of the SALW Management and Control Bill).

f) To meet regional and international obligation the Bill should be reviewed to incorporate provisions for regional and international cooperation including mutual legal assistance, tracing and UN arms embargo.

g) Review the SALW Management and Control Bill, 2014 and incorporate provisions to regulate private security organisations, stockpile management, duration of keeping firearms records, tracing, and provide for minimum and maximum penalties for the same offences.

h) To be in tandem with its neighbours in the EAC, Kenya Parliament should enact the Small Arms and Light Weapons Management and Control Bill, 2014.

4 The Case of Uganda

Like Kenya and Tanzania Uganda is a member to several regional and international institutions, with security cooperation frameworks including those on the management of SALW. In addition to being a UN member⁵⁷ the country is also a member of the EAC, and founding member of the RECSA. This section reviews Uganda's laws relating to SALW specifically the Firearms Act (1970) as well as other SALW laws. The report also assess the progress of the law review in the reform process in Uganda.

The report interrogates the Firearms Control Bill (2015) and evaluates the extent to which the current and proposed legislation complies with the regional and international instruments on SALWs. Reviewed instruments include the ATT (2013); Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons (2005); the UNPOA (2001).

4.1 Harmonization Process in Uganda

The Republic of Uganda is yet to complete the harmonization of its SALW legislation with regional and international SALW instruments. It is however important to note that the country is engaged in a review of its laws relating to control and regulating SALW. The review of its Firearms Act is aimed at developing a consolidated SALW law that harmonizes with SALW regional and international instruments.

The Ministry of Internal Affairs has made legislative proposals in form of a Draft Firearms and Control Bill, 2015 that domesticate most of the provisions of international and regional SALW Instruments such as the Nairobi Protocol, ATT, Firearms Protocol, ITI and UNPOA and are compliant with the Best Practice Guidelines. The Bill also share some similar provisions with the Kenyan Bill and the Tanzanian FACA, a step in the right direction to the harmonization of SALW with its RECSA neighbours.

The Uganda's Firearms Control Bill, 2015 was drafted after eight years review process.⁵⁸ The country made some significant reforms on its SALW legal regime in 2007 to urgently address some pertinent issues on the use and possession of SALW by private security organizations (PSO). In 1997 the country drafted the Control of Private Security Organisations Regulations of 1997 under sections 72(1)(a) and section 73(1)(p) of the Police Act.⁵⁹

The harmonization process has taken long due to the need to consult widely, have an inclusive process and need to develop national consensus on the key legislative proposals. The review process was also affected by lack of adequate financial and human resources as well as competition from other urgent national priority actions that require legislation.⁶⁰

The review process has taken long having started in 2007. The harmonization process is being spearheaded by a Law Review Committee that is coordinated by the NFP. The Committee comprises of the police, army, intelligence, President's Office, Law Reform Commission, Attorney General [First Parliamentary Counsel (FPC)], civil society and private security firms. The Committee prepared a concept document outlining key issues for review, and conducted national consultations of key stakeholders. Based on the consultations report, regional and international SALW Instruments and the Best Practice Guidelines, a draft Firearms Control Bill was drafted in 2015.

A draft Cabinet Memorandum has been prepared and the Bill awaits to be presented to Cabinet to approve its submission into Parliament. The Memo sets out the objectives of the Bill, the gaps in the current laws, how the Bill addresses the gaps, the impact of the Bill on the people and crime, and

⁵⁷Uganda is signatory to the UNPoA, Nairobi Protocol, ATT, ITI and Firearms Protocol.

⁵⁸Interview with CP Maknot Okello, NFP Uganda on November 12 2015 at 10.00 a.m.

⁵⁹Sections 72(1)(a) and section 73(1)(p) of the Police Act empowers the minister responsible for internal affairs to make regulations for the control of PSOs including their registration and use of equipment or uniform.

⁶⁰Interview with Jacqueline Akuno, Principal Legal Officer Uganda Law Reform Commission and Member of the Review Committee on January 5 2016

finally the Memo outlines the key provisions of the Bill. In the meantime the Committee is still conducting consultative workshops on the draft Bill which involved mostly government agencies, PSOs and civil society to gain further consensus before the Bill is submitted to Cabinet for approval. The missing gap in this process is that the Committee has not fully engaged Parliament in the consultation workshops. There is therefore need to conduct workshops for MPs on this bill involving key committees and technocrats.

4.2 Assessment of the Review Process in Uganda

The Uganda review process is fairly comprehensive and inclusive involving key stakeholders on SALW. It meets the minimum standard for carrying out law reform/review. Consultations are ongoing with the last stakeholder consultative workshop held in September 2015. It may be to date the only legal harmonization to undertake an economic and financial regulatory assessment of the Bill to ascertain and provide the implementation costs once the bill is enacted into a law. This will enable the Ministry of Internal Affairs, CAR, NFP and the Committee to plan for implementation once the Bill is enacted into law.

The legal harmonization process has taken long in Uganda. There is therefore need to expedite the process by engaging Parliament especially the Parliamentary Committee on Defense and Internal Affairs, and the Legal Affairs Committee. Funds available a key step should be organizing a retreat for members of the Committee, all chairpersons' of Parliamentary committees, their clerks and the Directorate of Legal Affairs of Parliament. During the retreat the participants shall be given an opportunity to get presentation on the reform process, international and regional instruments, key provisions of the Bill and its rationale. The retreat shall also discuss and reach consensus on the Bill clause by clause.

4.3 Legal and Institutional Framework

4.3.1 Firearms Act, Cap. 299

The Firearms Act (Cap. 299) aimed to amend and consolidate the law relating to the regulation, control, manufacture, import, export, sale, repair, storage and possession of firearms and ammunition. The Act provides for regulation of purchase, possession, manufacture, sale, dealership, transfer, importation, exportation and transportation of firearms and ammunition.

4.3.2 *Firearms Control Bill, 2015*

The FCB aims to consolidate and harmonise the laws relating to control and management of firearms; to establish an Arms Management and Disarmament Committee and Central Firearms Registry; to provide for a centralized registration and licensing of firearms; to streamline the manufacture, transfer, transit, export, import of firearms and ammunition; coordinate stockpile management; to repeal the Firearms Act Cap. 299; and provide for related matters. The Bill has substantive provisions on institutional framework, licensing, possession, marking, tracing, record keeping, manufacture, dealership, brokerage, transportation, financing, import, export, possession and use private security, acquisition by security agencies, disposal and destruction of firearms and ammunition in Uganda.

4.4 *Assessment of the Firearms Act and the Firearms Control Bill, 2015*

4.4.1 *License and Record Keeping*

The Firearms Act gives lots of discretionary powers to the Chief Licensing Officer (CLO) in regards to granting of firearms Licenses. The CLO may, in his or her discretion, refuse to issue a firearm certificate without assigning any reason for the refusal (s. 4(4)). The CLO also has discretion to do the following without providing any reason: suspend or revoke a License (s.5(1)), refuse to register firearms dealer (s.13(2)), remove names of firearms dealers and gunsmiths from the dealers register (s.16(1)). The Act prohibits purchase, acquisition and possession of firearms and ammunition without a valid License (s.3(1)). It authorizes the CLO to keep or cause to be kept a register of firearm certificates and shall cause to be entered in it the name of every person to whom a firearm certificate has been issued.

In contrast to the Firearms Act, the proposed FCB provides for an elaborate, decentralized and consultative process for licensing and permits acquisition. The Registrar of firearms⁶¹ is responsible for granting Licenses, permits, certificates and accreditation and recover the fees payable (s.5 (1) of the Firearms Bill, 2015). The FCB provides for different classification or Licenses and permits. Licenses are classified as dealers, possession for self Defense, possession for hunting, possession for theatrical, film or television production, manufacturer's, gunsmith's, broker's shooting instructor and shooting range administrator (s.23). While the permits are classified as dealers, brokers, import, export, temporary import, transit and removal permits (s.31).

⁶¹The Registrar is appointed by the Minister from among the serving members of the Armed Services.

The Bill provides for application and granting of Licenses and permits to qualified persons and institutions as well as their renewal and revocation (sections 24 - 33). The Bill also provides for competent certificates (ordinary and advance) in Part III sections 17 to 20. The Bill further provides for accreditation to provide training in use of firearms based on trustworthiness, integrity, suitability, capacity and qualification (s. 21 & 22).

The FCB also provides for record keeping and establishes a Central Firearms Registry which keeps records (s. 8)⁶² and consists of the civil firearms registry, the military firearms registry, and the National Focal point for coordination of national, regional and international action on control of firearms (s. 8).⁶³ Dealers are also required to keep records of their transactions by keeping registers that are linked to the CAR (s. 74).

These provisions are also specified by the Best Practice Guidelines (2005:11) on the establishment of the national register with the national database led by the registrar.

Consistent with (Article 4 (c)) of the Nairobi Protocol, the Ugandan Firearms Act empowers the Registrar to establish and maintain the Central Firearms Database (section 3 (a)) while the Bill establishes the CAR (s.8). This complies with the UNPoA provision (11(9)) whereby member states are committed to keeping detailed and comprehensive records of manufacture, holding or transfer of SALW under their jurisdiction. Likewise, Article 5 (2) of the ATT obliges states to establish and maintain a national control system. Each state commits to produce national control list to the Secretariat, to be availed to the other states (Article 5 (4)).

The Firearms Bill of 2015 specifies the timeframe (10 years) for keeping the records, as it is the case for the Best Practice Guidelines (2005:10). Other key gaps in the Firearms Act of 1970 catered for in the 2015 Firearms Control Bill include: centralised registration of all civilian owned SALW, keeping of records on the import, export and transit of SALW and SALW records be maintained for not less than ten years [s.74(2)].

4.4.2 *Possession*

Parts III-VII of the Firearms Control Bill (2015) determines the process of acquiring permission and qualifications⁶⁴ to own firearms for private or business purposes. The Act exempts the member of the armed forces (army, police and prisons) from its application (s.43).

⁶²The registry contains registers with names, address and other particulars of the owner as well as details and particulars of the dealer, gunsmith, broker, transporter, importer and exporter.

The Bill further specifies procedures for permit application that includes obtaining a certificate of competency before applying (section 17-20). Part VI provides for possession of firearms by private security organisations (PSO) which includes acquisition of an advanced competency certificate and possession Licenses for each firearm user (s.51). The PSOs can only use authorised arms (s.52) and must establish and maintain proper security measures (s.53), records and safe storage (s.54). Employees of a PSO only possess firearms and ammunitions while on duty (s. 51(8)). Part VII sections 56-58 provides for possession of firearms by security agencies. It provides for the types, acquisition and registers of firearms for security agencies including the police, prisons, army, reserve force and intelligence.

These provisions of the Act and Bill comply with the Nairobi Protocol (Article 3 (c) (i-iii) whereby states are to incorporate in their national laws, among others, measures to control civilian possession of small arms. States commit in Article 5 (a) of the Protocol to review national procedures and criteria for issuing and withdrawing licenses and maintaining the national database of licensed SALW, owners and dealers. To complement regional initiatives to control SALW the Uganda law empowers the Minister of Internal Affairs to recognize firearms licenses issued in the neighbouring countries.⁶⁵ It should be noted, that the Firearms Bill of 2015 addresses most of stockpile management elements⁶⁶– as specified in the Best Practice Guidelines on the Implementation of the Nairobi Declaration and Protocol (2005). The Bill restricts possession to persons of 25 years and above (s. 18(2)(b) as provided in the Best Practice Guidelines on sections of Marking and Accountability.

In compliance with the international and regional regulations on marking, both the 1970 Firearms Act (s.8) and the FCB (s. 59) stipulates that to obtain or renew a firearm License it is compulsory to present a marked firearm with the manufacturer's serial number or any other identification. Likewise, the UNPoA [Art. II(2)] requires the manufacturer to engrave a unique marking⁶⁷ on each SALW.

Section 8(2) of the Act states, “no firearm certificate shall be issued or, as the case may be, renewed, in respect of a firearm unless such firearm bears a mark or number of identification or is first marked with such a mark or number- by, or under and in accordance with the directions of, the CLO”.

⁶⁵According to the legislation, the CAR shall be under the control of the Registrar.

⁶⁴For instance, to obtain a firearm license the person should be aged 25 or above.

⁶⁵The countries identified with reciprocal recognition include all of the GLR/ EAC members and one from Central Africa. The law requires the Registrar to submit to the Minister an annual report showing all issued permits.

Section 59(1) of the Bill states, “all firearms owned or carried under a License within the jurisdiction or control of the Government of Uganda (GOU), shall bear a mark inscribed on it by the manufacturer and the GOU”. Similar section 60 of the Bill provides for marking of all firearms under the jurisdiction of the State for both the state and civilian use. The laws also provide for the unlawful possession of a firearm or ammunition without a manufacturer's dealer's, or a gunsmith's License or an import, export, on-transit or transporter's permit.

Article 3(c) (iv & v) of the Nairobi Protocol provide for the same on controlling the manufacture of SALW. Similar to the Best Practice Guidelines the FCB [s. 59(3)] specifies that marking shall be prescribed by the registrar. The Bill also specifies the form of penalty⁶⁸ to persons who erase, alter or tamper with the manufacturer's serial number. The Ugandan bill stipulates for unlawful possession of both unmarked firearms (s. 60(2)) and ammunition (s. 61(4)). Section 60(2) states, “a person who is found in possession of unmarked firearm or ammunition commits an offence and on conviction shall be liable to imprisonment of a term of five years or to a fine of two hundred currency points or to both (s.60(2)).” Key gaps of the Firearms Act bridged by the Bill include specification of the information that markings should contain or of where on the small arms markings should be placed, and provisions making it offence to alter, falsify or remove markings.⁶⁹

4.4.3 Import, Export and Transit

Both the Firearms Act [s. 26(1)] and the Firearms Control Bill [s. 78(1&2)] require every importer, exporter or transit of firearms and ammunition through Uganda to obtain a permit. The CLO or LO can revoke the import or export permit without giving any reason under the Act (s. 26(6) but the Registrar is given lists of reasons for the refusal under the Bill (sections 26, 27, 28, 32 (4) & 33). To import firearms and ammunition the Registrar is empowered to issue a certificate to the importer who is supposed to be a licensed dealer.

⁶⁶According to Best Practice Guidelines stockpile management include planning, acquisition, possession, record keeping, safe storage, control, maintenance, production and disposal of SALWs stockpiles.

⁶⁷According to the UNPoA the marking has to indicate the country of manufacture and also provide information that enables the national authorities to identify the manufacturer and the serial number for tracing purposes.

⁶⁸According to the bill, the person commits an offence and on conviction shall be liable to imprisonment to a term of 10 years.

⁶⁹Marks are put in the barrel and frame and shall contain the name and or the registered logo of the manufacturer, the country and place of manufacture, the mark UG followed by the serial numbers and any other mark issued by the Registrar, date of manufacture, type and model, and the caliber of the firearm [section 65(1, 2&3)]

Similarly, a person importing or exporting firearms or ammunition on transit, through Uganda for trade or personal use is required to get a separate permit. These provisions are similar to those of the Firearms Protocol, ATT, Nairobi Protocol, Best Practices Guidelines and UNPOA.

Article 10 of the Firearms Protocol (2001)⁷⁰ empowers the firearms registrar to grant, suspend, refuse, renew or cancel a transit permit for the importation of arms or ammunition, whether in whole or in parts to contiguous states. This provision echoes articles 3 (c) (v) and 10 of the Nairobi Protocol that provides for the import, export, transfer and transit of the SALW. Likewise, in the UNPOA, States commit to effectively control the manufacture of SALW within their areas of jurisdiction and over the import export, transit or transfer (Article II (2)).⁷¹

Article II (12) of the UNPoA requires States to control transfer of SALW by using the end-user certificate and implement effective legal enforcement mechanisms. The Arms Trade Treaty also provides for the transfer control of SALW whereby, all states are responsible for establishing and implementing national control systems. States further commit to effectively regulate international trade in conventional arms and prevent their diversion. The FCB fully reflects the Best Practice Guidelines and other Instruments' provisions on transfer.

4.4.4 *Brokering and Dealership*

There are no provisions on brokering in the Firearms Act but it has been provided in the FCB. The Firearms Bill (s. 69, 70 & 72) provides for brokers, manufacturers and gunsmiths. The Registrar of firearms will approve the brokers [section 5(1) (b)]. The Registrar of firearms is responsible for the issuance and administration of all dealers and brokers Licenses and permits [s. 72(1) & 75(1)]. This is in line with Article II (14) of the UNPoA where parties commit to regulate the activities of those who engage in SALWs brokering including registration, licencing or authorization and the appropriate punishments for illicit brokering. States are further committed to consider steps (Art. IV (1)(d)) to enhance international cooperation in preventing, combating and eradicating illicit brokering in SALWs. The FCB also echoes the Best Practice Guidelines (2005:30) on registration, licencing of

⁷⁰The protocol on Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition supplements the UN Convention against Transnational Organised Crime (2000), which has not yet entered into force.

⁷¹States commit to control in order to prevent illegal manufacture and illicit trafficking in SALW or their diversion to unauthorized recipients.

⁷²Transfer refers to hire, give, loan, lend, pawn or otherwise part with possession.

individuals and/or companies involved in dealing and brokering transaction (s. 72 & 75).

4.4.5 *Transfer⁷², Renting, Lending or Pawning of SALW*

Renting, transfer or pawning of firearms to persons who are unfit to have a firearm or who does not have a License is prohibited by both the Firearms Act and Bill (s.20 & s.105). Section 20(1) of the Act states, "no person shall take or accept any firearm or ammunition from any other person as a security for any money lent to that person or for any performance of an action done". Contravention of this provision attracts 6 months imprisonment sentence if convicted (s. 20(2)). Section 105 of the Bill states, "a person who pawns or pledges a firearm or ammunition commits an offence and shall face imprisonment of a term not exceeding 10 years." These provisions are harmonized with the Nairobi Protocol and Best Practice Guidelines. Article 3(c) (x) of the Nairobi Protocol requires States to make provisions prohibiting pawning and pledging of SALW.

4.4.6 *Tracing*

The Uganda's Firearms Act is not very elaborate on tracing but the Bill has bridged the gap. In accordance with article 17 of the ITI all tracing requests under the Bill are made to the Registrar (s.11(1) which contains information describing the illicit nature of the firearms, circumstances under which the firearms were found or lost, markings, type, and caliber of firearm as well as the intended use of the information being sought (s.11(2)). The tracing requests from outside Uganda is made by the Registrar through diplomatic channels (s.13). Section restricts persons who can access tracing information to competent authorities designated by the requesting agency or State and can't be released to anyone else without consent of the state providing the information. The Information can only be used for purposes consistent with the ITI.

The mark and serial numbers on the arms serve to facilitate tracing. The FCB specifies that the registrar determine the national identification code⁷³ of the SALW through a notice in a Gazette (s. 59(3)). The Registrar is empowered to engrave the national identification code on firearms (s. 19(2)).

⁷³Article 59 (3) of the firearms control bill empowers the registrar to make specification of the mark for civilian owned firearms by notice in the Gazette.

The provisions of the FCB are consistent with the Nairobi Protocol that provides for a unique mark in addition to the manufacturer serial number, which would indicate the country where the SALWs are imported from. As it is the case with Article 3 of the Nairobi Protocol, section 66 (5) of the Firearms Control Bill articulates a punishment to a person who erases, alters or tampers with the manufacturer's serial number or any other identification code mark on a firearm with the intention of changing its identity. States are encouraged in Article III (10) of the UNPoA to consider international cooperation and assistance to examine technologies that would improve the detection of illicit trade and measures to facilitate technology transfer. Article 7 of the Nairobi Protocol provide for marking, tracing and record keeping. While there is a provision on state-owned SALW, Part V of the FCB provides for control of ammunition privately owned or those owned by individuals.

4.4.7 Manufacture and Repair

The Firearms Act prohibits manufacture and assembling of firearms and ammunitions (s. 11(1)). These acts are attracts a life imprisonment sentence (s. 11(3)). The FCB allows for manufacture or assembling of firearms and ammunition in the Uganda but requires a manufacturing License [s. 64 (2)]. On armaments repair, the gunsmith's permit is required under the Bill [s. 69 (1)] to persons who also have possession License. Article 69(4) of the FCB (2015) specifies that a gunsmith shall not permit any person to carry out gunsmith of firearms on his or her behalf unless that person is in possession of the appropriate competence certificate. While there are specific provisions in Ugandan legislation, the Best Practice Guidelines and the UNPoA do not give a direct reference on repair.

4.4.8 Disposal and Destruction of SALW

Part XIV (sections 85-89) of the 2015 Firearms Control Bill stipulates the disposal and destruction of firearms. Furthermore, the Ugandan legislation provides for the destruction of all firearm or ammunition that have been abandoned or cannot be safely stored and illicit firearms seized by national authorities after registration. Article 88 specifies on firearms disposal once a holder of a License does not wish to renew the License. This is consistent with the regional and international instruments. States are required in article 8 (a) and (b) of the Nairobi Protocol to design and adopt programmes for collection, storage and destruction of obsolete SALW.

Moreover, Article 12 of the protocol provides for voluntary surrender of both SALW in lawful civilian possession (art. 12 (a) and illegal holders (Art. 12 (b)) for destruction/disposal by the state. According to UNPoA, States are to ensure that all confiscated, seized or collected SALW are destroyed (art. 16)). Article 18 requires states to regularly review stocks of SALWs held by Defense and security forces so that destruction of such stocks is implemented and such stocks are adequately safeguarded until disposal. Other missing provisions in the Firearms Act of 1970 that have been catered for in the Bill include re-activation of de-activated SALW and collection, safe-storage, destruction and responsible disposal of weapons rendered surplus, redundant or obsolete (sections 84, 86, 87 & 89).

4.5 Review and Analysis of Other Legislation on SALW

Other laws reviewed include the Police Act (Cap 303), Prisons Act (Cap 304), Security Organisations Act (Cap 305), Uganda People's Defense Forces (UPDF) Act, 2015, Uganda Wildlife Act (Cap 200), Amnesty Act, 2006 and the Control of Private Security Organisations Regulations, 1997.

The Amnesty Act provides for surrender and disposal of weapons from reporting rebels (s.4). The purpose of the Amnesty Act is to provide for amnesty for Ugandans involved in acts of a warlike nature in various parts of the country. This Act was (is) being used to pacify various rebel groups in Uganda especially the LRA of Joseph Kony and the Allied Democratic Front (ADF) of Jamil Mukulu. This was possible by granting amnesty to any Ugandan who has at any time since the 26th day of January, 1986, engaged in or is engaging in war or armed rebellion against the government of the Republic of Uganda through participating in actual combat, collaboration with perpetrators of war or aiding the war (s.2(1)). The reporters are demobilized, disarmed and re-integrated into society (s.4 & 5).

The Police Act (Cap 303) is another legislation provides for use of SALW. The Act which came into force on 14th October 1994, provides for among other things the structure, organisation and functions of the police force and a police disciplinary code of conduct.⁷⁴ The Act elaborates the functions of the police force as to (a) protect the life, property and other rights of the individual; (b) maintain security within Uganda; (c) enforce the laws of Uganda;

⁷⁴Preamble to the Police Act

(d) ensure public safety and order; (e) prevent and detect crime in the society; and (f) perform the services of a military force (s. 4). The police enforces the Firearms Act and proposed FCB.

The Police Act also provides for the control of PSOs (s.72&73) and use of firearms by the police (s.28). The police are allowed to use arms in special cases (s.28) including against a charged or convicted escapee from lawful custody, a person who forcefully rescues another from lawful custody or prevents arrest. The Act further provides for regulations of PSOs and allow the Minister of Internal Affairs to make regulations to manage PSOs. Similarly, section 11 of the Prisons' Act allows for use of arms by prison officers on prisoners escaping or attempting to escape, break in or out of a door, gate or wall, if it is the only way to prevent the escape and a warning given to escapee. The prison officer can also use arms to save life or bodily harm and to quell a riot (s. 11(3)).

The UPDF Act regulates the possession, use and protection of arms under control of the military. The Act provides for proper protection and use of war materials including firearms and restricts possession to authorized persons (s.33). The Wildlife Act also allows use of firearms. Section 52 of the Uganda Wildlife Act provides for regulation of weapons used for hunting. The section allows the board of directors of the Wildlife Authority to from time to time, on the recommendation of the executive director, make regulations specifying the types, sizes and calibre of weapons which may lawfully be used for hunting any protected species (s.52(1)). Section 54 prohibits unlawful discharge of any weapon within metres of vehicle, aircraft or boat as well use of motor boat, vehicle or aircraft. The Act allows for the use of arms to kill animals in self Defense. (s.59). This only applies to persons who have been authorized to be in the park and not to those who are there illegally for illegal purposes such as poaching. This is the provision that allows park authorities to combat poaching and illegal hunting. To complement this the Act has made incentives to local governments and communities to encourage them to participate in wildlife protection and combating of poaching. The Act allows local governments to establish wildlife committees (s. 12). The Act allows Uganda Wildlife Authority to enter into commercial arrangements with private persons to manage protected areas (s. 14).

⁷⁵States commit to control in order to prevent illegal manufacture and illicit trafficking in SALW or their diversion to unauthorized recipients.

⁷⁶Transfer refers to hire, give, loan, lend, pawn or otherwise part with possession.

These incentives combined with the punitive measures in the Act potentially helps in mitigating poaching.

4.6 *Offences and Penalties*

Both the Firearms Act and the Firearms Bill provide for several offences and stiffer penalties than for the other three countries reviewed. The Act prohibits illicit dealing (s.12), dealing in unregistered place (s. 14(4)), manufacture or assembling (s.11), illicit purchase, acquisition and possession (s.3), making false statement (s. 13(4) and taking or accepting firearm or ammunition as security (s.20). The Act has stiff penalties ranging from imprisonment for six months for failing to keep transaction records or making false statement on the records (s. 17(6) to life imprisonment for manufacture or assembling of firearms and ammunition (s. 11(1&3)). The Firearms Control Bill, 2015 prohibits illicit manufacture, illicit possession, illicit transfer or sale, alteration and obliteration of certificate and marking on firearm and ammunition, pawning (s. 105). The penalties range from 6 months to 25 years imprisonment. The offence of possession, use, or carrying of a firearm without a license attracts imprisonment of a maximum of 25 years (s. 39(9)).

The penalties under the UPDF Act in relation to protection and use of arms are stiffer. A person subject to military law who fails to protect war materials or misuses war materials commits an offence and is liable on conviction to suffer death (s.33(1)). Failure to protect war materials or misuse of war materials includes failing to guard arms or ammunition, malicious damage to arms or ammunition, tampering with or mishandling arms or ammunition resulting in damage, giving or allowing arms or ammunition to be handled by unauthorised persons, losing arms or ammunition or parts of arms or ammunition, or failing to do any other act necessary for the protection of any war material or otherwise misusing war materials (33(2)). Similarly a person subject to military law who carelessly shoots a fellow fighter or handles arms or ammunition in such a manner as to endanger lives of other fighters in operation commits an offence and is liable on conviction to life imprisonment (s.34). The weakness of the Bill is that it does not provide for minimum and maximum penalty for each offence. In most cases the Bill provided for discretionary maximum sentences that leave lots of room for the presiding Judges to determine appropriate punishment.

. The lack of minimum sentences is contrary to provisions of the Nairobi Protocol where State Parties committed to introduce harmonised heavy minimum sentences for SALW crimes and carrying of unlicensed SALW [Art. 5(b)(i)].

