

**BEST PRACTICE GUIDELINES
FOR THE IMPLEMENTATION OF THE
NAIROBI DECLARATION AND THE
NAIROBI PROTOCOL ON SMALL ARMS
AND LIGHT WEAPONS**

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ACKNOWLEDGEMENTS

The Regional Centre on Small Arms and Light Weapons (RECSA) is grateful for the project funding received from the UK Government through the Department For International Development (DFID).

RECSA would also like to thank all those who contributed to the development of these Best Practice Guidelines and Minimum Common Standards on the Implementation of the Nairobi Declaration and the Nairobi Protocol.

Saferworld and SaferAfrica who provided financial and technical assistance for four of the five Best Practice workshops while Institute for Security Studies (ISS) supported one of the workshops.

We equally appreciate the Member States' representative's contributions for the development of these Guidelines.

1.0 INTRODUCTION

This best practice guide deals with Small Arms and Light Weapons (hereafter “SALW”) as categorised and defined by the Nairobi Declaration and the Nairobi Protocol¹. This categorisation includes firearms, ammunition and related materials. The aim of the guide is to elaborate a framework for the development of policy, 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 that in state possession during peacetime.

2.0 STATUS

This document was approved by the third Ministerial Review Conference held on 20th – 21st June, 2005 in Nairobi.

3.0 REFERENCES

The primary reference materials for this guide are the various International and Regional instruments, pertaining to SALW, that are applicable to the Great Lakes Region and Horn of Africa, Nairobi Declaration, The Nairobi Protocol and the proceedings of the Best Practice workshops, that were held by the Member States and the Nairobi Secretariat, between September 2004 and April 2005. Technical support to the Nairobi Secretariat was given by SaferAfrica, Safer World and the Security Research and Information Centre. Financial support for the workshops was given by the following Organisations:

- (a) Best Practices Workshop 1: Stockpile Management. SaferAfrica and Saferworld
- (b) Best Practice Workshop 2: Import, Export and Transfer Control: SaferAfrica and Saferworld.
- (c) Best Practice Workshop 3: Marking, Tracing and Brokering: SaferAfrica and Saferworld
- (d) Best Practice Workshop 4: Public Awareness and Destruction: Institute for Security Studies.
- (e) Best Practice Workshop 5: Mutual Legal Assistance and Operational Capacity, Public Education and Disposal: SaferAfrica and Saferworld.

4.0 METHODOLOGY

Implementing the different aspects of the Nairobi Protocol in a sub-region with diverse legal systems, different levels of internal stability and differences in capacity of law enforcement agencies can be, both legally and technically, complex. Therefore, the regional secretariat, in collaboration with its civil society partners held a series of Best Practice

Workshops with National Focal Point Coordinators and other experts, with the aim of developing best practice guidelines, for the implementation of the Nairobi Protocol. While these best practice standards are not exhaustive, they provide the minimum accepted norm, for the implementation of the Nairobi Protocol, and they form a sound basis for the development of national policy and the review of national legislation.

5.0 DEFINITIONS

Article 1: Definitions: In this Protocol, unless the context otherwise indicates:

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

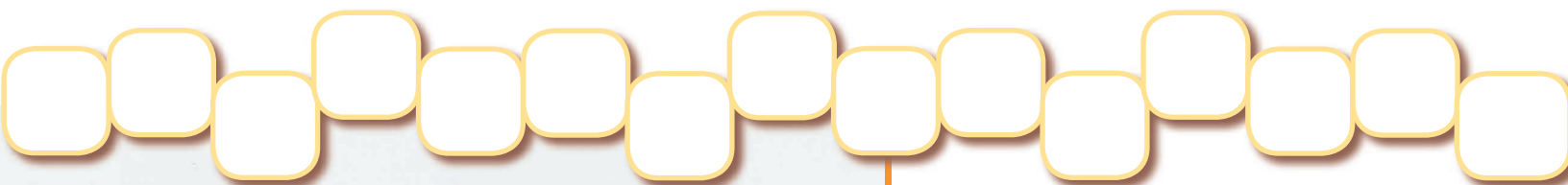
“**Small arms**” are weapons designed for personal use and shall include: light machine guns, sub-machine guns, including machine pistols, fully automatic rifles and assault rifles, and semi-automatic rifles. “small arms” shall also include:

“**firearms**”, meaning:

- any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;
- any other weapon or destructive device such as an explosive bomb, incendiary bomb or gas bomb, grenade, rocket launcher, missile, missile system or mine;
- “**ammunition**” meaning the complete round or its components, parts or replacement parts of a small arms or light weapon, provided that those components are themselves subject to authorization in the respective State Party; and
- “**other related materials**”, meaning any components, parts or replacement parts of a small arm or light weapon, that are essential to its operation.

CHAPTER 1

Stockpile Management, Record Keeping, Marking, Collection and Disposal



1.1 STOCKPILE MANAGEMENT

Although the Nairobi Protocol does not try to define “Stockpile Management” It does address most of the relevant elements thereof. Finding an internationally accepted definition, for stockpile management, is no mean feat either. The term is used in a wide variety of commercial, medical, geological and ultimately, security applications, and seems to be tailor made, for every application. In its application to SALW, Stockpile Management refers to planning, acquisition, possession, record keeping, safe storage, control, maintenance, refurbishment, production and disposal of small arms and light weapons stockpiles.

For the purposes of the Nairobi Declaration and the Nairobi Protocol, stockpile management is defined as:

The control and management, in all its aspects, of small arms and light weapons in state and non-state possession.

Stockpile management, when it is applied to SALW Weapons consist of all the following elements:

- (a) Joint Planning and Forecasting
- (b) Acquisition
- (c) Stockpile security
- (d) Maintenance of the stockpile
- (e) Marking
- (f) Recordkeeping
- (g) Accountability
- (h) Loss and Theft
- (i) Emergency Procedure
- (j) Training
- (k) Disposal

1.1.2 Definition of Possession

The legal definition of what constitutes “possession” under the Nairobi Protocol is not given by the latter. In the interest of harmonisation of national legislation, and in order to assist with joint – and cross border operations, it is essential that this legal definition be harmonised between State Parties.

Guideline:

Member States should consider their current legal definitions of possession and ensure that it allows for the following minimum elements:

(a) Possession: The following should constitute possession of a firearm, for the purposes of the Protocol and the national legislation:

The owner or a person, to whom the owner has transferred possession of a firearm, has possession of the firearm, while it is in his/her physical possession or under his/her control.

Without limiting the subsection above, a firearm should be taken to be in the physical possession or under the control of a person:

- (i) While he/she is handling the firearm or the firearm is under her/his control
- (ii) While the firearm is on the premises at which the owner or other person usually resides or premises at which the owner or other person, is, for the time being, residing.
- (iii) While the firearm is in a vehicle, vessel or aircraft in which the owner or other person is for the time being travelling or residing.

(b) The following exceptions do not constitute possession:

- (i) A person has possession of, or uses a firearm, on the range of an accredited institution, while undergoing training in the safe handling and firing of that firearm, under direct supervision of the instructor of that institution, and providing that the institution holds a licence for the said firearm.
- (ii) A person has possession of that firearm in the ordinary course of the business of carrying or storing goods on the premises of a licensed manufacturer, dealer or gunsmith, under the direct order and/or supervision of the licence holder.
- (iii) A person has possession of a firearm as the administrator, committee or guardian or manager of the estate of a deceased person.
- (iv) person has possession of a firearm as the administrator, committee or guardian or manager of the estate of a person who is unable to manage his/her own affairs.
- (v) A person has possession of a firearm as the Official Trustee or Registered Trustee of a bankrupt estate.

Likewise:

- (vi) A person who handles a firearm in the presence, and with the consent, of a person who is the owner of the firearm, and who holds a licence for that firearm, does not have possession of the firearm.

- (vii) A person who handles a firearm in the registered premises of a licensed firearm dealer, and with the consent of the dealer, for the purpose of inspecting the firearm, does not have possession of the firearm.

(c) Offences: The following should constitute offences for the purposes of the Protocol and the national legislation:

- (i) Any person, who has possession of a SALW without holding a licence or permit, authorising possession of that specific firearm, should be guilty of an offence.
- (ii) Any person who has possession of a SALW prohibited by the Protocol, without the written authority of the responsible officer, or in the execution of his/her duty, as ordered by the responsible officer (while on duty), should be guilty of an offence.
- (iii) Any person, who uses a firearm for a purpose that is not authorised by the firearm licence or permit, held by that person, should be guilty of an offence.

If, in the proceedings following the alleged commission of an offence, the evidence gives rise to a reasonable inference, that the purpose for which the defendant used the firearm was not authorised by the licence or permit, the onus should shift to the defendant to establish that the purpose for which the defendant, used the firearm, was authorised by the licence.

The maximum penalties for an offence against this section of the Act should be of the utmost severity.

1.1.3 Guidelines On Stockpile Management

(a) Joint Planning & Forecasting

The planning of the utilisation of the current stock and the forecasting of future SALW needs of the State can only happen in a collaborative environment, where all the departments and agencies of the State that hold SALW assess the current stock, and determine the short and medium term needs, in a collaborative manner. This presupposes:

- (i) Detailed knowledge of the existing stock including: what is available, which agency is holding it, what the status and serviceability of the stock are, how long the status will still be applicable, and how long the stock can still fulfil the current requirements.

- (ii) A thorough understanding of current and future needs: Understanding the current threats to the security of the State and its citizens– both internal and external – and a forecast of future threats, to the security of the State and its citizens, in the short medium and long term must, form the basis of determining the types of small arms and light weapons required, if any at all, as well as the time for acquisition and the period during which the stockpile must be maintained. The level of the stockpile will be determined by the size of the security forces, that the state will maintain, during the different terms of the analysis. Where applicable, reserves for emergencies must be calculated at realistic and manageable levels.
- (iii) Impact Analysis. Planners and decision makers should understand the current and forecasted impact, of the proposed stockpile on the budget and human resources available to the state, security of the state and its citizens and on the environment where stockpiles of SALW will be stored.

Admittedly, it is difficult to legislate for the practice of joint and interagency planning, as well as the different governance issues, related to such activity. However, it is easy to legislate for the principles of:

- ⇒ Joint planning by formalising the institutional framework for arms management.
- ⇒ Establishing a body that determines the national needs, capacities, and surpluses and how to deal with them.
- ⇒ Establishing the principle issues, on which such decisions are based, and mapping out the path for the recommendations of such a body, the feedback loop and the governance oversight required.
- ⇒ Regulations and administrative procedures, accompanying the legislation, can regulate the practical implementation of such an activity.

(b) Acquisition Management

Acquiring SALW for the national inventory is another much overlooked component of stockpile management. Although the acquisition plan is mostly governed by economical factors, it can no longer be the only consideration. From the Bamako Declaration to Nairobi Declaration, the UN Programme of Action and back to the Nairobi Protocol, guidelines are constantly given, to explain what constitutes acceptable practice and standards for trade in SALW. Adhering to these guidelines should be a prerequisite, from suppliers and supplying countries, before acquisition commence. Suppliers and supplying countries, that do not adhere to these minimum standards, should not be considered for trade partners. The acquisition plan should also assist with the disposal of SALW, as and when existing



stocks are replaced by the new stock. Furthermore, the control process, from the initial placement of the order, the acquisition is on the inventory and in storage, is a complete process that remains part of acquisition management. In the implementation of best practises for stockpile management, countries should strive to establish legislation, for the principle issues of acquisition management. Regulations and administrative procedures accompanying the national legislation should be geared towards establishment and regulation of the practice. (Also see “Managing Surplus” later in this section.)

