

# Arms brokering in Southern Africa

Selected case studies



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Edited by Nelson Alusala and Mothepa Shadung



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# Abbreviations and acronyms

<b>ATT</b>	Arms Trade Treaty
<b>AU</b>	African Union
<b>DDR</b>	disarmament, demobilisation and reintegration
<b>DRC</b>	Democratic Republic of the Congo
<b>ECOWAS</b>	Economic Community of West African States
<b>FNLA</b>	Frente Nacional de Libertação de Angola (National Front for the Liberation of Angola)
<b>GDP</b>	gross domestic product
<b>ITI</b>	Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons – commonly referred to as the International Tracing Instrument
<b>MONUSCO</b>	United Nations Organization Stabilization Mission in the Democratic Republic of the Congo
<b>MPLA</b>	Movimento Popular de Libertação de Angola (Popular Movement for the Liberation of Angola)
<b>NFP</b>	National Focal Point
<b>NGO</b>	non-governmental organisation
<b>PSC</b>	private security company
<b>SALW</b>	small arms and light weapons
<b>SARPPCO</b>	Southern African Regional Police Chiefs Cooperation Organisation
<b>UN</b>	United Nations
<b>UNGA</b>	United Nations General Assembly
<b>UNITA</b>	União Nacional para a Independência Total de Angola (National Union for the Total Independence of Angola)
<b>UNPoA</b>	UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
<b>UNSC</b>	United Nations Security Council
<b>UNTOC</b>	United Nations Convention against Transnational Organized Crime

# Biographies of the authors of the arms brokering monograph

**Nicholas Marsh** works at the Peace Research Institute Oslo (PRIO) where he researches the international trade in small arms, the relationship between violence and the acquisition of weapons by non-state groups, arms trafficking, and laws and regulations governing arms transfers.

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**Noel Stott** leads the Arms Management Programme and the Weapons of Mass Destruction programme at the Institute for Security Studies (ISS). The aim of these programmes are to identify and enhance Africa's role in international efforts to strengthen disarmament and non-proliferation. He has been employed by the ISS since 2002 and has extensive experience in many aspects of arms control, including conventional arms, small arms and light weapons and weapons of mass destruction.

**Guy Lamb** is Head of the Arms Management Programme at the Institute for Security Studies and has been conducting research on peace and security issues in sub-Saharan Africa since 1996. He holds a Masters degree in international and comparative politics from the University of Cape Town, and is a doctoral candidate at Rhodes University's Department of Political and International Studies.

**Ben Coetzee** is the Programme Manager of the Arms Management Programme and a senior researcher at the ISS in Pretoria. He has worked with governments across Africa on matters relating to arms control. His efforts are dedicated to improve arms control measures and to reduce the flow of illicit arms to and across Africa.

**Gugu Dube** is a Junior Researcher with the Arms Management Programme (AMP) at the Institute for Security Studies (ISS) in Pretoria. She has an honours degree in international relations. She has followed the Oslo Process since it was initiated and attended the Dublin Diplomatic Conference and the Signing Ceremony for the Convention on Cluster Munitions (CCM) as well as various events to garner Africa's support for a global instrument prohibiting cluster munitions that cause unacceptable harm to civilians.

**Adèle Kirsten** has been a non-violent, social justice activist for more than twenty years. She became active in the anti-apartheid movement in the late 70's as a result of her opposition to the injustices of the apartheid system, the growing militarisation of the society and her support for those who refused to serve in the apartheid army. In late 1994 she was one of the founding members of the organisation Gun Free South Africa (GFSa).

**Nelson Alusala**

# Executive summary

This publication is a review of the national processes relating to arms brokering in 12 countries in the southern African region. In their analyses, the authors have looked at the national processes and practices in place in Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania and Zimbabwe. The information contained here is a compilation of interviews with policymakers and implementation experts in those countries, as well as a review of existing policy documents. The time frame for this study was between 2008 and 2012. However, due to the complex nature of arms brokering and the challenges posed by regulating it, only limited changes to national policies have been noted in a few of the countries as at the time of the adoption of the Arms Trade Treaty (ATT) in 2013. There is an expectation that with the ATT in place, the activities of arms brokering will be controlled more effectively once these countries sign and ratify this treaty.

This publication highlights the situation of arms brokering in selected Southern African Development Community (SADC) member states. It further recommends that a similar review of countries in other regions of Africa be undertaken with the aim of establishing the situation in those countries. This would be even more important in establishing how the ATT has had an impact on national legislation of those countries as far as arms brokering is concerned.

## **Arms control: The process thus far**

Arms brokers are indiscriminate in their activities. They are often a crucial link in arms transfers to militaries, policing agencies, militias and rebel groups. This fundamental role that they play in the arms trade has led to the need to develop and implement controls on arms-brokering activities globally, particularly within the UN system. Today, the normative approach, underscored by a number of international, regional and sub regional multilateral agreements aimed at eradicating the proliferation of arms, includes concerted efforts and commitments to regulate and control the activities of arms brokers.

The urgent need to control the flow of arms and ammunition in Africa is as old as the problem of trafficking of arms. The security of the continent has remained at the mercies of an uncontrolled proliferation of arms. At the core of this arms proliferation lie the often invisible activities of illicit arms brokers – individuals who eschew state controls on arms



procurement and transfers in their dealings. Arms brokers are the main sources of illegal arms circulation, especially among civilians and non-state actors. Illicit arms brokering takes place at the international level, whereby a broker supplies arms to a recipient in another country, or at the domestic or intra-state level, where brokers move arms from one zone, usually where there is less conflict, to another (conflict) zone. The trade involves conventional weapons, as well as small arms and light weapons (SALW).

The international community's efforts to regulate arms brokers took a major step forward when, in November 2000, the UN General Assembly (UNGA) adopted the UN Convention against Transnational Organized Crime (UNTOC).<sup>1</sup> This convention was subsequently supplemented by three protocols aimed at curtailing the trafficking in persons, smuggling of migrants, and illicit manufacture of and trafficking in firearms. The UNGA adopted the third of these protocols, the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, commonly known as the Firearms Protocol, on 31 May 2001.<sup>2</sup> It entered into force on 3 July 2005, binding to its provisions the member states that are signatories to it.

In the midst of the UNTOC negotiation process, the UN member states adopted in July 2001 the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (commonly referred to as the UN Programme of Action, or UNPoA). Unlike the Firearms Protocol, which is legally binding, the UNPoA is a political framework that sets the normative procedures for the control of small arms. It presents UN member states with the opportunity to put into place practical measures to curb the illicit trade in SALW at the global, regional and national levels.

The UNPoA gave rise to the adoption of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (commonly referred to as the International Tracing Instrument, or ITI), which, like the UNPoA, is a politically binding instrument. It was adopted in 2005 with the objective of enabling states to develop internationally agreed measures for standard marking, record keeping and tracing.<sup>3</sup>

International efforts to arrive at a global legal instrument that would control the brokering of SALW, as well as conventional arms, eventually came to fruition when the UNGA adopted the ATT on 2 April 2013.<sup>4</sup> On 25 September in New York, the 50th member country deposited its ratification instrument, thereby triggering entry into force of the ATT 90 days from then.<sup>5</sup> The superiority of the ATT over previous instruments derives from the fact that it is a hybrid of all the others. In other words, it combines aspects contained in the UNPoA, the Firearms Protocol and the ITI. The ATT essentially covers a broader scope of weapons (both SALW as well as conventional arms). Article 2 of the ATT provides the eight categories of arms that are covered by the treaty:

- Battle tanks
- Armoured combat vehicles
- Large-calibre artillery systems

- Combat aircraft
- Attack helicopters
- Warships
- Missiles and missile launchers
- Small arms and light weapons

At the international level, states have even greater responsibility to ensure transparency in arms brokering under the ATT. Daryl Kimball, executive director of the Arms Control Association,<sup>6</sup> presents a summary of the obligations of states under the ATT. However, it is worth noting that states, especially in Africa, will need to overcome major hurdles that stand in their way of information sharing and cross-border cooperation to help combat illicit arms-brokering activities. African countries should acknowledge that although some of the obligations contained in the ATT would appear to be intrusive, if implemented the countries would stand a higher chance of controlling the activities of arms brokers. In terms of the obligations of the ATT, states are called upon to:

- establish and maintain an effective national control system to regulate the export of, import, transit, and transshipment of and brokering activities related to (all defined as ‘transfers’ in the ATT) the eight categories of arms covered by the ATT, as well as exports of ammunitions/munitions and of parts and components that are used for firing, launching, delivering or assembling the eight categories of arms covered (Articles 3 and 4);
- Establish and maintain a national control system, including a national control list (Article 5.2) and make it available to other states parties (Article 5.4);
- Designate competent national authorities to be responsible for maintaining this system (Article 5.5);
- Designate at least one national contact point to be responsible for exchanging information related to the implementation of the ATT (Article 5.6);
- Prohibit transfers of conventional arms, ammunition/munitions, or parts and components for the eight categories of arms covered by the ATT that would violate obligations under Chapter VII of the UN Charter or international agreements relating to the transfer or illicit trafficking of conventional arms, or where there is knowledge that the items will be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949 or other war crimes (Article 6);
- Review applications for exports of the eight categories of arms covered by the ATT and conduct a national export assessment on the risk that the exported arms could have ‘negative consequences’ for peace, security and human rights. An arms export application should be declined if the assessment determines that there is an overriding risk that the exported arms will be used to commit or facilitate a serious violation of international humanitarian or human rights law, or offences under international conventions or protocols relating to terrorism or international organised crime, and

taking into account the risk of the exported arms being used to commit or facilitate serious acts of gender-based violence or violence against women and children (Article 7);

- Take measures to regulate conventional arms imports (Article 8);
- When importing conventional arms, provide information to help the exporting state party to conduct its national export assessment, including by providing documentation on the end use or end user (Article 8);  
Take measures, where necessary and feasible, to regulate the transit and transshipment of conventional arms (Article 9);
- Take measures to regulate brokering taking place under their jurisdiction (Article 10);
- Take measures, including risk assessments, mitigation measures, cooperation and information sharing, to prevent the diversion of conventional arms to illicit markets or for unauthorised end use and end users (Article 11);
- Maintain national records for each export authorisation or delivery of conventional arms for at least 10 years (Article 12);
- Provide annual reports to the secretariat on export and import authorisations or deliveries of conventional arms to be distributed to states parties (Article 13);  
Take appropriate measures to enforce national laws and regulations to implement the treaty (Article 14); and
- Cooperate with other states parties to help implement the ATT effectively (Article 15).