4.7 Institutional Framework

The Firearms Bill, 2015 has provided elaborated institutional framework for management of firearms and ammunitions than any of the three countries reviewed. The Bill provides for institutional framework to deal with SALW. The Key institutions include the Arms Management and Disarmament Committee (AMDC) (s.2), Central Arms Registry (CAR) (s.8), National Focal Point (s.4(c), Registrar (s.4), Deputy Registrar (DR) (s.6), District Firearms Taskforce (DFT) (s.16(1).

4.7.1 Arms Management and Disarmament Committee (AMDC) (s. 2)

Section 2 of the Firearms Bill (2015) establishes the Arms Management and Disarmament Committee chaired by the IGP. Even though the Best Practice Guidelines suggests seven committee members, the Uganda Bill provides for six members but allow co-option of persons necessary to assist the committee to effectively discharge its functions (s.2(3). The composition of the Committee includes all Heads of the Armed forces and intelligence including the IGP, Chief of Defense Forces, Commissioner of Prisons, Director General (DG), Internal Security Organization (ISO), DG, External Security Organisation (ESO) and the Registrar of the Central Arms Registry (CAR) who is the Secretary to the Committee. The Committee lacks civil society, PSO representation or member of the public representation that will bring independent thoughts in its deliberations. The Committee coordinates all national activities⁷⁵ relating to the implementation of the Act; provides guidance in relation to the management of firearms and disarmament; makes recommendations on types of firearms and ammunition to be licensed; provides expert opinion on firearms and ammunition to be destroyed; and advises the Minister of Internal Affairs on matters arising from the implementing the Act (s. 3).

⁷⁵The Committee is also responsible for organising the development, implementation, resourcing and monitoring of the national action plans and evaluation measures to address SALW's problems.

4.7.2 Central Arms Registry (CAR) (s.8 of the Firearms Bill)

The Firearms Bill (s.8) establishes the Central Firearms Registry that consists of Civil Firearms Registry (CFR) (8(1a), Military Firearms Registry (MFR) (s.8(1b) and National Focal Point (s.8(1c). The CFR shall contain all information relating to firearms which are not in the hands of the military, the MFR contain information on firearms used and managed by the military and intelligence services and the NFP coordinates national, regional and international action on control of firearms (s.8(1).

The CAR will also have information and database on firearms, dealers, manufacturers, gunsmith, importers and exporters, official institutions, private security organisations and any other information that may be required to be kept by the Registrar (s.9(1). The information to be kept include:

- a) Competence certificates, licenses, authorizations, permits, renewals and cancellations;
- b) Original documents and applications for licenses, authorizations, permits and renewals;
- c) Transfers, imports, exports, loss, recovery, theft, seized, forfeited, surrendered or destruction of firearms and ammunition in possession of civilians or official institutions;
- d) Transport of firearms and ammunition;
- e) Record of licensed dealers, brokers, manufacturers, gunsmiths, importers, exporters, transporters and accredited institutions; and
- f) Finger-prints submitted during applications.

4.7.3 National Focal Point

The current Uganda National Focal Point Office on SALW was established by the Government of Uganda in 2001 to coordinate activities to prevent, combat and eradicate the problem of the proliferation of illicit small arms and light weapons (SALW). The Act does not provide for the NFP but like the Bill provides for an Arms Management and Disarmament Committee and Registrar. The Bill establishes the NFP within the CAR for coordination of national, regional and international action on control of firearms (s.8(c). This is in line the UNPOA, Nairobi Protocol and ATT. The UNPoA (II (5)) commits States to establish a coordination point on matters related to the implementation of the POA. Under the ATT (Art. 5(6)) States promise to specify one or more national points of contact⁷⁶ to be communicated to the Secretariat. The Nairobi Protocol also requires States to establish NFP [Art. 16(a)].

⁷⁶The treaty specifies that the national point of contact is mandated to exchange information on matters related to the Treaty execution as well as regularly update the information on SALW.

Uganda is in compliance with its regional and international obligations since these instruments do not specifically state that the NFP has to be an independent agency.

4.7.4 Registrar of Firearms

The FCB establishes the office of the Registrar of Firearms appointed by the Minister of Internal Affairs from among the serving members of the Armed Services (s.4). The Bill also creates three Deputy Registrars responsible for MFR, CFR and NFP (s.6). The functions and powers of the Registrar are laid down in the Bill (s.5) including to:

- a) Establish, maintain and have overall responsibility of the CAR;
- b) Issue and administer firearms Licenses and permits;
- c) Recover the fees payable under the law;
- d) Coordinate national, regional and international action on firearms control;
- e) Implement regional and international Protocols and Agreements on the control of firearms;
- f) Conduct public education programmes on the provision of the law and other matters relating to the safe possession and use of firearms;
- g) Conduct and facilitate research on policy and other issues related to control of firearms;
- h) Develop and supervise a training programme for competence testing;
- i) Advise the Minister on matters arising from this Bill or its implementation; and,
- j) Monitor the implementation of the law.

4.7.5 Powers of the Registrar (s. 5(2))

The Registrar has powers to: conduct investigations or inquiries, coordinate with other government (ministries, departments and agencies), CSOs, regional and international organizations and the international community (s. 5(2)).

4.7.6 Designated Firearms Officer (DFO) and District Firearms Taskforce

The Bill creates the office of the Designated Firearms Officer (who is the police officer in charge of the region) in every region (s.15) and a District Firearms Taskforce (whose secretary is the police officer in-charge of the district) in every district (s.16) of Uganda. The DFO is responsible for receiving, scrutinizing and recommending to the Registrar applicants for issuance and renewal of Licenses and permits originating from the region.

The DFT is responsible for coordinating actions on firearms control, receiving applications for processing and renewal of the Licenses and permits, recommending and forwarding applications for Licenses and permits, and recommending action on armament and disarmament in the district.

The review found that the institutional framework under the Act and Bill including the CLO, AMDC, CAR, Registrar, NFP, DFO and DFT fulfills the requirements of Article 16(a) of the Nairobi Protocol which requires States to establish NFP. It also implements Article II (4) of the UNPoA that directs the member states to designate institutions responsible for policy guidance, research and monitoring of SALW prevention and eradication.

4.8 Regional and international cooperation⁷⁷

According to the 2015 Firearms Control Bill, to combat illicit proliferation of firearms and ammunition, the registrar shall implement regional and international Protocols and Agreements on the control of firearms (Article 5 (1) (e)). To combat illicit trade in SALWs states commit in Article III(7) of the UNPoA to foster cooperation and exchange experience and conduct joint training among officials⁷⁸ at the national, regional and global levels. The bill also empowers the registrar of firearms to coordinate with ministries, departments and agencies, civil society organizations, regional and international organizations and the international community in the performance of his or her duties (Articles 5 (2)(b) of the 2015 Firearms Control Bill). The Bill provides for mutual legal assistance (s. 99(1) and reciprocal recognition of Licenses issued by other countries (s. 100) The Bill recognizes Licenses and other documents which are issued by other countries that have reciprocal arrangements with Uganda (s. 100).

This echoes the Nairobi Protocol objective [Art. 2(c)] which encourages governments to promote and facilitate information sharing and cooperation in the sub-region as well as between the governments and other key stakeholders.

Likewise Article 4(a) and (b) of the Nairobi Protocol provides for strengthening sub-regional cooperation among law enforcement and security agencies in suppressing criminal activities related to circulation and trafficking in SALWs.

⁷⁷This aspect covers issues such as joint training and information sharing.

⁷⁸They include customs and crime control officials, police, intelligence and immigration

Again, in the UNPoA [Art. III(11)] states commit to cooperate through existing global and regional frameworks in tracing illicit SALWs especially exchange of relevant information. In Article III (12) of the UNPoA states are encouraged to exchange information on a voluntary basis on their national marking systems on SALWs. The weaknesses in the Ugandan current legislation and proposed bill is the lack of implementation framework of the UNSC arms embargo.

4.9 Other Stakeholders

Other stakeholders have also been identified as important stakeholders in combating illicit trafficking and proliferation of SALWs. Article 2(c) of the Nairobi Protocol provides for the involvement of the civil society organisations to promote information sharing and cooperation in issues related to illicit trafficking and proliferation of SALW. This corresponds the UNPoA whereby, states commit to encourage NGOs and civil society IV(2)(c) to engage, as appropriate, in all aspects of international, regional and sub-regional and national efforts to implement the POA.

The current law and the Bill does not provide for none state actors participation in control of SALW. The Bill does not mention civil society involvement in its implementation yet civil society is playing a key role in controlling the proliferation of SALW and advocating for the passing of the Bill by Parliament. The only room left open for civil society and other none state actors to get involved is created under section 2(3) of the Bill allows the Arms Management and Disarmament Committee to co-opt any person as may be necessary to assist the Committee in the discharge of its functions. This still gives too much discretion to the Committee that can decide not to bring any person on board. Since the Bill is not yet in Parliament it should be reviewed to include provisions for inclusion of a member of the civil society or public in the Committee and as well provision on civil society participation.

4.10 Regulation of Private Security

Section 72(1)(a) and section 73(1)(p) the Police Act empowers the minister for internal affairs to make regulations for the control of private security operators (PSO) including their registration and use of equipment or uniform. The 1997 Control of Private Security Organisations Regulations, was promulgated by the Minister on basis of those powers. . The definition of a PSO includes any organisation that undertakes private investigation of facts or character of a person or one which performs services of watching, guarding or patrolling for the

purpose of providing protection against crime, but does not include the Ugandan Police Force, Prison Service or Armed Forces (s.72(2)). Such an organisation, however, ought to be registered under the Companies' Act (s.2, r.11). Under section 72(3) of the Police Act, the authority to determine whether an organisation constitutes a PSO lies with the Minister for Internal affairs.

Schedule III of the Regulations allow PSO to use authorised firearms (see regulation (r) 2) mainly semi-automatic and single shot guns. Regulation 16 enjoins the regulation of PSOs on use of firearms to be in conformity with the provisions of the Firearms Act, which require that whoever desires to possess a firearm must have a certificate (s.3). The firearms and ammunitions arms used by PSOs are licensed in conformity with the Firearms Act (r.16 & 24). The PSO are authorized to import firearms and ammunitions upon recommendation of the IGP to the Minister of Internal Affairs (r.22) for the authority to import. Guards of a PSO may use authorised firearms in certain circumstances including self Defense, arrest, or save life (r.20). An application to purchase the scheduled arms and ammunition in and outside Uganda is subject to the existence of an approved operator's License issued by the IGP (r.25). Every PSO must submit monthly returns and brief accounts of the arms and ammunitions in its possession to the IGP (r.26). The provisions of the Regulations have been re-echoed in the Firearms Control Bill with similar interpretation only that when enacted into law the regulation of PSOs will now be by an Act of Parliament rather Statutory Instrument (see Part VI, sections 51-54).

4.11 Conclusion and Recommendations

This section reviewed Uganda's compliance to the international instruments on SALW, particularly the Firearms Control Bill (2015) which is to replace the Firearms Act of 1970. It was found that to a larger extent the Firearms Control Bill is consistent with the regional and international SALW instruments. It has adequately made provisions for regional and international cooperation, licensing, possession, ownership, marking, manufacturing, dealership, tracing, transfer, disposal, institutional arrangements, reciprocal recognition of SALW registered in other countries and mutual legal assistance on SALW. The Bill has good provisions for regulating PSOs, tracing and registration that are superior to the other three countries reviewed. It also has fairly stiff maximum sentence provisions. These provisions in general comply with the existing SALW regional and international instruments that Uganda is a party to. The bill however has some gaps that need to be tightened.

It lacks provisions on dealing with UN embargoes and gives the Minister too much powers and less for the IGP. The Bill leaves room for someone within the armed forces other than a police officer to be appointed as a registrar which is the case in the Firearms Act and provisions in the current and proposed laws in other countries including Tanzania and Kenya. The Bill does not also provide for minimum and maximum sentences for the same offence that leave lots of discretion to the Judge. It lacks provisions on effective participation of civil society in its implementation or on SALW issues. Lastly, the Bill does not give financial and operational autonomy to the NFP or the CAR. The institutional arrangement as currently proposed needs to be streamlined by creating an autonomous NFP or agency to deal with control and management of SALW similar Burundi or Rwanda.

Now that the general elections have been concluded the Ministry can now use this opportunity when the legislators are fully back in the House to expedite the process by engaging Parliament especially the Parliamentary Committee on Defense and Internal Affairs. Funds available a key step should be organizing a retreat for member of the Committee, all chairpersons' of Parliamentary committees, their clerks and the Directorate of Legal Affairs of Parliament. During the retreat the participants shall be given an opportunity to get presentation on the reform process, international and regional instruments, key provisions of the Bill and its rationale. The retreat shall also discuss and reach consensus on the Bill clause by clause.

4.11.1 Existing gaps

- a) To comply with the regional and international obligation the Firearms Control Bill should be reviewed to include provisions on UN arms embargoes.
- b) There is need for sharing of powers between the Minister and IGP in the supervision of the NFP.
- c) The NFP or CAR should be given autonomy in terms of budget and operations by granting it a financial vote. But it is better if an autonomous institution or agency is established to deal with SALW.
- d) In compliance with Article 2(xiii) of the Nairobi Protocol that requires legal uniformity in the sphere of sentencing, the penalties in the Bill should be reviewed to provide for maximum and minimum sentences.
- e) Due to the role that Civil Society and other non-state actors play in SALW issues, the composition of AMDC should be reviewed to include a representation from the PSOs and CSOs.

5 Harmonization of the Central African Republic Legislation with International and Regional SALW Instruments

This section reviews the Central African Republic (CAR)'s laws relating to SALW. CAR is a member to several SALW regional and international instruments. . In addition to being the UN member⁷⁹ the country is also a member of RECSA⁸⁰ established by the Nairobi Protocol in 2004. CAR has signed both regional and international agreements to strengthen controls over use of SALW and to reduce the availability of SALW.

Historically CAR has fared poorly and experienced turmoil since gaining independence from France in 1960. At the time of the review law enforcement in CAR is virtually non-existent throughout most of the country especially the legislations to do with SALW. The government has lost control of most of the country and continues to battle rebel groups -part of the ongoing conflict since 2012. The army is charged with securing the country. However, due to its weaknesses it currently working alongside foreign troops under the UN Mission and the French under the Sangaris Operation.⁸¹ The illicit trade and trafficking in SALW poses a threat to the stability of the country by inter alia, promoting armed violence by the Seleka and Anti Balaka militia, prolonging armed conflict and encouraging the illicit exploitation of natural resources.

5.1 Fragility and Harmonization Environment in CAR

Legal reforms and harmonization best takes place in stable environment. The harmonization and DDR process in the CAR is affected by the current fragility in the country. CAR is a fragile state with long running conflict and unstable government that cannot control the whole of the country's territory. The vast majority of the country is controlled by local militia groups and the Uganda' Lord's Resistance Movement of Joseph Kony. The most known local militia groups are the Seleka and Anti-Balaka.⁸²

⁷⁹Uganda is signatory to the UNPoA, Nairobi Protocol, ATT, ITI and Firearms Protocol.

⁸⁰CAR Joined RECSA in 201 and is yet to ratify the Nairobi Protocol

⁸¹The Security Council established the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) by UNSC resolution 2149 (2014) of 10 April 2014 and requested the Secretary-General to subsume BINUCA in the new mission as of the date of the adoption of that resolution. It further requested the Secretary-General to ensure a seamless transition from BINUCA to MINUSCA. Acting under Chapter VII of the Charter of the United Nations, the Security Council authorized MINUSCA to take all necessary means to carry out its mandate, within its capabilities and its areas of deployment. It further decided that the transfer of authority from MISCA to MINUSCA will take place on 15 September 2014. In the period preceding this transfer of authority, MINUSCA implemented the mandated tasks through its civilian component, while MISCA continued to implement its tasks as mandated by Security Council 2127 (2013) . MINUSCA commenced the implementation of the mandated tasks through its military and police components on 15 September 2014 (UNSC resolution 2149 of 2014).

The Seleka militia is part of the Seleka CPSK-CPJP-UFDR alliance of the Muslim dominated rebel militia factions that overthrew the CAR government on March 24, 2013.⁸³ This is the splinter group of the of the Convention of Patriots for Justice and Peace (CPJP) and the Patriotic Convention for Saving the Country (CPSK), two of the then CAR's many anti-government militias on August 20, 2012. It merged from the radical and more militant faction of the CPJP and CPSK following signing of a peace agreement with the Government of CAR on August 25, 2012 which they rejected⁸⁴. The Seleka first emerged publicly on September 15, 2012 under the name alliance *CPSK-CPJP*, when it published a press release taking responsibility for the attacks on three towns.

Though mostly Muslim, the Seleka and their leader Michel Djotodia, weren't an overtly religious movement. Having assumed the reign of power the group members ran wild across the country during their time in office, plundering villages and killing Christians as well as supporters of the deposed President Francois Bozize.⁸⁵ When the group became untenable and President Michel Djotodia announced their dissolution in September 2013 the disbanded group dispersed into the countryside allegedly committing mass atrocities.⁸⁶ When the Seleka embarked on deliberate killing of mostly Christian civilians including women, children, and the elderly when they ascended into power the Christians organised into the Anti-Balaka militia for self Defense.⁸⁷

The Anti-Balaka militias were originally formed in the 1990s as village self-defense forces to provide security in the villages.⁸⁸ The group re-emerged as the Christian militias in the CAR after the rise to power of Michel Djotodia in 2013 allegedly to protect Christian populations. Soon the Anti-Balaka militia followed in the footsteps of the Seleka by embarking on revenge attacks against the Muslims

⁸²Interview with Jean Pierre Betindsi, Charge de Mission on 6th October 2015

⁸³David Smith (November 22, 2013); The Guardian. "Unspeakable horrors in a country on the verge of genocide- Militias in the Central African Republic are slitting children's throats, razing villages and throwing young men to the crocodiles. What needs to happen before the world intervenes?"

⁸⁴Ibrahim, Alkhali; Abdraman, Hassan (2012-08-20). "RCA: Protocole d'accord militaro-politique contre le régime de Bozizié". *CPJP-Centrafrrique (Press release)*. Retrieved 2016-02-17.

⁸⁵Human Rights Watch: "Central African Republic: War Crimes by Ex-Seleka Rebels - Hold Commander Accountable for Attack on Town" November 25, 2013

⁸⁶Human Rights Watch: Ibid

⁸⁷Human Rights Watch (2013): "Central African Republic: The Forgotten Human Rights Crisis in the Central African Republic. November 25, 2013 Retrieved on 2016-02-17.

⁸⁸Andrew Katz (May 29, 2014). "A Question of Humanity?: Witness to the Turning Point in Central African Republic". Time Newspaper

⁸⁹The Guardian. 14 February 2014. "France and the Militarization of Central Africa: Thousands of Muslims Fleeing the Central African Republic". Retrieved 17 February 2016.

⁹⁰Discussion with Head of Rwanda UN Police Contingent in CAR. The RECSA team was caught up in the lock down and were rescued and hosted by the Rwanda UN Police Contingent in CAR for six days until the airport was re-opened.

killing and committing atrocities.⁸⁹

At the time of the field consultation and review there was new surge in violence between Muslim and Christian militias in September and October 2015 that led to the postponement of the Presidential elections by CAR's interim President Catherine Samba Panza. The capital Bangui was under lockdown at the end of September after 42 people were murdered in retaliation following the decapitation of a Muslim motorcycle taxi driver.⁹⁰ The Anti-Balaka militia attacked the Ngaragba prison in Bangui, freeing more than 500 of the prisoners. The situation was brought under control following the combined force of the French Sangaris and UN.

5.2 Harmonization of National SALW Legislation in CAR

CAR has not yet commenced comprehensive harmonization of its legislation to regional and international SALW instruments and Best Practice Guidelines. The country lacks a specific law on control and regulation of SALW⁹¹. There is significant good will by the DDR/SSR High Commission which is currently the Government Point of Contact in the field of Small Arms Control to develop a comprehensive law to manage and control firearms and ammunition in the country but the prevailing security and capacity situation in the country has delayed the process.⁹²

The country needs to set up an inclusive Harmonization Committee to drive the process. RECSA could play a significant role in helping CAR to come up with a modern law that meets regional and international standards since the process will rely on and benefit from best practices and international and regional SALW instruments. The new law should also domesticate regional and international instruments on SALW.

The significant work that has taken place is the promulgation of the Commission on SALW Presidential Decree in 2008 that established the Commission to spearhead SALW interventions with a DDR mandate. This Commission was responsible for coordination of SALW issues at the national, regional and international levels. The Commission acted as the NFP on SALW until it lapsed in 2013. This Decree and the SALW Commission was replaced by the High Commission on Demobilisation, Disarmament and Re-integration (DDR) Presidential Decree in 2014 that established the DDR High Commission

⁹¹Interview with Lt Col. Noel Selesson, Haut Commissaire DDR/RSS and Jean Pierre Betindsi, Charge de Mission on 8th October 2015

⁹²Interview with Jean Pierre Betindsi in Bangui in October 2015

⁹³Interview with Lt Col. Noel Selesson and Jean Pierre Betindsi

⁹⁴Interview with Lt Col. Noel Selesson, Haut Commissaire DDR/RSS and Jean Pierre Betindsi, Charge de Mission in Bangui in October 2015

to spearhead DDR and security sector reform (SSR) in CAR. The work of this Commission has been curtailed by the instability prevailing in the country for the last 5 years, lack of control by the government, existence of illicit firearms in the hands of civilian and growing number of militia heavily armed especially the Anti-Balaka and Seleka. The Commission is making plans to mount a disarmament process after the general elections.⁹³

5.3 *Legal and Institutional Framework*

CAR unlike other reviewed countries does not have specific law on management and control of SALW and ammunitions. The laws that have provisions on use of firearms are; the 1961 laws and regulations on the management of SALW in CAR, the Organic Law on Local Government that provides for acquisition of guns for hunting, the Organic Law on Wildlife which allows wildlife officers to use firearms and also allows hunting using firearms and the Penal Code (The Law No. 10,001, January 6th, 2010).⁹⁴

5.3.1 *Acquisition and Possession of Firearms in CAR*

In the past the government used to enter into memorandum of understanding with individuals who wants to deal in firearms and ammunition. The dealing was regulated by a contract and not by legislation.⁹⁵ Currently, it is the Ministry of Local Government that have authority to grant License to acquire, possess and use firearms from licensed dealers. Application to purchase and possession a firearm is made to the licensing officer at the local government ministry who issues a License to purchase a gun from any dealer mostly by importations.

However, currently there is confusion in the whole country and civilians are armed. The majority of firearms especially AK-47 are acquired through the black market where the AK-47 goes for USD 25. Most of the firearms come from neighbouring countries especially Cameroon, Chad, Sudan, South Sudan, DRC and Congo Brazzaville.⁹⁶ The key armed groups (Anti-Balaka and Seleka) acquired most of their arms after the fall of Bozize when most of government owned firearms were diverted to the hands of civilians, and more came in the countries which backed the militia movements which invaded the countries mainly from Chad. The illegal arms are fueling illegal activities especially poaching that will further fuel the conflict which has raised concern of the international community and countries in the region.⁹⁷

In January 2014 the UNSC passed resolution 2134 on Illegal Exploitation of Wildlife in CAR. The resolution was based on Chapter VII of the UN Charter, and explicitly state illegal exploitation of wildlife as a threat to the peace. The finding of a “threat to the peace” is important because this constitutes the principal door opener for coercive measures under Chapter VII. In res. 2127 (concerning the CAR), the Security Council for the first time considered the “total breakdown in law and order” in a state, and “the absence of a rule of law” (preamble, 3rd indent; see also paras. 14-15) as a “threat to international peace and security” (preamble, last indent). The resolution authorized targeted sanctions against poachers, wildlife product traffickers, and those persons and entities pulling the strings. States must freeze the assets and restrict the travel of any individual or entity found to be involved in wildlife trafficking. The import of this resolution is that traffickers must be targeted by officials from different government agencies, such as wildlife, immigration, police and customs. The resolution was meant to target the armed groups such as the Seleka, Anti-Balaka, LRA and other groups operating in CAR.

5.3.2 *Regulation of Private Security Organisations*

The private security registers as companies under the Companies Act. There is no specific law to regulate them. They are not allowed to use firearms and ammunition. The License only allows PSOs to use sticks but have acquired firearms illicitly through the black market. There is need to enact a law to regulate PSO operations in CAR.

5.3.3 *Penal Code (The Law No. 10/001, January 6th, 2010)*

The Penal Code has provisions on offences relating to SALW in Part 7, chapters 6 and 7 on Special Offenses. Chapter 6 deals with illicit acquisition, possession and carrying, confiscation and disposal while chapter 7 deals with fabrications and illicit trafficking in arms. Section 245 of the Code prohibits illicit acquisition and use of arms. The section states, (anyone who has obtained, carried, used or attempted to use arms of war, not as an element of defense forces or security or paramilitary forces during a mission or commanded service or authorized to obtain the arm, will be punished with 5 – 10 years imprisonment and a fine of 5 – 10 million francs”. Section 246 metes the same punishment for anyone who removes or attempts to remove

⁹³Interview with Lt Col. Noel Selesson and Jean Pierre Betindsi
Interview with Lt Col. Noel Selesson, Haut Commissaire DDR/RSS and Jean Pierre Betindsi, Charge de Mission on 8th October 2015

⁹⁶Interview with Jean Pierre Betindsi in Bangui in October 2015

⁹⁷Interview with Lt Col. Noel Selesson and Jean Pierre Betindsi

arms or ammunition of war from a powder keg, warehouse or shop, without prior authorization of the competent military authority.

Section 247 prohibits assistance in illegal acquisition of arms and states, “any persons who will have committed a crime of any kind in assistance with arms or ammunitions of war in the course or outside mission or commanded service, will be punished with a penalty of forced work and fine of 5 – 10 million francs”. The Code differentiate between commissions at night and day and gives different punishments. In section 248, the Code states, “if the crime or offenses committed above were either at night, in group, or caused injury, mutilation, death, or if it was accompanied, followed or preceded by acts of torture, or rape , the suspect faces death penalty”.

Section 249 provides for confiscation and disposal of arms. The section states, “In firearms and ammunitions, as well as vehicles or any asset used for transportation in the carrying out of an offence, will be seized and confiscated by the State”. While section 250 prohibits illicit manufacturing of firearms and their parts and defines unlawful manufacture as an act of assembling firearms, their parts, and ammunition; (1) without putting serial number on firearms at the moment of manufacture ; (2) from the pieces or elements, is having done an object of unlawful trafficking and (3) without license or authorization of competent authority.

Section 251 provides for penalties for illicit manufacture, which is a 5 – 10 year imprisonment and fine of 100,002 – 500,000 francs. Section prohibits illicit trafficking which it defines as an act of importing, exporting, receiving, selling, or delivery, transportation, or transferring of fire arms, their parts, and ammunitions from or via the CAR territory , to the territory of another state, either without a license, or if the firearms are not marked. The section therefore calls for branding of arms. The punishment for illicit trafficking is penalty of 5 – 10 years imprisonment and fine of 100,002 – 500,000 francs.

There are some provisions for marking of SALW in possession of security forces and registration of SALW brokers and prohibition of brokering without a license. The law allows for sharing of information of deregistered brokers with other states. The provisions that are lacking in the CAR Penal Code include: it does not license the manufacture of SALW but illegal manufacture of SALW is not considered a criminal offence. There are also no provisions, laws, regulations or administrative procedures for export, import, transit, retransfer, tracing, stockpile management of SALW.