(c) Improving national stockpile management and security

As regards Member States, proper national control over their stockpiles of SALW (including any stockpiles of decommissioned or deactivated weapons) is essential, in order to prevent loss through theft, corruption and neglect. To that end, signatory States agree to ensure that their own stockpiles are subject to proper national inventory, accounting, control procedures and measures. The different types of stocks taken into account, for stockpile security of SALW, are national stockpiles of the armed forces (e.g. military storage facilities), including reserve stocks and the inventory of reserve organizations, as well as government-held surplus stocks. These procedures and measures, the selection of which is at the discretion of each participating State, should include:

(i) Regulations for stockpile locations. It is beneficial for a stockpile location to have its own set of regulations covering such issues, for ease of reference and facilitation of quick reaction, in the event of an emergency. Regulations for a stockpile location should:

- ⇒ Outline the scope of the installation;
- ⇒ Details of the officer in charge of the location (name, location and telephone number at least);
- ⇒ Outline any security threats;
- ⇒ Details of all the people at the location, with security responsibilities (security officers, safety officers, armaments officers, transport officers, stores officers, accounting officers etc);
- ⇒ Outline security procedures to be followed in different areas of the establishment (storage, servicing etc);

(ii) Transport security measures. Member States should institute measures, to ensure secure transport of SALW, on or through their territory. The measures should be in accordance with the prevailing security situation at the time of transport. In this context, transport means the secure movement of SALW:

- ⇒ from provider (manufacturer or dealer) to an ultimate recipient (armed or security forces);
- ⇒ from a governmental or supplier storage site to a military storage site;
- ⇒ from one military storage site to another military storage site (as well as reserve stocks and inventory of reserve organizations);

- ⇒ from a military storage site to one or several units/formations;
- ⇒ from a military storage site to a destruction facility; or,
- ⇒ from a military storage site to a dealer or buyer (e.g. as in the case of elimination of surplus).

(iii) Access control measures. Access control measures are the prerogative of each Member State. However, access control measures should conform to the following minimum sub-regional standards:

- ⇒ **Right of access.** The right of access should vary according to the type of installation and category of SALW. Generally, only approved staff, with a legitimate reason, should be authorized to gain access, and full records of authorizations and access should be maintained. Authorization should only be granted by designated Commanders or Chiefs of Security.
- ⇒ **Security clearance.** Security clearance should be mandatory for all personnel allowed access to SALW stockpiles.
- ⇒ **Issuance of and access to keys.** Keys for SALW stores should be issued only to the members of personnel, who require access in order to perform their official duties. The handling of the keys should be registered. Normally, no single individual should be allowed to have access to the keys of both the SALW and related ammunition stores. (If, in certain circumstances, personnel might have access to both areas, a double checking system is recommended.)

(iv) Emergency Situations: Protection measures in emergency situations should be complemented by an overall site security plan, together with comprehensive regulations, for specific stockpile location. An emergency plan should be prepared, which should include details of enhanced security procedures, to be followed in emergency situations (or when the site is on a higher alert status than normal). Ideally, stockpile locations should be able to call on armed response forces to prevent loss or damage to the SALW in storage, during an emergency situation (and all legal implications should be addressed beforehand)

(v) Lock-and-key and other physical security measures: These measures depend on the location and the type of stockpiles, and should be based on prior security assessment. It should include:

- ⇒ **Storage:** Small unit level arms should be stored in arms racks or metal containers, that should be constructed in such a way as to prevent easy removal, and should at least be secured with spot-welded bolts. Unless the arms are under constant surveillance, additional security measures should be considered.

- ⇒ Storage building, its doors and windows: The doors of storage buildings should be armoury vault doors or solid hardwood with steel plate on the outside face, with door bucks, frames, and keepers rigidly anchored. They should be secured with security padlocks and hasps. Windows and other openings should be kept, as general rule, closed and firmly locked.
- ⇒ Alarm and intruder detection systems: Where possible only approved alarm systems (according to international standards) should be used. These should be checked periodically. It is recommended that a daily visual check be undertaken, and periodical in-depth checking to be done. Activation of the alarm systems should trigger off an instant response from the guard force. The alarm system should be connected to a sensitive central monitoring station.
- ⇒ External lighting systems. Exterior building and doors should be equipped with appropriate lighting. The intensity of the light should allow easy detection of unauthorized activities. Switches for the light should be accessible only to authorized staff.
- ⇒ Guard patrols and dogs: Patrols should be made at prescribed intervals, and random checks should also be conducted. Security staff should check the arms storage installation during off-duty hours. Security staff should be designated, trained and properly equipped, and should be ready to react in a timely fashion to respond to possible incidents. Where available Military working dogs should be used as a complementary measure.
- ⇒ Fencing: Required perimeters should be fenced, and the material used should meet established minimum standards. Clear zones should be established around the fence, both inside and outside, with adequate extension. The perimeter fence should have a minimum number of gates, consistent with operational requirement.
- ⇒ Key controls: Keys for armouries and/or stores should be issued only to the members of personnel who require access in order to perform their official duties. The number of keys should be the minimum necessary and the keys themselves should be difficult to reproduce. Keys for SALW storage locations should be held separately from those of their related ammunition stores, and within secure containers. These keys should not be left unsecured or unattended. The handling of keys should be registered. This registration should be kept for a minimum period of at least one year. Inventories of keys should be conducted periodically.

(vi) Inventory management and accounting control procedures: It is essential to have system that enables easy and efficient management of the inventory of SALW and accountability of the stores. Whether the records

are kept manually on paper or held in a computer database, back up copies of the data should be kept at a separate location, just in case there is loss or theft of the originals. It should be clear, to all those involved in inventory management and accounting, for how many years records should be kept. It is recommended that such records should be held for at least 25 years, with a view to improving the traceability of SALW.

- ⇒ Audit of records: Once a system is in place it should be regularly audited and its effectiveness reviewed. The records should themselves be checked and subject to security inspections at regular intervals – ideally at least once every six months. Checks/inspections should be recorded in dedicated logs, that are themselves inspected, at regular intervals.
- ⇒ Stock-check or inspection of SALW Stores: Checks of stores, which should also include unannounced ‘spot checks’, should normally be conducted by authorized personnel, other than those allowed unsupervised access to holdings. Where bulk stores are being checked, seals on boxes should be inspected, and where a large number of boxes is stored, care should be taken to carefully inspect the boxes in the middle of the stockpile, as well as those others which are not easily verifiable on a visual basis. SALW should be accurately counted (i.e. individually) and quantities should tally with what is in stock records. Issue, receipt and expenditure documentation should be examined, to ensure their accuracy, and that transactions have been correctly authorized. There should be procedures that facilitate quick report of loss or theft.

(vii) The sanctions to be applied in the event of loss or theft:

Impeccable and authoritative regulations, for investigation and clarification of loss or theft of SALW, as well as effective prosecution of any violations, can help a lot in the fight against proliferation of SALW. They are also an important deterrent to prevent diversion of SALW, from the legal to the illicit market. On the other hand, lack of regulations, lax security, poor record-keeping, neglect and corruption can highly increase the likelihood of theft or loss.

(viii) The procedures for immediate report of any loss:

Member States should institute an effective reporting and follow-up procedure, in case of losses. The reporting system should be in accordance with national procedure, and that should be reported as soon as possible, to the Officer accountable for the stockpile as well as the SALW Registry. Reports should include:

- ⇒ The specific location of the loss.
- ⇒ Item identification, quantity, serial numbers and other identifying marks;
- ⇒ Date, time and place of loss/recovery and outline of circumstances of loss or recovery;



- ⇒ Action taken: who is investigating the loss; who has been informed; any action taken to prevent further loss.

(ix) The selection and security training of stockpile staff:

Careful and systematic selection and recruitment, of all personnel involved in tasks regarding stockpile management and security of SALW is essential. The requirements should include reliability, trustworthiness, and conscientiousness, as well as the appropriate professional qualifications. In addition, every individual should be subject to security clearance.

- ⇒ **Training:** Key personnel should receive periodic training on regulations, behaviour and procedures, relative to security within SALW stockpile locations, inventory management and record-keeping. This specific security training should be provided at the time of assignment to duty and should be regularly updated. If any changes are made, or new directives or regulations come into effect, a training update should be provided. For emergency situations, such as damage to property, burglary and theft, intrusion and intelligence activities, or fire and natural disasters, special training should be given, and it should include the appropriate practical exercises.

1.2. RECORD KEEPING

1.2.1 Commitments and Requirements:

Recordkeeping is the key to controlling legal SALW and preventing them from becoming illegal. It is also the key to successful tracing of the origins of illegal SALW. Recordkeeping, constitutes, critically speaking, the weakest link in the current operational initiatives, to achieve reduction and eradication of the illegal pool and criminal use of SALW. The importance of accurate and maintained records of all SALW is recognised in all protocols and agreements relevant to SALW control, on the International, Regional and Sub-Regional level.

(a) International: A number of important international commitments relating to recordkeeping of SALW, have been set out in the resolutions of the General Assembly of the United Nations.

(i) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. This Protocol entered into force in April 2005. The Protocol is the only global legally binding instrument, that establishes common procedures, for the prevention and suppression of the illicit manufacture of firearms. The Protocol will enter into force on 3rd July 2005, following the submission of the 40th instrument of ratification on 4th of April 2005. In

accordance with the Protocol, each State Party shall ensure the maintenance of records and information (for at least 10 years, but, wherever possible, for upto 25 years) on firearms, their components and ammunition, to facilitate their identification, tracing and to prevent and detect their illicit manufacture and trafficking. The records should include at least:

- o The appropriate markings and serial numbers.
- o Issuance and expiry dates of trade licences, the country of export, import and all transit countries, the final recipient and a description and quantity of the articles.

(ii) United Nations Programme of Action. In accordance with the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, member States undertook to put in place adequate laws, regulations and administrative procedures, to establish adequate and detailed standards and procedure, (among others), relating to accounting and control of small arms and light weapons. Accordingly, Member States are required to:

- ⇒ Ensure that comprehensive and accurate documents are kept for as long as possible, on the manufacture, holding and transfer of small arms and light weapons. These records should be organised and maintained in such a way as to ensure that accurate information can be promptly retrieved, and collated by competent national authorities¹.
- ⇒ The record keeping procedure should also ensure responsibility for all SALW held by the state and effective tracing of such weapons².

(b) Regional: Although the Bamako Declaration precedes the UN Programme of Action and the UN Protocol, African Heads of State and Government included clear guidelines, on Record keeping, for implementation on the continent.