From the foregoing, it is clear that states must cooperate in implementing the ATT if they want to seal all possible loopholes that illicit brokers may seek to exploit. The ATT bears a humanitarian face. It is a multilateral agreement that seeks to reduce not only the illicit trade in arms, but also the human suffering caused by illegal and uncontrolled arms transfers. The ATT is structured in such a way that it improves regional security and stability, and promotes accountability and transparency by the state on matters of transfers of not just conventional arms, but also SALW. The ATT is simply a mechanism for transparency: it does not impose trade restrictions on the types or quantities of arms that a state may buy, sell or possess. Nor does it have a bearing on a country's domestic legislation concerning arms control or ownership of firearms.

At the continental level, and as the case studies in this publication indicate, Africa has continuously grappled with the challenge of unregulated arms brokering. The continent has borne the insidious effects of illicit transfer of arms. And these challenges have led to various African sub regions seeking to establish mechanisms to curtail the harmful activities of arms traffickers. These mechanisms include the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons (commonly referred to as the Nairobi Protocol); the Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair and Assembly (referred to as the Kinshasa Convention); the

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials (referred to as the ECOWAS Convention); and the SADC Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community Region (referred to as the SADC Protocol).

At the national level, to avoid ambiguity and misinterpretation of the laws pertaining to the ATT, it is advisable that governments make the necessary information available to all entities that might be affected by the treaty. The starting point for each state party to the ATT is to develop the necessary capacity for enforcing national arms-control measures governing international arms transfers. At the domestic level, these laws should be enforceable and should be sufficiently publicised. In other words, the regulations governing national arms-transfer control should be accessible to all entities involved in arms transfers. In his document *Arms Trade Treaty: Ratification and implementation guide for African states*, Coetzee<sup>7</sup> presents a clear and simplified process that policymakers in each country ought to follow in ‘domesticating’ the ATT.

One of the key areas of the process is the enforcement element of the treaty. This, according to Coetzee, entails legal requirements that must be adhered to nationally. Enforcement should be applied by institutions that have knowledge of arms transactions and the ability to implement penalties and sanctions if transgressions take place. There must be clear procedures for enforcing control measures and penalties, with information sharing and transparency, and frequent training and capacity building to keep up with the latest developments in the field of arms brokering. Coetzee advises that the enforcement of arms-transfer control should not be the responsibility of a single government department (as is the case in most of the countries reviewed in this publication). Nor should the enforcement of the laws on brokering be located in only one place in a country. If enforcement is to be effective, all relevant government departments must be involved in the control processes and all must have the capacity and legal framework to carry out these duties.

As noted in the country case studies included in this publication, a number of African countries are faced with the challenge of secrecy and compartmentalisation of knowledge (i.e. the police running their own affairs independently of the military – and vice versa). Although this compartmentalisation may well be understandable for the security of the country and command and control, there should be systems in place that enable these separate structures to coordinate and synchronise their arms-control processes to help eliminate potential grey areas that arms brokers and traffickers may take advantage of.

In the case of the SADC region, in which all the countries reviewed in this document are located, the SADC Protocol defines arms brokering as acting for a commission, advantage or cause, whether pecuniary or otherwise. The protocol also states that arms brokering means facilitating the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials. These actions, according to the protocol, involve acting as intermediary

between a manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and their buyer or recipient.<sup>8</sup>

At the sub regional level, the major issue is how states can cooperate with one another to control the operations of brokers without jeopardising their own state security. This can happen only when states, acting in unison, put into place measures to ensure that illegal brokers do not take advantage of existing weaknesses that enable their criminal activities. Although such measures would help control arms brokering, the practicality of implementing them comes with several challenges, especially in Africa, for several reasons. These include – among others – insufficient direct collaboration between civil society and government (due to government’s suspicion of civil-society organisations); a disconnect between policy and its implementation (while policies may be in existence, some governments lack the will to implement them); and lack of a continental enforcement mechanism at the level of the African Union (AU) to impose restrictions on illegal arms manufacturing within Africa and transfers of arms into Africa.

The SADC Protocol, like the other mechanisms on the continent, aims to overcome these challenges by promoting cooperation between states in the region. Notably, the SADC member states have successfully cooperated in various activities by coordinating several arms-control initiatives, particularly in the area of arms collection and destruction. The protocol specifically commits its member states to implement legislation to control the activities of arms brokers in their territories.

Through the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO), headquartered in Harare, Zimbabwe, member states are able to coordinate their activities to implement the SADC Protocol. SARPCCO, which is an implementing organ of the SADC Protocol, has a dedicated firearms desk officer responsible for assisting states with the implementation of the protocol. It is therefore expected that the same structure will adopt the implementation of the ATT, once the SADC member states ratify it. The 2007 SARPCCO annual general meeting resolved that a Regional Coordinating Committee on SALW would be established to serve as a body responsible for coordinating the implementation of the SADC Protocol.

This publication consists of chapters, which are country specific. Each chapter reviews the national mechanisms available in a SADC member state to regulate arms-brokering activities.

The authors of this publication trust that the southern African governments, as well as other African governments and civil-society organisations, will find this publication to be a useful resource to reinforce and develop brokering regulations and controls in their respective countries. It is recommended that similar reviews be undertaken in other sub-regions of Africa, especially with a view to implementing the ATT. The purpose of these types of reviews is to provide policymakers in those countries with not only a consolidated image of national mechanisms regarding arms brokering, but also a regional perspective on where other neighbouring states stand with regard to arms-control activities and legislations.

## Notes

- 1 See, The Protocol against Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. At: <http://www.securitycouncilreport.org/un-documents/document/Disarm%20ARES55255.php>. Accessed on 6 November 2014.
- 2 See, United Nations Convention against Transnational Organized Crime and the Protocols Thereto. At: <http://www.unodc.org/unodc/treaties/CTOC/>. Accessed on 6 November 2014.
- 3 See, International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, At: [http://www.poa-iss.org/InternationalTracing/ITI\\_English.pdf](http://www.poa-iss.org/InternationalTracing/ITI_English.pdf). Accessed on 01 November 2014.
- 4 See, UNSC Resolution 67/234 B. of 2013 on the The Arms Trade Treaty.
- 5 See, "Arms Trade Treaty enters into force: towards more responsible and more transparent arms trade," At: [http://eeas.europa.eu/top\\_stories/2014/250914\\_att\\_en.htm](http://eeas.europa.eu/top_stories/2014/250914_att_en.htm). Accessed on 02 November 2014.
- 6 See, "Arms Trade Treaty at a Glance," at: [http://www.armscontrol.org/factsheets/arms\\_trade\\_treaty](http://www.armscontrol.org/factsheets/arms_trade_treaty). Accessed on 9 November 2014.
- 7 See, "Arms Trade Treaty – Ratification and Implementation Guide for African States," At: <http://www.issafrica.org/publications/handbooks-and-manuals/arms-trade-treaty-ratification-and-implementation-guide-for-african-states>. Accessed on 8 November 2014.
- 8 See, Protocol on the Control of Firearms, Ammunition and Other Materials (2001), At: <http://www.sadc.int/documents-publications/show/Protocol%20on%20the%20Control%20of%20Firearms,%20Ammunition%20and%20Other%20Materials%20%282001%29>. Accessed on 8 November 2014.



**Nic Marsh**

# Chapter 1: Angola

## Background

Arms trafficking and the legacy of the past war in the Republic of Angola are intimately connected. Angola's war of independence against Portuguese colonial rule started in 1961 and continued until the withdrawal of Portugal from its African empire in 1975. Portugal concluded separate peace agreements with three Angolan parties: the Popular Movement for the Liberation of Angola – Party of Labour (MPLA);<sup>1</sup> the National Front for the Liberation of Angola (FNLA);<sup>2</sup> and the National Union for the Total Independence of Angola (UNITA)<sup>3</sup>. However, these three fought each other for control over the capital city, Luanda, and the country. After a very brief coalition government, the fighting resumed. The result was that the MPLA took control over the capital and the north of Angola, while UNITA operated from bases in the south-east; the FNLA ceased to be a major military force.

The conflict in Angola was part of the Cold War. The MPLA received support from Cuba and other Soviet-bloc states. Several countries, including South Africa, the then Rhodesia<sup>4</sup> and the US, supported UNITA both openly and covertly. After a brief ceasefire in 1992, UNITA renewed its military campaign. The end of the Cold War and the fall of the apartheid regime in South Africa brought an end to the large-scale government arms supplies that had supported UNITA, which subsequently reoriented its strategy towards purchasing weapons that were paid for by the exploitation of diamond reserves in the areas it controlled. In an investigation by Robert Fowler, head of the UN Security Council panel tasked with investigating violations of the arms embargo against UNITA, the author detailed extensive arms-trafficking networks destined for UNITA. Fowler's report stated that UNITA had employed illicit arms brokers who sourced arms from former Warsaw Pact states<sup>5</sup> and transferred them to UNITA by using false end-user certificates and by transshipment through other African states.<sup>6</sup>

The civil war finally ended in 2002, but the decades of conflict had extracted a terrible price. Millions of Angolans were killed or forced to flee their homes. In addition, large quantities of arms were diffused throughout Angola, and despite the demobilisation and disarmament of the former UNITA combatants, the arms still remain a problem.

Angola has a coastline of 1 600 km, and shares a total of about 5 000 km of land borders with the Democratic Republic of the Congo (DRC), the Republic of the Congo, Namibia and Zambia. The country possesses the exclave of Cabinda, which lies to the north of



the Congo River, separated from the rest of Angola by a strip of territory belonging to the DRC. High economic growth in Angola is being fuelled by a booming oil sector, post-war reconstruction and extraction of other natural resources (such as diamonds and iron ore). Nevertheless, a considerable proportion of its population live in poverty. In 2011 the country had an estimated gross domestic product (GDP) per capita of US\$5 318, and a life expectancy at birth of 51 years.<sup>7</sup>

The Angolan government has highlighted its concern regarding arms caches left over from the civil war, weapons retained by former combatants and military-style weapons held by civilians.<sup>8</sup> In addition, Angola is used as a 'trans-shipment point for cocaine destined for Western Europe and other African states, particularly South Africa'.<sup>9</sup>

## **Trafficking in small arms and light weapons**

### **Main sources of illicit arms in Angola**

Several interviewees who took part in this research stated that the main arms-related problem in Angola was the possession and internal circulation of arms that originated during the civil war (and perhaps even during the war of independence). Angola has stated that in recent years it has placed a high priority on the disarmament, demobilisation and reintegration (DDR) of the armed forces of UNITA, which included 85 550 soldiers, 39 739 officers and 6 931 sergeants.<sup>10</sup>

The Angolan government also notes that large quantities of arms and ammunition are in the possession of the civilian population, as well as of former combatants. In particular, it states that during the two wars 'the populations were armed in order to defend their lives and belongings, which obviously resulted in the proliferation of firearms'.<sup>11</sup> In addition, it notes the existence of arms caches and weapons still retained by former combatants. The government<sup>12</sup> says that there are several areas of the country – notably, Mavinga, Lumbala N'guimbo and Cuango – where some people were not aware of the peace agreement between UNITA and the government of Angola.