5.4 *Institutional Framework*

5.4.1 *DDR/SSR High Commission*

The DDR/SSR High Commission established by a Presidential Decree in September 2014 is charged with coordinating and managing control and issues of SALW at national, regional and international level. Its mandate is to conduct DDR, coordinate control and regulation of SALW, conduct public awareness programmes on SALW, and develop policies on SALW. The Commission also acts as the NFP on SALW. The study notes that the Commission has very broad mandates and focus on the DDR/SSR that is needed at the moment but may not be appropriate in the long run. Being a country recovering from conflict and having specific law on SALW it would be appropriate for CAR to establish an independent commission to deal with SALW.

5.4.2 *Supreme Council for Hunting*

The Supreme Council for Hunting (SCH) is a major government agency with the responsibility for regulating hunting, protecting nature, organizing management and exploitation services for wildlife, creating protected areas, and regulating wildlife tourism, which is administered by the Ministry of Hunting and the Directorate of Waters, Forests and Hunting. All enforcement officers of hunting rules and environmental protection legislation have the power to seize and confiscate weapons, machines, or vehicles utilized during the commission of these offenses, and the meats, spoils, and trophies of animals illegally captured or killed. Prosecution of these offenses lies with the General Prosecutor Office.

5.5 *Challenges of Harmonization of SALW Laws in CAR*

The harmonization process in the CAR has been slow due to political instability that has bedeviled the country since independence. The prevalence proliferation of SALW, existence of armed groups throughout the country, small and weak Government control, recurrent instability, porous borders, successive forceful changing of governments, unstable neighbours, and continued military intervention of other countries in the CAR are some of the challenges facing the government of CAR. The country still remain fragile and there was upsurge in violence in October 2015 during the data collection of this study. The country has successfully held a general election that has ushered in a democratically elected government which should have a mandate to undertake SSR and harmonization of SALW laws.

The study found that, harmonization and strengthening of the legislative and regulatory frameworks on SALW is a priority and urgent for CAR. However, any successful review process is reliant on significant technical expertise and financial resources, which are not currently available in CAR.

The other challenge is that the country's current SALW legislation is either inexistent or is scattered in different laws and needs to be consolidated under one comprehensive and coherent law. This consolidation will need a consultative and consensual process involving all stakeholders in government, private sector, civil society and development partners.

For these reasons the CAR has not made any advance in reviewing, amending and harmonization of legislating, laws, regulations or administrative procedures on SALW with international and regional instruments to exercise effective control. The Penal code is the only law available on the control of SALW but does not have significant provisions. The country is open to harmonise its laws and is calling for assistance in developing laws, regulations and/or administrative procedures on control of SALW.

5.5.1 Existing Gaps in CAR

a) There is a need to combat the proliferation of illicit SALW that are in the hands of civilians and militia. The Government needs to put in more commitment and undertake a comprehensive security sector reform of the armed forces, police and other law enforcement agencies. The reform should also put in strong measures to control sales, transfer and ownership of SALW. Most of all, the root causes of violence and conflict, under development and inequality, need to be comprehensively addressed for any control measures to be effective.

b) Since CAR lacks the human and financial resources to undertake institutional and legal reforms RECSA and UNDP should continue to assist the government in DDR and in addressing the proliferation and illicit trafficking of SALW effectively and comprehensively. RECSA should also increase on its support to the CAR to mark its SALW as one way of combating proliferation.

c) The harmonization of SALW laws process in the CAR should be inclusive and comprehensive involving government institutions, religious and civil society leaders, the militia representatives and private security organizations. CAR should kick start the review process by establishment a multi-disciplinary harmonization committee. The Review Committee should consider and assess during the review process, the social, political, economic and cultural factors that can support, affect or undermine legislative changes.

d) The review process can best be done by generating public support for DDR and controlling proliferation of SALW. The DDR/SSR High Commission should coordinate and seek support from other stakeholders especially the Civil Society and religious leaders to create public awareness on SALW to support disarmament, to promote the review of domestic laws in line with requirements in international and regional instruments, to cultivate public support for national arms control efforts, among others.

e) In line with international and regional instruments the review should make substantial prohibited and punitive provisions for offences laws are needed to act as deterrents to illegal weapons ownership by civilians.

f) The review team should coordinate with and benefit with other RECSA members such as Rwanda, Burundi and Tanzania who have harmonized their laws and Kenya and Uganda who are in advance stages of harmonization by making bench mark visits and ensuring that their provisions are harmonized with provisions in those countries.

g) To strengthen its cooperation with other countries and international community CAR should accede to and ratify regional and international instruments on SALW. It should start by ratifying the Nairobi Protocol which it is already participating in.

h) CAR should establish an independent Commission with financial and decision making autonomy to effectively deal with SALW.

i) RECSA should prioritize providing technical and financial assistance to CAR to review, harmonize, draft and enact a comprehensive SALW legislation.

6 Challenges, Conclusion and Recommendations

6.1 Challenges in Harmonization of Laws

The challenges faced by all the four countries in harmonizing their laws are in general terms similar but CAR seem to have more fundamental challenges due to the current political imbroglio it is facing. The formation of a new democratically elected government provides good opportunity to push up the needed SALW and other security sector reforms in CAR. The key challenges of the harmonization of SALW legislation fall in to these broad categories.

6.1.1 Lack of Political Will and Commitment

The key challenges of harmonizing or reforming SALW legislation is that it has to play within the competitive priority needs of the state.

⁹⁸Interview with Lt Col. Noel Selesson, Haut Commissaire DDR/RSS and Jean Pierre Betindi, Charge de Mission in Bangui in October 2015

The SALW is low in the legislative and development agenda when compared to economic, governance and policy issues that tend to get better attention. There also seem to be limited political will in enacting comprehensive SALW legislation especially Kenya, Uganda and CAR that have not yet completed their harmonization processes. In Kenya for example, instead of enacting the already drafted Small Arms and Light Weapons Management and Control Bill, 2014, a section of the Bill was extracted and included in the Security Laws (Amendment) Act, 2014. This repealed section 3 of the Firearms Act to create the Firearms Licensing Board under (Section 35, of the Security Laws (Amendment) Act).⁹⁸ The countries have also not been able to identify or mobilize support among the MPs especially in committees responsible for peace, Defense, security or law and order related issues to champion the legislative process in the Parliament. Involving Parliament from the onset and identifying champions within and outside Parliament is a key strategy in getting bills enacted. This was the major reason why the harmonization process in Rwanda succeeded.

6.1.2 Slow Process of Harmonization

The second challenge is that the harmonization process is rather slow and taking on average over five years in all the countries due to the controversial nature of the issues to be addressed. The need to develop consensus on key issues through consultative and inclusive process also delays the process. In Kenya, Uganda and Tanzania special inter agency Committees were formed to drive the reform process. This was meant to help in developing consensus and fasten the process but it seems it has not had the desired effect because the process is still slow. The participation in the harmonization is also limited to the executive and civil society leaving out the Legislature and Judiciary. This is likely to delay the process further because the MPs in Kenya and Uganda shall have to be lobbied afresh to pass the existing Bills. This may require holding consultative workshops or retreats on the Bill with MPs especially those from the relevant committees relating to security, Defense, internal and legal affairs.

6.1.3 Lack of Resources

The third issue is the lack of funds to facilitate the harmonization process. Funds are needed for consultation, committee work, technical expertise and awareness creation. The countries rely mostly on assistance from donors and civil society for most of the review work⁹⁹.

⁹⁹Interviews with Heads of NFP of Uganda and Kenya

Member States especially CAR do not have the necessary technical capacity to conduct a review on its own and need technical assistance from RECSA or other partners. In all the countries legislative drafting capacity is still weak and drafting of legislation is the preserve of one or two departments usually the First Parliamentary Counsel and Law Reform Commission which are all under the Attorney General in case of Kenya, Tanzania and Uganda. For CAR it is the AG's office that is responsible for drafting legislation.

6.1.4 Lack of Coordination with Other Countries

The fourth and very important challenge is that the countries seem to be undertaking their harmonization processes without consultation and coordinating with each other. This has resulted in the countries laws and proposed bills not purely harmonized. This will defeat the purpose of regional harmonization. This is against the letter and spirit of the international and regional instruments that envisages uniformity of laws in Member States. Uniformity of provisions in the countries in the region will ensure that criminals do not have safe havens in jurisdictions with weak provisions to conduct their activities.

6.1.5 Lack of Conducive Environment for Harmonization

One of the countries reviewed (CAR) did not have a conducive environment for harmonization because it is involved in a civil conflict with a weak government that is more concerned with providing much needed humanitarian and development assistance to the country. The country need to develop a legislation that will regulate disarmament and SALW. This can only be possible when there is a stable government that seemed to have been achieved after the formation of a new democratically elected government in 2016.

6.1.6 Conflict of Laws

The review also found that the countries have different legal systems and are in different stages of harmonization. In regards to status of harmonization, whereas other countries have specific laws dealing with SALW, CAR does not have any law currently. The reform or review in CAR will have to start from scratch which provides a unique opportunity to develop a comprehensive legislation. Since there is nothing to start from, the harmonization process can adopt the Best Practice Guidelines in full and prepare comprehensive legislation that is harmonized with the regional and instruments based on model legislation and laws from other member states.

A more fundamental issue the review found is that the countries reviewed have different legal systems. Kenya, Tanzania and Uganda subscribe to the common law system while CAR is of the civil law system. Consequently these countries seem to approach review based on the system of laws they subscribe to.

6.1.7 Overlapping Memberships of RECs

Related to conflict laws is the issue of overlapping memberships of Regional Economic Communities (RECs). All the four countries are members of five of the eight RECs recognized by the African Union and peace and security mechanisms. Each of the countries belongs to at least three RECs while some belong to up to four RECs. This multiple membership feature is counter-productive as it can cause identity crisis, duplication of resources as well as conflicting goals, policies and loyalties. All the countries are members of the AU, RECSA and ICGLR. Uganda and Kenya are members of IGAD, COMESA, ESAAMLG, EASF, EAC and EAPCCO. Tanzania and CAR are not members of IGAD, EASF and ESAAMLG, while Tanzania is a member of SADCC and CAR is a member of the Economic Community of Central Africa States (ECCAS). A legitimate question is that in case of a conflict between RECSA member states and another country where one or two of the members belongs which side one will identify with.

6.2 Conclusions

The SALW current and/or proposed legislation in the four countries is largely in harmony with each other and also with the regional and international Instruments and Best Practices Guidelines. The only exception is CAR which does not have a functioning law nor proposed one. There are still some variations in the different national laws in regards to sanctions for breach of the law. The Tanzanian law for example does not have provisions for minimums but have a lower maximum of only 10 years which is far short of the 15 years envisaged by the UNPOA and Best Practice Guidelines.

The laws and draft bills also do not have specific provisions on stockpile management as envisaged in the Nairobi Protocol but have provided for most, if not, all the elements of stockpile management. This omission found is not fatal as long as the law or the bills make provisions for the elements of stockpile management. The Best Practices Guidelines envisage stockpile management to include - (a) Joint Planning and Forecasting, (b) Acquisition, (c) Stockpile security, (d) Maintenance of the stockpile, (e) Marking, (f) Record keeping, (g) Accountability, (h) Loss and Theft, (i) Emergency

Procedure, (j) Training and (k) Disposal. Most of these are included in the new or draft legislation. It would be prudent if Kenya and Uganda which still have their Bills in draft form and CAR which is yet to start the reform process include definition and provisions for stockpile management as provided for in the Best Practices Guidelines.

The four countries are yet to harmonise their current or proposed legislation with each other. It is only Tanzania which has already enacted a new law on firearms and ammunition while the rest still either have draft bills (Uganda and Kenya) or are yet to commence the review process (CAR). Some of the Bills have serious gaps. The Kenya Bill does not have provisions on tracing, private security organisations, stockpile management, duration of keeping firearms records, tracing, and minimum and maximum penalties for the same offences.

The three countries should also ensure that they include all the provisions in the Best Practices Guidelines and Instruments in their bills before enacting them.

The other challenge to harmonization is the lack of a model legislation in the region to help member states adapt to their circumstances during harmonization. For this to happen RECSA may have to come in and provide technical assistance to the three countries.

Also it is important to discuss if some states could 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 harmonization of SALW legislation and policies in the region.

6.3 Recommendations

a) The four countries should coordinate and consult each other on harmonization process to ensure that there is uniformity in their laws in terms of offences, penalties and other provisions on control and management of SALW. This will avoid conflict of laws and facilitate law enforcement. RECSA should help in coordinating this process.

b) To promote legal uniformity and harmonization in the region, and since Tanzania has recently enacted a comprehensive and progressive SALW law, Kenya and Uganda should harmonise their Bills with Tanzania's Firearms and Ammunitions Control Act (2015). Their laws should however provide for those issues that have not been covered or are weakly covered in the Tanzania law.

These include stockpile management, regulations of arms embargo, tracing and private security, stiff penalties with minimum and maximum sentences, creation of an independent SALW agency, and regional and international cooperation.

c) Each country should involve Parliament from the start especially the Internal Affairs, Defense, Security and Legal Affairs Committees to ensure they get their support before the Bill is tabled in Parliament. The Harmonization Committee and the NFP should hold strategic advocacy retreats with MPs on the Bills and laws.

d) Kenya, Uganda and CAR should identify and mobilize champions among MPs to spearhead the legislative process in Parliament.

e) Kenya and Uganda should revise their Bills to fill the identified gaps and present their Bills to Cabinet and Parliament for approval and enactment

f) While CAR now that it has got a democratically elected government should set up an inter-agency and multi-disciplinary harmonization committee and commence review and harmonization its SALW laws.

RECSA

a) To facilitate uniform harmonization RECSA should develop a model legislation that the countries can adapt to their circumstances during harmonization.

b) RECSA should lobby Member States to build good political will and commit to harmonization of their laws to conform to SALW regional and international instruments.

c) RECSA can support member states by providing support to the advocacy and consensus building workshops with MPs in Uganda and Kenya which have draft bills. Similar workshops should, be held with MPs from Tanzania Parliament to sensitize them on the law and lobby them to support and provide funds for the implementation of the new Act.

d) Considering the current capacity deficit in CAR, RECSA should provide technical and financial support to CAR to form the Harmonization Committee and support the work of the Committee if the harmonization process in CAR is to be achieved.

6.4 Conclusion

The review has identified significant landmarks and gaps in the harmonization process in the four countries. The key take way is that the harmonization process in the RECSA region though slow is on track. Several countries have already achieved the landmark (Rwanda, Burundi, Tanzania, and DRC (bill passed in parliament but not yet assented). Like Kenya and Uganda, South Sudan also has a draft Bill. RECSA and the Member States should ensure that the harmonization should achieves uniformity of laws so that no country become a safe haven for proliferators, criminals, illegal arms dealers or users. The RECSA region is the most fragile in Africa and this will continue to be so as long as there ease in accessing illegal firearms and ammunition. Without reform and review of laws to achieve SALW legislation harmonization with regional and international instruments and with each member state domestic laws, the region will not be able to control the use, dealing and proliferation of SALW that will continue to destabilize individual countries and the region.

Annexes

Annex I: Status and Milestones of Harmonization Matrix

Country	Milestones Reached/Made	Responsible Government Organs	Major Challenges
Tanzania	<ul style="list-style-type: none"> • Firearms Control and Management Act, 2015 enacted • Inclusive Harmonisation Committee set up • Planning to implement the new FACA 	<ul style="list-style-type: none"> • Ministry of Home Affairs • Tanzania Police Force • Inspector General of Police • NFP, Harmonisation Committee • Cabinet and President • Parliament 	<ul style="list-style-type: none"> • Not possible to assess impact of the new law because its implementation has not started • Lack of funds to implement the new law • Harmonisation process took 8 years • NFP does not have its own vote and relies on Police budget
Kenya	<ul style="list-style-type: none"> • Draft Firearms Bill, 2014 prepared • Draft Bill with Cabinet Secretary for Interior • SALW Licensing and Vetting Board established 	<ul style="list-style-type: none"> • Ministry of Interior • NFP, SALW LVB • Law Reform Commission • AG's Office • Harmonisation Committee • Cabinet and President • Parliament 	<ul style="list-style-type: none"> • Lack of funding • Competing government priorities • Review has taken so long • Heading to election period which may delay the process • NFP does not have its own vote and relies on Ministry of Interior budget
Uganda	<ul style="list-style-type: none"> • Harmonisation Committee set up • Draft Firearms Control Bill, 2014 • Draft Cabinet Memo • Bill not yet submitted to Cabinet • Consensus building workshops held 	<ul style="list-style-type: none"> • Ministry of Internal Affairs • National Focal Point • Harmonisation Committee • Cabinet and President • Parliament 	<ul style="list-style-type: none"> • Lack of funding • Need for technical expertise on SALW • Competing government priorities • NFP does not have its own vote and relies on Ministry of Internal Affairs budget
Central African Republic (CAR)	<ul style="list-style-type: none"> • DDR/SSR High Commission established • Successful elections were held that may give impetus to the harmonisation process • NFP established 	<ul style="list-style-type: none"> • Attorney General • DDR/SSR High Commission • National Police • NFP, High Council for Hunting • Cabinet and President • Parliament 	<ul style="list-style-type: none"> • Harmonisation Committee not yet set up • Harmonisation process has not started • There is no specific law on SALW • There is no draft bill on SALW • Country remains fragile

Annex II: Key Findings on Harmonization of Laws Matrix

Issue	Uganda (laws & Bills)	Tanzania (Laws)	Kenya (Law & Bill)	CAR (Laws)
1. Definitions <ul style="list-style-type: none"> • Light weapon • Small arm • Firearm • Brokering • Tracing 	<ul style="list-style-type: none"> • Defines all 	<ul style="list-style-type: none"> • Defines all 	<ul style="list-style-type: none"> • Defines all 	<ul style="list-style-type: none"> • Does not define all
2. Licenses and licencing	<ul style="list-style-type: none"> • Act: License to eligible persons by CLO • Bill: License to fit and proper persons and institutions who have competence certificates and with no criminal records (s.17, 18 & 20) • establishes the office of the Registrar to issue and renew Licenses (s. 4, 5, 6) • Gives elaborate procedure for licencing of firearms (s. 24–28, 31, 32 & 33) • Gives Licenses and permits that can be issued: possession for (self-Defense, hunting, film & theatrical productions), gunsmith, manufacturers, dealers, brokers, shooting range administration, and shooting instructor (s. 23) • Provides for accreditation of trainers in use of firearms (s. 21 & 22) 	<ul style="list-style-type: none"> • Act: lays down procedure for licencing (s.24-28) • License to eligible persons by Registrar 	<ul style="list-style-type: none"> • Act: License to persons deemed fit by the licensing officer to purchase/acquire/possess firearms. (s.5(2)) • Bill: establishes small arms and light weapons licensing vetting board (s. 4(1) and the office of the Chief Licensing Officer (CLO) (s. 20(1)) • Elaborates licensing requirements (s.23) 	<ul style="list-style-type: none"> • Penal Code: Prohibits possession without a License • No specific provision on licencing process
3. Record keeping and storage	<ul style="list-style-type: none"> • Act: Registrar to keep a register of firearms (s.4(2), dealers, (s.13) • Dealers to keep register of transactions (s.17(1)) • Dealer to have safe storage facility (s.18) • Bill: establishes the Central Arms Registry comprising of military registry, civil registry & NFP (s.8) • CAR to have databases and records for firearms, dealers, manufacturers, gunsmith, importers, 	<ul style="list-style-type: none"> • Importers to keep firearms and ammunition records (s.28) • Establishes Central Firearms Registry (CFR) located at the Police HQ (s.9) • Establishes a sub-registry in Zanzibar (s.58) • Does not provide for the period to keep the records 	<ul style="list-style-type: none"> • Act: dealers to provide and keep a register of transactions (s.17(1)) • Establishment of a central registry of firearms and ammunition (s.45(d)) • Dealers to have enclosed safe store for safe custody firearms and ammunition (s.18(1)) • Bill: Inspector general of police and dealers to keep records of arms deposited for safe custody (s.39(3)) 	<ul style="list-style-type: none"> • No specific provision

	<p>exporters, PSOs, official institutions, competence certificates, licenses, permits, renewals, refusals, authorisation, transfers, applications, imports & exports, transportation, recovery, losses, seizures, destruction, forfeiture and figure prints (s.9)</p> <ul style="list-style-type: none"> • Records to be kept for 10 years (s.74(2)) • Dealers submit monthly reports to the Registrar (s.74(2)) • Importers to keep firearms and ammunition records 		<ul style="list-style-type: none"> • Dealers to keep registers, records and databases on SALW that are linked to the national database (s.58(3&6)) • Manufactures to maintain records of SALW in a manner that links them to the national database. (s.50(6)) • The IGP to keep a record of the numbers and unique identification marks of all small arms and light weapons (s.72(3)) 	
4. Possession	<ul style="list-style-type: none"> • Act - prohibits possession of firearms & ammunition without a License (s.3(1)) • Prohibits private possession of prohibited firearms (s.3(6)) • Age of possession is 25 years & above (s.4(4)(d)) • Lays down procedure for licencing (s. 24-28) • Bill - Prohibits possession of firearms without a License (s.35(1)) • Age of possession is at least 25 years (s.18(2)(b)) • Limits rounds of ammunition to 30 annually (s.40) • Provides for possession of firearms by PSOs & security agencies - • PSOs must get advanced competency certificate & possession Licenses for each firearm user (s.51). • Types, acquisition and registers of firearms for security agencies (police, prisons, army, reserve force and intelligence). 	<ul style="list-style-type: none"> • Act - Prohibits possession of firearms without a License or permit (s.10(1), 21(1)) • Lays down licencing procedure (s. 10) • Age of possession is at least 25 years (s.11(1)(a)) • Private individuals and companies to only possess non-automatic SALW (s.10(3), 32(1)) • No provision on limits for rounds of ammunition to possess (s.22) • Provides for possession of firearms by PSOs (s.10(5-8), 16) and security agencies - • PSOs must get advanced competency certificate & possession Licenses for each firearm user (s.16) • Types, acquisition and registers of firearms for security agencies (police, prisons, army, reserve force and intelligence). • Provides for reciprocal recognition of SALW Licenses issued in neighbouring states (s. 13) • No specific provision 	<ul style="list-style-type: none"> • Act: prohibits possession without certificate (s.4(1)) • Classifies as an offence: possession of specified firearms without certificate (s.4A(1)) • Provides for exemptions from holding a firearms certificate (s.7) • Classifies as an offence possession of an obliterated firearm (s.11A) • Bill: prohibits civilian possession of SALW and ammunition (Part III clause 22) • Age of possession is between 25 and 75 years of age (s.23(2)(e)) • Specifies procedures for License application e.g. presentation of a competency certificate for having successfully undergone the prescribed competency test (s.24(1)) 	<ul style="list-style-type: none"> • Prohibits possession of firearms and ammunition without a License • PSOs are not allowed to use firearms & ammunition
5. Acquisition, & sale	<ul style="list-style-type: none"> • Act - prohibits purchase and acquisition of firearms & ammunition without a License (s.3(1)) 		<ul style="list-style-type: none"> • Act: allows with a License (s.4(1)) • Allows with a License (12(1)) 	<ul style="list-style-type: none"> • Acquires from Licensed dealers

purchase	<ul style="list-style-type: none"> • Bill: allows with a License (s.35(1)) 			<ul style="list-style-type: none"> • Bill: provides for sale of SALW, spares and to registered dealers or the State (s.46(2)) • All SALW shall be licensed 	<ul style="list-style-type: none"> • Sale only by Licensed dealers
6. Marking & branding	<ul style="list-style-type: none"> • All legal SALW to be marked (s.59(1)) • Marking of manufactured and imported SALW (sections 65, 66(1)) • Has specification of the information that markings should contain (s.66(2)) • Provide where and how markings should be placed on SALW • No provision on branding • Act: allows with a License • Bill: allows with a License (s.12(1)(a)) 	<ul style="list-style-type: none"> • All SALW to be marked (s. 19(1)) • Marking of manufactured and imported SALW (s.18) • No provision on branding • Has specification of the information that markings should contain (s.20) 	<ul style="list-style-type: none"> • Bill: All SALW to be marked (s.72) • Marking of manufactured and imported SALW (s.72) • Marking of state owned small arms and light weapons (75(1)) • Prohibits possession and carrying of unmarked SALW (s.76) • No provision on branding • Act: prohibits transfer by unregistered dealers (s.16) • Bill: prohibits transfer of possession of SALW or ammunition to a third party (s.38) 	<ul style="list-style-type: none"> • All SALW shall be branded • Provides for marking of firearms with security agencies but no procedure for marking 	
7. Transfer	<ul style="list-style-type: none"> • Act: allows with a License • Bill: allows with a License (s.12(1)(a)) 	<ul style="list-style-type: none"> • Act: allows with a License • Bill: allows with a License 	<ul style="list-style-type: none"> • Act: prohibits transfer by unregistered dealers (s.16) • Bill: prohibits transfer of possession of SALW or ammunition to a third party (s.38) 	<ul style="list-style-type: none"> • No provision 	
8. Brokering	<ul style="list-style-type: none"> • Act: No provision • Bill: allowed with a License (s. 75(1)) 	<ul style="list-style-type: none"> • Act: No provision • Bill: allowed with a License 	<ul style="list-style-type: none"> • No provision 	<ul style="list-style-type: none"> • Registration & licencing of SALW brokers • Prohibits brokering without a License 	
9. Dealers/ dealership	<ul style="list-style-type: none"> • Act: allows with a License (s.12) • Bill: allowed with a License (s.72) 	<ul style="list-style-type: none"> • Act: allows with a permit (s.32) • Dealer in specified premises (s.34) • Keep register (s.35(1)) 	<ul style="list-style-type: none"> • Act: registration of dealers by CLO (s.13) • Registration of place of business (s.15) • Registration of transactions • Bill: Allows with License (s.54(1)) • License should specify premises (s.56(a)) • Provides for renewal (s.57), replacement (s.61) & revocation (s. 60) of dealer's License 	<ul style="list-style-type: none"> • Based on MOU between dealers and government • Registration and licencing of dealers 	
10. Import & export	<ul style="list-style-type: none"> • Act: allows with a permit • Should operate from designated place • Import only certain categories (s. 26) • Bill: Allowed with a permit and end user License (s.78) 	<ul style="list-style-type: none"> • Act: allows with a permit • Operate only from designated place • Restrict category of SALW for Import and export 	<ul style="list-style-type: none"> • Act: allows with a permit • Prohibits importation/exportation of prohibited firearms (s.27(2)) • Bill: allows with a permit (s.62(1)) • Permit issued to qualified dealer/ manufacturer (s.62(2)) 	<ul style="list-style-type: none"> • No provision 	
11. Transit and	<ul style="list-style-type: none"> • Act: allows with a permit (s.28) 	<ul style="list-style-type: none"> • Act: Allows transit with permit 	<ul style="list-style-type: none"> • Act: provides for transit permits (s.30) 	<ul style="list-style-type: none"> • No provision 	