(i) The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking in Small Arms and Light Weapons:³ The guidelines included in this Declaration shaped the United Nations Programme for Action in a substantial manner. On record keeping, the guidelines state that it is vital to address the problem of SALW in a comprehensive, integrated, sustainable and efficient manner through, *inter alia*, the enhancement of the capacity of Member States, to identify and seize illicit SALW, control legal stocks and harmonize legislation governing (among others) marking and record keeping of all SALW.

(c) Sub-Regional: On the sub-regional level, there are a number of sub-regional commitments, relative to record keeping of small arms and light weapons:

(i) The Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa and its ensuing Coordinated Agenda for Action and Implementation Plan.

In the Nairobi Declaration and its ensuing documents and the Nairobi Protocol, State Parties agreed to: establish control and management mechanisms for SALW in legal non-state possession and in state possession, establish national procedures and criteria for management and control, issue and withdrawal of SALW, maintenance of national databases and inventory of SALW, SALW owners, and of commercial SALW dealers within their territory. State Parties had also agreed to maintain secure storage of state owned SALW and ensure accountability and effective tracing of SALW held and distributed by the state. State Parties further agreed to ensure maintenance of records of SALW, for at least 10 years, to enable traceability and identification.

During a Inter-governmental Authority on Development (IGAD) conference on the implementation of the Nairobi Declaration (10 and 11 Dec 2001 in Djibouti), and subsequently endorsed by the Council of Ministers of Signatory States to the Nairobi Declaration on 6 and 7 August 2002, it was agreed to establish and maintain one central database, on the national level of all SALW stocks owned by each State agency, private security companies and private citizens. The database should be accessible to the National Focal Points of all Member States, contain a standard system for the keeping of records, and be compatible with the existing information exchange systems, already in place, such as the Interpol ROCCISS and IWETS systems.

1.2.2 National Database of SALW

(a) The Central SALW Register/Bureau

Member states, through their national legislation, should institute the Central SALW Register as the institution responsible to the Registrar for the administration and maintenance of the national SALW database, according to the duties and obligations arising under the Protocol and the national legislation.

(b) The Registrar of SALW

- (i) The responsible minister should, through the National Legislation, appoint the National Chief of Police, as the Registrar of Firearms (hereafter referred to as the Registrar).
- (ii) The Registrar may - by instrument in writing - delegate to any person any of the Registrar's powers and functions, under the national legislation.
- (iii) Any delegation under the national legislation is revocable at will, and does not prevent

the exercise of any power or function by the Registrar.

- (iv) The Registrar should be accountable to the responsible Minister for the SALW Register and the functions of the register, as prescribed in the national legislation.
- (v) The Registrar should advise the responsible Minister on matters arising from the national legislation, matters arising from the enforcement of the national legislation, matters arising from society regarding SALW, and any consecutive amendments and recommendations, as necessary. To assist the Registrar in this function, national legislation should instate an Advisory Committee.

(c) The SALW Advisory Committee

Member States should instate a SALW Advisory Committee (hereafter referred to as the Advisory Committee) consisting of seven members, appointed by the responsible Minister. The committee should be strictly advisory, to be consulted in accordance with the needs of his functions.

Composition: The Advisory Committee should consist of the Registrar and seven members of whom:

- (i) One should be the National Focal Point Coordinator
- (ii) One should be a legal practitioner of at least seven years standing,
- (iii) One should be a ballistic expert of at least seven years standing, with a proven knowledge of law enforcement requirements and procedures,
- (iv) One should be a representative of Defence, directly involved with the management of the military stockpile,
- (v) One should be a representative of the Defence Industry (if applicable),
- (vi) Two should be persons who, in the opinion of the Minister, are able to represent the interest of the community at large, regarding firearm issues.
- (vii) The Advisory Committee should, where possible, include at least 3 women.
- (viii) The Minister may appoint any member of the Advisory Committee as the chairperson of the committee.
- (ix) The Minister may appoint a suitable person to be a deputy of any member of the committee, and such a person, while acting in the absence of the permanent member, has all the powers, authorities, duties and obligations of that member.



(d) Functions of the Advisory Committee: The Advisory Committee should:

- (i) advise the Minister on any matters arising from the national legislation and the Protocol.
- (ii) advise the Minister on any matters arising from the administration of the SALW Register.
- (iii) advise the Minister on any SALW and ammunition that are, in the opinion of the committee, dangerous to the community at large, not in the interest of the security of the State, or not in the interest of the enforcement of the law in general, and of which ownership and/or use should be restricted or prohibited.
- (iv) advise the Minister on community action and the role and support of civil society, in matters pertaining to the Implementation of the Nairobi Protocol and national legislation.
- (v) advise the Minister on any specific matters regarding SALW, as requested by the Minister.

Procedural matters:

- ⇒ Before the Advisory Committee makes any decision upon a matter arising under the national legislation or the Nairobi Protocol, it should allow the Registrar, and any other person with a direct interest in the matter, a reasonable opportunity to make representations orally or in writing, to the Advisory Committee.
- ⇒ In investigating any matter arising under the national legislation or the Nairobi Protocol, or as requested by the Minister, the Advisory Committee is not bound by the rules of evidence; it is free to investigate issues using whatever mode it may deem appropriate.

(f) Deputy Registrar: The Registrar should, in consultation with the Minister, appoint a senior civil servant (Police officer or civilian), as the Deputy Registrar of the SALW Register. The Deputy Registrar should be responsible to the Registrar for the day-to-day administration and management of the Central SALW Register, the duties and obligations of the Register, the maintenance of the national Database, as well as any other responsibilities delegated to him by the Registrar, arising from the Nairobi Protocol or national legislation.

1.2.3 Minimum Requirements for the National Database

The national database should be located in the SALW Register/Bureau (usually within the Police). The SALW

Register is responsible for the processes and administration of the database, as described within the Nairobi Protocol, and within the powers and functions, as delegated by the national authority. As such the SALW Register should develop and maintain:

- ⇒ An accurate and up-to-date information database, for use should investigating officers, which is accessible on a 24hour basis, and which provide the basic detail of every SALW on the register as described below.
- ⇒ An administration system (both electronic and archival) to implement and support the record keeping aspects of the Nairobi Protocol.
- ⇒ A research section, which should be responsible for continuous research into matters relating to the SALW policy and technical aspects, that impact on the administration and control of SALW.
- ⇒ A Public education section, which should be responsible for research, provision of training, testing curricula, public information, education material and campaigns, to educate the public on matters pertaining to the ownership of firearms, alternative measures of self-defence, conflict resolution etc.

The following minimum information is required of every SALW in the database:

(a) SALW in legal non-State possession

- (i) The name, address, date of birth and gender of the person in whose name the firearm is registered.
- (ii) A recent photograph of the person in whose name the firearm is registered, as submitted on application for a licence.
- (iii) The type of firearm (such as pistol, rifle, etc), specification (such as semi-automatic, pump action, bolt action, etc), the make of firearm (such as Beretta, FN Browning, etc), the model of firearm (such as 92FS, 75, etc), the serial number of the firearm, the calibre of the firearm (such as 9 millimetres, 9 millimetres Parabellum, etc), and any other relevant markings, such as engravings proof marks, country identity marks and other markings on the firearm, that can assist the Police to identify the firearm later.



- (iv) Particulars of the licence or special permit granted, renewals of the licence, suspensions, cancellations, or surrender of that licence or special permit.
- (v) The original application forms and required attachments submitted for both the licence and

(b) SALW in State Possession

The database will include and maintain a register of all firearms in legal State possession. This includes all machine-guns, assault-rifles, rifles, shotguns, pistols and revolvers (up to and including 12,7 millimetres or 0.5 inches in calibre). The following minimum information should be included in the Register:

- (i) The State Department under whose control the firearm is, or in whose safekeeping or legal possession the firearm is.
- (ii) The type of firearm (such as pistol, assault-rifle, etc), specification (such as semi-automatic, pump action, bolt action, etc), the make of firearm (such as Beretta, FN Browning, etc), the model of firearm (such as 92FS, 75, etc), the serial number of the firearm, the calibre of the firearm (such as 9 millimetres, 9 millimetres Parabellum, etc), and any other relevant markings such as engravings proof marks, country identity marks and other markings on the firearm, that can assist the Police to identify the firearm later.
- (iii) Particulars of the movement, transfer, sale, destruction, etc. of the firearm, within 30 days of such an action. The Act should make the reports of loss and/or theft of firearms from State armouries compulsory and within the same parameters, as for those in legal non-State possession.

(c) Obligations and duties of Government Employees:

National Legislation should place obligations on Government employees, to manage those firearms entrusted to them for the purpose of carrying out their official duties, in a responsible manner, and as expected of any licensee. National legislation should instate the following:

- (i) Every government agency should issue an employee with a permit (an official document not unlike a firearm licence), authorising his/her possession and use of a specific State firearm and indicating the restrictions and conditions of possession. (For example: is the employee entitled to have the firearm in his/her possession after hours, is the employee

entitled to carry the firearm on his/her outside the premises of the agency issuing the permit, is the employee entitled to store the firearm at home? etc).

- (ii) An employee of a government agency, who holds a permit to possess a State firearm for the purpose of his or her employment, should carry that permit on his/her person when in possession of the firearm.
- (iii) An employee, to whom a State firearm has been issued, will comply fully with the regulations and requirements for legal possession of a firearm: (Undertake a course in firearm legislation, be tested to the standard required by the Registrar, have successfully completed a practical training course in the safe handling of a firearm to the standard required by the Registrar, be deemed fit to possess a firearm).
- (iv) Unless otherwise authorised in writing (permit), an employee should return the relevant firearm to the employer's store of firearms at the end of each period of duty by the employee.
- (v) Negligence with, or loss of, a State firearm by any State employee will be prosecuted in a court of law, as described in the national legislation. National Legislation should place an obligation on Department Heads to announce and prosecute all cases of negligence with, and loss of firearms by state employees.
- (vi) The employer should not authorise an employee to possess a State firearm, when not on duty, unless satisfied that the firearm will be stored in accordance with the security and safe storage guidelines.
- (vii) A written authorisation (permit) for an employee to possess a State firearm, when not on duty, should be subjected to the following conditions:
- (viii) When being transported to and from the place of employment the employee shall carry the firearm.
- (ix) When not on duty the firearm shall be stored at the employee's place of residence, and not carried on the person or used for any other purpose.