### **Arms trafficked into and out of Angola**

Respondents stated that they were aware of a few isolated incidents in which arms have been trafficked across Angola's borders. Nevertheless, as the country has a long land border and coastline, it is entirely possible that trafficking continues to take place. In one incident, some international traffickers reportedly viewed Angola as a potential source of arms, and a fruitful location for brokering activities. With reference to an incident that took place on 22 September 2007, it was reported that two leaders of the Movement for the Emancipation of the Niger Delta, an armed opposition group operating in Nigeria's Niger Delta, were arrested in Angola. Henry Himomotim Okah and Eduardo Atata were reported to have been arrested in Angola while negotiating an arms deal.<sup>13</sup> The allegations were that they had been

arrested in possession of a list [that contained the] description and amount of war material and military intelligence norms manuals they intended to buy in

Angola [and that they] had designed a strategy to ship the weapons out on a Korean vessel.<sup>14</sup>

On 14 February 2008, the two were extradited from Angola to Nigeria to stand trial for 'terrorist' activities they were accused of committing in Nigeria.

### **Circulation of arms inside Angola**

Several interviewees stated that the main form of trafficking in Angola is internal rather than cross-border. The arms that are trafficked from one area of Angola to another are military weapons originally acquired during Angola's civil war.

Private security companies (PSCs) are reported to be among the recipients of illicitly procured weapons. In a 2005 report, members of the Angolan National Police were cited as stating that 'firearms used by PSCs were mostly un-registered; nevertheless, they tended to regard illicitly procured firearms by PSCs as potentially easier to control than the ones "loose on the streets"'.<sup>15</sup>

### **Support for a wanted arms broker**

Angola has been criticised by, among other groups, Amnesty International for its dealings with Pierre Falcone, who is wanted by the government of France on charges of illicit arms brokering. It is alleged that Falcone broke French law by arranging arms transfers to the Angolan government during the 1990s. In 2003 Angola appointed Falcone as its ambassador to UNESCO, an act which, according to participants interviewed during this research, would grant Falcone 'total immunity from prosecution'. This, according to sources interviewed, was also the view held by Falcone's lawyer. Nevertheless, France issued a global arrest warrant for him in 2004<sup>16</sup> and Falcone was convicted and sentenced to six years in jail in 2009.<sup>17</sup>

### **International cooperation**

Of particular importance in Angola's efforts to control the circulation of weapons are collaborative operations conducted by Namibia, South Africa and Angola, in which arms caches remaining since the wars in Angola and Namibia are identified and the weapons destroyed. For instance, in 2007 Operation Mandume took place for nine weeks during October and November. This was described as an 'information-driven weapons and ammunition destruction crime-combating operation that has been jointly carried out by the police services of South Africa, Namibia and Angola'. The operation was modelled on Operation Rachel, which was carried out in Mozambique.<sup>18</sup>

### **National legislation**

#### **New SALW legislation**

In 2008 the government of Angola conducted a review and determined that a new law governing SALW was necessary. However, in 2012 Angola reported that the new draft law had not yet been enacted, as the government continued to await 'updates that will be made as a result of the new National Security Act which was passed in July 2012'.

In 2010 Angola stated that the new SALW legislation would cover:

- Preparation of the preliminary draft of the Law amending the legislation on the possession and use of light, defense, recreation and hunting weapons, as such legislation is obsolete and inadequate to the current socio-political context.
- Amendment of the Law on Private Security in order to adjust the coercive means used by private security companies in their activity.
- Repealing the Official Order that prohibits the import and sale of firearms and hunting and recreation weapons, seeking the establishment of national entities to conduct the procurement and marketing of weapons in a controlled manner, thus supporting the proper conduct of private security activities.
- Drafting the Regulation on the safety of military entities in order to establish the new type of weapons these entities and their security guards are allowed to carry, thus allowing for the collection of weapons of war in their possession.
- Updating the regulations and procedures for the military and police on the use and possession of weapons of war.

This review of the law relating to SALW had been in process for several years. Several interviewees noted that Angolan arms legislation is out of date – some of it dating back to the colonial era – and that it needed to be reviewed and updated. They stated that Angola is in the process of developing new arms legislation.

In 2006 Angola provided some background information about the legislative review process:

The long duration of the armed conflict has created difficulties in the Angolan judicial system, which have in turn hindered the promulgation of legislation, regulations and administrative procedures that allow an effective control of all the small weapons owned by, or put in circulation by the State, and imported by the State and other private security institutions.

The Angolan government is carrying out broad reform of the justice system, coordinated by the respective Ministry that is also in charge of the Reform of the Criminal Law and Complementary Legislation.

In March 2008 participants at an international seminar held in Luanda strongly recommended that Angola reform its laws concerning the possession and use of weapons, as doing so would ‘punish trafficking and discourage [use of weapons] by unauthorised persons’.<sup>19</sup>

At the time of writing this report, the country was yet to embark on these reforms.

### **Pre-existing legislation**

Most of the sources interviewed disclosed that Angolan legislation does not contain any provisions that explicitly control all the activities of arms brokers. Nevertheless, Angolan law does cover certain aspects of the physical movement of arms, which, by implication, means some aspects of brokering activity.

Article 265 of the Angolan Penal Code<sup>20</sup> specifies punishment of one to five years' imprisonment for people found guilty of the illicit manufacture, import, transport, purchase, sale, concealment, caching, marketing or holding of war materials and firearms, and their ammunition.<sup>21</sup> Interviewees noted that Angolan law prohibits the private import, export and sale of military-style firearms. It was repeatedly stated that the only party allowed to do so is the Angolan government.

Interviewees also stated that the law prohibits private individuals from purchasing arms in Angola for civilian use without proper authorisation. The process is such that anyone wishing to purchase a weapon must first obtain a permit to own it and then obtain an import permit. They would then have to purchase the weapon abroad (most often in South Africa or Namibia) and provide the Angolan border authorities with the necessary documentation verifying when it was imported. It was stated that an individual could use this method to lawfully obtain a firearm only with a calibre of less than 7.65 mm, to be used for hunting or recreation.

### **Other relevant legislation**

Law No. 6/97, the Organic Law of the National Bank of Angola, governs financial transfers. It provides the National Bank with wide-ranging authority to inspect institutions and records of financial transfers. It can also require parties to report specific transfers to the National Bank.<sup>22</sup> Articles in the Angolan Penal Code covering terrorism also criminalise the supply of weapons and ammunition to 'terrorist organisations'.<sup>23</sup>

Of particular note is law No. 19/92, the Law on Private Security Companies. This legislation allows PSC staff to 'use and bear "defensive" firearms and [they are] obliged to undertake regular training in use of arms' (Article 11). Law No. 19/92 also requires that 'they [PSCs] regularly present an inventory of arms, munitions and staff to the General Commander of the National Police' (Article 15c–d).<sup>24</sup> As of 2004, official police statistics indicated that there were 307 PSCs in Angola, employing 35 715 people, with 12 087 weapons.<sup>25</sup>

### **National Commission**

The National Commission for the Materialization of the Programme of Action on the Illicit Trade in Small Arms and Light Weapons was established in 2004. The commission is coordinated by the Ministry of Foreign Affairs, and includes representatives from the ministries of Defence, Home Affairs, Territory Administration, Justice, Family and Woman Promotion, as well as from civil society.<sup>26</sup>

### **International commitments concerning brokering**

Angola has not yet ratified the SADC Protocol. Similarly, the country has neither signed nor ratified the Firearms Protocol of the UNTOC – a legally binding instrument, which includes commitments that states should consider when developing regulations to control arms brokering.<sup>27</sup> However, Angola has expressed its commitment to implement the politically binding UNPoA.

In 2006 Angola stated that:

it had been giving concrete steps with a view to ratifying the Protocol against the illicit manufacturing and traffic of firearms and their parts and ammunition, which is complementary to the UN convention against organized transnational crime, as well as other international instruments adopted by the United Nations.<sup>28</sup>

Angola has signed but not ratified the 2010 Kinshasa Convention.<sup>29</sup> This convention commits states (in Article 13) to register brokers and license individual transactions. Ratification of the convention would, hopefully, prompt Angola to enact regulations to specifically control arms brokers.

## **Needs**

Interviewees stressed that their main need is for better cooperation to help combat and prevent arms trafficking in the region. To this end, they emphasised the need for improved coordination within SARPCCO.

Interviewees also asked for NGOs and foreign governments to share information on legislation, regulation and best practices. Such assistance would be most relevant while Angola reviews its national legislation concerning arms transfers.

The main area in which material assistance is required is in the management, control and destruction of surplus weapons left over from the civil war.

## **Potential for illicit brokering in Angola**

The main attraction for illicit brokers in Angola is the availability of considerable stocks of military material left over from the decades of war that the country endured. As the case of Okah and Atata demonstrates, illicit arms brokers and traffickers have recently seen Angola as a source of arms. Furthermore, Angola's proximity to the DRC could make it an attractive staging post for illicit arms supplies into that country, which continues to be a zone of instability.

The lack of explicit brokering regulations in Angolan law poses two significant risks. The first is that foreign nationals (or Angolans) could be based in Angola and arrange illicit arms transactions involving third parties. Secondly, Angola lacks the legal means to prevent its citizens from engaging in illicit brokering activity abroad.

Angola is currently reviewing its arms legislation, and this would be a prime opportunity to implement legislation to control arms brokering and fulfil its commitments under the UNPoA.