transportation	<ul style="list-style-type: none"> • Bill: Allows with a permit (s.76(1)) 	<ul style="list-style-type: none"> • (s.45(1)) • Special permit for each consignment (s.45(3)) • Provides for transporters permit (s.49) • Not provided for 	<ul style="list-style-type: none"> • Bill: Prohibits transit of SALW and ammunition through Kenya without in-transit permit (s.62(3)) 	<ul style="list-style-type: none"> • Prohibited under the Penal Code (s. 251)
12. Pawning, renting & lending	<ul style="list-style-type: none"> • Act: prohibits pawning and making SALW as security (s.20) • Bill: Outlaws pawning, renting & lending (s.105(9)) 		<ul style="list-style-type: none"> • Act: prohibits pawning (s.20(1)) • Bill: prohibits renting, lending, loaning, pawning, transfer of possession of SALW or ammunition to a third party (s.38) • Prohibits lending (s.80(1)) • No specific provision 	<ul style="list-style-type: none"> • Prohibited under the Penal Code (s. 251)
13. Tracing	<ul style="list-style-type: none"> • Act: no specific provision • Bill: provides for tracing (sections 11, 12, 13 & 14) • Provides for tracing requests to and by the Registrar (s.11 & 13) 	<ul style="list-style-type: none"> • Act: Specifies that the Committee determines the national identification code of the SALW (s 19 (1)) 	<ul style="list-style-type: none"> • No specific provision 	<ul style="list-style-type: none"> • No provision
14. Manufacture & repair	<ul style="list-style-type: none"> • Act: Bans manufacturing of SALW (s.11(1)) • Bill: allows manufacturing with a License (s.64) 	<ul style="list-style-type: none"> • Manufacturing with a License (s.38) • Allows repair with a gunsmith's permit (s.39) 	<ul style="list-style-type: none"> • Act allows manufacturing for government only (s.9) • Prohibits repair without License (s.12),(s.16(3)) • Bill allows manufacturing with a License (46(1)) • Manufacturer shall operate at designated place (s.46(2)) • Renewal of manufacturer's License (s.49) 	<ul style="list-style-type: none"> • Doesn't provide for licensing for manufacturing SALW • Manufacturing without License is not an offence
15. Stockpile management	<ul style="list-style-type: none"> • No specific provision in the Act and Bill 	<ul style="list-style-type: none"> • No specific provision but provides for storage by importers and dealers (s.27, 29) • IGP to issue directive on storage of SALW (s.30) 	<ul style="list-style-type: none"> • No specific provision 	<ul style="list-style-type: none"> • No specific provision
16. Disposal & destruction	<ul style="list-style-type: none"> • Act: provides for forfeiture and disposal (s. 33 & 38) • Bill: provides for destruction of all firearm or ammunition that have been abandoned, can't be safely stored, seized illicit firearms, and rendered 	<ul style="list-style-type: none"> • Act: Provides for disposal of firearms (part VII) 	<ul style="list-style-type: none"> • Act: provides for disposal and destruction of firearms (s.38) • Bill: provides for disposal and destruction (s.73 & 74) 	<ul style="list-style-type: none"> • Penal code: Provides for confiscation and disposal of arms (s.249)

	surplus, redundant or obsolete (s. 87 – 89) <ul style="list-style-type: none"> Types/ways of disposal including voluntary surrender, seizure, confiscation etc. 				
Offences & penalties					
17. General Comments	<ul style="list-style-type: none"> Does not provide for minimum and maximum penalties for offences Either provide for max or min but not both 	<ul style="list-style-type: none"> Does not provide for minimum and maximum penalties for most offences Either provide for max or min but not both 	<ul style="list-style-type: none"> Does not provide for minimum and maximum penalties for most offences Either provide for max or min but not both 	<ul style="list-style-type: none"> Does not provide for minimum and maximum penalties for offences Either provide for max or min but not both 	<ul style="list-style-type: none"> Does not provide for minimum and maximum penalties for offences Either provide for max or min but not both
18. Illicit possession	<ul style="list-style-type: none"> Act: max 10 years and/or 20,000 fine (s.3(2)) Bill: max 25 years (s.39(9), 41(8), 42(11)) 	<ul style="list-style-type: none"> Act: five years (s.20(2)) 	<ul style="list-style-type: none"> Act - Max Life (s.) Bill - max 20 yrs. and a max fine of 20 million KES (s.84) 	<ul style="list-style-type: none"> Min 5 years Max 10 years (s.245 Penal Code) 	<ul style="list-style-type: none"> Min 5 years Max 10 years (s.245 Penal Code)
19. Possession, or purchase of unmarked SALW	<ul style="list-style-type: none"> Act: No provision Bill – 5 years and/or 5 million shillings (s.60(2) & (s. 61(4)) 	<ul style="list-style-type: none"> No specific provision 	<ul style="list-style-type: none"> 	<ul style="list-style-type: none"> No provision 	<ul style="list-style-type: none"> No provision
20. Illicit dealing	<ul style="list-style-type: none"> Bill: 25 years (s.72(5)) 	<ul style="list-style-type: none"> Max 10 years and /Max fine of 15 million shillings (60(1)) Max 10 years and /Max fine of 15 million shillings (60(1)) 	<ul style="list-style-type: none"> Act: Min 5 Max 10 (s.12(2)) 	<ul style="list-style-type: none"> No provision 	<ul style="list-style-type: none"> No provision
21. Illicit purchase, sale & acquisition	<ul style="list-style-type: none"> Act: 6 months and/or 2,000/= (s.3(3&4)) Bill: 15 years max 	<ul style="list-style-type: none"> Max 10 years and /Max fine of 15 million shillings (60(1)) 	<ul style="list-style-type: none"> Min of 7 years Max 15 years 	<ul style="list-style-type: none"> Min 5 years Max 10 years (s.245 PC) 	<ul style="list-style-type: none"> Min 5 years Max 10 years (s.245 PC)
22. Illicit manufacturing	<ul style="list-style-type: none"> Act: Max - death penalty (s.11(1&3)) Bill: 25 years (s.64(5)) 	<ul style="list-style-type: none"> Max 10 years and /Max fine of 15 million shillings (60(1)) 	<ul style="list-style-type: none"> Act: Min 10 years Max 15 years (s.9(3)) Bill: Min 15 years, 20 million shillings Min fine (s.83) 	<ul style="list-style-type: none"> Not an offence 	<ul style="list-style-type: none"> Not an offence
23. Altering, falsifying or removing marks	<ul style="list-style-type: none"> Bill: Max - 10 years 	<ul style="list-style-type: none"> Act: Max 5 years and / max fine of 10 million shillings (s.19(8)) 	<ul style="list-style-type: none"> Act: Min 5 years Max 10 years (s.11A) Bill: Min 10 years (s.91) 	<ul style="list-style-type: none"> Min 5 years Max 10 years 	<ul style="list-style-type: none"> Min 5 years Max 10 years
24. Misuse of SALW	<ul style="list-style-type: none"> Act: carrying SALW when drunk – 6 months (s.31) Imitation of SALW (s. 32) 	<ul style="list-style-type: none"> No specific provision 	<ul style="list-style-type: none"> Act: use and possession of imitation firearms Max 15 years Min 7 years (s.34) Carrying firearm while drunk or disorderly 	<ul style="list-style-type: none"> Min 5 years Max 10 years (s.245 PC) If firearm is used to kill, 	<ul style="list-style-type: none"> Min 5 years Max 10 years (s.245 PC) If firearm is used to kill,

	<ul style="list-style-type: none"> Threatening violence – 14 years (s.32(1)(b)) Display of imitated SALW – 6 months (s.32(2)) Bill: carrying SALW when drunk – 6 months (s.31) Imitation of SALW (s. 32) Threatening violence – 14 years (s.32(1)(b)) Display of imitated SALW – 6 months (s.32(2)) Act: 6 months and/or 2,000/= (s. 20) Bill: 10 years (s.105(9)) 			<ul style="list-style-type: none"> Not provided for Not provided for 	<ul style="list-style-type: none"> max 1 year and or max fine of ten thousand shillings (s.33) Bill: use and possession of imitation firearms Max 15 years & Min 7 years (s.94) Use of small arm in unauthorised way under the influence of alcohol Min 7 years and/ Min fine of 5 million shillings (s.80(3)) Act: Max 5 years Min 3 years (s.20) Bill: lending Min 7 years and /Min fine of 10 million shillings(s.80(2)) No specific provision 	<ul style="list-style-type: none"> rob or rape penalty is death Min 5 years Max 10 years (s.251 PC)
25. Pawning, renting						
26. Illicit trafficking in & fabrication of SALW	<ul style="list-style-type: none"> Act: No specific provision Bill: 5 years (s.105(7)) 				<ul style="list-style-type: none"> Fabrication Min 5 years Max 10 years Min fine 100,002 francs Max fine 500,000 francs (s.251) 	
27. Manufacturing or importing unmarked SALW	<ul style="list-style-type: none"> Act: life imprisonment (s. 11) Bill: 10 years and/or 10 million shillings 		<ul style="list-style-type: none"> No specific provision 			<ul style="list-style-type: none"> Not provided for
28. Making false statements	<ul style="list-style-type: none"> Act: 5 years (s.4(10)) Bill: 5 years (s.105(6)) 		<ul style="list-style-type: none"> Not provided for 	<ul style="list-style-type: none"> Act: (application for certificate) Max 2 months and/max fine of 2,000 KES (s.5(9)) Application for renewal of permit Max 6 months and/max fine of shs. 2,000 (s.7(15)) Permit for dealing Max 10 years & Min 5 years (s.12(2)) Registration of dealers Max 1 year and/ Max fine of 10,000 shillings (s.13(5)) Bill: Min 2 years and/ Min fine of 2 million shillings. (s.90) 	<ul style="list-style-type: none"> Not provided for 	
SALW Institutions						
29. Central Registry	<ul style="list-style-type: none"> Act: CLO to keep register of firearms certificates (s. 4(2)) 	<ul style="list-style-type: none"> Act: establishes central firearms registry (s.9) 		<ul style="list-style-type: none"> Act: Minister to make rules for establishment of a central registry (s.45(d)) 		<ul style="list-style-type: none"> No provision

	<ul style="list-style-type: none"> • Bill: establishes Independent CAR – military, civil & NFP (s.8) 			<ul style="list-style-type: none"> • Bill: 	
30. NFP	<ul style="list-style-type: none"> • Act: no specific provision • Bill: establishes NFP to coordinate national, regional & International action on control of firearms (s.8)(c) 	<ul style="list-style-type: none"> • Act: Establishes NFP (s.4) 	<ul style="list-style-type: none"> • Act: no specific provision • Bill: No specific provision 	<ul style="list-style-type: none"> • DDR/SSR Commission 	High
31. Board	<ul style="list-style-type: none"> • Bill: Establishes the Arms Management and Disarmament Committee (s. 2) 	<ul style="list-style-type: none"> • Act: Establishes Arms Management and Control Committee (s.5) 	<ul style="list-style-type: none"> • Act: establishes the SALW Licensing and Vetting Board (s.3) • Bill: establishes the SALW Licensing and Vetting Board (s.4) 	<ul style="list-style-type: none"> • DDR/SSR Commission • Supreme Council for Hunting 	High
32. Registrar	<ul style="list-style-type: none"> • Bill: establishes the office of the Registrar with Deputy Registrars for civil arms, military and NFP (sections 4, 5 & 6) 	<ul style="list-style-type: none"> • Act: provides for appointment of a registrar of firearms (s.8) 	<ul style="list-style-type: none"> • Act: Not provided for • Bill: provides for appointment of the chief licensing officer (s.20) 	<ul style="list-style-type: none"> • No provision 	
33. Designated Firearms Officer (DFO) – RPC	<ul style="list-style-type: none"> • Bill: Provides for DFO to receive, scrutinize and recommend to the Registrar applicants for issuance and renewal of Licenses and permits originating from the region (s. 15). 	<ul style="list-style-type: none"> • Not provided for 	<ul style="list-style-type: none"> • Not provided for 	<ul style="list-style-type: none"> • Not provided for 	
34. District Firearms Taskforce (DFT)	<ul style="list-style-type: none"> • Provides for the DFT to coordinate actions on firearms control, receive applications for processing & renewal of Licenses and permits, recommending and forwarding applications for Licenses and permits, and recommending action on armament and disarmament in the district (s. 16). 	<ul style="list-style-type: none"> • Not provided for 	<ul style="list-style-type: none"> • Not provided for in the Act • Bill: Provides for County and District Taskforce 	<ul style="list-style-type: none"> • No provision 	
35. Regional & International cooperation	<ul style="list-style-type: none"> • Registrar to implement regional & international Protocols & agreements on the control of firearms - section 5(1)(e) • NFP established to coordinate national, regional & International action on control of firearms (s.8)(c) • Registrar can coordinate with international & regional organizations and the international community (s.5(2)(b)) 	<ul style="list-style-type: none"> • Act: Provides for information sharing and mutual assistance (s.68) 	<ul style="list-style-type: none"> • Not provided for 	<ul style="list-style-type: none"> • Allows sharing of information of deregistered brokers with other states • DDR/SSR Commission established to coordinate and manage control and issues of SALW nationally, regionally and internationally 	
36. Other Stakeholders Non-state actors	<ul style="list-style-type: none"> • Provides for collaboration and working with non-state actors (s.5(2)(b)) • No representation of non-state actors in the AMDC (s.2 of the Bill) 	<ul style="list-style-type: none"> • Act: Provides for collaboration and working with non-state actors • Non-state actors represented in the AMDC (s.6(1)(0) FACA) 	<ul style="list-style-type: none"> • Provides for collaboration and working with non-state actors • No non-state actors representation in the Board 	<ul style="list-style-type: none"> • No specific provisions 	

Annex III: Law Making Process in Tanzania

The stages of initiation and enactment of bills are briefly outlined below:

Laws in Tanzania are introduced to Parliament in form of Bills by Government through the Attorney General, the Minister or by a Private Member of Parliament (Private Members Bill). Before a Government Bill is introduced into the Assembly, it goes through a lengthy process of consultation and decision-making at user department level, stakeholders' level, public level, Ministerial level, Permanent Secretaries level and finally the Cabinet. Any interested party can get involved at any stage.

Publication of Bill

After the Bill has been approved by the Cabinet, (in the case of government bills) it is published in the official Gazette with a statement of its objects and reasons, signed by the Minister responsible for introducing the bill in the National Assembly. It must be published in at least two issues of the gazette at intervals of not less than seven clear days. The first publication of a Bill must contain its full text, and must be published at least twenty-one days before it is introduced in the National Assembly for first reading.

The second publication of the Bill is deemed to have been made by the insertion of a notice in the Gazette naming the title of the Bill, plus the number and date of the Gazette in which it was first published.

Bill under Certificate of Urgency

The procedure for publication mentioned above may be dispensed with in respect of a government bill, if a certificate under the hand of the President is laid on the table of the Assembly by a Minister or Attorney-General stating that the relevant Bill is of such an unusually urgent nature that time does not permit compliance with the prescribed procedure.

Private Member's Bill

Any MP who is not a Minister may introduce a Bill into the Assembly. Such bill is known as a private member's bill. A member desiring to do so notifies the Clerk of the National Assembly of his or her intention and submits the name of the Bill and describes fully the objects and reasons of the Bill. The procedure for printing and publication is the same as for government bills.

First Reading

The first reading stage of any bill is done by the Clerk at the Table by reading the long title of the Bill before the Assembly. At this stage no discussion takes place, instead, the Speaker refers the Bill to the appropriate Standing Committee for consideration/scrutiny. The Committee has no power to amend a Bill referred to it but may request the Minister responsible for the Bill to introduce amendment to the Bill in the Assembly.

Second Reading

After the Chairman of the appropriate Standing Committee has reported to the Speaker that his Committee has concluded its consideration of the Bill, the Speaker orders the Bill to be entered on the Order Paper ready for the Second Reading. At this stage, the Minister in charge of the Bill moves a motion that the Bill be now read for the second time, gives detailed explanations to the Assembly before the Members start debating the proposals contained therein.

The Minister's speech is followed by a statement of the Chairman of the Committee, which considered the Bill who outlines the views of the Committee regarding that bill. The official spokesman for the opposition then takes the floor to give the views of the official Opposition regarding the Bill. This is followed by a general debate by the Members regarding the merits or otherwise of the bill.

Committee of the Whole House

On completion of the general debate, the Assembly constitutes itself into a Committee of the whole House chaired by the Speaker and will now debate the bill clause by clause. The Clerk calls the number of each clause in succession together with any amendments which may have been made by the Minister in charge on the Bill. The Presiding Officer (who at this stage is designated Chairman, not Speaker) puts the question "that the Clause (or the clause as amended) be approved. Members usually answer in chorus as "aye" or "no". Whatever side is louder will take the day. Sometimes it is done by show of hand or division into lobby if there is no clear winner.

Third Reading and Passing of the Bill

When the clauses of the Bill have been dealt with, the Assembly resumes and the speaker returns to the Chair at the conclusion of the proceedings in the Committee of the whole House. The Minister in-charge of the Bill then reports to the Assembly that the Committee has considered the Bill, Clause

by clause and approved the same. Thereafter he requests the Assembly to concur with the findings of the Committee. At this stage the Assembly votes, and if the majority of the MPs give their consent then the Bill has been passed by the House. If the majority of MPs say 'No' then the Bill has been rejected by the Assembly.

Assent to Bills

When a Bill has been passed by the Assembly, a printed copy of the Bill is submitted by the Clerk of the National Assembly to the President for his assent or other order if the bill is assented to then it becomes an Act of Parliament.

Withhold of Assent

In case the President withholds his assent to the Bill, he must return it to the Assembly together with a statement of his reasons for withholding his assent to the Bill. After the Bill is returned to the Assembly, it shall not be presented again to the President for his assent before the expiration of six months since it was so returned. In order for it to be presented again to the President, it must be supported by the votes of not less than two-thirds of all the Members of the Assembly.

If the Bill which was returned to the Assembly by the President, is passed again by the Assembly with the support of not less than two-thirds of all the Members of the Assembly, and is presented a second time to the President for his assent then the President is obliged to assent to the Bill within twenty one days of its being presented to him, otherwise he must dissolve Parliament and call for a new general election.

Annex IV: Law Making Process in Kenya

The stages of initiation and enactment of bills are briefly outlined below:

- According to art 109(5) of 2010 Constitution: a Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the NA in accordance with Article 114. A "Money bill," is stated to originate only from the NA.
- Art. 110 (3): Before either House considers a Bill, the Speakers of the NA and Senate shall jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary Bill.
- Art. 110 (5): If both Houses pass the Bill in the same form, the Speaker of the House in which the Bill originated shall, within seven days, refer the Bill to the President for assent.
- Art. 111 (2): The NA may amend or veto a special Bill that has been passed by the Senate only by a resolution supported by at least two-thirds of the members of the Assembly
- Art. 111 (3): If a resolution in the National Assembly to amend or veto a special Bill fails to pass, the Speaker of the Assembly shall, within seven days, refer the Bill, in the form adopted by the Senate, to the President for assent
- Art. 112 (1): If one House passes an ordinary Bill concerning counties, and the second House-- (a) rejects the Bill, it shall be referred to a mediation committee appointed under Article 113; or (b) passes the Bill in an amended form, it shall be referred back to the originating House for reconsideration.
- Art. 112 (2): If, after the originating House has reconsidered a Bill referred back to it under clause (1) (b), that House-- (a) passes the Bill as amended, the Speaker of that House shall refer the Bill to the President within seven days for assent; or (b) rejects the Bill as amended, the Bill shall be referred to a mediation committee under Article 113.
- Art. 113 (1): If a Bill is referred to a mediation committee under Article 112, the Speakers of both Houses shall appoint a mediation committee consisting of equal numbers of members of each House to attempt to develop a version of the Bill that both Houses will pass.
- Art. 113 (2) If the mediation committee agrees on a version of the Bill, each House shall vote to approve or reject that version of the Bill.
- Art. 113 (3): If both Houses approve the version of the Bill proposed by the mediation committee, the Speaker of the NA shall refer the Bill to the President within seven days for assent. (4) If the mediation committee fails to agree on a version of the Bill within thirty days, or if a version proposed by the committee is rejected by either House, the Bill is defeated.

- 115 (1): Within fourteen days after receipt of a Bill, the President shall assent to the Bill or refer the Bill back to Parliament for reconsideration by Parliament, noting any reservations that the President has concerning the Bill.

- Art. 115 (2): If the President refers a Bill back for reconsideration, Parliament may, following the appropriate procedures under this Part— (a) amend the Bill in light of the President’s reservations; or pass the Bill a second time without amendment.

- Art. 115 (3): If Parliament amends the Bill fully accommodating the President’s reservations, the appropriate Speaker shall re-submit it to the President for assent.

- Art. 115 (4) Parliament, after considering the President’s reservations, may pass the Bill a second time, without amendment, or with amendments that do not fully accommodate the President’s reservations, by a vote supported— (a) by two-thirds of members of the NA; and (b) two-thirds of the delegations in the Senate, if it is a Bill that requires the approval of the Senate.

- Art. 115 (5): If Parliament passed a Bill under clause (4) the appropriate Speaker shall within seven days re-submit it to the President who shall within seven days assent to the Bill.

- Art. 115 (6): If the President does not assent to a Bill or refer it back within the period prescribed in clause (1), or assent to it under (5) (b), the Bill shall be taken to have been assented to on the expiry of that period.

- Art. 116 (1): A Bill passed by Parliament and assented to by the President shall be published in the Gazette as an Act of Parliament within seven days after assent.

- Art. 116 (2): Subject to clause (3), an Act of Parliament comes into force on the fourteenth day after its publication in the Gazette, unless the Act stipulates a different date on or time at which it will come into force.

- Art. 116 (3): An Act of Parliament that confers a direct pecuniary interest on MPs shall not come into force until after the next general election of MPs.

- Art. 116 (4): Clause (3) does not apply to an interest that MPs have as members of the public

Annex V: Law Making Process in Uganda

The stages of initiation and enactment of bills are briefly outlined below:

Although various bodies in Uganda have been making and continue to make different types of laws, the main law making body in Uganda is parliament.¹⁰⁰ This is provided for under chapter six of the constitution of Uganda which deals with the Legislature. The composition of parliament is set out in article 78 of the constitution which provides that parliament shall consist of;

- members directly elected to represent constituencies;
- one woman representative for every district
- such number of representatives of the army, youth, workers, persons with disabilities and other groups as parliament may determine; and
- the Vice president and Ministers, who if not already elected members of parliament (MPs), shall be ex-officio members

Under article 79 of the constitution, parliament is vested with powers to make laws. In terms of article 91 of the constitution, the powers of parliament to make laws is exercised through bills passed by parliament and assented to by the president.

Legislative Proposals by a Minister

Bills that are presented to Parliament are a result of a legislative proposal by a responsible Minister to implement a government policy which requires legislation. This is usually as a result of background and technical input in form of concept note, research and recommendations by a technical department and senior management of the ministry concerned. The Minister’s legislative proposal is done by a cabinet memorandum presented to cabinet. Not all legislative proposals put before cabinet are approved by cabinet. But where cabinet has approved a policy on a particular legislative proposal, then cabinet gives its decision in writing in form of a cabinet minute. The proposed legislation maybe in the form of a bill, statutory instrument, or draft statutory instrument depending on whether the instrument has been laid before cabinet for notification or information.

When cabinet has approved the proposal for legislation, the ministry or department which made the proposal for legislation sends copies of the cabinet memorandum and capital minute to the First Parliamentary Counsel (FPC) in the Ministry of Justice and Constitutional Affairs/ Attorney General

¹⁰⁰District Councils have legislative powers in their respective risdictions(article 180(1) of the Constitution

together with any other documents relevant to the proposed legislation and drafting instructions for the drafting of the legislation. It is important that drafting instructions are in writing so as to ensure that the draftsman fully understands what the proposed legislation is intended to achieve. From the time when drafting instructions are given to the FPC to the completion of the drafting of the legislation, numerous consultations are held between the Ministry or department sponsoring the legislation and the office of the FPC, stakeholders and the public.

When the drafting is completed, the FPC sends the draft to the instructing Ministry or department for scrutiny and circulation to other persons who, in the opinion of the instructing Ministry/Department, would make useful comments on the proposed legislation. In some cases, where the proposed legislation warrants, the FPC informs the Attorney General (AG) and the Solicitor General about the draft legislation. Before a final draft is made, there are several drafts which are discussed by the instructing Ministry or department and the FPC. The draft shall be submitted to the Ministry responsible for finance

If the instructing Ministry or department is satisfied with the draft legislation, the final draft Bill is submitted to Ministry of Finance for scrutiny and issuance of a certificate of financial implications. The Bill shall be submitted to Cabinet by the Minister concerned with a cabinet memorandum explaining the legal effect and the objectives of the proposed legislation and attaching the certificates of legal compliance and financial implications. Cabinet debates the bill and either approve it or return it to the ministry for review. At this stage, any member of the cabinet may propose changes or modifications to the draft bill. The instructing Ministry and the FPC ensure that the amendment or the modifications are effected accordingly. Sometimes Cabinet send the bill to the Law Reform Commission to do a thorough study and consultancy in liaison with the parent department.

Private Member's Bill

A private member's bill may be initiated in areas where an MP or MPs feel that the Government has failed or neglected to initiate legislation on a certain aspect. Under article 94(4)(b) of the constitution, an MP has the right to move a private member's Bill. Article 94(4)(c) and (d) provides that a member moving the private Member's Bill shall be afforded reasonable assistance by the department of government whose area of operation is affected by the Bill and the office of the Attorney General is required to afford the member professional assistance in the drafting of the Bill.

Legislative Proposal by a standing Committee in Parliament

Legislation may also be initiated by a standing committee in Parliament. Standing Committees are some of the necessary committees that parliament has appointed under Article 90(1) of the constitution for the efficient discharge of its functions.¹⁰¹ Standing Committees are empowered under article 90(3)(b) of the constitution to initiate any Bill within their respective areas of competence. Under this provision therefore, these Committees have powers to initiate legislation.

However, no bill or motion shall be moved or introduced in the House by a Private Member's bill or by a standing committee in Parliament, in the following areas;

- imposition of taxation or alteration of taxation otherwise than by reduction;
- imposition of a charge on the Consolidated Fund or other public fund of Uganda or the alteration of such charge otherwise than by reduction;
- payment, issue or withdrawal from the Consolidated Fund or other public fund of any monies not charged on that fund or any increase in the amount of that payment, issue or withdrawal; or
- the composition or remission of any debt due to the government of Uganda.

Presentation, Publication and Introduction to Parliament of a Bill Originating from Cabinet, Standing Committee and a Private Member's Bill

After Cabinet has approved that draft Bill on proposed legislation and it is published in the Gazette as a bill, it is presented to the Legislature through the clerk to Parliament after a sufficient number of copies of the bill has been printed and produced for distribution to Members of Parliament. Under article 94 of the Constitution, Parliament has power to make Rules to govern its own procedure and procedure of its committees. Parliament has indeed made 'Rules of Procedure'. Part XVI of the Rules of Procedure deals with the publication and introduction of Bills to parliament.

Publication of Government Bills

After a Bill or Statutory Instrument has been approved by cabinet, the instructing Ministry sends to the FPC the draft Bill or a dully signed statutory Instrument, the Cabinet memorandum and the Cabinet Minute on the decision.

¹⁰¹In summary, this means that no Bills may be initiated on matters relating to specific financial aspects like imposition of taxation, imposing a charge on the Consolidated Fund, remission of debt, etc.

The FPC causes the Bill or the signed statutory instrument to be published in the Gazette. Only the FPC has authority to issue instructions for publication in the Gazette of a Bill or statutory instrument after it has seen the Cabinet Minute authorising publication.

Introduction and Publication of other Bills.

A private member's Bill is introduced into Parliament/House by way of Motion to which is attached the proposed draft Bill. If the motion is carried, the printing and publication of the Bill in the Gazette, the progress of the Bill is the same as what is followed in respect of a Government Bill. Rule 91 of the Rules of Procedure requires that Bills must be published in the Gazette.

The Bill must be accompanied by an explanatory memorandum setting out the policy and principles of the Bill, the defects of the existing law, if any, and the remedies proposed to deal with those defects. The explanatory memorandum is signed by the Minister or by the Member introducing the Bill or the chairperson of a standing committee.

Urgent Bills (exemption from publication in the Gazette)

A bill may according to rule 96(i) of the Rules of Procedure, be introduced under special circumstances without being published in the Gazette, if the appropriate Committee of the House recommends and the House approves dispensation with the requirement for publication. Copies of the Bill are circulated to Members and such Bill may go through all stages in one day.