Every Government agency should hold a register, in a form approved by the Registrar, which contains:



- (x) The relevant particulars of every firearm issued to an employee.
 - ⇒ mark each small arm or light weapon at the time of import, with a simple marking, permitting identification of the country of import and the year of import, and an individual serial number, if the small arm or light weapon does not bear one at the time of import, so that the source of the small arm or light weapon is easy to trace.
- (xi) The relevant particulars of the employee authorised to have that firearm in his/her possession.
 - ⇒ ensure that all small arms and light weapons in possession of the state are marked with a unique mark.
- (xii) This register should be a legal document, and should be kept for at least ten years, after the last entry has been made into the register, in the archive of that government agency, providing a traceable history of each firearm and in who's possession it was and when. The register should therefore comply with at least the following:
 - o Should have not less than 100 pages, each of which has a machine printed heading and machine printed consecutive number,
 - o The pages should be bound so as to prevent their easy removal,
 - o Each entry should be made in undeletable blue or black ink,
 - o Alterations should be made by striking-out, not by erasure.
 - o The full name and office of the person effecting the alteration should be noted, to authenticate that the alteration is official.
 - ⇒ ensure the maintenance, for not less than ten years, of information in relation to small arms and light weapons, that is necessary to trace and identify those small arms and light weapons, which are illicitly manufactured or trafficked, and to prevent and detect such activities. Such information shall include:
 - o the appropriate markings required by this Article;
 - o in cases involving international transactions in small arms and light weapons, the issuance and expiration dates of the appropriate licenses or authorisations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

The head of every Government Agency, or a person delegated to in writing, issuing firearms to employees should:

- o Ensure that each register is kept in a safe place and not with any firearm to which it relates,
- o Ensure that the relevant entries are made in the relevant register at the time when a firearm or some ammunition or both are transferred from employer to employee, and when returned to employer.

Penalties for employees of the State who do not comply with the guidelines should be severe, and the Government Agency should be compelled, by the national legislation, to instate legal procedure against employees who do not comply with this section of the protocol.

1.3 MARKING

In terms of the Nairobi Protocol State Parties undertake to:

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

To this effect the following Best Practises are recommended:

- ⇒ All SALW under the jurisdiction or control of signatory States, including those for use by members of the armed or security forces be marked using the ISO 3166-1 country codes.

Serial no	Country	ISO Code
1	Burundi	BI
2	Congo, The Democratic Republic of the	CD
3	Djibouti	DJ
4	Eritrea	ER
5	Ethiopia	ET
6	Kenya	KE
7	Rwanda	RW
8	Sudan	SD
9	Seychelles	SC
10	Tanzania, United Republic of	TZ
11	Uganda	UG

- ⇒ All SALW owned by the State be marked with a “*” (star) preceding the ISO 3166-1 country code. For example: *TZ for weapons belonging to the state in Tanzania.
- ⇒ All imported weapons, from Jan 2006, will be stamped by the manufacturer with all the markings as indicated in the Nairobi Protocol, as expanded in these guidelines.

The current stock will be stamped, by the signatory States, in accordance with the Nairobi Protocol, over a three year period, ending in December 2008.

1.3.1 Managing Surplus

(a) Indicators of a surplus

- (i) It is for each signatory State to assess in accordance with its legitimate security needs, whether the SALW in its possession include a surplus.
- (ii) When assessing whether it has a surplus of small arms, each signatory State should take into account the following indicators:
- (iii) The size, structure and operational concept of the military and security forces;
- (iv) The geopolitical and geostrategic context, including the size of the State's territory and population;

- (v) The internal or external security situation;
- (vi) International commitments, including international peacekeeping operations;
- (vii) SALW no longer used for military purposes, in accordance with national regulations and practices.

The signatory States should carry out regular reviews and in particular in connection with:

- ⇒ Changes of national defence policies;
- ⇒ The reduction or re-structuring of military and security forces;
- ⇒ The modernization of SALW stocks or the acquisition of additional small arms.

1.4 COLLECTION AND DISPOSAL

1.4.1 Definitions: The Nairobi Protocol does not specifically define collection, disposal and destruction of SALW, although multiple paragraphs of the Protocol emphasise the need for effective collection, disposal and destruction programmes. In general, State Parties undertake to identify and adopt effective programmes for the collection, safe-storage, destruction and responsible disposal of small arms and light weapons rendered surplus, redundant or obsolete, in accordance with domestic laws, through, inter alia, peace agreements, demobilisation or (re-)integration of ex-combatants, or re-equipment of armed forces or other armed State bodies⁴. The collection, disposal and destruction of small arms and light weapons refers closely to other sections of these guidelines, and most explicitly the section on stockpile management [managing surplus and destruction and deactivation]. Every effort should be made to ensure that the processes of stockpile management and the collection, disposal and destruction of small arms and light weapons are complementary procedures, that follow similar, if not identical, guidelines activities:

For the purpose of the Best Practise Guidelines the elements of Disposal will include the following activities:

(a) Collection of SALW. For the purpose of these guidelines, collection refers to all weapons that become the responsibility of the State, through legal acquisition, seizure, forfeiture, voluntary surrender and disarmament, demobilization and reintegration (DDR) programmes.

(b) Disposal of SALW: In the Nairobi Protocol State Parties are obliged to ensure that small arms and light weapons rendered surplus, redundant or obsolete, through the implementation of a peace process, the re-equipment or re-organisation of armed forces and/or other state bodies



are securely stored, destroyed or disposed of, in a way that prevents them from entering the illicit market or flowing into regions in conflict or any other destination, that is not fully consistent with agreed criteria for restraint. Responsible disposal can include:

- (i) **Deactivation of SALW:** Where the deactivation of SALW will be carried out only in such a way as to render all essential parts of the weapon permanently inoperable and, therefore, incapable of being removed, replaced or modified, in a way that might permit the weapon to be reactivated.
- (ii) **Sale of SALW:** Where State Parties decide to dispose of surplus and redundant stock by means of sale, this action should be taken in accordance with the section on import, export, transfer and transit of SALW.
- (iii) **Safe Storage of SALW:** This means of disposal of SALW involves the storage of SALW in a safe and secure location. Weapons should be stored in accordance with the requirements of storage, as set out above in Stockpile Security. Member States should seriously consider storing the weapons in a separate location from the working parts of the weapons. Should leakage take place, from the safe storage facility, the weapons will remain inoperable. Although this method of disposal of SALW is cheap, it is by no means fool proof. Member States should consider the fact that:
 - ⇒ SALW stay under direct control of national government, and therefore remain their legal responsibility.
 - ⇒ This method of disposal requires adequate and secure infrastructures.
 - ⇒ The potential for proliferation, in the future, exists, through crime, corruption and, if there is a significant political change of circumstances.

(c) **Destruction of SALW:** Under these guidelines the preferred method of disposal of SALW is destruction. Destruction should be done in a way that renders the weapon both permanently disabled and physically damaged. Any SALW identified as surplus to a national requirement should, by preference, be destroyed. Destruction will generally be used to dispose of illicitly trafficked weapons, seized by national authorities, once the legal due process is completed.

(i) **Institutional Roles**

Articles 8, 9 and 12 of the Nairobi Protocol place responsibility on the State to collect, dispose and destroy SALW, as well as encourage voluntary surrender of these weapons. This means that states should identify competent and relevant authorities to handle the collection, disposal and destruction of surplus, redundant, obsolete, as well as surrendered small arms and light weapons.

⇒ **Regional Institutions:**

Regional institutions, such as the Nairobi Secretariat, can assist with the mobilization of necessary resources such as funding and technical assistance, to support member States' programmes on awareness raising, collection, disposal and destruction of small arms and light weapons. The Nairobi Secretariat may, where necessary, facilitate joint operations by law enforcement agencies, aimed at collection and destruction of illicit small arms and light weapons. Coordination and cooperation with other sub-regional organizations, such as the Interpol Sub-Regional Bureau for Eastern Africa, can also be facilitated by the Secretariat.

⇒ **National Institutions:**

The primary role of the State is to provide security for its citizens. The removal of weapons that have a potential to undermine national security is the responsibility of State law enforcement agencies. Law enforcement agencies responsible for weapons collection, disposal and destruction include the police and where applicable, the military.

1.4.2 **Collection**

Article 8 of the Nairobi Protocol calls on each State to identify and adopt effective programmes for the collection, safe storage, destruction and disposal of small arms and light weapons in State ownership. Collection for disposal can be done using different strategies namely; voluntary and amnesty programmes, national security forced seizures and DDR programmes. Within these efforts, the following guidelines should be followed:

- ⇒ State owned SALW available for destruction are defined as being obsolete, surplus or redundant.
- ⇒ States should identify obsolete, surplus and redundant SALW using stockpile management techniques such as collaborative planning and forecasting, acquisition management, and record keeping [see section on Stockpile Management in these guidelines].
- ⇒ States should identify the appropriate department or agency that will be responsible for SALW collection at different levels.

- ⇒ The State should, where possible, involve civil society to enhance the collection of SALW, (for example through public awareness programmes).
- ⇒ States should ensure that qualified members of personnel with relevant SALW experience are responsible for weapons disposal.
- ⇒ Adequate security for the safe storage of collected weapons should be maintained at the point of collection.
- ⇒ Entities responsible for weapons collection should use temporary collection identification marks, to ensure that the weapons can be clearly and easily identified, as the ones set aside for disposal or destruction.
- ⇒ Firearms and ammunition should be stored separately.
- ⇒ To ensure adequate access control, a three-lock system should be used in order to ensure transparency and confidence building, in the storage of weapons.
- ⇒ The details of collected SALW should be recorded.
- ⇒ Where feasible, all SALW collected should be submitted for ballistic testing in order to determine whether such firearms were used to commit a crime.

- ⇒ States should use destruction of weapons as a tool for public awareness raising and confidence building, on the issue of SALW, and the civil society should be invited, to monitor the destruction process.

1.4.3 Destruction

- ⇒ Authorisation must be obtained from the relevant authority, before destruction, and this may involve checking government regulations (for example: in the destruction of state assets).
- ⇒ States should consider cost-effectiveness, safety and the environmental impact of different destruction techniques. (See list on destruction techniques).
- ⇒ All SALW earmarked for destruction that do not have a unique identification serial number, must be marked with a unique serial number, to ensure that there is absolute clarity on which weapons are destroyed.
- ⇒ The details of each SALW destroyed must be recorded, for future reference.
- ⇒ Personnel responsible for destruction should issue a certificate, showing the details of the firearms destroyed, and confirming destruction.



(a) Overview of Destruction Techniques for Small Arms and Light Weapons

TECHNOLOGY	EXPLANATION EXAMPLE	ADVANTAGES/DISADVANTAGES
Smelting and recycling	The use of industrial steel smelting facilities to melt down complete processed weapons.	<p>Advantages</p> <ul style="list-style-type: none"> o Limited training period o Simple o Cheap and efficient o Limited pre-processing o Minimal labour required o Highly visible and symbolic o Destruction guaranteed o Some costs recovered by sale of scrap o Limited pre-processing required. <p>Disadvantage</p> <p>Requires suitable industrial facility</p>
Bandsaw	The use of industrial band saws to cut SALW into unusable pieces.	<p>Advantages</p> <ul style="list-style-type: none"> o Limited training period o Simple o Labour intensive o Minimum of 3 cuts per weapon, dependent on type. <p>Disadvantage</p> <ul style="list-style-type: none"> o Inefficient
Burning	The destruction of SALW by open burning using kerosene.	<p>Advantages</p> <ul style="list-style-type: none"> o Cheap and simple o Highly visible and symbolic o Limited training requirements o Visual inspection essential, but difficult <p>Disadvantages</p> <ul style="list-style-type: none"> o Labour intensive o Environmental pollution o Not particularly efficient



<p>Cement</p>	<p>Cast weapons into cement blocks.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Cheap and simple o Limited training period <p>Disadvantages</p> <ul style="list-style-type: none"> o Recovery possible, but very labour intensive to achieve o High landfill requirements o High transport requirements to landfill o Final accounting difficult
<p>Crushing by Armoured Fighting Vehicles (AFV)</p>	<p>The use of AFVs to run over and crush the SALW.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Cheap and simple o Highly visible and symbolic o Limited training requirements <p>Disadvantages</p> <ul style="list-style-type: none"> o Not particularly efficient o Visual inspection essential
<p>Cutting by Oxyacetylene or Plasma</p>	<p>The use of high temperature cutting technology to render the SALW inoperable.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Cheap and simple. o Limited training requirements. o Equipment available o Worldwide. o Maintenance free. o Established and proven method. <p>Disadvantages</p> <ul style="list-style-type: none"> o Labour intensive. (One operative can process 40 weapons per hour). o Risk of small functioning components (bolts, etc) not being destroyed
<p>Cutting using Hydro Abrasive technology</p>	<p>The use of hydro abrasive cutting technology.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Limited training requirements. o Technology readily available. o High production levels possible using automation. o Environmentally benign. o Medium initial capital costs. <p>Disadvantage</p> <ul style="list-style-type: none"> o Equipment requires transporting to affected country.