## Notes

- 1 The acronym 'MPLA' is derived from the Portuguese: Movimento Popular de Libertação de Angola – Partido do Trabalho.
- 2 Portuguese: Frente Nacional de Libertação de Angola
- 3 Portuguese: União Nacional para a Independência Total de Angola
- 4 The country became the independent nation of Zimbabwe in April 1980.
- 5 Warsaw Pact founding members are People's Republic of Albania (left in 1961 as a result of the Sino-Soviet split), People's Republic of Bulgaria, Czechoslovak Socialist Republic, People's Republic of Hungary, People's Republic of Poland, Socialist Republic of Romania, Union of Soviet Socialist Republics and the German Democratic Republic that joined the Pact in 1956. In 1991, the Warsaw Pact broke disintegrated when most of the Communist governments fell.
- 6 Robert R. Fowler, Letter Dated 10 March 2000 From The Chairman Of The Security Council Committee Established Pursuant To Resolution 864 (1993) Concerning The Situation In Angola Addressed To The President Of The Security Council, [http://www.un.org/News/dh/latest/angolareport\\_eng.htm](http://www.un.org/News/dh/latest/angolareport_eng.htm), (accessed 24 April 2013).
- 7 Country data from the World Bank's online database- GDP per capita expressed as PPP. The World Bank Databank, <http://databank.worldbank.org/>, (accessed 10 February 2013).
- 8 Statement By H.E. Manuel Da Costa Aragão Minister Of Justice Of The Republic Of Angola At The General Exchange Of Views Of The United Nations Conference To Review Progress Made In The Implementation Of The Programme Of Action On The Illicit Trade In Small Arms And Light Weapons, <http://www.un.org/events/smallarms2006/mem-states.html> (accessed 24 June 2008).
- 9 The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/fields/2086.html>, (accessed 23 April 2013).
- 10 *Report of the Republic of Angola on the Implementation of the United Nations Programme Of Action To Prevent, Combat And Eradicate The Illicit Traffic Of Small And Light Weapons In All Its Aspects*, <http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2006@5@angola.pdf>, (accessed 11 July 2013).
- 11 *Report of the Republic of Angola on the Implementation of the United Nations Programme Of Action On The Illicit Trade In Small Arms And Light Weapons*, <http://disarmament.un.org/cab/salw-nationalreports.html>, (accessed 24 June 2008).
- 12 Ibid.
- 13 Ola Ajayi, IN FULL Leader, Jomo Gbomo Arrested in Angola, *Vanguard*, 22 September 2007, <http://allafrica.com/stories/200709220074.html>, (accessed 23 April 2013).
- 14 National Police Detain, Extradite Nigerians Over Arms Deal. *Angola Press Agency*, 15 February 2008, <http://allafrica.com/stories/200802150759.html>, (accessed 23 April 2013).
- 15 L Rimli and S Schmeidl, with U Joras and A Schuster, *Private Security Companies and Local Populations. An exploratory study of Afghanistan and Angola*. Bern: Swisspeace, 2007, 60.
- 16 Amnesty International, Undermining Global Security: the European Union's arms exports, 2004, <http://www.amnesty.org/en/library/asset/ACT30/003/2004/en/38bbb396-d617-11dd-bb24-1fb85fe8fa05/act300032004en.html>, (accessed 23 April 2013).
- 17 Estelle Shirbon, French power brokers convicted over arms to Angola, *Reuters*, 27 October 2009, <http://www.reuters.com/article/2009/10/27/idUSLR440868>, (accessed 23 April 2013).
- 18 Fifi Rhodes, Illegal Weapons Destroyed, *New Era*, 27 November 2007, <http://allafrica.com/stories/200711270510.html>, (accessed 23 April 2013).
- 19 Workshop Urges Update of Firearms Possession Law, *Angola Press Agency*, 6 March 2008, <http://allafrica.com/stories/200803060705.html>, (accessed 23 April 2013).
- 20 Código Penal, <http://www.minjus.gov.ao/VerLegislacao.aspx?id=76>, (accessed 23 April 2013).
- 21 Authors' translation of Angola 2006. The original text is as follows:  
Art. 265. (Armas e munições proibidas)  
1. Quem fabricar, importar, transportar, adquirir, ceder, esconder, fazer depósito, comercializar ou, simplesmente, detiver armas classificadas como material de guerra ou armas de fogo ou munições proibidas, em violação das disposições legais ou em desobediência às prescrições das autoridades competentes, é punido com pena de prisão de 1 a 5 anos.  
2. Com mesma pena é punido quem:  
a) Fabricar, importar, adquirir, ceder, esconder, fazer depósito, comercializar ou, simplesmente, detiver armas ou engenhos proibidos destinados a projectar, libertar ou difundir os materiais ou substâncias referidos no n. 1 do artigo anterior, em violação das disposições legais ou em desobediência às prescrições das autoridades competentes.
- 22 Letter Dated 31 March 2003 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1373 (2001) Concerning Counter-terrorism Addressed to the President of the Security Council. <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=46dbc9560>, (accessed 23 April 2013).

- 23 Código Penal, <http://www.minjus.gov.ao/VerLegislacao.aspx?id=76>, (accessed 23 April 2013); Authors' translation of Angola 2006.  
The original text is as follows:  
Art. 281. (Organização terrorista)
- 24 L Rimli and S Schmeidl, with U Joras and A Schuster, *Private Security Companies and Local Populations. An exploratory study of Afghanistan and Angola*. Bern: Swisspeace, 2007, 47.
- 25 L Rimli and S Schmeidl, with U Joras and A Schuster, *Private Security Companies and Local Populations. An exploratory study of Afghanistan and Angola*. Bern: Swisspeace, 2007, 52.
- 26 National Commission on Illegal Trade of Firearms Set Up, *Angola Press Agency* 28 August 2004, <http://allafrica.com/stories/200408300264.html>, (accessed 23 April 2013).
- 27 Information on signature and ratification from the United Nations Treaty Collection, <http://treaties.un.org>, (accessed 13 February 2013).
- 28 *Statement By H.E. Manuel Da Costa Aragão Minister Of Justice Of The Republic Of Angola At The General Exchange Of Views Of The United Nations Conference To Review Progress Made In The Implementation Of The Programme Of Action On The Illicit Trade In Small Arms And Light Weapons*, <http://www.un.org/events/smallarms2006/mem-states.html>, (accessed 24 June 2008).
- 29 Information on signature and ratification from the United Nations Treaty Collection, <http://treaties.un.org>, (accessed 13 February 2013).

## Chapter 2: Botswana

### **Historical overview**

Botswana is a democratic country with a stable political situation and a growing economy, which it has achieved from independence due to uninterrupted civilian leadership since achieving independence in 1966. It is a landlocked country bordering South Africa, Zimbabwe, Namibia and Zambia. The size of Botswana's territory is 600 370 km<sup>2</sup>, with over 4 000 km of borders in mostly uninhabited terrain.

### **Laws and regulations covering brokering activities**

The Botswana Arms and Ammunition Act 20 of 1979 (as amended) provides for the control of firearms and ammunition in Botswana. However, this Act does not cover the regulation of arms brokers, as required by the SADC Protocol. In 2002 the government of Botswana undertook an extensive review of its firearms legislation. The committee responsible for the review took into consideration the contents of several relevant regional and international instruments, such as the SADC Protocol and the Bamako Declaration. Based on the recommendations of this review, the government decided, among other measures, to amend the Arms and Ammunition Act so as to criminalise illicit arms brokering.

### **Dealers/brokers**

The Arms and Ammunition Act 20 of 1979 (as amended) provides for the registration of arms dealers and the regulation of the arms trade in Botswana. Article 13 (1), which addresses the 'sale and transfer of arms and ammunition', states that 'no person shall by way of trade or business, (a) purchase, sell or transfer, or (b) accept or expose for sale, any arms or ammunition unless he/she is a registered arms dealer in accordance with Section 14'. Similarly, Article 13 (2) states that 'no person shall sell, transfer or otherwise dispose of any arms and ammunition to any other person in Botswana unless (a) that other person is a registered arms and ammunition dealer'.

The Act also sets out guidelines that must be followed for the issuing of a dealer's licence. It stipulates that a dealer's licence shall not be issued to any person who is not a citizen or resident of Botswana. The applicant is also required to have fixed premises from which his or her business will be conducted.<sup>1</sup>



These restrictions prohibit foreigners without Botswanan residency or citizenship from trading in firearms and ammunition within Botswana's territory. Therefore, although brokers and brokering activities are not explicitly mentioned in the Act, it is conceivable that the act of brokering is included in the activities prohibited by Section 14 of the Act.

The Botswanan government makes use of registered arms dealers to procure arms and ammunition for state use.<sup>2</sup> These intermediaries are registered arms dealers who have legitimate businesses in Botswana. For all intents and purposes, these dealers act as arms brokers.<sup>3</sup> However, given the modest size of the Botswanan security forces, the supply of arms and ammunition to government is not highly profitable. This, combined with the relatively small trade in firearms and ammunition for civilian use (due to the 'raffle' system of allocating firearm licenses), firearms dealers sell a range of other goods, such as camping and fishing equipment and accessories alongside arms and ammunition.<sup>4</sup> During this research, one dealer indicated that he sourced his firearm and ammunition stock from Namibia as a transit country (see the chapter on Namibia). Previously (i.e. before 2004), the dealer in question had imported his stock from South Africa, benefiting from South Africa's commercial firearms sector. However, according to Botha,<sup>5</sup> over the past five years, the enactment of stricter firearms-control legislation and more stringent licensing criteria in South Africa had led to the closure of a large number of retailers and manufacturers in South Africa, which limited his access to stock. In addition, Botha<sup>6</sup> stated that controls over firearms transiting through South African borders have been tightened over recent years, which had, in turn, resulted in lengthy delays in the importation of firearms and ammunition from South Africa.<sup>7</sup>

The consensus among government officials who were interviewed was that there was no pressing need to regulate the activities of Botswanan citizens who might be involved in arms-brokering activities outside of Botswana.<sup>8</sup> The reason for this is that the officials are of the view that no significant brokering activities are taking place in Botswana.

## **Import and export**

The Arms and Ammunition Act 20 of 1979 regulates the import and export of arms and ammunition in and out of Botswana. Article 6 (1) of the Act provides that a person shall not import any firearms or ammunition if the import does not comply with an import permit issued under the law. Article 6 (2) provides that any arms and ammunition intended for resale shall be imported only under the authority of an arms dealer's import permit.

The Act is supported by regulations to assist with the practical application of the legislation. Article 3 of the regulations specifies that the minister shall, at the beginning of each year, determine the quota of firearms that may be imported into Botswana.<sup>9</sup> This procedure limits the number of firearm dealers that are able to operate within Botswana. Article 4 of the regulations outlines the provision of permits to acquire firearms.

## **Transport**

Importing firearms into, and their subsequent transport within Botswana are also regulated by a permit system. Permits are issued and approved by the Central Firearms

Registry. The civilian, dealer or government department that is required to transport firearms must inform the registry of the proposed means of transport. The entity must also declare where the consignment will enter Botswana and apply for a permit to import the goods into or transit the goods through Botswana. If an arms transport service provider should require an escort from the entry point into Botswana, then the police would provide that service to the importer.<sup>10</sup>

In instances where the military transports arms and ammunition into Botswana, the application to the registrar serves the purpose of informing the police that an arms transfer is going to take place. The military does not need the approval of the police to transport arms and ammunition. Civilians who seek to transport arms and ammunition across and/or into or out of Botswana must submit an application to the registrar. The police will consider the merits of this transfer before the application is granted or declined.