If the proposal is in form of a statutory Instrument initiated under an Act of parliament, e.g. section 94 of the land Act which provides that 'the Minister may, by statutory Instrument with approval of parliament, make regulations generally for the better carrying into effect the provisions of this Act.' Any statutory Instrument or order initiated under this section is presented to the clerk to parliament inform of a draft Statutory Instrument. A sufficient number of copies of the Bill, or draft statutory instrument must be produced for distribution to members of parliament.

Distribution of Bills to Members of Parliament

According to rule 92 of the Rules of procedure, when a Bill is published in the Gazette, the Minister responsible for the Bill delivers to the Clerk to Parliament copies of the Bill for distribution to MPs. The clerk is required to ensure that copies of

a private member's Bill or of a Bill originating from a standing committee are, when published, distributed to all members without delay.

Introduction, Debate and Passing of Bills in Parliament

First Reading

The first reading stage of any bill is done by the Clerk at the Table by reading the long title of the Bill before the Assembly. At this stage no discussion takes place, instead, the Speaker refers the Bill to the appropriate Standing or Session Committee for consideration/scrutiny. The Committee has powers to amend the Bill and present the amendment to the House.

Second Reading

After the Chairman of the appropriate Committee has reported to the Speaker that his or her Committee has concluded its consideration of the Bill, the Speaker orders the Bill to be entered on the Order Paper ready for the Second Reading. At this stage, the Minister in charge of the Bill moves a motion that the Bill be now read for the second time, gives detailed explanations to the Assembly before the Members start debating the proposals contained therein.

The Minister's speech is followed by a statement of the Chairman of the Committee, which considered the Bill who outlines the views of the Committee regarding that bill and any amendments with their rationale. The official spokesman for the opposition then takes the floor to give the views of the official Opposition regarding the Bill. This is followed by a general debate by the Members regarding the merits or otherwise of the bill.

Committee of the Whole House

On completion of the general debate Parliament constitutes itself into a Committee of the whole House chaired by the Speaker to debate the bill clause by clause. The Clerk calls the number of each clause in succession together with any amendments which may have been made by the Committee. The Presiding Officer (who at this stage is designated Chairman, not Speaker) puts the question "that the Clause (or the clause as amended) be approved. Members usually answer in chorus as "aye" or "no". Whatever side is louder will take the day. Sometimes it is done by show of hand or division into lobby if there is no clear winner.

Third Reading and Passing of the Bill

When the clauses of the Bill have been dealt with, the Assembly resumes and the speaker returns to the Chair at the conclusion of the proceedings in the Committee of the whole House. The Minister in-charge of the Bill then reports to the Assembly that the Committee has considered the Bill, Clause by clause and approved the same. Thereafter he requests the Assembly to concur with the findings of the Committee. At this stage the Assembly votes, and if the majority of the MPs give their consent then the Bill has been passed by the House. If the majority of MPs say 'No' then the Bill has been rejected by the Assembly.

Assent to Bills

When a Bill has been passed by the Assembly, a printed copy of the Bill is submitted by the Clerk of the National Assembly to the President for his assent or other order if the bill is assented to then it becomes an Act of Parliament.

Withhold of Assent

In case the President withholds his assent to the Bill, he must return it to the Assembly together with a statement of his reasons for withholding his assent to the Bill. After the Bill is returned to the Assembly, it shall not be presented again to the President for his assent before the expiration of six months since it was so returned. In order for it to be presented again to the President, it must be supported by the votes of not less than two-thirds of all the Members of the Assembly.

If the Bill which was returned to the Assembly by the President, is passed again by the Assembly with the support of not less than two-thirds of all the Members of the Assembly, and is presented a second time to the President for his assent then the President is obliged to assent to the Bill within twenty one days of its being presented to him, otherwise he must dissolve Parliament and call for a new general election.

Domestication of International Instruments (Treaties)

According to Vienna Convention on the Law of Treaties¹⁰², the term treaty describes an international agreement concluded in writing between states, or between a state and an international organisation, which is intended to create rights and obligations in international law. Procedures and regulations for ratification of Treaties and international and regional instruments are provided under the

¹⁰²Art 2 of the Vienna on the Law of Treaties

Ratification of Treaties Act¹⁰³. Section 1 of the Ratification of Treaties Act provides that a treaty includes a convention, agreement or other arrangement made under article 123(1) of the Constitution. A treaty maybe in the form of a single instrument with number of articles or inform of an exchange of notes.

The coming into Force of a Treaty

The coming into force of a treaty depends on each particular treaty. Generally, unless a treaty provides that it enters into force upon signature, by signing a treaty a state merely shows that it is in agreement with the text but it is not bound thereby until the treaty has been ratified and entered into force. Ratification means agreeing to be bound. In Uganda the law governing execution and implementation of treaties/conventions is the Constitution and Ratification of Treaties Act¹⁰⁴.

Under article 123(1) of the Constitution, the president or a person authorised by the president may make treaties, conventions, agreements or other arrangements between Uganda and another country or between Uganda and any International organisation or body in respect of any matter. Art.123(2) requires parliament to make laws to govern ratification of treaties, conventions, agreements or other arrangements made under Art 123(1) and the Ratification of Treaties Act was passed and came into force on the 13th of March, 1998. The Ratification of Treaties Act provides for the method of ratification of different categories of treaties.

Under Section 2 of the Act, treaties relating to armistice, neutrality or peace or those which the Attorney General certifies in writing require amendment of the constitution are to be ratified by parliament. All others are to be ratified by cabinet. Ratification of a treaty imposes upon the ratifying state obligations under international Law¹⁰⁵.

Procedure for Ratification

The organs of the Government involved in ratification are the Executive (Cabinet) and the Parliament. The Lead Ministry Agency responsible for the matter requiring ratification prepares the draft Cabinet paper. Then the regulatory authority within the line Ministry forwards the cabinet paper to the line Minister for approval and onward presentation to the cabinet. The line Minister then presents the cabinet paper to the Cabinet for approval.

¹⁰³Cap 204

¹⁰⁴ibid

¹⁰⁵Art 1 of the Draft Declaration of the Rights and Duties of States,1949(Prepared by the International law Commission; noted and recommended by the general ass.Res.375(IV),G.A.O.R 4th Session,Resolutions,P.66(1949)

Cabinet then authorises the Minister of Foreign Affairs to ratify the protocol.

The Minister of Foreign Affairs signs, seals and deposits the instrument of ratification with the treaty depository and also the National Depository of treaties

Annex VI: Agreed Regional and International Instruments on SALW

International Level

At the global level, the following instruments have been agreed upon to guide the management and control of small arms and light weapons:

The UN Programme of Action (UNPoA), 2001

This is an international instrument that aims at developing or strengthening agreed norms and measures with a view to promoting concerted and coordinated international efforts to curb the illicit small arms and light weapons manufacture, export, import, transfer and retransfers. It provides a framework for activities to counter the illicit trade in SALW.

Firearms Protocol, 2001

This is a UN Protocol that establishes mechanisms against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and ammunition; and it supplements the United Nations Convention against Transnational Organized Crimes. The Protocol is legally binding and it complements the UNPoA. The coordination of its implementation is entrusted to the United Nations Office on Drugs and Crime (UNODC).¹⁰⁶

International Tracing Instrument, 2005

This instrument is intended to enable States to identify and trace, in a timely and reliable manner, the illicit Small Arms and Light Weapons. It emphasises three broad areas of firearms marking, record keeping and cooperation in information sharing (tracing). The instrument was developed within the policy framework established by the 2001 Programme of Action and makes reference to the 2001 Firearms Protocol.¹⁰⁷

The Arms Trade Treaty, 2013

The Arms Trade Treaty (ATT) is a multilateral treaty that aims at regulating the international trade in conventional arms, from small arms to battle tanks, combat aircraft and warships. The treaty is intended to foster peace and security by eradicating and destabilizing arms flows to conflict regions and preventing human rights abusers and violators from being supplied with arms¹⁰⁸.

¹⁰⁶www.unodc.org

¹⁰⁷www.un.org/events/international/instrument

¹⁰⁸www.un.org/disarmemnet/ATT

At the international level, the United Nations Office for Disarmament Affairs (UNODA) coordinates all affairs related to SALW.

African Continental Level

At the African continental level, there is the Bamako Declaration to guide the management and control of small arms and light weapons:

The Bamako Declaration, 2000

The Bamako Declaration on the Common African Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons¹⁰⁹ aims at promoting peace, security and sustainable development through addressing the problem of the illicit proliferation, circulation and trafficking of SALW in a comprehensive integrated sustainable and efficient manner. The implementation of this declaration is vested with the member states while follow-up and coordination is undertaken by the African Union Commission.

Regional Level

At the regional level, countries have come together to fight small arms proliferation through enactment of regional instruments as outlined below:

The Nairobi Protocol, 2004

The Nairobi Protocol on the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States aims to;

- a) prevent, combat and eradicate the illicit manufacturing of, trafficking in, possession and use of SALW in the sub-region,
- b) prevent the excessive and destabilizing accumulation of SALW in the sub-region,
- c) promote and facilitate information sharing and cooperation between governments and the sub-region as well as between governments, inter-governmental organizations and CSO in all matters relating to illicit trafficking and proliferation of SALW,
- d) promote cooperation at the sub-regional level as well as in the international forum to effectively combat the SALW problem in collaboration with relevant partners, and
- e) encourage accountability, law enforcement and efficient control and management of SALW held by state parties and civilians.

From the institutional point of view, the Nairobi Protocol, unlike other regional instruments, has an intergovernmental institution (RECSA) that is solely dedicated to coordinating its implementation.

SADC Protocol, 2001

*The SADC Protocol on Control of Firearms, Ammunition and other Related Materials*¹¹⁰ signed by States in the Southern African Development Community, aims at preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilizing accumulation, trafficking, possession and use in the region.

The implementation of this protocol is the responsibility of signatory member states, while coordination and follow-up is by the Southern Africa Regional Police Chiefs Cooperation Organisation (SARPCCO).

ECOWAS Convention, 2006

The ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials¹¹¹, agreed upon by States in the Economic Community of West Africa, aims at preventing and combating the excessive and destabilising accumulation of SALW within ECOWAS; and to continue the efforts for the control of SALW.

The coordination and follow-up of this Convention is entrusted with the ECOWAS Commission, while implementation is by the member states.

Kinshasa Convention 2010

The Central African Convention for the Control of SALW, Their ammunition and all Parts and Components that can be used for their Manufacture, Repair or Assembly¹¹² (also known as the Kinshasa Convention), was negotiated within the framework of the UN Standing Committee on Security questions in Central Africa (UNSAC) and signed by 11 Members of the Committee. It aims at regulating small arms and light weapons and combating their illicit trade and trafficking in central Africa.

The follow-up and coordination of this Convention is vested in the ECCAS Secretary General while the implementation is with the member states.

¹¹⁰www.sadc.int-protocol

¹¹¹www.ecowas.int

¹¹²www.unrec.org/docs/kinshasa.pdf

Annex VIII: List of Respondents

Country	Institutions
Uganda	<ul style="list-style-type: none">• Ministry of Internal Affairs• NFP• Law Reform Commission• Safer world• Ministry of Defense• First Parliamentary Counsel/AG• Uganda Police Force
Kenya	<ul style="list-style-type: none">• NFP• Ministry of Interior• Office of the President• Institute for Security Studies, Nairobi Office
Tanzania	<ul style="list-style-type: none">• Ministry of Home Affairs• Tanzania Police Force• Ministry of Finance• Ministry of Foreign Affairs• Foreign Service Institute• Institute for Peace and Conflict Studies
CAR	<ul style="list-style-type: none">• NFP• ISS South Africa• ICGLR• UNDP• Small Arms Survey
Others	<ul style="list-style-type: none">• RECSA• EAC• Interpol East Africa Regional Bureau• Independent Researchers

Annex VIII: Model Firearms Control Bill, 2016

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A Bill for an Act

ENTITLED

THE FIREARMS CONTROL AND MANAGEMENT ACT, 2016

An Act to consolidate and harmonise the laws relating to control and management of firearms; to establish a Firearms Management Commission, the National Focal Point on Small Arms and Light Weapons and Central Firearms Registry; to provide for a centralized registration and licencing of firearms; to make provisions for the possession, licencing, manufacture, transfer, tracing, brokering, dealing, transit, export, import of firearms and ammunition; coordinate stockpile management and international cooperation on firearms; to repeal the Firearms Act; and to provide for related matters.

BE IT ENACTED By Parliament of Country x as follows:

PART I-PRELIMINARY

1. Short Title and Commencement

- (1) This Act may be cited as the Firearms Control and Management Act.
- (2) This Act shall come into force upon enactment and assent by the President of Country x.

2. Application

- (1) This Act shall apply to all firearms.
- (2) The Minister may by notice published in the Gazette, exempt from the application of this Act of any category of firearms or ammunition.

3. Interpretation

In this Act, unless the context otherwise requires,

“accessories” means instrument or component used in connection with small arms and light weapons and includes bullet-proof vests and jackets, ballistic helmets, silencers, flash breakers, telescopic sights, re-loading equipment, cleaning kit, oil used for cleaning purposes and magazines additional to those issued with the firearm;

“airgun” means a device manufactured to discharge a bullet or any other projectile of a calibre of less than 5.6 millimeter (.22 calibre), by means of compressed gas and not by means of a burning propellant;

“ammunition” means a primer or complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm;

“antique firearm” include a firearms manufactured before the 1st day of January 1900, that were not designed to discharge rim-fire or centre-fire ammunition, and which have not been redesigned to discharge such ammunition or any replica of such firearm;

“amnesty” means an indemnity against prosecution for the unlawful possession of a small arm or ammunition;

“armoury” a place where small arms and light weapons, ammunition and any other related materials are securely kept.

“arms marking” means;-

- (a) an operation consisting of printing a serial number, the name of the manufacturer as well as the place and country of production on the small arm;
- (b) any method adopted by the Country Police Force/Service and the Country x Defence Forces for purposes of identification, traceability and investigation, and may include radio frequency identification (RFID);

“authorized officer” means a police officer or any other officer designated as such by the Registrar to assist in the implementation of this Act;

“broker” means a person who acts for a commission, advantage or cause, whether pecuniary or otherwise to facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms; or as an intermediary between any manufacturer, supplier or dealer in firearms and a buyer or recipient of firearms;

“civilian” includes a member of any disciplined forces, who, at the time of possessing a small arm is not on duty or in active service;

“Commission” means Firearms Management Commission/Committee established under section 4.

“competency certificate” means a document which certifies that the applicant is competent to handle or use, store, transport, carry, trade, or manufacture a small arm or light weapon as the case may be ;

“customs officer” includes any person other than a labourer, employed in the service of the Customs of Country x or for the time being performing the duties in relation to the Customs of Country x.

“dangerous airgun” means any airgun of a calibre of 5.6 millimeter (22 calibre) or greater or any airgun that is self-loading manufactured to discharge a bullet or any other projectile with each depression of the trigger without requiring manual re-loading;

“dealer” means a person licenced to trade, but and sell small arms, ammunition and other related materials;

“embargo” means a partial or complete legal prohibition of transfer, transit and transportation or movement of firearms, their parts and components and any activity connected therewith with a particular country by the United Nations;

“end-user” means a person or institution identified by the competent authority as the designated user of transferred firearms, ammunition or other related materials;

“explosives” means -

(a) any substance or a mixture of substances, in a solid or liquid form, which is capable of producing an explosion,

(b) gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those herein mentioned or not, which is used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect,

(c) any fuse, rocket, detonator or cartridge, and every adaptation or preparation of an explosive as herein defined,

(d) any plastic explosive, or

(e) any other substance which the Cabinet Secretary may, by notice in the Gazette, declare to be an explosive, but does not include ammunition as defined under this Act;

“export” means sending or transporting firearms, their components, ammunition and other related material outside country x, especially for trade, sale or use;

“Firearm” means -

(a) a small arm;

(b) a light weapon;

(c) any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an

explosive and includes a dangerous airgun;

(d) any other weapon or destructive device such as a explosive bomb, incendiary bomb or gas bomb, grenade, rocket launcher, missile, missile system or mine, but does not include a toy firearm, an imitation firearm or any antique firearm which has been rendered incapable of use as a firearm.

“firearm” includes small arms, light weapons, muzzle loading guns and antique firearms except armaments;

“firearm free zone” means a zone designated as such pursuant to section

“foreign applicant” means a person who is not a citizen of Country x or a legal entity where citizens of Country x; one or more of its directors or shareholders are not citizens of Country x.

“fully automatic” means capable of discharging more than one shot with a single depression of the trigger;

“gunsmith” means a person who repairs, refurbishes, customizes, custom builds, adapts, modifies, assembles or deactivates a firearm but does not include a manufacturer;

“handgun” means a pistol or revolver which can be held in and discharged with one hand;

“illicit manufacturing” means manufacturing or assembling firearms from parts and components illicitly trafficked; or without a licence or authorisation from the Central Firearms Registry; or without marking the firearms at the time of manufacture, in accordance with this Act;

“immigration officer” has the same meaning as in the Country X Citizenship and Immigration Act;

“imitation explosive” means anything that has the appearance of an explosive, but which is not capable of operating as such and cannot by superficial examination be identified as an explosive;

“imitation small arm” means anything that has the appearance of a small arm but is not capable of operating as such and may not by superficial examination be identified as an imitation;

“import” means bringing or carrying firearms, their components, ammunition and other related material from-outside Country x for trade, sale or use in Country x;

“juristic person” includes a partnership and any other association of persons;

“licence” means a licence issued under this Act;

“light weapon” means a portable weapon designed for use by more than one person serving as a crew and includes heavy machine guns, automatic cannons, howitzers, mortars of less than 100 millimetre calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder-fired rockets, anti-aircraft weapons and launchers, and air defence weapons;

“marking” means the inscription of a permanent unique identifying alpha- numeric mark on the metal part of a firearm or ammunition;

“manufacturer” means a person who is licenced to manufacture firearms, ammunition and other related materials;

“Minister” means the Minister responsible for Internal Affairs/Interior;

“Mission” includes an embassy, High commission or a consular office;

“National Focal Point” means the National Focal Point designated as such under section

“permit” means operating authority granted under this Act;

“person” includes a company, association or other body of persons that are incorporated (also known as juristic persons);

“possession” -includes,

(a) not only having in one’s own personal possession, but also knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or of any other person;

(b) if there are two or more persons and any one or more of them with the knowledge and consent of the rest has anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

“prescribed” means prescribed by regulation;

“Private security” means security services provided to clients by non-state agencies.

“Private Security Organisation (PSO)” means a none state organisation that provides security services to clients. It includes any organisation that undertakes private investigation of facts or

character of a person or one which performs services of watching, guarding or patrolling for the purpose of providing protection against crime, but does not include the national Police Force, Prison Service or Armed Forces.

“prohibited weapon” means:

(a) a small arm which is so designed or adapted that when pressure is applied to the trigger, missiles continue to be discharged until such pressure is removed or the magazine or belt containing the missiles is empty, or for each pressure of the trigger more than one discharge of a missile can take place, unless such firearm has been modified to the satisfaction of the chief licensing officer so as to ensure that for each pressure of the trigger the discharge of only one missile can take place,

(b) any automatic or semi-automatic self-loading military assault rifle of 7.62 mm or 5.56 millimeter caliber or of any other caliber from time to time specified by the Cabinet Secretary by notice in the Gazette,

(c) a small arm fitted with or including any device, accessory or attachment which reduces or is designed or adapted to reduce the noise or flash caused by discharging such firearm and includes any such separate device, accessory or attachment,

(d) any weapon which can be or is designed or adapted to discharge any noxious liquid, gas or other substance unless such weapon, noxious liquid, gas or other substance are of classes or types authorized by the Cabinet Secretary by notice in the Gazette, and

(e) any small arm or ammunition prescribed or any class or type of small arm or ammunition or any such device, accessory or attachment as is referred to in paragraph (4) prescribed by the Cabinet Secretary by notice in the Gazette;

“proofing house” means the National Bureau of Standards;

“range” means a specialized facility designated for the training or practice in the use of small arms and licensed in accordance with this Act;

“region” means a Police Administrative Region;

“Registrar” means the person referred to in section 4 of this Act;

“replica firearm” means a firearm that is an exact and fully functioning copy of a model of firearm.

“Security Agency” means,

(a) the Country x Defence Forces/ Army,

(b) the Country x Police Force,

(c) the Country x Prisons Services,

(d) the Country x Wildlife Authority,

- (e) the Country x Intelligence Services;
- (f) the Reserve Force of the Country x Defence Forces, and
- (g) any government institution accredited by the Registrar as an official institution;

“stockpile management” means the systematic planning, acquisition, possession, recordkeeping, safe storage, control, maintenance, refurbishment, production and disposal of accumulated stocks of firearms in state and non-state possession;

“tracing” means the systematic tracking of a firearm for the purpose of assisting the authorities in detecting, investigating and analyzing to determine the source of the firearm;

“transfer” includes re-allocation, selling, letting, donating, lending or otherwise parting with possession;

“transit” means the act of passage, or passing over, across, or through, or the movement of arms, their components, ammunition and other related material from one country to another country via a third country;

“transport” means to carry or convey from one place to another, firearms, their components, ammunition and other related materials;

“unloaded” means that any propellant, projectile or cartridge which can be discharged from the firearm is not contained in the breech-lock or firing chamber of the firearm, nor in the cartridge, magazine or cylinder attached to or inserted into the firearm.

PART II - MANAGEMENT OF FIREARMS

4. *Firearms Management Commission*

- (1) The Firearms Management Commission is established to regulate, manage and control firearms in country x.
- (2) The Commission shall be composed of a chairperson, deputy chairperson and thirteen members comprising the following:
 - (a) Inspector General of Police;
 - (b) Chief of Defence Forces;
 - (c) Commissioner of Prisons;
 - (d) Director of the National Intelligence Services;
 - (e) Director Wildlife Services/ Authority;
 - (f) a representative from Office of the President;
 - (g) a representative from Ministry responsible for East African affairs
 - (h) a representative from Attorney General's Chambers;
 - (i) a representative from Ministry responsible for Foreign Affairs
 - (j) Representative of the Private Security Organisations;
 - (k) Representative of Civil Society Organizations;
 - (l) one member of the public; and
 - (m) Registrar of Firearms.
- (3) The Commission may co-opt any person as may be necessary to assist the Commission in the discharge of its functions.

5. *Appointment and Qualification of Members of the Firearms Management Commission*

- (1) The Members of the Commission shall be appointed by the Minister.
- (2) The persons qualified for appointment shall:
 - (a) have knowledge and experience in security, ballistics, international law or other related field;
 - (b) have at least ten years' work experience;
 - (c) not have been adjudged bankrupt;
 - (d) be of sound mind; or
 - (e) not have been convicted of an offence of moral turpitude or sentenced to imprisonment for more than six months.
- (3) Members of the Commission shall hold office for five years and they are eligible for reappointment for one further term.

6. *Removal of Members of the Firearms Management Commission*

- (1) The Minister may remove a member of the Commission from office, on the following grounds:
 - (a) incapacity;
 - (b) gross misconduct;
 - (c) abuse of office and corruption;
 - (d) if they have committed an offence under this Act; or
 - (e) if they have been convicted of any criminal offence except a traffic offence.
- (2) The Cabinet Secretary shall remove a member under subsection (1) upon written recommendation by the chair person, supported by a resolution of the Board.
- (3) A member shall not be removed under subsection (1) unless they have been accorded the right of fair hearing.
- (4) A member may vacate office by-
 - (a) submitting a written resignation to the Minister; or
 - (b) if they are absent from three consecutive meetings of the Commission without any justifiable cause; or
 - (c) upon being removed from office in terms of this Act.
- (5) Where a member of the Commission is removed or vacates office under sub section 1 or 4, or dies or resigns before the expiry of their term, the Minister shall appoint a person to replace them from the corresponding institutions and such persons shall serve for the remainder of the term.

7. *Functions of the Firearms Management Commission*

- (1) The Firearms Management Commission shall -
 - (a) oversee the implementation of this Act;
 - (b) receive, consider, vet, and approve applications for licenses and permits under this Act;
 - (c) suspend and revoke licences and permits issued under this Act;
 - (d) give guidance in relation to the management of firearms and disarmament;
 - (e) coordinate the implementation of international and regional agreement on the prevention, combating and eradication of illicit proliferation of small arms and light weapons;
 - (f) coordinate the development, implementation, resourcing and monitoring of the national action plans and evaluating the effective measures to address problems relating to small arms and light weapons;

- (g) Coordinate development and harmonization of policies and legislation relating to small arms and light weapons;
- (h) make recommendations on types of firearms and ammunition to be licensed;
- (i) advise on firearms and ammunition to be destroyed;
- (j) conduct research and gather relevant information, including requisition of reports, records, documents or any information from any source, including governmental authorities, and to compel the production of such information as and when necessary;
- (k) ensure coordination and support of the activities of civil society organizations, private security organizations and dealers engaged in use, management and the control of firearms;
- (l) supervise, control and administer the assets of the Commission in such manner and for such purposes as would best promote the objects and functions for which the Commission is established; and
- (m) advise the Minister on control of firearms and on any matters arising from the implementation of the Act.

(2) The Commission shall be the National Focal Point on Small Arms and Light Weapons and shall coordinate national, regional and International action on control of firearms.

(3) In the performance of its function, the Commission -

- (a) may receive on oath, written or oral statements; and
- (b) may not be bound by strict rules of evidence

8. *Powers of the Firearms Management Commission*

(1) The Commission has the powers necessary for the execution of its functions under this Act, and without prejudice to the generality of the foregoing, the Commission shall have the power to-

- (a) Receive, consider, vet, approve, suspend and revoke licences and permits issued under this Act;
- (b) to sue and be sued;
- (c) open and operate bank accounts;
- (d) determine provisions to be made for the Commission capital and recurrent expenditure and for the reserves of the Commission;
- (e) award contracts;
- (f) enter into association with other bodies or organizations within or outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established; and
- (g) receive grants or donations and make

legitimate disbursements there from for the furtherance of the objects and functions for which the Commission is established.

9. *Procedures of the Commission*

(1) The Commission shall determine its own procedures and the conduct of its business by regulation.

(2) Where the chairperson is absent from any meeting of the Commission, the members present shall select one of their own to chair the meeting.

(3) For purposes of this Act, at least six members shall constitute a quorum.

(4) The Board shall meet once every fortnight

(5) Meetings of the Board shall be held at such times, and at such places as the chairperson may determine in writing.

(6) The chairperson shall have the right to vote and in the case of equality of votes shall have a casting vote; a decision of the majority of the members present at a meeting of the Board shall be deemed to be the decision of the Commission.

(7) All licenses, permits, orders or other communication from the Board shall be under the hand of the chairperson or of such member duly authorized by the chairperson.

10. *Reports of the Commission*

The Commission shall submit to through the Minister an annual report to the National Security Committee on the state of firearms management and control in Country x.

11. *Secretariat of the Firearms Management Commission*

(1) The Commission shall have a secretariat to coordinate discharge its duties under this Act.

(2) The Secretariat shall have such offices and appoint such officers as are necessary to executive its mandate.

(3) The Secretariat shall compose of inter alia-

- (a) a Central Firearms Registry; and
- (b) National Focal Point on Small Arms and Light Weapons.

12. *Central Firearms Registry*

(1) A Central Firearms Registry is established within the Firearms Management Commission;

(2) The Central Firearms Registry shall consist of -

- (a) The Civil Firearms Registry which shall contain all information relating to firearms which are not in the hands of the Military; and

(b) The Military Firearms Registry which shall contain all information relating to firearms used and managed by the military and intelligence services.