<p>Cutting by Hydraulic Shears</p>	<p>The use of hydraulic cutting and crushing systems.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Limited training requirements. o Technology readily available. o High production levels possible using automation. o Environmentally benign. o Medium initial capital costs. <p>Disadvantage</p> <ul style="list-style-type: none"> o Equipment requires transporting to affected country.
<p>Deep Sea Dumping</p>	<p>The dumping at sea in deep ocean trenches of SALW.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Traditional technique. o Efficient. o Constraints of Oslo Convention. o More environmentally benign than many other techniques.
<p>Detonation</p>	<p>The destruction of SALW by detonation using donor high explosives.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Highly visible and symbolic. o Destruction. guaranteed if sufficient donor explosive used. <p>Disadvantage</p> <ul style="list-style-type: none"> o Labour intensive. o Environmental pollution. o Requires highly trained personnel. o Expensive in terms of donor explosive.
<p>Shredding</p>	<p>The use of industrial metal shredding technology.</p>	<p>Advantages</p> <ul style="list-style-type: none"> o Highly efficient o Limited training requirements. o Technology readily available. <p>Disadvantages</p> <ul style="list-style-type: none"> o High production levels possible using automation. o Environmentally benign. o High initial capital costs. o Equipment requires transporting to affected country.

Adapted from the _____ SEESAC Regional Micro-Disarmament Standard (RMDS/G) on SALW Destruction



CHAPTER 2

Import, Export, Transfer and Transit of Small Arms and Light Weapons



It is for each state to develop its own national transfer control system, in accordance with its international commitments. There is no single model for transfer control system, due to the great diversity in the legal and administrative systems in different countries. The following set of guidelines should, however, be used to develop compatible transfer controls (based on articles 10 and 11 of the Nairobi Protocol), governing import, export and transit of small arms and light weapons, throughout the region.

To facilitate information exchange, regional co-operation and joint-operations, legislative controls also need to be harmonised, to foster a mutual understanding on criminal matters including:

- ⇒ Proceeds of crime,
- ⇒ Fugitive offenders, and the
- ⇒ Extradition of offenders.

2.1 DEFINITIONS AND ELEMENTS

The Nairobi Protocol does not define the term “transfer”. For the purpose of these guidelines, “transfer” is defined as “the re-allocation, shipment or other movement of whatever form of arms across national boundaries”. This could involve, but not be limited to, a:

- ⇒ commercial sale, direct from company;
- ⇒ brokered sale, through a dealer;
- ⇒ military aid, free gift of government;
- ⇒ government sales of surplus equipment;

(a) Institutional Roles

(i) Regional Institutions

The 2nd Ministerial Review Conference of April 2004 confirmed the Nairobi Secretariat as the coordinating agency for the ratification and implementation of the Nairobi Protocol. As such, the Nairobi Secretariat should function as the co-ordinator and sub-regional clearing house, fostering transparency and the exchange of information.

(ii) National Institutions:

At the national level, the National Focal Point have been mandated by the 2nd Ministerial Review Conference of April 2004 to: “be responsible for monitoring the ratification, the implementation, the execution and evaluation of this protocol at the national level, in liaison with law enforcement agencies, and ensuring adherence to the standards set out therein and informing Secretariat on a regular basis of progress thereof.” And appointed the National Focal Point Coordinator “as the liaison between the Nairobi Secretariat and the relevant agencies in each Signatory State on all matters relating to the ratification and implementation of the Protocol.” The National Focal Point should therefore act as a national clearing house, and collect and disseminate

information nationally, as well as sub-regionally, through the Nairobi Secretariat. Other National Institutions that should be considered include:

- ⇒ A parliamentary Oversight Committee which reports to Parliament and ministers should to oversee arms transfers.
- ⇒ An Inspectorate, separate to all other Government departments and agencies, to verify whether government, industry and end-users are complying with the regulations. This Inspectorate should report to Government or Parliament

(b) Licensing requirement

Article 10 of the Nairobi Protocol calls on each State to establish and maintain an effective system of export, import and transit licensing or authorisation, for the transfer of small arms and light weapons. The Guidelines requirements are that:

- (i) A licence/permit is required for the import, export and transit of small arms and light weapons.
- (ii) An end-User Certificate is required for the import, export and transit of small arms and light weapons.
- (iii) A licence/permit must contain the following minimum information:
 - ⇒ Name and physical address of the applicant and all other parties involved in the transaction.
 - ⇒ The place and date of issue.
 - ⇒ The date of expiration of the licence.
 - ⇒ The country of export and country of import.
 - ⇒ The name and physical address of the end user.
 - ⇒ A description of the small arms, light weapons, ammunition or associated technology including:
 - Serial numbers
 - Other unique markings
 - Description of make, calibre and mechanism of the SALW.

- The name of manufacturer.
- The country of origin.
- The quantity of the goods.
- The value of the goods.
- The countries of transit, where applicable.

⇒ A licence/permit should only be issued where the SALW contain all relevant and appropriate markings.

(c) Procedure:

The procedure for applying for a licence and for issuing a licence must be clear and uncomplicated and should include:

- (i) All applications for licenses should be done in writing;
- (ii) All applications must be made to a single competent state authority;
- (iii) Each application must be considered on a case-by-case basis;
- (iv) An application for export should not be considered until the exporting authority is in possession of an import licence/permit, an End-User Certificate from the recipient country, and transit licences/permits from all countries of transit, where appropriate;
- (v) The relevant export or transfer criteria must be considered before a licence is issued;
- (vi) Relevant background information, concerning the export and proposed end-user, should be examined carefully, before granting an export licence;
- (vii) All licence applications should be examined by all relevant authorities across the government;
- (viii) The issuing authority shall take all reasonable precautions, to make sure that no official documents are lost or stolen, or made available to anyone not authorised to possess these documents;
- (ix) Deem, as criminal offences, the non-compliance with any of the requirements and specific conditions, included in the licence and in national legislation;

- (x) Create, in countries' national legislation, the authority to seize any small arms and light weapons, that are being illicitly imported, exported or transited;
- (xi) Ensure that accurate records of all import, export and transit transactions are kept for a minimum period of 10 years.

(d) Revocation, suspension and withdrawal of licences:

A licence should be revoked, suspended or withdrawn if:

- (i) False information has been supplied in order to obtain the licence/permit;
- (ii) The details contained in the licence have changed;
- (iii) The entry into force of an arms embargo;
- (iv) The situation in the recipient country has changed significantly;
- (v) If one of the parties included in the transaction has been charged with an offence, which impacts on their suitability to conduct such a transaction;
- (vi) If one of the parties has been declared bankrupt or insolvent;
- (vii) There is increased risk of divergence.

(e) End-user certificates

The United Nations Programme of Action calls for the use of authenticated end-user certificates in Article 12. The guidelines recommend that:

- (i) A standardised End-User Certificate containing certain security features, to prevent abuse or fraud, should be developed for use in the region;
- (ii) Processes and procedures be developed in order to enable officials to verify the authenticity of the End-User Certificate;
- (iii) The End-User Certificate should specify:
 - ⇒ A detailed description of the goods;
 - ⇒ Quantity of the goods;
 - ⇒ Value of the goods;
 - ⇒ Names and physical addresses of all parties involved in the transaction;



- ⇒ A description of the end-use;
- ⇒ The location where the goods will be used;
- ⇒ Assurances that the goods will only be used by the end-user and for the stated end-use; and
- ⇒ Procedures to be followed in the event of re-export including:
 - A prohibition on transfer, diversion, export, re-export of the goods, without previous approval from the original exporting country.
 - If arms are being re-exported, the original exporting state will be notified, before the re-export/re-transfer of the weapons.

(f) Record Keeping

Records of transactions should be maintained in a uniform manner and kept for:

- (i) 25 years by governments
- (ii) 10 years by industry.
- (iii) Records should be kept on:
- (iv) Licences
- (v) Gunsmiths
- (vi) Brokers
- (vii) Dealers
- (viii) Manufacturers
- (ix) Importers and Exporters
- (x) Theft and Loss
- (xi) Destructions

(g) Information exchange and oversight: In Article 16 of the Nairobi Protocol, member States undertake to develop measures in support of transparency, information exchange and harmonisation. The guidelines recommend that:

- (i) There should exist appropriate mechanisms for co-operation and information exchange, between licensing authorities and customs authorities, as well as among customs authorities themselves;
- (ii) To facilitate information exchange, all relevant documentation for import, export and transit should be standardised across the region;
- (iii) All relevant laws, regulations, procedures and documentation, relative to import, export and transit of small arms and light weapons, should

be made available to all parties involved in import, export and transit;

- (iv) Annual report should be made to the national parliament and to the Nairobi Secretariat, of all export and transit licences issued.

2.2 ARMS TRANSFER CRITERIA

2.2.1 Implementation of the arms transfer criteria

Each State Party to the Nairobi Protocol will assess transfer licence applications for small arms and light weapons, on a case-by-case basis, against the following Criteria. The Criteria should be viewed as a whole.

The Criteria apply equally to all SALW transferred, whether the arms:

- ⇒ have been manufactured in country, by any company, state-owned or otherwise, and under a licensed production agreement or otherwise;
- ⇒ are being re-exported;
- ⇒ are undergoing transit or trans-shipment;
- ⇒ have been identified as 'surplus arms';
- ⇒ are part of a military aid package, or other government-to-government deal;
- ⇒ transfer was arranged through a broker.

2.2.2 General Provisions

These Criteria apply to arms export, transit and brokering, and are intended to prevent the devastating consequences of arms proliferation, as outlined in the Preamble to the Nairobi Protocol.

These Criteria are to be used in conjunction with:

- ⇒ Protocol Article 10 (a), which requires State Parties to 'establish and maintain an effective system of export and import licensing, and authorisation, as well as measures on international transit',
- ⇒ Protocol Article 11 (iii), which requires State Parties to 'ensure that all registered brokers seek and obtain authorisation, for each individual transaction taking place'.