As Botswana is a vast and sparsely populated country, with many unregulated border areas, there is the potential for the country's territory to be used as a transit route for illicit arms and ammunition trafficking. The Botswana Department of Customs and Excise is of the opinion that this sort of illicit trafficking possibly does take place, but not on a large scale or frequently.<sup>11</sup>

## **Personal possession and control of firearms**

Personal possession of firearms is strictly controlled in Botswana. Each firearm is individually licensed. The Central Firearms Registry has manual and electronic records of firearm owners, as well as of the firearms that are held by these owners. The extent of the state's control over civilian firearm possession is evident in how it deals with handgun ownership. The Act does not permit civilians to possess handguns. The only handguns still in civilian possession are firearms that were licensed to civilians before the Arms and Ammunition Act of 1979 was amended in 1990 to ban all handguns. These firearms cannot be re-licensed after the death of their current licensed owners, and would have to be surrendered to the state for destruction at that point. However, it is not clear whether the government (more precisely, the Central Firearms Registry) keeps track of handgun licensees who die, in order to punctually recover those guns from them.

Incidents of illegal importing of handguns are a concern to the Botswana police. Some of these incidents have involved students from Botswana studying in South Africa, who had acquired illegal firearms in South Africa for personal protection. According to the Botswana police, the students in question do not typically relinquish these firearms when they return to Botswana and have subsequently been apprehended in possession of illegal handguns.<sup>12</sup>

The process for allocating gun licences in Botswana is different from other southern African countries. The current approach is to raffle 400 firearm licences to all licence applicants.<sup>13</sup> These licences are divided into two categories: 200 rifle licenses and 200 shotgun licences. Once the applicants have been selected by means of the raffle system, they are screened by the Central Firearms Registry to determine if they are suitable firearm owners.

The screening process takes various personal aspects of the licence applicant into consideration, such as age, criminal history and history of domestic violence. In most instances, the firearm registrar does not license all applicants for any given year because some applicants fail the screening process.

This system has been effective and is based on an open and transparent process for acquiring civilian firearms. The system does not provide for preferential treatment for any prospective firearm owner. Interviews with two individuals, one from the police and another from the customs department, illustrated the objectivity of the system. Both officials reported that they had applied for a firearm licence every year for the past five years. Neither had been successful in securing a licence.<sup>14</sup>

In instances where ownership of a firearm has to be transferred from one person to another, as the case may be when a person dies or the licensed owner decides to sell the firearm, the prospective new owner of the firearm must apply for a licence following the standard procedure. According to the police, many Botswanan citizens and residents apply for firearm licences (which are a scarce commodity) with the intention of selling the firearm and the licence as soon as they have obtained it. If the applicant succeeds in his licence application, the applicant would then buy an inexpensive firearm and shortly thereafter sell the firearm to another person at a profit. This kind of brokering in the licensing process is very profitable: firearms with licences are openly advertised for between 11 000 and 15 000 pula.

## **Protocols and agreements**

Botswana is a party to, and has signed and ratified the Bamako Declaration. This declaration calls for the criminalisation of the illegal trafficking of SALW. It requires that states take appropriate measures to control transfers of arms by controlling manufacturers, suppliers, traders and brokers, and shipping and transit agents in their territories. Botswana's Arms and Ammunition Act makes provision for controls over the sale and transfer of fully automatic firearms to civilians, and it criminalises the possession of weapons that emit irritants. The Act also makes provision for the restriction of certain firearms and ammunition.

The regulation of brokering is further examined and explained in the SADC Protocol Article 5 (3)(m), to which Botswana is a signatory; the Bamako Declaration Article 3 A(vii) and B(iv); the Firearms Protocol Article 15 and the UNPoA Section II Article 14. These protocols and declarations call for the strengthening of national legislation and administrative procedures regulating the activities of those engaging in arms brokering, which includes shipping and transit agents. It is advisable, however, that the regulation on brokering activity should be extended to include measures such as the registration of brokers, and the licensing or authorisation of brokering transactions. As part of the regulation process, appropriate penalties and fines must be agreed upon for all illicit brokering activities performed within the state's jurisdiction, either by its own citizens or by foreign nationals in their territory.

In conclusion, it should be noted that, internationally, there is a call for the regulation of the activities of arms brokers, as contained in the ATT. The consensus is that controls

over brokering are essential for stemming illicit arms trafficking worldwide. States should consider national systems with regional and international cooperation to regulate and monitor the transactions and activities of people involved in brokering activities.<sup>15</sup> This system should include components such as the registration of brokers conducting any brokering-related activity from a state's territory; the authorisation of all transactions being conducted; and the mandatory disclosure of import and export licences, or authorisations and accompanying documents. Brokers must also be obliged to disclose the names and locations of other intermediaries and brokers involved in transactions. The broker-registration system should make provision for regular updates regarding a broker's activities. The responsibility for updating this system would fall to the state.<sup>16</sup>

## Notes

- 1 Arms and Ammunition Act of 1979 (as amended), Article 14 (1) (b) (i)
- 2 Interview with Police Supt Godfrey Tlogelang, 19 September 2007.
- 3 Interview with Police Commissioner K Kapinga. Gaborone, 19 September 2007.
- 4 Interview with arms dealer, Mike Botha, 19 September 2007.
- 5 Ibid.
- 6 Ibid.
- 7 Crime Statistics: Report on the Crime Situation in South Africa, 2007, [http://www.saps.gov.za/statistics/reports/crimestats/2007/april\\_sept2007/crime\\_report20062007.pdf](http://www.saps.gov.za/statistics/reports/crimestats/2007/april_sept2007/crime_report20062007.pdf), (accessed 20 September 2007).
- 8 Interview with Police Supt Godfrey Tlogelang, 19 September 2007.
- 9 Interview with arms dealer Mike Botha, 19 September 2007.
- 10 Meeting with Police Supt Godfrey Tlogelang, 19 September 2007.
- 11 Meeting with Mr Buhalo Mudong, 19 September 2007.
- 12 Interview with Police Commissioner Kenny Kapinga. Gaborone, 19 September 2007.
- 13 C Gould and G Lamb (eds), *Hide and Seek: Taking Account of Small Arms in Southern Africa- Country Study*, Botswana, Institute for Security Studies: Pretoria, 2004, 29
- 14 Interview with Mr Buhalo Mudong and Assistant Police Commissioner, Mr Boikhutso Dube, The Head of Legal Services, 19 September 2007.
- 15 OSCE, Document on small arms and light weapons, 2012, <http://www.osce.org/fsc/20783>, (accessed 24 April 2013).
- 16 OSCE, Document on small arms and light weapons, 2012, <http://www.osce.org/fsc/20783>, (accessed 24 April 2013).

**Nic Marsh**

## Chapter 3: Democratic Republic of the Congo

### Background

The Democratic Republic of the Congo (DRC) endured one of the worst armed conflicts since the end of World War II.<sup>1</sup> Estimates vary as to the loss of life, but it is widely believed that there were several million deaths as a result of the conflict, most from disease or malnutrition. The war is generally divided into two parts. The first, from 1996 to 1997, occurred when Laurent-Désiré Kabila launched a rebellion against President Mobutu Sese Seko, which ended in 1997 when Kabila took control over the capital city and Mobutu fled the country.

The second phase of the war started in 1998 and officially ended in 2003. This period of conflict was characterised by direct intervention by neighbouring countries, which, along with the government in Kinshasa, also supported local proxies. Uganda and Rwanda invaded from the east, and they and their allies took over approximately half of the country. The government in Kinshasa was supported by certain states, especially Angola, Chad, Namibia and Zimbabwe, Namibia, which sent troops. This foreign intervention saved the government, but the fighting continued until 2002/2003, when several peace agreements were signed between the government in Kinshasa, Congolese armed groups and the intervening states. President Laurent Kabila was assassinated in 2001; he was replaced as president by his son, Joseph Kabila.

A UN peacekeeping force – the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUC, now MONUSCO) – operates in the DRC. MONUSCO is based in Kinshasa but has satellite operations across the country, especially in the eastern provinces of North Kivu, South Kivu, Orientale and Katanga. A constitutional referendum was held in December 2005, which was followed in 2006 by elections for the presidency, National Assembly and provincial legislatures. Joseph Kabila was inaugurated as president and the National Assembly was installed that year.

A condition of the peace agreement was the integration of some combatants belonging to armed groups with combatants from the national army to form integrated units. Despite this, several areas in the eastern DRC, particularly Ituri, South Kivu, North Kivu and Katanga, remained under the control of armed groups, and illicit weapons have continued

to flow across its borders. Members of the Lord's Resistance Army, an armed group also operating in Uganda and Sudan, have been based in the DRC's Garamba National Park. Hundreds of thousands of refugees from other conflicts, in Angola, Burundi, Rwanda and Sudan, reside in the DRC. There are also estimated to be some 1.4 million internally displaced persons. Government control over its territory is therefore tenuous.<sup>2</sup>

The DRC has land borders of 10 730 km with nine countries – Angola, Burundi, Central African Republic, Republic of the Congo, Rwanda, Sudan, Tanzania, Uganda and Zambia – but only 37 km of coastline. The country has extensive mineral resources, especially diamonds, gold, copper, cobalt, coltan and zinc. Despite its mineral wealth, however, the years of war have left it with one of the world's lowest GDPs per capita (US\$300) and 83.11 deaths per 1 000 live births.