(3) The Central Firearms Registry shall have registers in the manner and form to be prescribed in the regulations.

(4) The Register shall contain-

- (a) the names, address and other particulars of the owner;
- (b) the details particulars and purposes of the firearms ;
- (c) details and particulars of:
 - (i) dealers and brokers,
 - (ii) manufacturers and gunsmiths, and
 - (iii) transporters, importer, and exporters; and
- (d) such other information as may be required for that purpose.

13. Registrar

There shall be a Registrar of Firearms who shall be appointed by the Minister.

14. Functions of the Registrar

(1) The Registrar shall perform the following functions;

- (a) implement the decision of the Commission;
- (b) establish, maintain and have overall responsibility of the Central Firearms Registry;
- (c) grant, issue and administer all firearms licences and permits under this Act;
- (d) renew, suspend or revoke any licence or permit issued under this Act
- (e) recover the fees payable in terms of this Act;
- (f) conduct public education programmes concerning the provision of this Act and all other matters relating to the safe possession and use of firearms;
- (g) conduct and facilitate research on policy and other issues related to control of firearms;
- (h) develop and supervise a training programme for competence testing in terms of this Act;
- (i) advise the Minister on matters arising from this Act or its implementation;
- (j) monitor the implementation of this Act; and
- (k) any other function as may be assigned to him or her by the Minister.

(2) The Registrar may;

- (a) conduct any investigation or inquiry which he or she deem necessary;
- (b) coordinate with ministries, departments and agencies, civil society organisations, regional and international organizations and the international community in the performance of his or her duties.

(3) In the performance of his or her duties under this Act, the Registrar shall take into account;

- (a) the creation of a link between the Central Firearms Registry and other relevant databases;
- (b) measures for transfer of information to the Central Firearms Registry;
- (c) measures for control and management of all licences and permits issued;
- (d) measures for control of firearms of deceased persons or liquidated estates.
- (e) the adequate filing of hard copies of applications and licences; and

(4) The Registrar shall be accountable to and submit quarterly reports to the Minister.

(5) The Registrar may, in writing delegate any of the functions to the deputy registrars, or authorized officer any of the powers or functions conferred under this Act.

(6) The delegation made under subsection (5) shall not exclude or bar the Registrar from exercising or performing the same powers or functions.

15. Deputy Registrars

(1) There shall be two Deputy Registrars appointed by the Minister from among the serving and non-serving members of the Armed Services -

- (a) Deputy Registrar for Civil Registry, and
 - (b) Deputy Registrar for Military Registry;
- (2) The Deputy Registrars shall-
- (a) assist the Registrar in the day to day administration and management of the Registry;
 - (b) assist the Registrar on implementing action for control of firearms; and
 - (c) perform such other functions as the Registrar may delegate.

16. Staff of the Registry

(1) The staff of the Registry shall be seconded from the armed services and/or recruited and appointed by the Minister from qualified members of the general public.

(2) The staff shall perform duties assigned to them by the Registrar.

(3) The terms and conditions of service of the staff shall be determined by the Minister on advice of the Commission.

17. *Information and data to be maintained in the Central Firearms Register*

- (1) The Central Firearms Register shall contain;
 - (a) the central firearms database;
 - (b) the central dealers database;
 - (c) the central manufacturers database;
 - (d) the central gunsmith database;
 - (e) the central importers and exporters database;
 - (f) the central Official Institutions database;
 - (g) the central private security organisations database; and
 - (h) any other information required to be kept by the Registrar under this Act.
- (2) the central databases referred to in subsection (1) shall contain;
 - (a) such information concerning;
 - (i) competence certificates, licences, authorisations and permits as well as renewals and cancellations;
 - (ii) applications for licences, authorisations and permits and any renewal applications which have been refused under the terms of this Act;
 - (iii) transfers of firearms effected in terms of this Act;
 - (iv) imports and exports of firearms and ammunition in terms of this Act;
 - (v) the transport of firearms and ammunition in terms of this Act; and
 - (vi) the loss, recovery, theft or destruction of firearms.
 - (b) all original documentation submitted in support of all applications made in terms of this Act
 - (c) a record of all licenced dealers, brokers, manufacturers, gunsmiths, importers and exporters, transporter for reward, accredited institutions,;
 - (d) a record of transfer, loss, theft or destruction in respect of firearms in possession of Official Institutions;
 - (f) a record of all firearms recovered, seized, forfeited, surrendered to the State or destroyed;
 - (g) the finger prints which have been submitted for the purposes of an application in terms of this Act; and
 - (h) any other relevant information

18. *National Focal Point on Small Arms and Light Weapons*

- (1) The Central Firearms Register shall contain;
 - (a) the central firearms database;
 - (b) the central dealers database;
 - (c) the central manufacturers database;
 - (d) the central gunsmith database;
 - (e) the central importers and exporters database;
 - (f) the central Official Institutions database;

- (g) the central private security organisations database; and
- (h) any other information required to be kept by the Registrar under this Act.
- (2) the central databases referred to in subsection (1) shall contain;
 - (a) such information concerning;
 - (i) competence certificates, licences, authorisations and permits as well as renewals and cancellations;
 - (ii) applications for licences, authorisations and permits and any renewal applications which have been refused under the terms of this Act;
 - (iii) transfers of firearms effected in terms of this Act;
 - (iv) imports and exports of firearms and ammunition in terms of this Act;
 - (v) the transport of firearms and ammunition in terms of this Act; and
 - (vi) the loss, recovery, theft or destruction of firearms.
 - (b) all original documentation submitted in support of all applications made in terms of this Act
 - (c) a record of all licenced dealers, brokers, manufacturers, gunsmiths, importers and exporters, transporter for reward, accredited institutions,;
 - (d) a record of transfer, loss, theft or destruction in respect of firearms in possession of Official Institutions;
 - (f) a record of all firearms recovered, seized, forfeited, surrendered to the State or destroyed;
 - (g) the finger prints which have been submitted for the purposes of an application in terms of this Act; and
 - (h) any other relevant information

18. *National Focal Point on Small Arms and Light Weapons*

- (1) A National Focal Point on Small Arms is established within the Firearms Management Commission;
- (2) The National Focal Point shall;
 - (a) coordinate national, regional and international action on firearms control;
 - (b) be the national point of contact and liaison office between the Country x and other states on all matters relating to the implementation of the national program of action on the control of firearms and ammunition; and
 - (c) implement Regional and International Protocols and Agreements on the control of firearms.

19. *Designated Firearms Officer*

- (1) There shall be a designated firearms officer at every Region.

(2) The designated firearms officer shall receive, scrutinize and recommend to the registrar applicants for issuance and renewal of licences and permits originating from the region.

(3) For the purposes of subsection (1) the designated firearms officer shall be the police officer in charge of the region.

20. *District Firearms Taskforce*

(1) There shall be a District Firearms Taskforce in every District.

(2) A District Firearms Taskforce shall constitute representatives in accordance with the regulations to this Act.

(3) A District Firearms Taskforce shall be responsible for-

(a) co-ordinating action on firearms control at the district level.

(b) processing and renewal of the licences and permits;

(c) recommending and forwarding applications for licences and permits;

(d) recommending action on armament and disarmament in the District; and

(e) performing other functions as may be prescribed by the Registrar.

(4) The Police Officer in charge of the district shall be the secretary to the District Firearms Task Force.

PART III -

TRACING OF FIREARMS AND ACCESS TO REGISTRY

21. Access to Information of the Central Firearms Registry

(1) A person may access information in the Central Firearms Registry upon fulfilling the terms set by the Registrar.

(2) An application to access information shall be in the manner prescribed in the regulations to this Act and upon payment of a prescribed fee.

(3) The Registrar may grant or refuse permission to access the Register with or without conditions.

22. Requests for Tracing of Firearms in the Central Firearms Registry

(1) Any person or organization may make tracing request to the Registrar.

(2) All tracing requests submitted to or by the Registrar shall contain the following minimum information:

(a) information describing the illicit nature of the firearms, to the extent possible, the circumstances under which the firearms were found or lost,

(b) markings, type, calibre and other relevant information to the extent possible;

(c) intended use of the information being sought, and

(d) any other information deemed necessary by the applicant.

23. Restrictions of Tracing Information

All information received from tracing request shall be treated as confidential and may only be-

(a) released to competent authorities designated by the requesting agency or State;

(b) used for purposes consistent with the United Nations Tracing Instrument; and

(c) released to anyone else with prior consent of the State providing the information.

24. Tracing Requests outside Country x

All tracing requests outside Country x shall be by the Registrar through diplomatic channels.

25. Certified copies of entry to the Central Firearms Registry

(1) Subject to sections 12 and 13, the Registrar may furnish to an applicant a certified copy of an entry in the register.

(2) The copy of an entry in the register which is certified by the Registrar shall be conclusive evidence of the facts contained therein.

PART IV - POSSESSION OF FIREARMS, COMPETENCE CERTIFICATE, ACCREDITATION AND LICENCES

26. Possession of Firearms and Ammunition

(1) A person shall not possess a firearm unless he or she has obtained a licence or permit under this Act.

(2) The Registrar shall only issue a licence or a permit to a person who has a competent certificate.

(3) An application for the possession of a firearm under this Part shall be made to the Registrar through the District Firearms Committee in a prescribed form.

(4) The Registrar shall issue a licence or permit for non-automatic pistols or rifles and any other type of firearm as the Firearms Management Commission may specify.

(5) The Registrar shall issue a separate licence for each firearm.

(6) Where an applicant for a licence to possess a firearm is a company, the application shall be made by the chief executive officer in the manner to be prescribed in the regulations.

(7) A company shall not use, for security or any other purposes, a firearms licence issued in the name of another person.

27. Competence Certificate

(1) An applicant for a licence shall undergo a competence test by the Registrar.

(2) Every applicant shall undergo

(a) competency training on the use and safe handling of firearms at an approved government institution or private institution; and

(b) shooting range classes at an approved government or private institution

(3) The applicant shall be tested theoretically and practically in safe handling and use of the specific classes of firearms as may be directed by the Registrar.

(4) Notwithstanding the requirements of this section, applicants for a firearms licence with military background are exempted from undergoing theoretical and practical training on the safe handling of firearms

(5) Subject to subsections (1, 2, 3 and 5), the Registrar may issue the applicant with a competence certificate.

(6) Every application for a competency certificate, licence, permit or authorization must be accompanied by such information as may be prescribed.

(7) The competence certificate shall be classified in two categories;

(a) ordinary competence certificate; and

(b) advanced competence certificate.

(8) A competence certificate shall specify whether it relates to competence to;

(a) possess a firearm;

(b) trade in firearms;

(c) manufacture firearms; or
conduct business as a dealer, broker, transporter or gunsmith;

28. Ordinary competence certificate

(1) An applicant for a firearm shall undergo a competency test to assess his or her;

(a) knowledge of this Act and Regulations;

(b) ability to use, carry and store firearms safely and responsibly; and

(c) mental capacity.

(2) Where the applicant under subsection (1) is not a natural person, the individuals who are in charge of the firearms and human resource shall be required to obtain an advanced competence certificate after assessing his or her knowledge of;

(a) this Act and Regulations;

(b) the health and safety regulations pertaining to the handling and storage of firearms and explosive materials, and

(c) the nature of the business.

29. Qualification for a Competence Certificate

1. A competent certificate shall only be issued to a fit and proper person.

2. A fit and proper person in subsection (1) is a person who -

(a) submits a clearance certificate of good conduct from the Police;

(b) submits a certificate from a medical officer or a qualified Medical practitioner certifying that they do not suffer from a mental illness;

(c) is at least 25 years old on the day the application is received by the Registrar;

(d) is a citizen or resident of Country x;

(e) has successfully completed the prescribed training and practical tests regarding the safe and efficient handling of a small arm;

- (f) has, where applicable, successfully completed the prescribed training and practical tests for small arms dealers, manufacturers, or other persons who use small arms in the course of their business;
- (g) is of stable mental condition and is not inclined to violence or intemperate behaviour;
- (h) is not dependent on any substance which has an intoxicating or narcotic effect;
- (i) has not been investigated, charged or convicted or has a pending case, whether in or outside Country x, of an offence involving the unlawful or negligent use or handling of a firearm or explosives;
- (j) has not been investigated, charged or convicted or has a pending case, whether in or outside Country x, of an offence of domestic violence or sexual violence; or
- (k) has not been investigated, charged or convicted or has a pending case, whether in or outside Country x, of an offence of fraud, false statement, false pretence, abuse of alcohol or drugs, sabotage, terrorism, poaching, robbery, trafficking, public violence, arson, intimidation, rape, kidnapping or child stealing.

30. *Validity of a Competence Certificate*

- (1) A competence certificate shall remain valid for a period of five years.
- (2) A competency certificate holder shall be required to undergo a firearms-testing after every five years or as the Registrar may specify and shall pay such fees as specified in the regulations.

31. *Accreditations*

- (1) An application for an accreditation in terms of this Act shall be made to the Registrar.
- (2) The Registrar may set out different sets of criteria in respect of different accreditations relating to:
 - (a) trustworthiness and integrity;
 - (b) suitability to perform the relevant functions in terms of this Act; (c) capacity to serve the purpose of accreditation; and
 - (c) capacity to advance the purposes of this Act.
- (3) The Registrar may cancel an accreditation if there IS no longer compliance with any criterion for accreditation

32. *Classification of Licences*

- For the purposes of this Act, licences shall be issued in accordance with the following classifications –
- (a) Licence to possess firearm for self defence;
 - (b) Licence to possess firearm for hunting;

- (c) Licence to possess firearm for theatrical, film or television productions;
- (d) Manufacturer’s Licence;
- (e) Gunsmith’s Licence;
- (f) Dealer’s Licence;
- (g) Broker’s Licence;
- (h) Licence for Shooting Instructor
- (i) Licence for Shooting Range Administration

33. *Application for a licence*

- (1) A person shall apply for a licence in the prescribed manner.
- (2) When the applicant is other than a natural person, it shall nominate a natural person to apply on its behalf.
- (3) The person so nominated shall be identified on the licence or permit as the authorised person.
- (4) An authorised person who holds any licence or permit issued in terms of this Act pursuant to an application contemplated in subsection (2)(a) on behalf of the juristic person shall for purposes of this Act be regarded as the holder of the licence in question.
- (5) If it becomes necessary to replace an authorized person for any reason, the juristic person shall nominate a new authorized person who shall be in possession of the relevant competence certificate.
- (6) The Registrar shall either:-
 - (a) grant a licence without conditions or subject to such conditions as may deem fit; or
 - (b) refuse to grant a licence.
- (7) Where the Registrar refuses to grant a licence or imposes conditions in a licence, the applicant shall be given reasons in writing.
 - (a) grant a licence without conditions or subject to such conditions as may deem fit; or
 - (b) refuse to grant a licence.
- (8) Where the Registrar refuses to grant a licence or imposes conditions in a licence, the applicant shall be given reasons in writing.
- (9) The fees to be paid for the issuance of a licence shall be as prescribed by the regulations.
- (10) The Registrar shall before granting a licence, carry out a detailed background check on each applicant for a licence.

34. *Validity of a licence*

- (1) All licences issued under this Act shall be valid for one year from the date of issue.
- (2) Provided that a licence to possess firearms in collection shall be valid for 5 years.
- (3) Licences shall be renewed as provided under this Act.

35. *Variation of a licence*

- (1) The Registrar may, at any time, by notice in writing vary the conditions set in the licence
- (2) The Registrar may by notice require the licence holder to deliver the licence to him or her for the purpose of varying such licence.
- (3) The variation of conditions in a licence will take effect upon giving of 14 days' notice of such variation to the holder of the licence.

36. *Termination of Licence*

- (1) A licence shall terminate;
 - (a) upon the expiry of the licence;
 - (b) if surrendered by the holder to the Registrar;
 - (c) upon death of the holder;
 - (d) if the licensee is declared insolvent; or
 - (e) upon winding up of company;
- (2) A notice contemplated in subsection (2) may only be issued if the Registrar has;
 - (a) given the holder of the licence 30 days' notice in writing to submit written representations as to why the licence should not be cancelled; and
 - (b) duly considered any representations received and all facts pertaining to the matter.
- (3) If a notice contemplated in subsection (2) is issued, the former holder of the licence must dispose of the firearm in question through the dealer or in such manner as the Registrar may determine.
- (4) The disposal must take place within 60 days after receipt of the notice.
- (5) If the firearm is not disposed of within 60 days, it must be forfeited to the State and the former holder of the licence must surrender it immediately at such place and in such manner as the Registrar may determine.
- (6) Any period contemplated in this section may be extended by the Registrar to good cause.

37. *Renewal of a Licence*

- (1) An application for renewal of a licence shall be lodged with the Registrar within thirty working days before the expiry of the licence.
- (2) An application for renewal of a licence shall be made in the prescribed form upon payment of the prescribed fee.
- (3) The Registrar may refuse to renew a licence unless any firearm or ammunition, to which the licence relates, is availed for inspection in accordance with the requirements of this Act.

38. *Classification of Permits*

- (1) For purposes of this Act, permits shall be issued in accordance with the following classifications
 - (a) Dealer's permit;
 - (b) Broker's permit;
 - (c) Import permit;
 - (d) Export permit;
 - (e) Temporary import permit;
 - (f) Transit permit; and
 - (g) Removal permit.
- (2) An application for a permit shall be made in the prescribed form accompanied by the prescribed fee and particulars required in such form as set out in the regulations under the Act.

39. *Renewal of Permit*

- (1) An application for renewal of a permit shall be lodged with the Registrar within a reasonable time.
- (2) For purposes of subsection (1) of this section, the request for renewal of a permit shall not exceed-
 - (a) the duration of the permit where the permit held is for a period of less than thirty working days; or
 - (b) fourteen days where the permit held is for a period exceeding thirty days.
- (3) An application for renewal of a permit shall be made in the prescribed form upon payment of the prescribed fee.
- (4) The Registrar may refuse to renew a permit unless any firearm or ammunition, to which the permit relates, is availed for his or her inspection in accordance with this Act.

40. *Revocation, Suspension or Withdrawal of a Licence or Permit*

- (1) A licence or permit may be revoked, suspended or withdrawn by the Registrar if:-
 - (a) false information has been provided in order to obtain the licence or permit;
 - (b) the details contained in the licence or permit have changed;
 - (c) the entry into force of an arms embargo;
 - (d) the applicant has become mentally or physically or otherwise unfit;
 - (e) by administrative or judicial sanction, a court orders a preventive measure against the licence or permit holder;
 - (c) the applicant has become mentally or physically or otherwise unfit;
 - (d) by administrative or judicial sanction, a court orders a preventive measure against the licence or permit holder;

- (e) the licence or permit holder fails to comply with a notice under section 26(2) requiring delivery of the licence or permit;
 - (f) the licence or permit holder has been declared bankrupt or insolvent;
 - (g) If the licensee is convicted for an offence under this Act or any other offence related to violence.
 - (h) if the holder of the licence is declared unfit under this Act, or
 - (i) if the licence or permit is cancelled.
- (2) Where a licence or permit is revoked, suspended, withdrawn or is not renewed, the Registrar shall by notice in writing, require the holder to surrender to him or her licence.
- (3) Subject to subsection (2), where the licence or permit relates to an individual the firearm and ammunition shall be deposited at a police station as the Registrar may direct.

41. *Duty to Display Licence*

- (1) A person conducting the business of private security organisation, firearms training institution, shooting range, dealer, manufacturer, gunsmith or broker shall at all times have the relevant licence on the respective business premises.
- (2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to imprisonment for a term of 5 years or to a fine of two hundred currency points.

42. *Lost, Defaced or Stolen Licence and Permit*

- (1) Where a licence or permit issued in terms of this Act is lost, defaced or stolen, the holder of the licence or permit shall inform the Registrar of the loss or theft within 24 hours of the loss or theft;
- (2) Where the licence or permit issued in terms of this Act is lost, defaced or stolen, the holder of licence or permit shall within 7 days, apply for a substitute licence or permit;
- (3) An application for a substitute licence or permit shall be made to the Registrar in the prescribed manner and upon payment of a prescribed fee.
- (4) Where a licence which has been lost is subsequently found, the holder of the licence shall deliver to the Registrar the substitute licence issued under this section.
- (5) A substitute licence or permit shall contain the particulars on the original licence.

43. *Accreditation to Provide Training in use of Firearms*

- (1) An application for accreditation of an institution to provide training in use of firearms shall be as prescribed in the regulations.

- (2) The Registrar shall either-
 - (a) accredit with or without conditions; or
 - (b) refuse to accredit.
- (3) Where the Registrar refuses to accredit or Imposes conditions, the applicant shall be given reasons in writing.
- (4) The fees to be paid for accreditation shall be prescribed by the regulations.
- (5) The Registrar may cancel an accreditation if there is no longer compliance with the criteria for accreditation.
- (6) The Registrar shall approve the content of the respective training curriculum for accredited training institutions.
- (7) An accredited training institution in terms of subsection (2) shall keep a register in respect of every person successfully trained by it and submit the record to the Registrar.
- (8) The record referred to in subsection (7) shall be kept for a period of not less than 5 years.
- (9) Any person who operates a Firearms Training Institution under this Act without accreditation commits offence and on conviction shall be liable to imprisonment for a term of 25 years or a fine of one thousand currency points or both.

44. *Change of Circumstance*

- (1) The holder of a licence, permit or authorization issued under this Act shall notify the Registrar within 30 days;
- (a) any change to the holder's physical or postal address; or
 - (b) any change to other information that was submitted in respect of the application for the issue of that licence, permit or authorisation.
- (2) The Registrar shall within 30 days after receiving a notice referred to in subsection (1) acknowledge receipt of that notice in writing
- (3) A person who contravenes the provisions of Subsection (1) commits an offence and on conviction shall be liable to imprisonment for a term of 3 years or to a fine of one hundred currency points.

45. *Prohibited Firearms*

- (1) The following firearms and devices are prohibited firearms and shall not be possessed or licenced in terms of this Act, except as provided for in sections 42 and 43(2)(c).
- (a) Firearms for military and law enforcement use:-
 - (i) Mortars; light mortars and launchers designed and manufactured to fire a projectile bomb or grenade;
 - (ii) Guns; cannons and launchers designed and manufactured to fire a projectile; bomb or grenade of a calibre of 15 millimetres and bigger;

- (iii) Rocket launchers and other launchers designed and manufactured to launch rockets and self-propelled grenades;
- (iv) Grenade launchers, be they automatic, semi-automatic or single shot weapons, or any other launcher designed or manufactured to fire grenades, explosive devices or devices that emit tear generating or any other chemical substance.
- (v) Machineguns, light machineguns, sub-machineguns, machine-pistols and all other weapons designed to fire more than one shot with the single depression of the trigger of that weapon.
- (vi) Automatic assault rifles;
- (vii) Rifles designed and manufactured as sniper rifles;
- (viii) Rifles fitted with a magazine of which the capacity exceeds ten rounds;
- (ix) Firearms designed to fire ammunition for crowd control; applications in civil unrest, suppressing groups of people and firing tear generating or other chemical substances;
- (x) Automatic pistols and pistols designed to fire more than one shot with a single depression of the trigger of that weapon;
- (xi) Any firearm firing a cartridge with a cartridge case longer than 88.9 millimetres or 3.47 inches or of a calibre larger than 12.7 millimetres or 0.5 inches;
- (xii) Pistols and revolvers with a calibre larger than 0.45 inches or 11.43 millimetres and a barrel length of more than 165.1 millimetres or 6.5 inches.
- (xiii) Pistols fitted with a magazine of which the capacity exceeds fifteen rounds;
- (xiv) chemical substance, perforated grenades, or grenades designed for the instruction of military and law enforcement agencies of the State;
- (xv) Any firearm equipped with a silencer or device to suppress the noise of a shot fired from the firearm, except in the case of culling; or
- (xvi) any firearm declared by the Minister by notice in the Country x Gazette to be a prohibited firearm.
- (b) Any firearm;
 - (i) the mechanism of which has been altered so as to enable the discharging of more than one shot with a single depression of the trigger;
 - (ii) the calibre of which has been altered without the written permission of the Registrar;
 - (iii) the barrel length of which has been altered without the written permission of the Registrar;
 - (iv) the serial number or any other identifying mark of which has been changed or removed without the written permission of the Registrar;
- (c) No small arm for which a license or permit is grantable, under this part may be fitted with a silencer or a device that reduces noise or flash
- (d) A person who possesses uses or carries a prohibited firearm commits an offence and shall on conviction be liable to life imprisonment.

46. *Restricted Firearms*

- (1) *The following firearms are restricted for use by civilians and may only be licenced under special circumstances;*
 - (a) semi-automatic rifle or shot gun which cannot be readily converted into a fully automatic firearm;
 - (b) self-loading firearms; or
 - (c) any firearm declared by the Minister by notice in the Country x Gazette to be a restricted firearm.
- (2) The Registrar may licence restricted firearms under the following circumstances;
 - (a) where the applicant's life is in grave danger that in the opinion of the Registrar, a civilian firearm will not suffice;
 - (b) where the applicant is a private security organisation;
- (3) An application for possession of a restricted firearm shall be made to the Registrar accompanied by;
 - (a) an affidavit of the applicant explaining the circumstances and the need of the restricted firearm and show cause why the firearm approved for civilian use is not sufficient for the intended protection of the applicant or the service provided;
 - (b) an affidavit by the District Police Commander in whose area the applicant is resident stating the circumstances and situation warranting the possession of a restricted firearm.
- (4) The Registrar shall determine each application on a case by case basis;
- (5) No person shall hold more than one licence issued in terms of this section.
- (6) A firearm in respect of which a licence has been issued in terms of this section shall only be used where it is safe to use the firearm and only for self defence purposes.
- (7) A holder of a restricted firearm shall, within 7 days inform the Registrar of any change in circumstances that gave rise to the need or cause referred to in subsection (3)(i) of this section.
- (8) Subject to subsection (4), the holder shall hand over the firearm and ammunition to nearest police station and either;
 - (a) submit to the Registrar a new application to possess a civilian firearm;
 - (b) dispose of the firearm through a dealer within 60 days of notification; or
 - (c) forfeit the ownership of the firearm to the State.
- (9) A person who possesses, uses, carries a restricted firearm without a licence commits an offence and shall on conviction be liable to imprisonment of 25 years.

47. *Restriction on the type of Ammunition*

- (1) The following categories of ammunition shall be restricted to use by the Official Institutions only-
- (a) bullets designed for law enforcement purposes;
 - (b) exploding bullets, or bullets filled with explosives; and
 - (c) shotgun "slugs".
 - (d) ammunition with the capability to penetrate body armour.
- (2) The re-loading of ammunition is prohibited.

48. *Small Arms not to be fitted with a Silencer*

- (1) No small arm for which a license or permit is grantable, under this part may be fitted with a silencer or a device that reduces noise or flash.
- (2) No person shall be allowed to possess light weapons designed for use by security organs.