These Criteria recognize the need for some States to import arms, in order to exercise their right to individual or collective self defence, in accordance with Article 51 of the UN Charter; participate in peace support or other operations, in accordance with decisions of the United Nations Security Council, African Union Peace and Security Council, or other regional or sub-regional body, of which it is a member; or meet other legitimate military, security

or law enforcement needs, in accordance with recognized standards of human rights and international humanitarian law. They also recognize that states have a right to transfer arms, but that this right comes with duties, responsibilities and legal obligations.

The Criteria apply in equal force to small arms, light weapons, ammunition, other related materials (components or parts) and military technology or know-how.

When applying the Criteria, all States will make every effort to identify the final destination and ultimate end-user. This is important for all arms, and is particularly pertinent for components that are being transferred for final assembly in another country.

Decisions by States will be made after consultation between relevant government departments.

These Criteria are to be applied as a minimum, and do not infringe on the right of States to apply more stringent national, regional or international rules.

State Parties to the Nairobi Protocol will work together, to ensure consistent application and understanding of the Criteria. The Nairobi Secretariat will review the effectiveness of the Criteria and their application on a frequent and regular basis. The Secretariat will develop further guidelines, methodologies or other tools (such as 'red flag' early warning indicators, or compilations of countries, where diversion and misuse has been proven to be a problem), to bring clarity and to aid States in consistent implementation, in line with the spirit of the Criteria.

The Nairobi Secretariat will act as a clearing house for information on the Criteria and potential or actual recipients of arms, and will support States in the decision making process and on the implementation of the Criteria, where appropriate.

The Secretariat will hold annual meetings, to review the annual reports, operation and implementation of the Criteria, identify any improvements which need to be made, and submit to States a consolidated report, based on contributions from individual States.

If arms are being re-exported, the original exporting state will be notified before the re-export / re-transfer of the weapons.

2.2.3 Arms transfer criteria

State Parties to the Nairobi Protocol should adopt the following Criteria, for international arms transfers (export, transit and brokered transactions):

(a) State Parties shall not authorise transfers which would

violate their direct obligations under international law, including:

Obligations under the Charter of the United Nations – including

- (i) decisions of the Security Council such as those imposing arms embargoes
- (ii) the prohibition on the use or threat of force
- (iii) the prohibition on intervention in the internal affairs of another State
- (iv) Any other treaty or legal obligations, to which a State is bound, including binding decisions, including embargoes, adopted by relevant international, regional and sub-regional bodies, such as the African Union Peace and Security Council.
- (v) Prohibitions on arms transfers, that arise in particular treaties which a State is party to, such as:
 - 1980 Convention on the Use of Certain Conventional Weapons, Which May Be Considered Excessively Injurious, including its protocols⁵
- (vi) Universally accepted principles of international humanitarian law:
 - Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering
- (vii) Prohibition on weapons that are incapable of distinguishing between combatants and civilians.

(b) State Parties shall not authorize transfers which are likely to be used:

- (i) for the violation or suppression of human and peoples' rights and freedoms, or for the purpose of oppression;
- (ii) for the commission of serious violations of international humanitarian law;
- (iii) in acts of aggression against another State or population, threatening the national security or territorial integrity of another State, or threatening compliance with international law, governing the conduct of armed conflict;
- (iv) to worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts, or aggravating existing tensions;
- (v) to carry out terrorist acts or support or encourage terrorism;
- (vi) other than for the legitimate defence and security needs of the recipient country.

(c) State Parties shall take into account other factors, before authorizing an arms transfer.



States should not authorize the transfer if it is likely to:

- (i) be used for or to facilitate the commission of violent crimes;
 - (ii) in the commission of serious violations of international humanitarian law, applicable in international or non-international armed conflict;
 - (iii) In the commission of genocide or crimes against humanity.
 - (iv) In acts of aggression against another State or population, threatening the national security or territorial integrity of another State;
 - (v) adversely affect regional security; to endanger peace, introduce destabilizing accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability;
 - (vi) adversely affect sustainable development, through the excessive or unjustifiable diversion of resources from social expenditure, to military expenditure;
 - (vii) involve corrupt practices at any stage – from the supplier, through any middlemen or brokers, to the recipient;
 - (viii) contravene other international, regional or sub-regional commitments or decisions made, or agreements on non proliferation, arms control and disarmament.
- States shall take into account the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament.
 - States Parties shall not authorize transfers that are likely to be diverted, within the recipient country or be re-exported, to any other user, other than the stated final end-user.

(d) States should take into account the recipient's:

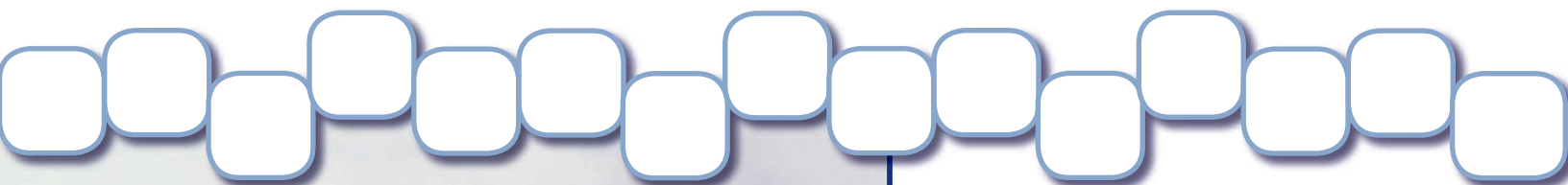
- (i) Record on compliance with end-use undertakings and diversion;
- (ii) Stockpile management and security procedures;
- (iii) Ability and willingness to protect SALW against unauthorized transfers, loss, theft and diversion.

(e) State Parties shall not authorize transfers if the arms have not been marked according to requirements under the Nairobi Protocol.



CHAPTER 3

Tracing & Brokering



3.1 TRACING

3.1.1 Definition and Elements:

The Nairobi Protocol defines tracing as follows: “tracing” shall mean the systematic tracking of small arms and light weapons, from manufacturer to purchaser, for the purpose of assisting the competent authorities of State Parties in detecting, investigating and analyzing illicit manufacturing and illicit trafficking.

This implies that State Parties should therefore have and keep records of such SALW, as well as SALW related transactions. The guidelines already issued for Record keeping as well as import, export, transfer and transit of SALW are, therefore, applicable to assist with the tracing requirements, as stated above.

Success in tracing the origins of illegal SALW forms the critical link, in the current operational initiatives, to achieve reduction and eradication of the illegal pool and criminal use of SALW. The following facts should be considered when assessing the necessity to develop and implement a national and sub-regional procedure, for the tracing of SALW:

- (a) Current national and sub-regional action, to successfully address the proliferation of SALW is hampered by a lack of verifiable data on the origins of illicit SALW, be it originated from within the national borders, or from without. Unless Law Enforcement Agencies are in a position to address these sources, armed with facts and verifiable data, the proliferation will continue unchecked. The required information and operational procedure will not be developed, unless a uniform standard operational procedure exists, to trace each and every illicit SALW, encountered by law enforcement agencies in the execution of their duties.
- (b) The core problem or cause of proliferation is negligence as well as targeted loss of control of SALW, leading to their availability for use in crime and violence. This is true throughout the sub-region and the international community. The occurrence of such losses, control dysfunctions, recoveries and criminal use, cut across such geographical, political, economic, functional, and other boundaries, forcing a greater need for joint effort and coordinated actions, such as the tracing of SALW. Although greater effort is currently put into the recovery of illegal SALW throughout the international community,

very little is done to trace the origin and the dysfunctions, relative to these losses, understanding and verification of the existing problems, nor to establish where possession or control over the arms were lost, in relation to where they were recovered and/or used in crime or violence. The lessons to be learned through tracing in follow-up are currently lost, due to little or no expertise in tracing, and are seldom analysed or utilised in further actions, in the combating of the SALW problem.

- (c) Tracing is a key success factor to combat SALW related crime. The tracing process is aimed at the tracing of all SALW relating to their criminal use or the dysfunction in the existing control processes.

3.1.2 Guidelines:

The existing criminal information reporting mechanism, through the National Interpol Bureaux (NCB) in every signatory State, should be made functional and having should serve as the main reporting mechanism, of all weapons related information, where a crime has been committed or suspected of having been committed. The Interpol Sub-Regional Bureaux (SRB) in Nairobi should assist with the operationalization of the reporting system, and ensuring its effective functioning.

(a) States should exchange, among themselves and through the Nairobi Secretariat and National Focal Points, relevant information on matters such as:⁶

- (i) Authorised producers, dealers, importers, exporters, and carriers/transporters of SALW, ammunition and related materials;
- (ii) The means of concealment used in the illicit manufacturing of or trafficking in SALW, and methods to detect them;
- (iii) Routes customarily used by traffickers of SALW, ammunition and related materials;
- (iv) Legislative experiences, practices, and measures to prevent, combat, and eradicate the illicit manufacturing of and trafficking in SALW and related materials.

(b) States should co-operate in the tracing of SALW that may have been illicitly manufactured or trafficked. Such co-operation shall include accurate and prompt responses to tracing requests.

(c) States should undertake to exchange similar information with the United Nations Security Council, within the framework of the embargoes agreed by the Security Council or UN peacekeeping missions.

(d) Subject to the obligations imposed by their constitutions or any international agreements, the States should guarantee the confidentiality of any information they receive, if requested to do so by the State providing the information. If, for legal reasons, such confidentiality cannot be maintained, the State that provided the information should be notified prior to disclosure.

(e) Where required, the States involved in a tracing operation may decide, by mutual agreement, to communicate the information exchanged with third parties.

(f) Unless otherwise agreed, information received during a tracing operation should be deemed confidential. The requested State should be empowered to restrict the use of the information it provides. The nature and scope of that restriction should not prevent the requesting State from continuing the tracing operation through other means.

3.1.3 The State requesting co-operation from:

- (a) The type and quantity of the weapons concerned, and the date and place of their confiscation, seizure, collection or recovery;
- (b) Markings and any further information that may help identify them;
- (c) Any further available information to help identify the weapons or ammunition concerned (descriptions, photographs, etc.);
- (d) Any further relevant information, such as where the weapons were found, identities of persons detained with the confiscated weapons, etc.

3.1.4 The State that receives the request for co-operation should undertake to acknowledge receipt thereof, and to provide any information it possesses to the requesting State, as rapidly as possible (a week could be considered as a reasonable period). Such information might include:

- (b) Confirmation that the items concerned were manufactured in the State from which information has been requested, if this is shown by the marking.
- (c) Any further information on the items concerned, that is likely to ensure reliable identification, such as, the date of manufacture; name, physical address and other related details of the manufacturer,

if available; hidden or other identification markings; special characteristics; and the date on which technical testing was conducted, and identification of the testing body, and so on.

(d) If the weapons or items concerned have been transferred legally out of the requested State, the date of export; the importing State and transit States where relevant; the final consignee, and any additional information, to assist the requesting State in tracing the weapons.

(e) If the weapons or items concerned have not been transferred legally out of the requested State, confirmation of that fact and communication of any additional information, that may assist the requesting State in tracing the weapons. The requested State shall also specify whether an investigation has been launched on the apparent loss, theft or diversion of the weapons concerned.