The country's long borders are in areas without significant infrastructure; the DRC is also hampered by a lack of internal communications. For example, it has only 2 794 km of paved road. Therefore, internal transport is generally by means of air and by boat, using the country's rivers and lakes. These modes of transport make it very difficult for MONUSCO and the government to monitor borders and prevent illicit arms trafficking. In addition, it has been noted that '... rampant corruption and inadequate supervision leave the banking system vulnerable to money laundering ...'.<sup>3</sup>

## **Trafficking in small arms and light weapons**

### **The arms embargo**

The DRC is the only member of SADC whose territory is subject to a UN Security Council (UNSC) arms embargo (though other SADC member states have also been subject to embargoes in the past). The embargo was initially promulgated in 2003 (after the peace agreement) and has been renewed each year. The 2003 resolution states that the embargo covers 'all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of the Congo'.<sup>4</sup>

This embargo was amended in 2005 to '...apply to any recipient in the territory of the Democratic Republic of the Congo, and reiterates that assistance includes financing and financial assistance related to military activities'.<sup>5</sup> Nevertheless, the terms of the 2005 embargo stated that, as well as arms supplies to the MONUC forces and those intended for humanitarian purposes, the following items were excluded from the embargo provisions:

- (a) Supplies of arms and related materiel or technical training and assistance intended solely for support of or use by units of the army and police of the Democratic Republic of the Congo, provided that the said units:
  - have completed the process of their integration, or
  - operate under the command, respectively, of the *état-major intégré* of the Armed Forces or of the National Police of the Democratic Republic of the Congo, or
  - are in the process of their integration, in the territory of the Democratic Republic of the Congo outside the provinces of North and South Kivu and the Ituri district.<sup>6</sup>

In addition, the 2005 resolution stipulated that all imports of weapons by the DRC should 'only be made to receiving sites as designated by the Government of National Unity and Transition, in coordination with MONUC, and notified in advance to the Committee'.<sup>7</sup> In March 2008 the embargo was amended again. This time the 2005 stipulations concerning imports by the DRC government were dropped, and instead the UNSC merely required exporters to provide advance notification to the monitoring committee of all transfers of arms to the DRC government.<sup>8</sup>

The main focus of the embargo has therefore been non-state armed groups operating in the eastern DRC, rather than government. Nevertheless, several informants in the DRC stated that they believed that the government was also covered by the UN embargo, and complained that it prevented the government from importing weapons needed to fight armed groups.

### **Arms procurement by the DRC government**

Informants stated that the Ministry of Defence makes arms purchases for the government and that, in accordance with the 2005 embargo provisions, the arms are for the integrated military and that the government should inform MONUC about bids for arms contracts. The information that should be provided includes the companies involved, transporters, end-user (i.e. which unit) and the destination (i.e. which province). Informants stated that the government had informed MONUC of arms imports on many occasions.

Informants also stated that the DRC has obtained defence equipment from Angola, China and Belgium. China and Angola has supplied weapons; Belgium has sent other equipment for use by the armed forces. Informants stated that Angola had sent surplus military equipment and weapons manufactured in China. They also stated that China had planned to open an ammunition factory in Katanga in 2008. As of 2014, this had not happened. Informants said that both China and Angola were engaged in training DRC armed forces. It was noted that China has a long history of involvement in the country (which started when Mobutu was in power) and that China is now aggressively pursuing commercial contracts in the DRC and is willing to accept payment via barter or for concessions to extract natural resources. China is a preferred partner to Western governments because it is not concerned with human rights and is able to make decisions quickly.

The UN Group of Experts monitoring the DRC arms embargo report several instances in which the government may have imported weapons in contravention of the UN embargo.<sup>9</sup> For example, Azza Air Transport, a Sudanese firm, is alleged to have transported 41 tonnes of arms and ammunition from Sudan to Kisangani in the DRC in 2007 without notifying MONUC (which was also denied permission to inspect the shipments). Sudan has denied that a transfer of military equipment took place and stated that the cargo comprised "general items", including furniture and food'.<sup>10</sup>

In another instance, MONUC was informed that a Bosnian air transport company called ICAR Air had transferred weapons from South Africa to the DRC. Subsequent investigations revealed that the shipment had originated in Serbia and was transported via Libya to Kinshasa. The cargo comprised 5 000 AK-47 assault rifles and 100 M-84

machine guns worth US\$1 296 000.<sup>11</sup> The Group of Experts also reported that weapons of Chinese origin had been offloaded from ships docked at the port of Matadi in the DRC without their being cleared through customs or reported to MONUC (current MONUSCO).

## **Main sources of illicit arms for armed groups in the DRC**

It is not possible here to provide a comprehensive picture of either all the armed groups operating in the DRC or their means of acquiring weapons. The following is an overview based on available research.

In January 2008 the Group of Experts monitoring the UN sanctions on the DRC reported several means by which arms are acquired by opposition groups in defiance of the embargo.<sup>12</sup> They stated that armed groups had violated the embargo and illicitly acquired weapons using several methods, principally by means of illicit cross-border transfer, and by diverting arms from government stockpiles under the custody of the DRC armed forces (FARDC). In addition, press reports have implicated troops serving with MONUC in the corrupt sale of arms surrendered during the DDR of armed groups following the 2003 peace agreement.

In the case of one group, the Forces Démocratiques de Libération du Rwanda-Forces Combattantes Abacunguzi (FDLR-FOCA), Ramos et al state that its main weaponry consists of 'old AK-47s, hand grenades, rocket-propelled grenades, 60/81/120 mm mortars and automatic machine guns'.<sup>13</sup> The Group of Experts noted that 'there are close links between some FARDC elements and FDLR-FOCA. These links include, inter alia, individual FARDC elements providing arms to FDLR-FOCA fighters and ad hoc revenue-sharing arrangements between FARDC elements and FDLR-FOCA'.<sup>14</sup> This partly explains the possible channels through which the diversion of arms from the FARDC stockpile flows to reach the armed groups. In the same report, the Group of Experts also noted that another group, the forces of the National Congress for the Defence of the People (CNDP), 'has often obtained FARDC armaments by collecting weapons abandoned by FARDC troops during combat'. They also noted that arms were officially transferred to the CNDP in 2007 when the CNDP was being integrated into the DRC government armed forces as part of the peace agreement.<sup>15</sup>

## **Trafficking arms into the DRC**

Informants explained that, because of the lack of roads in the region, most trafficking of weapons into the DRC was carried out by air, or boat over the lakes along the country's eastern border. They noted that there are a large number of airstrips in the country, which were used to deliver arms flown in from the countries to the east – Sudan, Uganda, Rwanda, Burundi and Tanzania – to the armed groups operating in the eastern DRC, especially in the mining areas. The government of the DRC has great difficulty in controlling its airspace and monitoring who is flying in and out of the country – especially as airfields lack radars and even lights.

The destinations for trafficked arms closely correlate with the areas in which illicit armed groups operate. Informants stated that weapons were being trafficked to illicit armed



groups operating in the southern regions of South Kivu province (the northern regions, near Bukavu, were said to be under government control). They identified part of Lake Tanganyika where the DRC, Tanzania and Burundi's borders converge as a hot spot for arms trafficking by boat. According to an informant, Ukrainian arms traffickers operate with stolen aircraft and use staging areas for air transport in the countries in the region, including Kenya, Uganda (via Entebbe International Airport) Zambia and Rwanda. They fly weapons into airstrips (where fuel containers have been discovered); the weapons are then offloaded (sometimes onto trucks) and delivered to armed groups.

There are two motives for trafficking weapons into the DRC. The first is a political/strategic motive. Informants said that governments were engaged in transferring arms to allied armed groups and proxies in the DRC. For example, it was alleged that Rwanda was engaged in supplying the armed forces of the CNDP, which was under the control of Laurent Nkundabatware. According to informants, Rwanda did this because it was threatened by remnants of the Interahamwe, a Hutu paramilitary organisation based in the eastern DRC, and that Nkundabatware's group protected Rwanda from them. However, Ramos et al explicitly state that Rwanda has denied making such transfers.<sup>16</sup>

The other motive for smuggling weapons is commercial. Informants stated that armed groups were engaged in illicit mining, and that natural resources were exchanged for weapons. The Group of Experts monitoring the UN arms embargo on the DRC found evidence of widespread trafficking networks, which were engaged in smuggling arms and other contraband:

Many smuggled weapons are supplied via these networks to illegal armed groups in the eastern part of the Democratic Republic of the Congo. The networks also smuggle goods ranging from household and electrical appliances to minerals, drugs, ivory and weapons.<sup>17</sup>

These trafficking networks are greatly enabled by the lack of surveillance over the water bodies (lakes and rivers) that characterises the Great Lakes region. Ramos et al note that security there is hampered by a lack of radar coverage, lack of land-based patrols on the lake shores and ill-equipped customs forces.<sup>18</sup> Nevertheless, they state that 'MONUC reports frequent seizures of arms on roads both leading to the lakes and surrounding areas. On 10 and 12 October 2007, for instance, fishermen were arrested by Congolese security forces in Katanga hiding 19 weapons in their baskets.'<sup>19</sup> Informants also stated that armed groups helped one another obtain weapons, meaning that they were both the final recipients of arms and part of the trafficking networks.

## **Transfer of weapons out of the DRC**

Informants also said that the DRC is used as a transit point for arms exports to other countries in the region. In particular, they said that weapons flown into the DRC were subsequently flown to South Africa, Mozambique, Angola and other countries. The authors of this publication were not able to substantiate these allegations. However, the lack of control over the DRC's airspace and the ease with which customs and other

checkpoints on the ground can be avoided make the country very vulnerable to being used as a transit point for illicit arms transactions, as well as a recipient.

### **Circulation of arms inside the DRC**

The main concern regarding internal transfers of weapons is the failure of the national DDR programme. As noted above, several armed groups operate in the DRC. Some of these took part in the peace process and started to join the integrated units but later withdrew. In other cases they continued to operate as militia groups. Another tactic would be for commanders of militia groups to dramatically underestimate in their declaration to the authorities the real number of troops under their control. This way, they could officially be part of the DDR process and be seen to give up their combatants to the national military authorities, while continuing to maintain large clandestine armed forces. In other cases, troops have been disarmed and demobilised, but they do not qualify to be remobilised into the mainstream military. They remain together and have the potential to form a new combatant unit if they are able to obtain new weapons and commanders. Informants stated that the regions of Ituri, North and South Kivu, and Katanga had particular problems with armed groups that had not participated in the DDR process.

These problems in terms of disarming groups have a long history. One informant stated that in 1987 a weapons-collection exercise was conducted in the Ituri province. The people being disarmed were former rebels who had been living in the forest since 1964, and had only become a problem after they started disturbing local civilians. It is therefore likely that isolated armed groups will be able to exist undetected in the DRC for long periods of time.

In addition to the weapons possessed by members of armed groups, two other important areas have not received attention. Informants said that systematic searches for arms caches had not begun, and that no comprehensive programme to disarm the civilian population had been initiated. It was alleged that search and cordon exercises to locate illicit weapons were not carried out, owing to concerns that the police are ineffective and would commit human-rights abuses. It was also stated by informants that MONUC (the current MONUSCO) had not prioritised the control of SALW, as maintaining stability was seen to be more important, and because MONUC lacks a legal framework to inform the disposal methods of captured arms.