49. *Licence to Possess a Firearm for Self Defence*

- (1) An application for a licence or permit to possess, use and carry a firearm referred to in section 22 and 29 shall be in the manner prescribed in the Regulations to this Act.
- (2) An applicant for licence to possess, use or carry a firearm or ammunition shall be required to be in possession of an ordinary competency certificate issued in the terms of this Act;
- (3) An applicant to possess, use or carry a firearm or ammunition shall be required to have proper safe security and storage facilities.
- (4) A firearm in respect of which a licence may be issued in terms of this sections any-
- (a) short gun which is not fully or semi-automatic;
 - (b) hand gun which is not fully automatic..
 - (c) restricted firearm issued in terms of section 31
- (5) No person may hold more than one firearm issued in terms of this section;
- (6) The Registrar may, under exceptional circumstances licence a person to possess a maximum of 2 firearms for self defence;
- (7) A person in possession of a valid licence for a firearm for self defence may be authorised to possess and carry the firearm to a public place;
- (8) A firearm in respect of which a licence has been issued in terms of this section shall only be used where it is safe to use the firearm and only for lawful purposes.
- (9) A person who possesses, uses, carries a firearm without a licence in terms of this section commits an offence and shall on conviction be liable to imprisonment to a term of 25 years.

50. *Restriction on Quantities of Ammunition*

- (1) The holder of a licenced firearm for self defence, hunting and sporting shall not possess more than 15 rounds of ammunition for each firearm in respect of which he/she holds a licence.
- (2) The holder of a licence shall not purchase more than 30 rounds per calibre per twelve-month period, excluding ammunition bought and used at a shooting range during anyone shooting or practice session.
- (3) Ammunition shall be stored in a prescribed safe unless under the direct control of the licence holder.
- (4) Ammunition shall be carried while concealed.
- (5) Ammunition shall be stored separate from the firearm.
- (6) A licence holder that has more than four firearms licenced in his/her name shall not have more than 15 rounds of ammunition for each firearm in his/her possession.
- (7) Record and maintain a detailed register for use of the ammunition.
- (8) A person who contravenes any of the provisions of this section commits an offence and shall on conviction be liable to imprisonment to a term of 5 years.

51. *Licence to Possess a Firearm for Hunting and Sporting*

- (1) An application for a licence to possess, use and carry a firearm referred to in section for hunting and sporting purposes shall be in the manner prescribed in the Regulations to this Act;
- (2) An applicant to possess and use a firearm for hunting shall be required to have proper safe security and storage facilities;
- (3) No hand gun shall be licenced for purposes of this section;
- (4) A firearm which a licence may be issued in terms of this section is any;
- (a) shot gun prescribed in the regulations; and
 - (b) rifle.
- (5) A firearm in respect of which a licence has been issued in terms of this section shall only be used where it is safe to use the firearm and only for hunting, sporting purposes and lawful purposes.
- (6) Hunting and sporting activities shall only take place on premises approved for such purposes and with the written consent of the owner of the premises;
- (7) A person who contravenes any of the provisions of this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding 5 years.

52. *Licence to Possess Firearm in Collection*

(1) An application for a licence to possess firearms in collection shall be in the manner prescribed in the Regulations to this Act;

(2) An applicant for a licence to possess firearms in collection shall be required to have proper safe security and storage facilities as prescribed in the regulations;

(3) A person shall not collect firearms for purposes of public or private display unless he or she is in possession of a valid collector's licence.

(4) A firearm that may be licenced for collection shall have an attribute of collectability regarding its historical, technological, scientific, heritage, educational, cultural and artistic value or any other aspect as may be deemed appropriate.

a. Private collections shall be displayed at the licensee's place of domicile and shall be limited to rifles, pistols and revolvers.

b. Public collections may include mortars, guns, cannons, rocket launchers, machine guns and grenades and shall only be displayed;

(a) in an accredited museum; and

(b) in accordance with such safety measures as may be prescribed.

c. A person in possession of, a collector's licence shall not buy or possess ammunition for any firearm under the licence.

d. A person in possession of a collector's licence shall have a valid special liability insurance for the firearms under the licence.

e. A collector for firearms shall ensure safe storage and security of firearms under the licence.

f. A collector shall not make a deliberate change in the circumstances regarding the display or storage of firearms under the licence without the approval of the Registrar.

g. A person who contravenes any of the provisions of this section commits an offence and shall on conviction be liable to a term of imprisonment of 10 years or a fine exceeding 1000 currency points.

53. *Temporary Permit to Possess a Firearm*

(1) The Registrar, may in his or her discretion, issue a permit for a specified purpose for a period not exceeding six months.

(2) For purposes of this section 'specified purpose' shall include firearms permits issued to;

(a) a foreign visitor for the purpose of hunting;

(b) a foreign visitor to display a firearm, parts and components or ammunition at a trade show or collectors' show, or to display firearms, parts and components or ammunition at a sporting or hunting trade show;

(c) a foreign visitor to participate in a sports competitive shooting event organized by

recognized business, hunting, sports shooting or collectors' organisation or theatrical performance and related productions;

(d) an official of a foreign government or distinguished foreign visitor so designated by the Ministry for Foreign Affairs;

(e) a foreign law enforcement officer entering Country x on an officially approved policing assignment; or

(f) a person for the purpose of repairing firearms, parts and components that are in their legal possession.

54. *Security Measures for Firearms Possessed Under Licence*

(1) A holder of a licence or permit to possess a firearm and ammunition shall ensure adequate security to prevent such firearm and ammunition from theft or loss.

(2) A person who-

(a) fails to lock away his or her firearm and ammunition in his or her possession in a prescribed safe, strong room or device for the safe keeping when such firearm is not carried on his or her person or is not under his or her direct control; or

(b) loses a firearm or is otherwise dispossessed of a firearm owing to that person's failure to-

i. lock the firearm away in the prescribed safe, strong room or device for safe keeping of the firearm;

ii. take reasonable steps to prevent the loss or theft of the firearm while the firearm was in his or her person or under his or her direct control; or

iii. keep the keys to such safe, strong room or device in safe custody;

(c) fails to report the loss or theft to the nearest police station to the place where it occurred within 24 hours after having become aware of the loss or theft of the firearm, commits an offence and shall on conviction be liable to imprisonment to a term not less than two years and not exceeding five years.

(3) A person who is convicted under sub section (2) shall be declared unfit to possess a firearm.

55. *Declaration as Unfit to Possess a Firearm by the Registrar*

(1) The Registrar may declare a person unfit to possess, use or carry a firearm if, on the grounds of information contained in a statement under oath or affirmation it appears that;

(a) final protection order has been issued against such person;

(b) that person has expressed the intention to kill or injure himself or herself or any other person by means of a firearm or any other dangerous weapon;

- (c) that person's mental condition, inclination to violence or dependence on any substance which has an intoxicating or narcotic effect;
- (d) that person has expressed the intention to kill or injure himself or herself or any other person by means of a firearm or any other dangerous weapon;
- (e) that person's mental condition, inclination to violence or dependence on any substance which has an intoxicating or narcotic effect, the possession of a firearm by that person is not in the interests of that person or of any other person;
- (f) that person has failed to take the prescribed steps for the safekeeping of any firearm; or
- (g) that person has provided information required in terms of this Act which is false or misleading.

(2) A declaration under subsection (1) may only be issued if the Registrar;

- (a) by a written notice served to the person, has called upon the person to appear before the Registrar at a time and place determined in the notice in order to advance reasons as to why that person should not be declared unfit to possess a firearm;
 - (b) has given that person a reasonable opportunity to submit reasons as to why the declaration should not be issued;
 - (c) has duly considered the matter and is satisfied that the person; (i) is unfit as contemplated in subsection (1); and
 - (d) does not rely solely on the same facts relating to a conviction in respect of which a court has made a determination in terms of this Act.
- (3) A person appearing in pursuant of a notice issued in terms of subsection (2) (a) is entitled to;
- (a) be heard and represented by a legal representative;
 - (b) request the Registrar to call, in the manner referred to in subsection (2) (a), any person that made a statement referred to in subsection (1), to appear before the Registrar; and
 - (c) examine the person that has been called in terms of subsection (1) or paragraph (b) to appear, or cause him or her to be so examined by such legal representative.

56. *Declaration as Unfit to Possess a Firearm by a Court*

A person is unfit to possess a firearm if he or she is convicted of-

- (a) an offence regarding the failure to store firearms or ammunition in accordance with the requirements of this Act;
- (b) an offence involving the negligent handling or loss of a firearm while
 - (a) the firearm was in his or her possession or under his or her control; or

- (b) an offence involving the handling of a firearm while under the influence of any substance that has an intoxicating or narcotic effect.

57. *Effect of Declaration*

(1) All competence certificates, licences, authorisations and permits issued in terms of this Act to any person who becomes or is declared unfit to possess a firearm in terms of section 44 or 45, cease to be valid from the date of conviction, or the declaration as the case may be.

(2) Notwithstanding an appeal against the decision of a court or of the Registrar, the status of unfitness contemplated in subsection (1)(a) remains in effect pending the finalisation of the appeal.

(3) A person who becomes or is declared unfit to possess a firearm in terms of section 44 and 45 shall within 24 hours, surrender to the nearest police station;

(a) all competence certificates, licences, authorisations and permits issued to him or her in terms of this Act;

(b) all firearms and ammunition in his or her possession.

(4) A person who has surrendered his or her firearm contemplated in subsection (2) shall dispose of the firearm and ammunition through a dealer or in such manner as the Registrar may determine-

(a) if an appeal is lodged and the appeal is successful, within 60 days of the finalisation of the appeal.

(b) if no appeal is not lodged, within 60 days of receipt written notice from the Registrar informing the person of his or her unfitness to possess a firearm.

(5) If the firearm and ammunition is not disposed of within 60 days, they shall be forfeited to the state and destroyed as prescribed, if no appeal is not lodged, within 60 days of receipt of written notice from the Registrar informing the person of his or her unfitness to possess a firearm.

(6) A period of 60 days referred to in this section may be extended by the Registrar for good cause shown.

(7) For purposes of subsection (3)(a), the Registrar shall release the firearm and ammunition in question to a dealer identified by the relevant person, for disposal by that dealer on behalf of the person.

(8) If the decision leading to the status of unfitness to possess a firearm of any person is set aside, any seized or surrendered firearm, ammunition, licence, permit or authorisation belonging to any such person, shall be returned.

58. *Duty to Carry a Licence or Permit*

(1) Any person that is carrying a firearm or ammunition on or about his or her person or who has a firearm or ammunition in his or her physical control shall carry with him or her a firearm licence or permit authorising his or her possession of the firearm or ammunition.

(2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to imprisonment for a term of 5 years or to a fine of two hundred currency points.

**PART V -
POSSESSION OF FIREARMS
BY PRIVATE SECURITY
ORGANISATION**

59. *Licence to Possess Firearms by a Private Security Organization*

(1) A person conducting a business of a Private Security Organisation shall apply for a licence to possess firearms in the manner prescribed in the Regulations to this Act;

(2) The Registrar shall on application issue a licence for each firearm possessed by the Private Security Organisation;

(3) A Private Security Organisation shall only hold firearms as provided by the regulations made under this Act; .

(4) A Private Security Organisation shall designate a person responsible for all firearms possessed by the Organisation and who shall ensure compliance with the relevant provisions of this Act;

(5) The designated person shall be in possession of an advanced competence certificate;

(6) The liability of the Directors, owners of, or any person with influence in the Private Security Organisation shall not be affected by the provisions of subsection (4);

(7) A Private Security Organisation shall ensure that each of its personnel possessing a firearm holds a valid competence certificate;

(8) An employee of a Private Security Organisation shall only be in possession of a firearm and ammunition while on duty;

(9) The liability of the Directors, owners of, or any person with influence in the Private Security Organisation shall not be affected by the provisions of subsection (4);

(10) A Private Security Organisation shall ensure that each of its personnel possessing a firearm holds a valid competence certificate;

(11) An employee of a Private Security Organisation shall only be in possession of a firearm and ammunition while on duty; and

(12) An employee of a Private Security Organisation in possession of a firearm and ammunition shall carry a firearm permit in the manner prescribed in the Regulations.

60. *Use of Authorised Firearms*

(1) A Private Security Organisation Officer may use an authorised firearm in the following circumstances;

(a) in self defence against an armed attack or the defence of any other person who may be under the protection of the employee from the threat of death or grave injury arising from such an armed attack;

(b) to stop any serious threat to life or property if police assistance cannot be called in time to avert the threat.

(2) A private security officer who misuses a firearm abandons his or her firearm or fails to secure the firearm or ammunition, commits an offence and shall be liable on conviction to a term of imprisonment of 10 years.

(3) A private security officer who possesses uses or carries a firearm without a valid permit issued in terms of this Act commits an offence and shall on conviction be liable to a term of imprisonment not exceeding 5 years.

(4) The Registrar shall have routine inspections of the armoury, arms and ammunition in possession of a Private Security Organisation.

(5) Destruction of firearms and ammunition possessed by a PSO shall be in accordance with the provisions of disposal of firearms in terms of this Act.

(6) The Registrar may from time to time issue standard instructions to Private Security Organisations regarding firearms.

61. *Security Measures for Firearms Possessed by Private Security Organizations*

(1) A Private Security Organisation shall establish and maintain such security measures for the premises referred to in the Private Security Organisation's licence in a manner prescribed by Regulations.

(2) A designated officer of a private security organisation that possesses firearms and ammunition shall ensure adequate security to prevent such firearms and ammunition from theft or loss.

(3) An employee of a private security organization who-

(a) fails to lock away his or her firearm and ammunition in his or her possession in a prescribed safe, strong room or device for the safe keeping when such firearm is not carried on his or her person or is not under his or her direct control; or

(b) loses a firearm or is otherwise dispossessed of a firearm owing to that person's failure to-

(i) lock the firearm away in the prescribed safe; strong room or device for safe keeping of the firearm;

(ii) take reasonable steps to prevent the loss or theft of the firearm while the firearm was in his or her person or under his or her direct control; or

(iii) keep the keys to such safe, strong room or device in safe custody;

(c) fails to report the loss or theft to the nearest police station to the place where it occurred within 24 hours after having become aware of the loss or theft of the firearm,

commits an offence and shall on conviction be liable to imprisonment to a term not exceeding five years,

(4) A person who is convicted under sub section (4) shall be declared unfit to possess a firearm in terms of this Act.

(5) A private security organization that contravenes the provisions of this section shall entitle the Registrar to-

(a) seize the firearms and ammunition in its possession;

(b) revoke or suspend the licence to possess firearms and ammunition.

62. Record to be kept by a Private Security Organisation

(1) A private security organisation shall;

(a) keep an up to date stock register of all firearms and ammunition in its possession; and

(b) maintain a daily register that reflects its employees that are in possession of firearms in accordance with the provisions of the regulations.

(2) A PSO shall submit monthly returns of all firearms and ammunition in its possession in the manner prescribed in the Regulations to this Act.

(3) A person who contravenes the provisions in this section commits an offence and shall be liable on conviction to imprisonment for a term of 1 year.

63. Cessation of Business.

(1) If the private security organization ceases to do business for any reason, the Directors, administrator or liquidator, as the case may be, shall not later than seven days after a final administration or liquidation order has been granted by court, notify the Registrar.

(2) Upon liquidation, the directors, administrator or liquidator shall ensure that the PSO's firearms are kept in safe custody pending disposal in accordance with this Act.

(3) Upon receipt of the notification in subsection (1), the Registrar may take custody of the firearms where in his or her opinion the PSO is no

longer in a position to secure the safety of the firearms.

(4) A person who does not comply with the provisions in this section commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 15 years.

64. Firearms in Possession of Security Agency

(1) Members of the Country x Defence Forces, Police Force, Intelligence Services and Prisons Services are exempted from the obligation to have a permit in respect of firearms in their possession under their control for the purposes of performing their duties, if those firearms are mounted in or upon a weapons system.

(2) A permit to a member of the security agency to possess and use a firearm under its control shall only be issued by the head of the security agency or someone delegated in writing by him or her.

(3) A permit issued in terms of this section shall contain information as prescribed in the Regulations to this Act.

(4) The head of a security agency may impose conditions on the possession and use of the firearms and ammunition under the control of that agency and may issue instructions to members of that agency prescribing conditions relating to acquisition, storage, transport, possession, use and disposal of such firearms and ammunition.

(5) Unless the permit issued in subsection (2) indicates otherwise, the member shall;

(a) when on duty, carry any hand gun under his or her control on his or her person in a holster,

(b) at the end of each period of his or her duty, return the firearm in question to the place of storage designated for that purpose by the security agency; and

(c) when travelling with a firearm, carry the firearm on his or her person in a secure place under his or her direct control.

(6) Notwithstanding subsection (5);

(a) the head of the agency may authorise a member to;

(i) have the firearm in his or her possession after his or her working hours

(ii) carry the firearm on his or her person outside the premises of his or her work place, or

(iii) store the firearm at his or her place of residence.

(b) The provisions of subsection (5)(a) of this section shall not apply to members of;

(i) the Reserve Force of the Country x Peoples Defence Forces; and

(ii) any government institution accredited by the Registrar as a security agency unless the Registrar determines in writing that it does so apply.

(7) The holder of the permit contemplated in this section shall carry the permit on his or her person when in possession of the firearm.

(8) The head of the security agency may only issue a permit in terms this section if the member;

(a) is a fit and proper person to possess a firearm in terms of this Act; and

(b) has successfully completed a prescribed training in safe use of a firearm.

(9) The head of security agency shall report the loss or theft of any firearm immediately to the Registrar and to the nearest Police station to the place where the loss or theft occurred.

65. *Acquisition of Firearms by a Security Agency*

(1) The acquisition of firearms for a security agency shall be subject to joint planning of the utilisation of the current stock and the forecasting of future firearms needs of Country x.

(2) The process of acquiring firearms for the security agencies shall be undertaken within the parameters of acceptable practice and standards for trade in firearms.

66. *Register to be kept by Security Agency*

(1) The Head of a security agency shall keep a register in the prescribed form;

(2) The Register shall contain such particulars as may be prescribed, including;

(a) (i) in the case of the Country x Peoples Defence Forces the particulars of every firearm of a calibre of less than 100 millimeters, or

(ii) in the case of other security agencies, the particulars of every firearm under its control;

(b) the particulars of every member of the agency who is allowed to be in possession of a firearm and the particulars of each such firearm;

(c) the conditions specified in every permit issued in terms of section 47.

(d) the particulars regarding disposal, transfer, loss, theft or destruction of firearms under its control;

(e) where the firearm is lost or stolen, the particulars regarding the loss or theft to the Country x Police Force.

(3) The head of the security agency shall;

(a) establish and maintain a workstation at a place which complies with such requirements as may be prescribed; and

(b) provide the Registrar with access to the workstation and to the Register referred to section in this section.

PART VI - MARKING OF FIREARMS

67. *Marking*

(1) Every small arms and light weapons in Country x shall be marked with a national identification code to be determined by the Commission.

(2) All firearms owned or carried under a licence within the jurisdiction or control of the Government of Country x, shall bear a number and unique identification mark, and in particular must reflect the following:

(a) country of manufacture;

(b) the logo of the manufacturing industry;

(c) the year of manufacture;

(d) serial number placed at the appropriate position or at the position that cannot be erased; and

(e) the manufacturing company.

(3) All firearms in the possession of any person resident, or travelling to or through, the republic of Kenya must be registered, bear a number and a unique identification mark.

(4) The Commission shall keep a record of the numbers and unique identification firearms registered under this Act.

(4) The Registrar shall engrave the national identification code on firearms.

(5) For purposes of this section the mark on the gun or firearm and ammunition shall be a permanent and alpha-numeric mark on the metal part.

(6) The specifications of the mark for civilian owned firearms shall be prescribed by the Registrar by notice in the Gazette.

(7) The prescription or mark shall contain such measures to prevent the removal or alteration.

(8) An owner of a firearm which was licenced before the coming into force of this Act shall submit the firearm to the Registrar for marking.

(9) Subject to subsection (8), the Registrar shall, issue directives specifying the time within which an owner shall present his firearm for marking and may prescribe sanctions for failure to comply with the requirements of the direction.

(10) A person shall not erase, alter or in any other manner tamper with the manufacturer's serial number or any other identification code mark on a firearm with the intention of changing its identity.

(11) An owner of a firearm shall immediately report to the Registrar of any firearm that has been erased, altered or tampered with in any manner as to render it illegible.

(12) The Registrar may, subject to sub section (11), direct in writing that such firearm be marked in accordance with this section.

(13) A person who contravenes this section commits an offence and is liable upon conviction,

to a fine of not less than 200 currency point but not exceeding 500 currency points or imprisonment for a term not less than two years and not exceeding five years or to both.

68. Marking of all Firearms under the Jurisdiction of the State

- (1) All the existing firearms for both the state and civilian use shall be marked in accordance with the provisions of this Act.
- (2) All firearms owned by the Defense Forces, Police Service, Prisons Service, Wildlife Services and any other state recognized institution shall bear a special mark uniquely designed by each institution and peculiar to them.
- (3) The Commission shall determine the type of mark to be used on civilian owned firearms including its features, its size and where it is to be affixed.
- (4) A person who is found in possession of unmarked firearm or ammunition commits an offence and on conviction shall be liable to imprisonment of a term of five years or to a fine of two hundred currency points or to both.

69. Marking of firearms in relation to their sale

- (1) All firearms sold in Country x, regardless of origin, shall comply with the provisions of sections 50 and 61 of this Act.
- (2) The stamping of the serial numbers for this purpose shall be in accordance with the prescription set by the Minister in the regulations made under this Act.
- (3) All firearms that are transferred from Government stocks to permanent civilian use shall be marked before such transfer takes place.
- (4) A person who sells, purchases or possesses a firearm that does not bear a prescribed mark under this section commits an offence and on conviction shall be liable to imprisonment of not less than 2 years and more than 5 years or to a fine of not less than 200 currency points and not more than 500 currency points or both with a destruction mark, and their records shall be kept with the Central Firearms Registry.
- (5) A person found in possession of a firearm or ammunition with a destruction mark commits an offence and on conviction shall be liable to imprisonment to a term of not less than 5 years and more than 10 years or to a fine of not less than 500 currency points and not more than 1000 currency points or both.
- (6) Firearms authorized for transit through the country under may not be marked specially.

**PART VII -
MANUFACTURING AND
GUNSMITHS**

70. Licence to Manufacturer of Firearms and Ammunitions

- (1) A manufacturer shall not produce or assemble firearms, their components, accessories or parts including ammunition without a valid manufacturer's licence.
- (2) An application for a manufacturer's licence shall be in a prescribed form.
- (3) A manufacturer shall produce or assemble such categories of firearms, their components, accessories or parts and/or ammunitions authorized in the manufacturer's licence.
- (4) A manufacturer shall only manufacture from the premises specified in the manufacturer's licence.
- (5) A manufacturer shall only sell or transfer firearms or ammunitions and their parts or components to persons duly authorised in accordance with this Act.
- (6) A person who contravenes any provisions of this section commits an offence and on conviction shall be liable to imprisonment for a term of not less than ten years and more than twenty five years.

71. Manufacturer's Licence

A manufacturer's license shall—

- (a) specify the physical location in respect of which the license is issued;
- (b) specify the conditions contemplated in this Act which are to apply; and
- (c) contain such other information as may be prescribed.

72. Marking of Firearms by Manufacturers

- (1) All firearms shall be marked at the time of manufacture with a mark showing the name of the manufacturer or the person licenced as manufacturer.
- (2) The manufacturer's mark shall be placed on the barrel and frame.
- (3) The mark in subsection (2) above, shall include -
 - (a) the name and or the registered logo of the manufacturer,
 - (b) the country and place of manufacture,
 - (c) the mark UC followed by the serial numbers and any other mark issued by the Registrar,
 - (d) the date of manufacture, type and model, and
 - (e) the caliber of the firearm.

- (4) Every manufacturer of parts and components shall mark each essential or main part and component, at the time of manufacture.
- (5) Subject to subsection (3) of this section, all arms manufactured or imported shall have a mark preceded with a star (" *").

73. *Marking of Ammunition by Manufacturers*

- (1) Every person that manufactures ammunition shall mark all ammunition at the time of manufacture.
- (2) The mark in subsection (1) shall include the lot number, the manufacturer's identity, as well as the country and year of manufacture.
- (3) Ammunition that do not comply with the provision of this section shall not be imported into Country x.
- (4) A person who permits the importation of unmarked ammunition commits an offence.
- (5) A person convicted of an offence under this section shall be liable to ten years imprisonment or to a fine of four hundred currency points or both.

74. *Manufacturer's Database*

- (1) A manufacturer's register shall be kept for a period of not less than 25 years after the date of the last entry.
- (2) Any manufacturer who contravenes the provisions of this section commits an offence and shall be liable on conviction to imprisonment for a term of not less than two years and more than 7 years or to a fine of not less than 300 currency points and not more than 500 currency points or both.

75. *Licence for a Gunsmith*

- (1) A person shall not carry on the business of a gunsmith or repair a firearm without a licence.
- (2) An application for a licence to carry on business of a gunsmith shall be in a prescribed form.
- (3) A gunsmith shall carry out gunsmith on those firearms that are possessed in accordance with this Act with authorisation from the Registrar;
- (4) A Gunsmith shall not carry out gunsmith on any firearm unless the holder of such firearm produces a valid licence.
- (5) A gunsmith shall not permit any person to carry out gunsmith of firearms on his or her behalf unless that person is in possession of the appropriate competence certificate;
- (6) A person licenced to carry on the business as a gunsmith may-

- (a) Repair, refurbish, modify or customize;
- (b) do custom building adaptations;
- (c) assemble; or
- (d) deactivate a firearm.
- (d) deactivate a firearm.

- (7) In carrying out the activities stated in sub section (6), the gunsmith shall not change the action, nature or tamper with the mark of the firearm without express written consent from the Registrar.
- (8) For the avoidance of doubt a licenced gunsmith shall not alter the mechanism of a firearm so as to enable the discharging of more than one shot with a single depression of the trigger, or alter the caliber or the barrel length of a firearm.
- (9) All firearms shall be repaired at Government arsenals or by a licenced gunsmith.
- (10) A person that carries on business as a gunsmith without a valid licence or contravenes the provisions of this section commits an offence and shall be liable on conviction to imprisonment for a term of not less than ten years and more than 25 years,

76. *Requirements for Gunsmiths*

- (1) A gunsmith shall only carry out gunsmith from the premises specified in the gunsmith's licence.
- (2) A gunsmith shall establish and maintain such security measures for the premises specified in the licence as prescribed in the regulations.
- (3) A gunsmith shall keep an updated register of stock and transactions at the premises and on monthly basis submit a report to the Registrar.
- (4) A gunsmith shall establish and maintain a workstation which links the Register referred to in subsection (3) to the Central Firearms Registry.
- (5) The gunsmith register shall be kept for a period of not less than 25 years after the date of the last entry.
- (6) A person who contravenes any provision of this section commits an offence and shall be liable on conviction to a term of not less than one year and more than five years imprisonment or to a fine of not less than 100 currency points and not more than 250 currency points.

77. *Manufacturer's Gunsmith Licence*

A gunsmith's license shall –

- (a) specify the physical location in respect of which the license is issued;
- (b) specify the conditions contemplated in this Act which are to apply; and
- (c) contain such other information as may be prescribed.

78. *Temporary Authorisation to Conduct Business as a Gunsmith in Premises other than those Specified in Gunsmith Licence*

- (1) The Registrar may issue a temporary permit to conduct business as a Gunsmith other than those specified in the Gunsmith's licence.
- (2) Application for a permit specified in (1) shall be made to the Registrar in a prescribed form.
- (3) The Registrar may impose conditions on a Gunsmith in respect of a permit issued in terms of this section.
- (4) The permit in terms of this section shall specify;
 - (a) premises in respect of which it is issued;
 - (b) period for which it is issued; and
 - (c) conditions subject to which it is issued.
- (5) The Registrar may at any time withdraw the permit issued in terms of this section.
- (6) The Registrar shall keep a record of permits issued in terms of this section.
- (7) A person who carries on business of a gunsmith on premises other than those specified in the licence or fails to comply with the provisions of subsection (4) of this section commits an offence and shall on conviction be liable for imprisonment to a term not exceeding 5 years
- (8) Where a person is convicted under this section, the Registrar shall revoke or suspend the licence issued under this Act.