3.2 BROKERING

3.2.1 Definition and Elements. The Nairobi Protocol defines both the act of Brokering and a Broker. The definitions are as follows⁷:

3.2.2 Brokering: In terms of the Nairobi Protocol brokering means acting:

- (a) for a commission, advantage or cause, whether pecuniary or otherwise;
- (b) to facilitate the transfer, documentation and/or payment in respect of any transaction, relating to the buying or selling of small arms and light weapons; or
- (c) thereby acting as intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.

3.2.3 Broker: a Broker is a person who acts:

- (a) for a commission, advantage or cause, whether pecuniary or otherwise;
- (b) to facilitate the transfer, documentation and/or payment in respect of any transaction, relating to the buying or selling of small arms and light weapons; or



- (c) as an intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.

3.2.4 Guidelines:

As such the Nairobi Protocol requires State Parties to establish a national system, for regulating dealers and brokers of small arms and light weapons. In accordance with Article 11 of the Nairobi Protocol, the following guidelines are recommended:

(a) Registration of Brokers:

State Parties should register all brokers operating within their territory before such brokers can operate from or within their territory (See attached registration form);

(b) Licensing of every individual brokering transaction:

State Parties should **ensure** that all registered brokers seek and obtain a license for each individual transaction taking place (See the attached licensing form);

(c) Licensing of individuals and companies involved in the brokering transaction:

State Parties should regulate all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing. State Parties can develop their own licensing form and system. The Broker Registration form can serve as guideline for the license application.

(d) Full Disclosure of the details of the transaction:

State Parties should ensure that all brokering transactions provide full disclosure on import and export licenses, or authorisation and accompanying documents of the names and locations, of all brokers involved in the transaction; and

(e) Requirements for import, export, transfer and transit of SALW:

All transactions of brokers, manufacturers, dealers, traders, financiers and transporters of small arms and light weapons should conform to the guidelines for import, export, transfer and transit of SALW.

3.2.5 Registration Form: Broker

Section A: Accompanying Documentation: Certified Copies of the following documentation **MUST** accompany the Registration Request:

- (i) 2 x Passport photographs of the Applicant, including a certification that the photographs were taken within 21 days of the date the application was submitted.
- (ii) 1 Copy of the National Identity document of the applicant.
- (iii) 1 Copy of every current passport of the applicant.
- (iv) 1 copy of the Certificate of Registration or

Incorporation of the Company or Business enterprise.

- (v) 1 Copy of the National Identity Documents and Passports of all the persons who own the company or business enterprise, as well as all those persons responsible for the day-to day management and control of the company or business enterprise.
- (vi) Copy of other Registrations. Where the applicant or the company or business enterprise is already registered as a producer, exporter, importer or transporter of Arms and Ammunition or related material, registration certificates must be attached.
- (vii) Certificate of Registration or Incorporation of all subsidiary offices nationally or foreign (see 3.K.)

Section B: Application

Serial	Required Information	
1	Date of Application	
2	Information about Applicant	
A	Name	
B	Physical Address	
C	Postal Address	
D	Telephone	
E	Fax	
F	e-mail address	
G	Date of Birth	
H	Citizenship (if dual or multiple provide complete information on all citizenships)	
I	National Identity Number	
J	All Passport Numbers	
3	Information About the Company or Business Enterprise	
A	Name of the Company or Business Enterprise as it appears on the Certificate of Registration or Incorporation	
B	Physical Address of the company or business enterprise	
C	Postal Address of the company or business enterprise	
D	Telephone	
E	Fax	



F	e-mail address	
G	Name, Title, Physical Address, Telephone number, Fax Number and e-mail address of the Authorised Representative of the company or business enterprise.	
H	Name, Title, dates of Birth, Citizenship, National Identity Number and Passport number of all persons who owns the company or business enterprise.	
I	Name, Title, dates of Birth, Citizenship, National Identity Number and Passport number of all persons responsible for the day-to-day management and control the company or business enterprise.(If different from 3H)	
K	Subsidiary Offices (national and Foreign.	
	Name, Physical address, postal address, Telephone number, Fax number and e-mail address of every subsidiary office of the applicant or company or business enterprise Nationally and Foreign.	

(Individual countries may require additional information.)

Application Form: Brokering License

Section A: Accompanying Documentation: Certified Copies of the following documentation **MUST** accompany the Application:

- (i) Broker Registration Form.
- (ii) Broker Registration Number.
- (iii) Identification of goods. Detailed description of the goods involved in the proposed brokering transaction in terms of: Items, Classification, quantities.
- (iv) Certificates of transport of the goods from the point of origin to the end destination.
- (v) Certificates of transit through all states from the point of origin to the end destination.
- (vi) Validated End-user certificate.

Section B: Application

Serial	Required Information	
1	Date of Application	
2	Information about Applicant	
A	Name of Broker and Company or Business enterprise	
B	Broker Registration number	

C	Nature of participation in the brokering activity (indicate whether participation is in manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying, and delivering firearms, parts or components or ammunitions, or other action or if the participation directly involves the facilitation of these activities.	
D	Detail description of the financial or other rewards the applicant will receive from the transaction.	
2	Identification of other parties to the Transaction	
A	Complete information of all other parties involved in the transaction.	
B	Name of party	
C	Nature of participation (purchaser, vendor, shipper etc)	
D	Nationality	
E	Country of residence	
F	Physical address and location of business	
3	Identification of manufacturer of firearms, parts, or components or ammunition OF EVERY ITEM ON THE GOODS LIST (Section A.3.)	
A	Name of the Company or Business Enterprise as it appears on the Certificate of Registration or Incorporation	
B	Physical Address of the company or business enterprise	
C	Postal Address of the company or business enterprise	
D	Telephone	
E	Fax	
F	e-mail address	



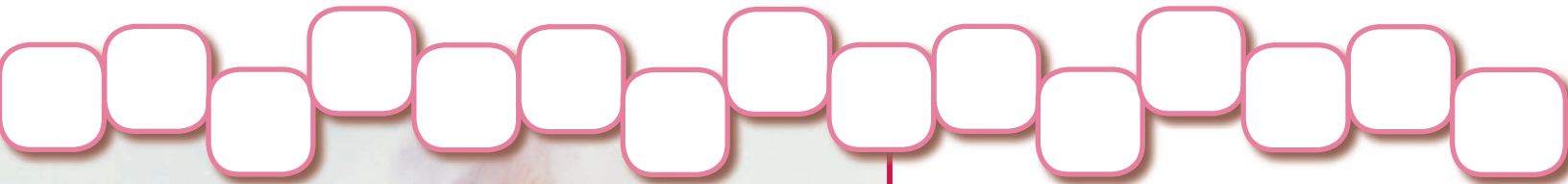
G	Name, Title, Physical Address, Telephone number, Fax Number and e-mail address of the Authorised Representative of the company or business enterprise.	
4	Identification of ownership/source of the firearms, parts or components, or ammunition where the specific item or consignment is not bought directly from the manufacturer	
A	Name of the Person, Company or Business Enterprise.	
B	Physical Address of the person, company or business enterprise	
C	Postal Address of the person, company or business enterprise	
D	Telephone	
E	Fax	
F	e-mail address	
G	Name, Title, Physical Address, Telephone number, Fax Number and e-mail address of the Authorised Representative of the company or business enterprise.	
5	Identification of end-user	
A	Name of the End-user.	
B	Physical Address of the End-User	
C	Postal Address of the End-user	
D	Telephone	
E	Fax	
F	e-mail address	
G	Name, Title, Physical Address, Telephone number, Fax Number and e-mail address of the Authorised Representative of the end-user	

(Individual countries may require additional information.)



CHAPTER 4

Public Awareness Raising and Public Education



4.1 DEFINITIONS AND ELEMENTS

4.1.1 Public Awareness Raising:

The Nairobi Protocol does not specifically define the term public awareness, in Article 13. For the purpose of these guidelines public awareness raising refers to increasing knowledge and understanding of issues, often with the goals of developing popular support, promoting dialogue, mobilising political will and commitment to action and building confidence both within a state and amongst States in the region. The degree to which these goals are applicable will vary depending on the situation in the country. Training for those undertaking public awareness, as well as training manual that can assist these efforts, may be very useful.

Public awareness raising is an important part of efforts to prevent the proliferation and illicit trafficking of small arms and light weapons. Public awareness raising can assist in changing attitudes and behaviour towards possession and use of small arms among the public, assisting the government a great deal in control efforts. Public awareness raising can also be used to build cultures of peace (for example: through community reconciliation and confidence building). Specific awareness efforts, for example public weapons destructions, can promote transparency and contribute to building cultures of peace. Public awareness raising becomes an important means for building confidence amongst governments and communities.

The motivation for public awareness raising related to SALW is to promote the involvement of all sectors of society in efforts to minimise social dependency on arms and improve the understanding of the impact and effect of their proliferation on the safety, security and development prospect of communities and the state alike. Examples of public awareness efforts include national awareness campaigns using radio, poster campaigns, leaflets, cultural shows, school awareness programmes and others. Public education refers to the directed efforts of the government and civil society organisations, to foster workable understanding of the responsibilities of ownership and responsible management of privately owned firearms amongst communities at large, and amongst firearm owners specifically.

4.1.2 Public Education:

Article 13 of the Nairobi Protocol also refers to Public Education Programmes. This is the formal responsibility of State Parties to enhance public knowledge of responsible ownership and management of those weapons in legal private ownership. This typically will include community programmes, to promote understanding of the national legislation, the accompanying regulations and the responsibilities pertaining to civilian ownership.

(a) Institutional Roles

Public awareness raising is often stated as involving all sectors of society. These sectors include but are not limited to the following: government (and relevant government departments), civil society, traditional leaders, politicians or political parties, the media, parliamentarians, political activists, individuals, business and private sector. In some instances, regional and international organisations may also be involved in such efforts.

(i) Regional Institutions:

Regional institutions, such as the Nairobi Secretariat, can assist in the coordination of regional public awareness raising efforts and support to national actions. In addition, the annual Civil Society Forum may be used to identify areas of common interest that could result in a public awareness raising effort, as well as building confidence, amongst civil society actors and regional and international institutions. The Secretariat can also assist with technical assistance and identification of resources.

(ii) National Institutions:

The role of the government is to create and maintain an enabling environment for awareness raising activities. National institutions have the responsibility, under the Nairobi Protocol, to provide public information on their efforts on small arms control and have also committed themselves to under take the following steps, within the Coordinated Agenda for Action:

- ⇒ Promote national education programmes to minimize social dependency on arms, and improve responsible management of arms through, for example, national awareness campaigns (community and other radio stations, poster campaigns, leaflets, cultural shows, school awareness programmes, together with appropriate training materials.
- ⇒ Prioritize support to local and other non-governmental awareness raising programmes.
- ⇒ Provide support to international and regional bodies and agencies to, undertake regional action and education programmes.
- ⇒ Organize a national consultative forum, involving all sectors of society, in a free and frank debate, on the proliferation of small arms and light weapons and its effect on societies.