### **National legislation**

Since 2008 DRC arms legislation has been determined by several statutes. The primary arms legislation is Ordinance 85-035, which is supported by Ordinance 85-212, containing the measures used to implement 85-035. This law was amended by a presidential decree in 1997 (at the start of the civil war) that banned the private possession of weapons. Informants stated that this decree had not been rescinded. Nevertheless, there was uncertainty as to its status, and elements of the 1985 law were being followed (perhaps by people who were not aware of the 1997 decree). For

example, despite the decree, one informant stated that he was able to obtain a permit to own and import a firearm; he was able to purchase it in South Africa and import it into the DRC.

The (brief) 1997 decree includes the following provisions:

- Article 1 – All possession permits issued under the 1985 legislation have become obsolete.
- Article 2 – All weapons held under these permits should be surrendered to the government.
- Article 3 – Any violations of these Articles should be punished.
- Article 4 – Governors of provinces are responsible for the implementation of the decree.<sup>20</sup>

Huybrechts provides an overview of the 1985 arms legislation; the key elements are as follows:<sup>21</sup>

### ***Personal possession***

- Possession of weapons requires prior authorisation.
- Carrying weapons without a permit is punishable.
- The quantity of weapons that may be held by civilians is limited to two firearms for hunting or sport, and one for self-defence.
- Civilians cannot possess certain light weapons.

### ***Marking and record keeping***

- Article 34 states that SALW should be marked with the name of the producer, place or country of production and serial number, and the year of manufacture should be recorded.
- In the case of international transfers, the following information shall be recorded: date of issue and expiration of licences, the country of import and transit, quantity and final recipient.

### ***Production***

- Manufacture of arms requires authorisation.

### ***Trade***

- International trade in arms requires prior authorisation and details should be recorded.
- A permit is required for the domestic sale or otherwise distribution of firearms or their ammunition.
- Permits to possess and trade in weapons can be revoked at any time by the issuing authority if public safety is threatened or the permits have been abused.

### ***Penalties***

- Illicit trafficking will be punished with a prison term of five to 10 years and fines.

- These penalties are doubled when the offences are committed in an area in which military operations are taking place.
- Arms in transit without authorisation can be seized and confiscated.

Significantly, the 1985 legislation neither defined brokering nor prohibited or controlled brokering activities. Several informants said that this was a problem. Because, at least officially, brokers and brokerage did not exist, it was difficult to control and prosecute people engaged in organising illicit arms transactions.

Informants said that private security personnel were not allowed to carry guns and that they must be accompanied by the police if armed force is required.

Decree 21 of 1950 prohibits the civilian possession of military-style weapons, which are defined as including 'revolvers, pistols, submachine guns, rifles, or any automatic weapons that fire in bursts'.<sup>22</sup>

## **New legislation**

Several informants reported that DRC arms legislation was in the process of being reformed. As of early 2008, legislation was being discussed in Parliament.

The aim of the reform was to bring the national legislation into conformity with the Nairobi Protocol. Although the authors were not able to obtain a copy of the draft legislation, parliamentarians said they expected that, in line with the Nairobi Protocol, the new law would define brokering, what role brokers could play, and what control mechanisms would be introduced.

The DRC reforms are part of a tri-nation reform programme also involving Rwanda and Burundi, which is supported by Belgium. The three countries are former Belgian colonies and this was the rationale for the joint reform process. Since 2004, meetings have been held in Mombasa, Kigali, Brussels and Kinshasa. In particular, the meetings have considered legislation concerning brokering and transportation. Although informants welcomed this initiative, they regretted that Uganda had not been part of the reform process, as the affairs of the DRC, Rwanda and Burundi are closely linked to Uganda. They stated that it was because Uganda was not a francophone country.

Informants also said that the Nairobi Protocol and the Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA), its implementing body, was much more dynamic than the SADC Protocol. It was noted that the legislation reform process had benefited from frequent meetings and implementation support conducted under the auspices of the Nairobi Protocol.

## **International commitments concerning brokering**

The DRC is a party to the politically binding UNPoA. The DRC has signed the Nairobi Protocol, and informants stated that it was in the process of ratifying it. The country has not ratified the SADC Protocol. Informants stated that the SADC protocol had been

adopted by Parliament, that it would soon be sent to the senate and would then require signature by the Presidency.

On 28 October 2005, the DRC acceded to the legally binding Firearms Protocol of the UNTOC.<sup>23</sup> This protocol includes numerous measures aimed at preventing illicit trafficking of firearms and contains, additionally, a legally binding commitment concerning arms brokering. Article 15 states that:

1. States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:
  - (a) Requiring registration of brokers operating within their territory;
  - (b) Requiring licensing or authorization of brokering; or
  - (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.
2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.

Passing legislation to control arms brokering would therefore represent a fulfilment of the DRC's commitments under the UNTOC.

## **DRC's capacity to implement legislation**

It is apparent from interviews with informants, and from reports by the UN Group of Experts, journalists and NGOs that the DRC's capacity to implement legislation is very limited. The new arms legislation (outlined above) is a step in the right direction. However, the country currently lacks the basic foundations needed for any implementation mechanism. Parts of its territory are under the control of armed groups; it lacks effective customs and border control; lack of radar prevents monitoring of airspace; and the national police are not trusted. Effective control over arms brokers operating in the DRC and over Congolese citizens operating abroad requires both legislation and a concerted effort to build up the state infrastructure needed to implement it. It is difficult to see how this can be achieved without the support of the DRC's neighbours and the wider international community.

## **Needs**

The country's requirements for effective control of arms brokering can only be described as enormous. The new legislation does provide the potential to control brokering activities in its territory, and perhaps by its citizens acting abroad. But, to realise this potential, the DRC will need to develop, in cooperation with international organisations and its neighbours, law-enforcement agencies that have capacity to ensure that the country can control brokering activities in its territory.

Because the country does not at present have control over some areas near its eastern borders, and has limited control over its airspace, gaining effective control over brokers is likely to take some time. At the very least, the DRC needs to develop capacity in its ministries to monitor, register and license brokering activity; the capacity of customs and border control to monitor and control movements of goods and people; the capacity of airports to monitor air traffic; it needs to establish national radar monitoring of airspace; it needs to gain control over natural-resource extraction; and it needs general improvement in the national police service's capacity to investigate crime. It is unfortunately the case that for as long as illicit armed groups continue to control territory, traffic arms and exploit natural resources, it will be very difficult for the DRC to control illicit arms brokering. Nevertheless, it is the unfettered activities of arms brokers that increase the power and opportunities for armed groups and other criminal elements. Any return to effective national governance will first require state control over the movement and possession of weapons in its territory.

If these needs seem daunting, it is important to recognise that other countries, in particular the DRC's neighbours, can play an important part in promoting control over illicit brokering and arms trafficking. First, they need to aggressively prevent their own citizens and companies from engaging in illicit arms brokering activities, and control the illicit exploitation of natural resources and other activities that help armed groups and other parties to operate unlawfully in DRC. This control should involve strict observance of the UN sanctions covering groups operating in the DRC's territory. At the very least, the DRC's neighbours, and any other country, should ensure that they are not involved in any way in the transfer of state-owned weapons to armed groups, and governments must not be complicit in the financing of armed groups.

Illicit trafficking is a cross-border activity. Although the DRC's problems are multiple, it is possible to combat trafficking from the other end of the supply chain. Countries that supply and export arms, countries used as transit points and bases for brokers, and those whose nationals operate as illicit brokers can all play an essential part in combating and preventing illicit arms trafficking into the DRC.

## **Potential for illicit brokering in the DRC**

As is clear from the previous sections, there is a great deal of illicit brokering that takes place in DRC. This section will therefore not repeat what has already been written. Instead, it will briefly highlight what was said by one informant. Although most international attention has (rightly) been focused on the DRC as a recipient of illicitly trafficked weapons, the country is also being used, according to informants, as a staging post for illicit movements of arms into other countries in the region. Even if it were able to involve armed groups in the peace process (or defeat them by military force), without adequate control over its borders, airports and airspace, the DRC will be an ideally located haven for traffickers in arms, commodities and people. If reports that China intends to build an ammunition factory in the Katanga province are correct, then the DRC will also be an arms producer, and perhaps even exporter.

Control over brokering is not just essential for the future security of the DRC itself. Without adequate control over brokers and traffickers, the country could well become host to the kinds of parties that could compromise the security of the whole region.

## Notes

- 1 The author wishes to acknowledge the assistance of Nelson Alusala who accompanied him on his visit to Kinshasa in October 2007, and also the assistance via correspondence of Charles Nasibu Bilali and Ilhan Berkol (of GRIP).
- 2 All data in this section from the CIA World Factbook 2007. IN FULL
- 3 CIA, The World Fact Book 2010. Washington Potomac Books, CIA.
- 4 United Nations (UN) Security Council. 2003. *Resolution 1493 (2003)*. S/RES/1493. New York: United Nations, 4.
- 5 United Nations (UN) Security Council. 2005. *Resolution 1596 (2005)*. S/RES/1596. New York: United Nations, 2.
- 6 Ibid.
- 7 Ibid., 2-3.
- 8 United Nations (UN) Security Council. 2008. *Resolution 1807 (2008)*. S/RES/1807. New York: United Nations, 3.
- 9 Ramos, R M et al. 2008. *Final report of the Group of Experts on the Democratic Republic of the Congo*. S/2008/43. New York: United Nations.
- 10 Ibid., 16-17.
- 11 Ibid., 18.
- 12 Ibid.
- 13 Ibid.
- 14 Ibid., 9.
- 15 Ibid., 13.
- 16 Ibid.
- 17 Ibid., 10.
- 18 Ibid.
- 19 Ibid.
- 20 Translation by the author.
- 21 Huybrechts, P 2006. *Afrique Centrale L'harmonisation Des Législations Nationales Sur Les Armes Légères: Annexe Tableaux Analytiques De La Conformité Avec Le Protocole De Nairobi (Burundi, Rdc Et Rwanda)*. Brussels: Groupe de recherche et d'information sur la paix et la sécurité (GRIP).
- 22 Democratic Republic of the Congo 2001. *Initial Report Submitted by the Democratic Republic of the Congo to the Counter Terrorism Committee pursuant to Security Council resolution 1373 (2001)*. S/2001/1331. New York: United Nations.
- 23 Information from the UNODC web site <<http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-migrantsmugglingprotocol.html>>

# Chapter 4: Lesotho

## **Historical overview**

Lesotho is a constitutional monarchy. The security forces consist of the Lesotho Defence Force, the Lesotho Police Service, the National Security Service and the Lesotho Mounted Police Service (LMPS). As at 2014, the country had a population of about two million.<sup>1</sup> Lesotho is landlocked and surrounded entirely by South Africa.