PART VIII - DEALERS AND BROKERS

79. *Licence for Firearms Dealer*

- (1) A person shall not operate as a firearms dealer without a valid dealer's licence.
- (2) An application for a dealer's licence shall be in a prescribed form.
- (3) A dealer's licence shall be limited to firearms which civilians are licensed to possess.
- (4) A firearms dealer shall not sell a firearm to any person unless that person has a licence authorising him to purchase or possess such firearm or ammunition.
- (5) A person who contravenes any provision of this section commits an offence and shall be liable on conviction to imprisonment for a term of not less than 10 years and not more than 25 years.

80. *A Person who may be Licenced as a Dealer*

- (1) A dealer's license may be issued to a person who is a fit and proper person to trade in firearms.
- (2) Any natural person who is appointed or engages in the trading of small arms and light weapons on behalf of, or as an agent of a dealer who is a juristic person must qualify in terms of section under this Act to trade in small arms and ammunition.

81. *Particulars of a Dealer's Licence*

The dealer's license shall –

- (d) specify the conditions contemplated under this Act;
- (e) specify the premises in respect of which the license is issued;
- (f) specify the weapons that is authorised to deal in; and
- (g) contain such other information as may be prescribed.

82. *Temporary Authorisation to Conduct Business as a Dealer in Premises other than those Specified in Dealer's Licence*

- (1) The Registrar may issue a temporary permit to conduct business as a dealer other than those specified in the Dealer's licence.
- (2) An application for a temporary permit shall be made to the Registrar in a prescribed form.
- (3) The Registrar may impose conditions on a licenced dealer in respect of a permit issued in terms of this section.
- (4) The permit in terms of this section shall specify;

- (a) premises in respect of which it is issued;
 - (b) period for which it is issued; and
 - (c) conditions subject to which it is issued.
- (5) The Registrar may at any time withdraw the permit issued in terms of this section.
- (6) The Registrar shall keep a record of permits issued in terms of this section.
- (7) A person who carries on business of a dealer on premises other than those specified in the licence or fails to comply with the provisions of subsection (4) of this section commits an offence and shall on conviction be liable for imprisonment to a term not exceeding 5 years
- (8) Where a person is convicted under subsection (7), the Registrar shall revoke or suspend the licence issued under this Act.

83. *Dealer's Database*

- (1) A dealer shall keep a register containing such information at the premises as may be prescribed in the licence.
- (2) The dealer's register shall be kept for a period of not less than 10 years after the date of the last entry.
- (3) A dealer shall submit monthly returns of their stock and transactions to the Registrar.
- (4) A dealer shall establish and maintain a workstation which links the register referred to in subsection (2) to the Central Firearms Registry.
- (5) Any person who contravenes any provision of this section commits an offence and shall be liable on conviction to imprisonment for a term of ten years or to a fine of two hundred currency points.

84. *Broker's Licence*

- (1) A person shall not operate as a broker of firearms without a valid broker's licence.

PART IX – IMPORT, EXPORT, TRANSIT, TRANSPORT AND FINANCING OF FIREARMS AND AMMUNITION BUSINESS

85. Import, Export and Transit of Firearms and Ammunition

- (1) No person shall import into or export from or carry on transit any firearms or ammunition through Country x without an import, export, transit or transport permit.
- (2) An import or export permit may only be issued to a person who qualifies to be a dealer or manufacturer according to this Act.
- (3) No authorized manufacturer is allowed to divert any materials for manufacture of small arms to another place other than the designated factory.
- (4) Such raw materials will be weighed and checked at the port and again at the entry of the factory for accountability purposes.

86. Firearms transportation permit

- (1) A person shall not transport any firearm or ammunition unless he obtains a transporter's permit.
- (2) A person engaged in the business of transportation associated with firearms, their parts and components and ammunition shall require a permit for each of the transactions which he or she will engage in.
- (3) An application for a transporter's permit shall be made to the Registrar in the prescribed form.
- (4) A transporter shall comply with security measures of transportation as prescribed by the regulations.
- (5) Any person that contravenes any of the provisions of this section commits an offence and shall be liable on conviction to imprisonment for a term of not less than 10 years and not more than 25 years.

87. Requirements for Export, Import, Transit or Transport Permit

- (1) An import, export, transit or transport permit may be issued to a person who is fit and proper person to hold such a permit.
- (2) Unless the Registrar directs otherwise in writing, no import, export or transit permit may be issued in respect of any small arm or light weapon which does not bear the prescribed identification marks.

88. *Particulars of Export, Import or Transit Permit*

The export, Import, Transit or Transport Permit license shall –

- (a) Specify the conditions contemplated under this Act;
- (b) specify the premises or vessel in respect of which the license is issued;
- (c) specify the weapons that is authorised to deal in; and
- (d) contain such other information as may be prescribed.

89. *Removal of Imported Firearms and Ammunition*

- (1) A person who imports or transports firearms or ammunition shall not remove them from the Customs clearing points without authorization from the Registrar.
- (2) An application for removal shall be made in the manner prescribed in the regulations.
- (3) Any person who contravenes any of the provisions of this section commits an offence and on conviction shall be liable to imprisonment for a term of not less than 7 years and not more than 15 years.

90. *Conditions of an Import, Export, Transit or Transport Permit*

- (1) A permit for the import, export or carriage in-transit of firearm also constitutes a license to possess such firearm for such person and period as the Registrar may specify on the permit.
- (2) The Registrar may impose such conditions in respect of the possession of the relevant small arms or light weapons as may be prescribed, and must, on the permit in question, specify any conditions imposed.
- (3) The holder of a permit issued in terms of this Act must comply with the conditions specified in the permit.

91. *Firearms Financing Activities Permit*

- (1) A person engaged in financing activities associated with firearms, their parts and components and ammunition shall require a permit for each of the transactions which he or she will engage in.
- (2) An application for a firearms financing activities permit shall be made in the manner prescribed by the regulations.
- (3) Any person that contravenes any of the provisions of this section commits an offence and shall be liable on conviction to imprisonment for a term of not less than ten years and more than 25 years.

92. *Inspection of Firearms and Ammunition*

- (1) A police officer of a rank of Inspector of Police or above or Customs Officer may at any time, inspect the firearms, ammunition, storage conditions and storage facilities to which a licence or permit has been issued under this Act.
- (2) The Police officer-
 - (a) may require the owner of a firearm to answer questions relating to the whereabouts of the firearm or relating to the person or persons who have, or had, possession of the firearm;
 - (b) may require that person to produce such evidence as may be stipulated by a police officer to verify information given in response to a requirement under this section; and
 - (c) shall produce his or her warrant card if requested by the person mentioned in subsection (1), (2) or (3) before that person is required to comply with the request of the police officer

93. *Production of a Licence or Permit*

- (1) A person in possession of a firearm or ammunition shall, at the request of a police officer produce a firearm and licence/ permit for inspection.
- (2) The person referred to in Subsection (1) of this section may request the police officer to produce his or her official identity card, before complying with the said request.
- (3) Any person who refuses or fails to produce a firearm or licence or permit on demand without reasonable excuse commits an offence and on conviction shall be liable to imprisonment for 5 years or fine of two hundred currency points.

94. *Power to Seize Firearms or Ammunition*

- (1) A police officer may seize a firearm or ammunition if he or she suspects upon reasonable grounds that:
 - (a) A firearm is not licenced or unauthorised;
 - (b) an offence in terms of the provision of this Act has been committed, or is about to be committed, with respect to the firearm or ammunition;
 - (c) a person who has possession of a firearm is not a fit or proper person to have possession of that firearm or ammunition;
 - (d) continued possession of a firearm by a person would be likely to result in undue danger to life or property;
 - (e) a person has possession of a firearm or ammunition in contravention of an order of a court or domestic violence restraint order of a court;
 - (f) a firearm is mechanically unsafe in which case a police officer shall seize the firearm and promptly take it for inspection by a designated expert to confirm whether it is mechanically unsafe and, if it is found to be mechanically safe it should be returned to the licenced owner;

- (g) a firearm has been converted to an automatic firearm after approval of the licence to possess that firearm;
 - (h) a person who has possession of that firearm is apparently under the influence of an intoxicating liquor or drug;
 - (i) a person has ammunition that has been acquired or is held in contravention of the Act; and
 - (j) a person has possession of a firearm whose serial number or mark has been removed or altered.
- (2) If a police officer suspects on reasonable grounds that a person has possession of a licence-
- (a) that has been cancelled or suspended;
 - (b) for an illegal purpose; and
 - (c) is not a fit and proper person to have possession of the licence,
- (3) Any police officer that seizes a firearm, licence or ammunition under this section, shall hand it over to the nearest police station.
- (4) A firearm, licence or ammunition held under this subsection shall be held until;
- (a) proceedings are instituted for an order under this section or for an offence in relation to any section of this Act, or any other Act;
 - (b) a decision is made not to institute such proceedings; and
 - (c) the expiration of 3 months after the firearm or ammunition was seized, whichever occurs first.
- (5) A Police Officer who seizes a firearm, licence or ammunition under this section shall provide proof of identification on request.

PART X - STOCK MANAGEMENT, DISPOSAL AND DESTRUCTION OF FIREARMS

95. Keeping of Stock, Inventory and Accounting for Firearms

- (1) The Police, Defense Forces, Prisons Service, Wildlife Service, Intelligence Service and other security agencies shall keep stock of all their firearms and shall be accountable for them.
- (2) The Police shall take inventory of all small arms and ammunition in their possession and control including those owned by civilians, once every year or at any other time it may be expedient to do so.
- (3) The Defense Forces, Prisons Service, Wildlife Service, Intelligence Service and other security agencies shall take inventory of their firearms and ammunition, once every year or at any other time it may be expedient to do so.
- (4) A report of the inventories referred to in subsection 1 and 2 shall be forwarded to the Commission and the National Security Council by each security organ as soon as is practicable or at any time that the council may require.

96. Collection Procedures

- (1) The procedures for the collection of firearms and ammunition shall be as prescribed in the Regulations.
- (2) All firearms that become the responsibility of the Government of Country x through legal acquisition, seizure, forfeiture, voluntary surrender and disarmament, demobilization and reintegration programmes shall remain eligible for collection by the Registrar.
- (3) The Minister shall determine the criteria of identifying obsolete, surplus and redundant firearms for collection.
- (4) The collected firearms and ammunition shall be stored separately using a three-lock system.
- (5) The institution responsible for firearms collection shall use the destruction marks to identify arms and ammunitions for disposal or destruction.

97. Records of Collected Firearms

- (1) The Central Firearms Registry shall keep the details of collected firearms and ammunition for disposal or destruction.
- (2) The Central Firearms Registry shall maintain records of:-
 - (a) all firearms seized during military operations;
 - (b) all firearms peacefully surrendered under weapons collection programmes;

- (c) all lost and recovered firearms; and
- (d) all illicit, obsolete, defective or redundant stocks declared for destruction.

98. *Disposal of Firearms and Ammunitions*

- (1) All firearms and ammunitions that are rendered surplus, redundant or obsolete shall be disposed off in a way that prevents them from entering the illicit market.
- (2) The disposal stated in (1) above may include destruction, transfer or sale of the firearm.
- (3) Where a firearm that previously belonged to a deceased person has been sold, the proceeds of the firearm shall be given to the estate of the deceased.
- (4) If a person who holds a licence, permit or authorisation issued under this Act, ceases to carry on business for any reason, the small arms and ammunition in possession of that person must be kept in safe custody by the person and at the place designated by the Commission, until they are disposed of as prescribed.

99. *Voluntary Disposal*

- (1) A holder of a licence issued in terms of the previous Act that does not wish to renew his or her licence shall:
 - (a) dispose of the firearm through a licensed dealer within 30 days of this Act coming into operation; or
 - (b) surrender the firearm to the Registrar, designated officer or a Police officer in charge of a district.
- (2) A shall surrender any ammunition he or she is in possession without having been in lawful possession of a firearm.
- (3) The registrar shall dispose of any firearm or ammunition surrendered in compliance with subsection (1) in accordance with the provisions of this Act.

100. *Firearms Disposal in case of Death of a Licencee*

- (1) Upon the death of a licensee, the executor, administrator, or any other person dealing with the estate of such licensee, who comes into possession of firearms and ammunition initially issued to the licensee, shall deposit the same, within seven days, at the nearest police station.
- (2) Subject to subsection (1), the executor, administrator, or any other person dealing with the estate may apply for a licence to possess the firearm in accordance with the provisions of this Act. Registrar shall cause the institution of proceedings for forfeiture before a court of law.

(3) The firearm or ammunitions subject to forfeiture proceedings shall be surrendered to the police station for safe custody pending the decision of court.

(4) The forfeited firearm and ammunition by order of court shall become the property of the Government of Country x and shall be registered as such and its licence shall be cancelled.

(5) The registrar shall have an up to date register of all forfeited firearms.

101. *Forfeiture of Firearms*

- (1) Any firearm or ammunition which is connected with an offence shall, where the court thinks fit, be forfeited to the Government.
- (2) Any firearm or ammunition found in any building, vessel, aircraft or place without any apparent owner may, be ordered by the court to be forfeited to the Government.
- (3) Where a firearm or ammunition has been forfeited by the Government, by a court order, it shall be disposed of in the manner and within the time specified in the destruction order of the court.
- (4) A disposal order shall not be executed by the Government where an appeal is pending against the order or until such time the statutory appeal period elapses without an appeal being instituted against the order.

102. *Destruction of Firearms and Ammunitions*

- (1) All firearms and ammunition that have been impounded, surrendered, forfeited, abandoned or cannot be safely stored and illicit firearms seized by national authorities shall be registered and destroyed.
- (2) Before any firearm or ammunition is destroyed, the officer in charge of the destruction shall be required to obtain permission from the Registrar.
- (3) The Officer responsible for the destruction shall issue a certificate containing the details of the firearms destroyed and confirming the destruction.
- (4) Any firearms forfeited to the State in terms of this Act shall be destroyed by the State within six months of the date of the forfeiture.
- (5) A person found in possession of a firearm that has been earmarked for destruction commits an offence and shall be liable on conviction to a term of imprisonment for not less than seven years and not more than fifteen years.

PART XI – REGIONAL AND INTERNATIONAL COOPERATION

103. Information Sharing and Mutual Legal Assistance

(1) The Commission may, for the purposes of combating illicit proliferation of firearms and ammunition-

(a) upon request made by the appropriate authority of a foreign state, disclose to that authority any information in its possession; and

(b) receive and act upon any information, obtained in the course of investigations, relating to a firearm or ammunition unlawfully possessed

(2) For purposes of enhancing the implementation of this Act, the Government of the Republic of Country x may establish mutual legal assistance systems with any other State in an effort to eradicate the illicit manufacturing and trafficking of and control, possession and use of firearms, their components or ammunition.

(3) Mutual legal assistance may include;

(a) investigation and detection of offences; (b) obtaining evidence and statements;

(b) execution of searches and seizures;

(c) communication of information and transfer of exhibits;

(d) inspection of sites or examination of objects or documents;

(e) request for judicial documents;

(f) service of judicial documents;

(g) communication of relevant documents and records;

(h) identification or tracing of suspects or proceeds of crime;

(i) application of special investigative techniques, such as forensics, ballistics and finger printing; and

(j) any other form of mutual assistance consistent with this Act.

104. Reciprocal Arrangements

Licences and other documents which are issued by an authority of another country other than Country x shall be recognised if Country x has reciprocal arrangements with that country.

PART XII- OFFENCES AND PENALTIES

105. Unlawful possession

(1) A person who;

(a) possesses, uses or carries a firearm without holding a valid firearms licence or permit;

(b) purchases, uses, has in his or her possession or carries ammunition without a licence or permit;

(c) holds or carries quantities of firearms or ammunition in excess of those authorised by such licence or permit; or

(d) fails to comply with any condition subject to which a firearm licence or permit was granted to him or her;

commits an offence and on conviction is liable to a fine not less than 250 currency points and not exceeding 1000 currency points or to imprisonment for a term not less than five years and not exceeding ten years or to both.

(2) This section shall not apply to any of the following cases and such cases are accordingly exempted from this section;

(a) possession, use or carriage of a firearm or ammunition by a member of an official institution;

(b) possession, use or carriage of a firearm or ammunition by a licenced firearms dealer in the ordinary course of his or her business as such a dealer;

(c) possession or carriage of a firearm or ammunition or ordinary course of business by a person engaged in the business of carrying or warehousing goods for reward;

(d) possession of a firearm or ammunition on board of a vessel as part of the equipment of that vessel;

(e) carriage for sporting purposes only of a firearm or ammunition under instructions from and for the use of the holder of the firearms licence or permit for such firearm or ammunition;

(f) possession, carriage, or humane killer in the ordinary course of business by a butcher, slaughter man or other person engaged in the business of human slaughter of animals.

106. Giving or Lending of Firearms

A person who -

(a) sells, supplies or in any manner gives possession of a firearm or ammunition to a person who is not allowed in terms of this Act to possess that firearm or ammunition; or

(b) being in possession of any firearm, imitation firearm or ammunition, with intent to commit an offence or to use the firearm or imitation firearm with intent to resist arrest or to prevent the arrest of another person, commits an offence and shall on conviction be liable to imprisonment to a term not less than seven years and not exceeding 15 years.

107. *Giving or Lending of Firearms*

(1) A person who is aware of the existence of a firearm or ammunition that is not in the lawful possession of any person and fails to report the location of the firearm or ammunition to a police officer without delay commits an offence and shall on conviction be liable to imprisonment not exceeding twelve months.

(2) A police officer to whom a person has made the report contemplated in subsection (1) shall immediately provide the person with written proof that the report has been made or, in case of telephone or similar report, with official reference number of the report.

108. *Holding a Firearm under the Influence*

(1) A person who handles a firearm while under the influence of a substance which has an intoxicating or narcotic effect commits an offence and shall on conviction be liable to imprisonment not exceeding three years.

(2) A person who gives control of a firearm to a person whom he or she knows or ought to reasonably know to-

(a) be mentally ill, or

(b) be under the influence of a substance that has an intoxicating or narcotic effect, commits an offence and shall on conviction be liable to a term of imprisonment not less than eight months and not exceeding four years.

109. *Causing Bodily Harm, Injury or Damage to Property*

A person who -

(a) causes bodily injury to any person or causes damage to the property of any person by negligently using a firearm;

(b) discharges a firearm in a built up area or any public place, without good reason to do so;

(c) displays any firearm or imitation firearm in a public place in such a manner as to cause alarm to any member of the public;

commits an offence and shall on conviction be liable to imprisonment to a term not less than twelve months and not exceeding five years.

110. *Falsification and Alteration of Documents*

(1) A person who-

(a) adds or alters any word, figure or letter to a competence certificate, licence or permit as issued, without the Registrar's permission;

(b) uses or possesses any competence certificate, licence or permit to which any words, figures or letters have been unlawfully added, erased or altered;

(c) parts with a competence certificate, licence or permit in order that it may be used by a person other than the person to whom it was issued or granted;

(d) uses a competence certificate, licence or permit issued in the name of another person in order to procure possession of a firearm or ammunition;

(e) supplies particulars, information or answers in an application for a competence certificate, licence or permit in terms of this Act knowing them to be false, incorrect or misleading or not believing them to be correct;

makes a false entry into, a Register which is required to be kept in terms of this Act; or

(f) furnishes any false information in any returns or tampers with any records maintained or required to be submitted in terms of this Act, commits an offence and shall on conviction be liable to imprisonment to a term not less than twelve months and not exceeding five years.

(2) A person who falsifies or illicitly obliterates, removes or alters the calibre, barrel and marking(s) on a firearm, and ammunition commits an offence and shall on conviction be liable to imprisonment to a term not less than twelve months and not exceeding five years.

111. *Obstruction of Officers on Duty*

A person who obstructs or hinders any person in the exercise of any power or the performance of any duty in terms of this Act commits an offence and shall on conviction be liable to imprisonment to a term not less than twelve months and not exceeding five years.

112. *Pawning or Pledging of Small Arms and Light Weapons*

A person who pawns or pledges firearm or ammunition commits an offence and shall on conviction be liable to imprisonment to a term not less than two years and not exceeding 10 years.

113. *Attempts to Commit Offence*

A person who -

(a) attempts to commit or participate as an accomplice in any of the offences mentioned in this section; or

(b) organizes, directs, aids and abets, facilitates or counsels the participation in any of the offences mentioned in this section;

commits an offence and shall on conviction be sentenced to a similar term of imprisonment.

114. *General Penalty*

(1) Any person who commits an offence under this act for which no specific penalty is given shall be liable to a fine not less than 100 currency points

and not exceeding 500 currency points or to imprisonment for a term not less than two years and not exceeding five years or to both.

(2) Where a person who is convicted under subsection (1) holds a permit for the possession of a firearm or ammunition, such permit shall be cancelled or suspended and the firearms or ammunition be forfeited for a period which the court deems fit.

PART XIII - GENERAL PROVISIONS

115. Amnesty for surrender of firearms

(1) The Minister may, in consultation with the relevant authority in Country x, and by notice published in the Gazette -

- (a) for the purpose of surrendering illegally possessed firearms; and
- (b) to maintain law and order, declare an amnesty to any person found in unlawful possession of a firearm or ammunition.

(2) The notice in subsection (1) shall specify the person to whom amnesty is granted, the period, area and conditions of amnesty.

(3) A person who surrenders a firearm or ammunition under this section shall not be prosecuted.

116. Forceful Disarmament

(1) The Minister may in consultation with the Commission and the Inspector General of Police by notice in the Gazette declare forceful disarmament in any part of the country that the Minister considers to be insecure or unsafe by virtue of small arms proliferation.

(2) The conduct of disarmament mentioned in subsection (1) shall involve the community concerned and have regard to international Law and effected in a manner that does not violate or infringe on the human rights and fundamental freedoms of any person or community affected by the order.

117. Firearm Free Zones

(1) The Minister may on his or her own motion or on application by a person in the prescribed manner, declare any premises or category of premises to be firearm free zones, by notice in the Country x Gazette.

(2) Unless authorised to do so; in terms of a notice issued under subsection (1), no person shall;

(a) allow any firearm or ammunition into a firearm free zone;

(b) carry a firearm or ammunition in a firearm free zone; or

(c) store any firearm or ammunition in a firearm free zone.

(3) A security officer on official duty is exempted from the provisions of subsection (2).

(4) Any person that allows or carries a firearm in a firearm free zone commits an offence and shall be liable on conviction to imprisonment for a term of five years or to a fine of one hundred currency points.

118. Power to prohibit selling of Firearms and Ammunition

(1) The Minister may, from time to time, by statutory order (or notice in the Gazette) prohibit the importation, exportation, re-export, sale, and transfer

(2) Any person that allows or carries a firearm in a firearm free zone commits an offence and shall be liable on conviction to imprisonment for a term of five years or to a fine of not less than 100 currency points or liable to imprisonment for a term of not less than four years and not exceeding 10 years.

119. Premise Requirements

(1) The premises for manufacturing, dealing, gun smithing, and PSO shall fulfill the security requirements as prescribed in the Regulations.

(2) Licences issued to manufacturers, dealers, gunsmiths and PSOs shall conform to the specific premises in which they operate, and approved by the Registrar.

(3) Manufacturers, dealers, gunsmiths and private security companies shall have their premises regularly inspected.

120. Safe Storage Requirements

A person in possession of a firearm licence shall have safe storage facilities at the residence or place of business as prescribed in the regulations.

121. Public Display of Firearms

The public display of firearms or replica firearms in public for retail or sales or interest purposes is prohibited unless:

(a) inside the approved premises of a licenced dealer; and

(b) the necessary permit is obtained for each transaction outside the approved premises.

122. *Designation of Officials*

The Minister may in writing designate any person or category of persons employed by the State to implement any of the provisions of this Act.

123. *Private Ranges*

(1) A person who wishes to establish a private range must apply in the prescribed form to the Registrar for a license to operate a private range.

(2) The application must be accompanied by the prescribed fee and contain such information as may be required by the Registrar putting in to account among others public safety and security.

(3) The Commission shall conduct inspection of grounds or premises upon which a private range is proposed to be established.

(4) If the Commission is satisfied as to the suitability of the ground or premises, the range Commission shall prepare a report to that effect and shall direct the Registrar to issue a private range certificate.

124. *Arrest without Warrant*

(1) A police officer may arrest without warrant any person whom the officer suspects on reasonable grounds of having committed an offence under this Act.

(2) The police may impound any small arm or light weapon that the officer reasonably believes to be an illegal weapon or has been used to commit an offence or is in a person's possession without the relevant authorization.

125. *Jurisdiction of Magistrates' Courts*

A Magistrates' Court shall have jurisdiction under this Act.

126. *Regulations*

(1) The Minister may, by statutory instrument, make regulations generally for the better carrying out of any of the provisions or purposes of this Act.

(2) Without prejudice to the general effect of subsection (1), regulations made under that subsection may provide for all or any of the following matters;

(a) the determination and payment of fees payable in respect of the issue or renewal of a competency certificate, licence, permit or authorization or in respect of anything else for which a fee may be charged in terms of this Act;

(b) the fees or remuneration which may be charged by dealers in respect of any firearm, or other device, required to be disposed of through a dealer in terms of this Act;

(c) the security at any premises at which dealers, manufacturers, gunsmiths, importers and exporters of firearms and ammunition;

(d) precautions to be taken in respect of carriage, use, safe custody or destruction of firearms and ammunition;

(e) the surrender and disposal of competency certificates, licences, permits or authorisations issued in terms of this Act;

(f) the notification of change of address;

(g) the taking of fingerprints;

(h) the training and testing and such other measures as may be necessary to ensure the competency of employees of an official institution that may possess and use firearms under the control of the official institution; and

(i) generally with regard to any other matter which it is necessary or expedient to prescribe in order to achieve or promote the objects of this Act.

PART XIV - ADMINISTRATIVE REVIEW AND APPEALS

127. Administrative Review

- (1) A person;
- (a) whose application for a licence, permit or authorization in terms of this Act has been refused, cancelled, suspended or issued subject to conditions; or
- (b) who has received a notice of an administrative decision in terms of this Act which may detrimentally affect his or her rights, may apply to the Minister for review within one month from the date of receipt of the communication.
- (2) The Minister may with reasons confirm, vary or reverse any decision of the Registrar.
- (3) The Minister may admit evidence of facts not before the Registrar when he or she made the decision which is the subject of review only if;
- (a) there is a reasonable explanation for the failure to inform the Registrar of the facts; and
- (b) the Registrar has had sufficient opportunity to verify the facts and to present any evidence to the Minister in this regard.
- (4) The procedure for handling administrative review shall be in a manner prescribed by the Regulations.

128. Appeals

A person aggrieved by the decision of the Minister may appeal to the High Court within thirty days from the date of receipt of the decision.

PART XV - TRANSITIONAL PROVISIONS

129. Relicensing

Upon the coming into force of this Act, every licence issued under any enactment repealed by this Act, shall stand revoked and all persons shall be required to reapply for licences in accordance with the provisions of this Act, within such period and in such manner as may be prescribed.

130. Firearms issued under the Repealed Firearms Act

A person in possession of a firearm prohibited in terms of this Act, but which was lawfully obtained under the repealed Act, shall surrender apply for renewal of his or her licence within 30 days of the coming into force of this Act.

131. Repeal of laws

The Act, is hereby repealed and replaced.

This study has been commissioned and published with a funding from the African Development Bank - AfDB

AFRICAN DEVELOPMENT BANK GROUP



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