The government must engage in a popular approach and undertake public education, through for example, peace committees and other government-civil society partnerships.

Countries should ensure that the scope for public awareness programmes are included at least in their national action

plans and, ideally, in the relevant national legislation or regulations.

(iii) Civil Society: Experience from countries has shown that effective partnerships between governments and civil society can result in effective public awareness campaigns. The media is a critical actor in awareness raising efforts and early engagement with the media can assist a lot in the identification of topics and development of stories, images and messages that can be transmitted through the media, to a wider audience. The media can also form effective partnerships with governments, to develop a strategy for providing public information.

4.1.3 Guidelines

(a) Identify objectives and plan strategy

The first step in undertaking a public awareness programme is to identify the objectives of the programme. It is useful to develop a strategy that will guide the programme during its lifetime. It is important to identify the time available and specific objectives and expected outcomes for each stage of the awareness programme. Answering the following questions will assist in developing the strategy:

- (i) What is the purpose of the awareness programme?
- (ii) How much time is available?
- (iii) What resources are available?
- (iv) Who is best placed to develop and implement the programme?
- (v) Who needs to be involved in the design of programme?
- (vi) Who needs to be aware of the programme?

(b) Identify target audience and best means to reach them

The second stage is to identify the target audience for the public awareness campaign and the best means to reach it. For example, if the campaign is meant to sensitise the general population on the Nairobi Protocol, the audience is wider than if the focus of the public awareness programme is to encourage responsible ownership among firearms owners, which would be a smaller audience.

In considering the best means to reaching the target audience, it is important to look at the geographic location of the audience (urban or rural), their knowledge of concerned issues that the awareness programme intends to focus on, as well as specific sectors of the society, that may deserve special recognition, for example children, youth, women, the elderly and the disabled.

(c) Assess strengths and weaknesses of various options:

There are many ways in which public awareness campaign can be conducted. These include, but are not limited to:

- (i) Radio
- (ii) Newspapers
- (iii) TV
- (iv) Internet (websites, chat rooms, blogs)
- (v) Seminars and consultations
- (vi) Posters, flyers, leaflets
- (vii) Theatre
- (viii) Music events
- (ix) Sporting events
- (x) Community activities and events
- (xi) Religious gatherings and communications
- (xii) Public rallies
- (xiii) Traditional structures and authorities, where they exist.

The organizer of the public awareness effort must learn from the chosen distribution channel (newspapers, TV, radio) what will be the most effective message, and how it can be best transmitted to the target audience.

In working with the media, those organising the public awareness effort need to provide information that will be useful to the media, in a form that they can use and transmit with ease.

Involving personalities, such as musicians, sports stars, actors and can to spearhead campaigns can be most effective. The more committed and involved these people are in the campaign, the more the campaign can benefit from their participation.

(d) Use communication methods relevant to those groups

It will be important to consider what communication methods are most relevant to the target audience. This includes local languages, the use of visual images and the accessibility of information.

(e) Efforts should be made to involve different sectors and groups through different activities

It is possible to use the experience of others to develop a successful public awareness effort. For example, working with advertising companies who understand how to reach audiences, the media, international organisations and other NGOs, actors, theatre groups, musicians and sports stars, as well as community-based organisations.

(f) Learn from other experiences across Africa and internationally

It is important to realise that public awareness raising goes on every day in many different sectors, and that those working on small arms can learn from others. For example, education and health campaigns are common and it may be possible to incorporate elements related to small arms into these activities.



(g) Share information and material

It is important to look at sharing information and material from different countries and regions. Networks, such as the International Action Network on Small Arms, provide information that may be of use to others.

(h) Use existing outreach channels (health, education, cultural events)

It may be possible to use existing outreach channels, for example, through schools, health clinics, government ministries or cultural events to channel public awareness efforts. Consultations should be held with possible partners to look at what can be done.

(i) Determine how to monitor impact of programme and evaluate its success

It is important to develop a plan to monitor the impact of the programme and evaluate its success.



CHAPTER 5

Legislative Measures, Operational Capacity and Mutual Legal Assistance



5.1 LEGISLATIVE MEASURES

5.1.1 Art 3 (a) of the Nairobi Protocol states:

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

- (a) illicit trafficking in small arms and light weapons.
- (b) illicit manufacturing of small arms and light weapons.
- (c) illicit possession and misuse of small arms and light weapons.
- (d) falsifying or illicitly obliterating, removing or altering the markings on small arms and light weapons, as required by this Protocol.

Guidelines are that:

- (a) The revised Firearms Act in each State Party must be accompanied by a comprehensive public education and awareness campaign down to village level, to ensure that the bulk of the population is aware that this act has changed.
- (b) State Parties should strive to consolidate all legislative issues, relating to small arms and light weapons, as referred to in the Protocol, into one or two sets of legislation.
- (c) In terms of possession, member states should refer to the Best Practice Guidelines on possession, when reading Article 3(a).
- (d) The legislation should be translated into the local languages, to make it as accessible as possible to all people.

5.1.2 Art 3 (c)

Art 3(c) of the Nairobi protocol calls on each State Parties to incorporate in their national laws:

- (a) The prohibition of the unrestricted civilian possession of small arms.

(i) **Guideline:**

- ⇒ Provisions should be made in countries legislation on Small Arms and Light Weapons, that makes provision for categories of firearm licenses, in terms of their use and justification. The licensing officer will have the final decision on these applications.
- ⇒ Provisions promoting legal uniformity and

minimum standards, regarding the manufacture, control, possession, import, export, re-export, transit, transport and transfer of small arms and light weapons;

(ii) Guideline: This article addresses the large or commercial industry as well as local manufacture.

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

(iii) Guideline: Member states may require the following:

- ⇒ The safekeeping and storage of the firearms,
- ⇒ Applicants to have a basic knowledge of the law,
- ⇒ Applicants to be able to safely handle and discharge a firearm

Provisions prohibiting the misrepresentation or withholding of any information given with a view to obtain any license or permit;

(iv) Guideline: this article includes licenses and permits for brokers, owners, manufacturers etc.

- ⇒ State parties should ensure that the prohibition applies to all applications for licences and permits including those for brokers, owners and manufacturers.
- ⇒ Provisions promoting legal uniformity in the sphere of sentencing.

(v) Guideline:

- ⇒ A working group consisting of members from all member states, working on revision of the national legislation, should be formed to decide on a list of offences that needs to be harmonized, as well as minimum and maximum sentences.
- ⇒ The working group is encouraged to look at sentences that will act as deterrents.

5.2. OPERATIONAL CAPACITY

5.2.1 Article 4

State Parties shall:

- (a) Strengthen sub-regional co-operation among police, intelligence, customs and border control officials, in

combating the illicit circulation and trafficking in small arms and light weapons, and suppressing criminal activities relating to the use of these weapons;

(i) Guideline: Both Ministerial Declarations have already dealt with the sub-article in depth, as regards the Nairobi Secretariat and National Focal Points. State parties should apply the recommendations of the Ministerial Review Conferences of 2002 and 2004, and undertake to place the NFP on the Government budget, so that NFP activities can become formal budget items.

- ⇒ Enhance the capacity of national law enforcement and security agencies, including appropriate training on investigative procedures, border control and law enforcement techniques, and upgrading of equipment and resources;

(ii) Guideline: The basic training manual on SALW should be included in the basic training curriculum of all law enforcement agencies including, customs, immigration and other relevant departments.

- ⇒ Establish and improve national databases, communication systems and acquire equipment for monitoring and controlling SALW movements across borders;

(iii) Guideline: All communications to and from National Central Bureaux of Member States, relating to SALW, should include the NFP Coordinators as an addressee in all instances.

5.2.2 Art 15

State Parties shall establish appropriate mechanisms, for cooperation among law enforcement agencies, to promote effective law enforcement including:

(a) Strengthening regional and continental cooperation among police, customs and border control services, to address the illicit proliferation, circulation and trafficking of small arms and light weapons. These efforts should include, but not be limited to, training, exchange of information, to support common action in an effort to contain and reduce illicit small arms and light weapons trafficking across borders, and the conclusion of necessary agreements in this regard;

(i) Guideline: Member States should ensure that, all customs and immigration officials are involved in the law enforcement agency training programmes.

- ⇒ Introducing effective extradition arrangements.

(ii) Guideline:

- ⇒ State parties to the Nairobi Protocol, that do not have extradition agreements with other State parties, should consider entering into extradition agreements with those parties.
- ⇒ State parties are encouraged to review the Schedule

of Extraditable Offences, so as to take into account offences mentioned in the Nairobi Protocol.

5.3. MUTUAL LEGAL ASSISTANCE

5.3.1 Art 14

(a) State Parties shall engage in the creation of a mutual legal assistance system, in order to cooperate with each other, to afford mutual legal assistance in a concerted effort, so as to eradicate illicit manufacturing and trafficking of, and control the possession and use of, small arms and light weapons. Mutual legal assistance shall, inter alia, include the following:

- ⇒ investigation and detection of offences;
- ⇒ obtaining evidence and/or statements;
- ⇒ execution of searches and seizures;
- ⇒ communication of information and transfer of exhibits;
- ⇒ inspection of sites or examination of objects and/or documents;
- ⇒ request for judicial documents;
- ⇒ service of judicial documents;
- ⇒ communication of relevant documents and records;
- ⇒ Identification or tracing of suspects or proceeds of crime; and
- ⇒ application of special investigative techniques, such as forensics, ballistics and fingerprinting.

(b) State Parties may further agree upon any other form of mutual assistance consistent with their national laws.

(c) State Parties shall designate a competent authority which shall have the responsibility and power to execute and monitor requests, for mutual legal assistance.

(d) Requests for mutual legal assistance shall be made in writing to the competent authority and shall contain:

- ⇒ the identity of the authority making the request;
- ⇒ the subject matter and nature of the investigation or prosecution to which the request relates;
- ⇒ the description of the assistance sought;
- ⇒ the purpose for which the evidence, information or action is sought; and
- ⇒ all relevant information available to the requesting State Party, which may be of use to the requested State Party.

(e) A State Party may seek any such additional information, which might be necessary for the execution of the request, in accordance with its national laws.

5.3.2 Guideline:

(a) State Parties that have not yet done so are encouraged to create a legal framework, to promote mutual legal assistance.



(Footnotes)

¹ A/CONF.192/15. The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, Section II par 9. Page 10

² Ibid, par 10. Page 11.

³ The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking in Small Arms and Light Weapons, 1 December 200. Page 3, par 2.vi), page 4, par A.i)and A.iv), Page 5, Par B.ii).

⁴ Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa, Article 8, Page 7, Article 9, page 8.

⁵ The CCW currently has 5 protocols, covering I non-

detectable fragments, II mines, booby traps and other devices, III incendiary weapons, IV blinding laser weapons, and V explosive remnants of war, with a strong emphasis on the protection of civilians from these weapons. The CCW is a 'live instrument' and further protocols may be added over time.

⁶ The best practices listed here are adapted from the OSCE Handbook of Best Practices on Small Arms and Light Weapons, p. 11and 12.

⁷ Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and Horn of Africa, Article 1: Definitions, Page 2.

(Endnotes)