Although Lesotho has not experienced the levels and types of violent crime witnessed in other countries in the region, particularly South Africa, there has been nonetheless an increase in violent crime, in particular armed robbery, over the last 10 years. The uncontrolled flow of arms and the abuse of firearms pose a security problem for the country.

In late 2014, the country's military and police clashed, leading to regional concerns about the country's future stability. The AU subsequently issued a communiqué cautioning all the parties not to escalate the situation.<sup>2</sup> The SADC Troika, under the leadership of South Africa, spearheaded negotiations between the parties.<sup>3</sup>

Stealing of livestock and its associated armed violence are seen as a major security threat, and illegal civilian firearm possession is a growing concern. For example, it is known that many citizens who cannot obtain firearms in Lesotho travel to South Africa to purchase them – either legally or illegally. A South African firearm licence is not valid in Lesotho. Migrant mine workers who obtain firearm licences in South Africa can get a permit to bring firearms temporarily into Lesotho during their leave periods. However, the problem arises when they return home permanently: in that instance, the firearm would be held illegally, as the licence and temporary import permit cease to be valid.

## **Small arms and light weapons: Control and proliferation**

### **Firearms control legislation: Licensing and use**

Lesotho is a signatory to the SADC Protocol, the UNPoA and the Bamako Declaration. The following Acts currently provide the legislation concerning firearms in Lesotho:

- Internal Security (Arms and Ammunition) Act 17 of 1966
- Internal Security (Arms and Ammunition) Amendment Act 4 of 1999. (This amendment prohibits the possession of rifles by civilians.)



## Firearm and ammunition dealers

Lesotho does not manufacture firearms or ammunition. All legally owned firearms are therefore imported into the country by government and firearm dealers. Some of the firearm dealers are AK's Arms and Ammo, the Lesotho Firearms Company and Maluti Arms.

Sections 9 to 16 of the Internal Security (Arms and Ammunition) Act regulate the activities of firearm dealers. A dealer has to acquire an import permit from the police before firearms or ammunition can be brought across the Lesotho border.

## Regulation, control and combating arms-brokering activities

When Lesotho ratified the SADC Protocol on 27 November 2002, a National Focal Point was established under the chair of the LMPS. The commissioner of police, who is the administrator of the Internal Security (Arms and Ammunition) Act, has been designated as head of the National Contact Point.<sup>4</sup>

Membership of the National Focal Point includes:

- LMPS
- Lesotho Defence Force
- National Security Service
- Ministry of Foreign Affairs
- Department of Immigration
- Lesotho Revenue Authority
- Private Security Association
- Attorney-General's Chambers

After the establishment of the National Focal Point (under the UNPoA), the LMPS undertook an audit of the Act and identified a number of serious shortcomings, as follows:

- It provides no definition of light weapons and there are no prohibitions for civilian ownership of firearms.
- There are no restrictions on the quantity of firearms or ammunition that can be owned.
- There are no prohibitions on lending firearms.
- There is inadequate record keeping: Lesotho still uses a manual system for recording data relating to firearm licensing.
- There are no provisions for marking and tracing.
- There are no provisions for brokering.
- There are no provisions for transfers, re-transfer or end-user certificates.

All of these issues were addressed in the Internal Security (Arms and Ammunition) Amendment Bill of 2007, which also includes reference to controls over manufacturing, brokers and brokering activities.

## **Arms acquisition**

One of the issues raised by a dealer, and corroborated by the LMPS, is that there is no coherent or integrated arms procurement strategy on the part of the Lesotho government. Each government department procures weapons from its own suppliers either from Lesotho arms dealers or, more commonly, South African dealers. The LMPS felt that this situation should be addressed in the amendments to the law to ensure that there is a single government department responsible for state arms procurement. The dealer felt very strongly that government should support local dealers when purchasing firearms. Most business he gets from government is for the supply of ammunition. There is no firearm dealers' association in Lesotho, although the three dealers mentioned above have informal links.<sup>5</sup>

## **Prohibiting illegal arms brokering**

As far as it is known, there are no arms brokers operating out of Lesotho or Lesotho nationals operating as brokers in other countries. However, in several instances, and notably since August 2007, the LMPS have had enquiries and requests from several sources asking to be registered as brokers, and not dealers. For instance, in August 2007, a company specifically asked to be registered as a broker, and not a dealer, as the company did not want to trade in weapons or hold stocks. As the existing law does not make provision for registering brokers or regulating brokering activity, the company was advised to register as a dealer in the interim until brokering legislation is passed by the Parliament of Lesotho.

All interviewees that took part in this research supported the notion of extra-territorial jurisdiction to be included in any new legislation relating to arms brokering. Although the phenomenon of brokers and brokering activities has not been an issue for Lesotho, there was strong support for amending the existing Act to include brokering controls. This is in part because of their strong support for regional cooperation, but also because, as one interviewee put it: 'People are always looking for loopholes and we need to make sure that we contribute to strengthening the security of the entire region.'

In addition, the LMPS felt that, as, Lesotho may face problems in the future concerning increased interest in brokering activity in its territory, and that it must take active measures to avoid these problems as far as possible. There was also strong support for the sharing of information across the region, especially with South Africa, their only neighbour.

There are some key articles or provisions that are absent from the Amendment Bill. For example, although the Bill defines brokering, there are no substantive provisions regulating brokering activities. It is believed that these are being corrected and it is likely that a system of registering and licensing brokers who will be able to operate legally will form part of a redrafted bill. The Amendment Bill would also stipulate that any person

performing or participating in brokering activities without being registered and licensed would be guilty of an offence. The LMPS feels that the inclusion of such clauses, in addition to those mentioned above, will significantly enhance the implementation of the SADC Protocol.

## Conclusion

The Lesotho government recognises the important role that civil society has to play in strengthening national firearm-control legislation. This was seen primarily as assisting with awareness-raising campaigns and being in dialogue with Members of Parliament.<sup>6</sup>

The Department of Foreign Affairs believes the domestication of treaties will help Lesotho to develop its own laws that are relevant to its national situation and acknowledges that, in the absence of any national regulations on brokering, the SADC Firearms Protocol is used as a benchmark.<sup>7</sup>

There is a general agreement in government that, given the highly specialised nature of arms brokering, there was little awareness of this issue across government departments or within civil society.<sup>8</sup> Generally, knowledge is concentrated among a few specialists in the police and in foreign affairs. This is one of the reasons why the LMPS plans to hold a series of consultations on the Amendment Bill in key government departments. This is not only to get political support for the changes, but also to raise awareness of the issue. Once the police at the operational level are convinced that these changes are necessary, there should be no opposition to these amendments.

## Notes

- 1 See, Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/geos/lt.html>, (accessed 28 September 2014).
- 2 See, Communiqué: The African Union warns against any Unconstitutional Change of Government in Lesotho, <http://reliefweb.int/report/lesotho/communiqu-african-union-warns-against-any-unconstitutional-change-government-lesotho>, (accessed 16 September 2014).
- 3 Maseru Facilitation Declaration - Communiqué by SADC Facilitator Deputy President Cyril Ramaphosa, <http://www.dfa.gov.za/docs/2014/leso1003.html>, (accessed 16 September 2014).
- 4 Lehloka Maphatsoe, Superintendent, Lesotho Mounted Police Service (LMPS) and National Focal Point Coordinator, Maseru.
- 5 Personal communication, A. K. Ramaisa, CEO of AK's Arms and Ammo, Maseru.
- 6 Personal communication, Katileho Pefole, Programs Manager: Transformation Resource Centre (TRC), Maseru.
- 7 Personal communication, Lineo Mosala, Head of the Legal Division, Department of Foreign Affairs, Government of Lesotho, Maseru.
- 8 Personal communication, Dr. John Dzimba, CEO of the Lesotho Institute for Public Administration and Management (LIPAM), Maseru.

# Chapter 5: Malawi

## Introduction

Malawi is a landlocked country of 118 484 km<sup>2</sup>, which includes 24 208 km<sup>2</sup> of inland water. Its capital, Lilongwe, is Malawi's largest city; the second largest is Blantyre and the third Mzuzu.<sup>1</sup> It borders Tanzania to the north, Zambia to the west, and Mozambique to the south and east, along the shores of Lake Malawi. As at 2014, Malawi had a population of about 17 million people. It is rated one of the poorest countries in the world, according to the UN Human Development Index.<sup>2</sup> The index provides a composite measure of three basic dimensions of human development: health, education and income. In the index, Malawi was ranked 174 out of 187 countries in 2014.<sup>3</sup>

From the independence of Malawi in 1964 to 1994, the country was a one-party state led by Hastings Banda of the Malawi Congress Party. In 1994, Malawi held its first multi-party elections and Bingu wa Mutharika was elected as president. Since then, Malawians have the perception that there has been a marked increase in the level of crime, including firearm-related crime, and an increase in the availability of illicit small arms. However, very limited research has been undertaken on issues relating to small arms in Malawi and, as a result, accurate information about the dynamics of this phenomenon is unavailable. Mutharika was re-elected for a second term in May 2009.<sup>4</sup>

## Firearms trafficking and crime

In 1999 civil-society organisations in Malawi publicly criticised the government for not doing enough to stem the rise of armed crime, and the government has since then expanded its national programme to reform the police with the help of UK aid, and engaged community organisations in community policing forums to help fight violent crime and counter the illegal possession of firearms.<sup>5</sup>

According to the late Willie Chingaru of the Malawi Police Service (MPS), a study conducted by independent experts in 1998 showed an increase in violent armed crime and recommended that the matter be urgently addressed. The types of arms that proliferate in Malawi are AK-47s. These, as well as home-made muzzle-loaded guns, have been used in criminal activities, including armed robbery and illegal poaching.

Illicit trafficking of firearms from South Africa is rife. The most commonly used type of pistol in Malawi is the Star pistol.<sup>6</sup>

Despite these issues, Chingaru noted:

The problem of small arms is not critical in Malawi. There is, however, a need to have it contained and prevent it from escalating. Malawi is not a source of small arms proliferation in SADC, but is an end-user country, contributing to the problem by providing a demand for small arms. It also manufactures illegal homemade firearms, which contributes to the problem in Malawi. These sources serve to confirm that the problem of small arms should be treated in a regional context and not limited to national programmes. In that case, it follows there can be no total solution to the smallarms issue in Malawi, or other affected countries in the SADC region, unless it is comprehensively addressed as a regional challenge.<sup>7</sup>

A report published in 2003 by international development organisation Deutsche Gesellschaft für Technische Zusammenarbeit remains generally true today. The report states:

Small arms proliferation in Malawi mainly manifests itself in the following areas:

- Illegal small arms used in armed crime, including organised poaching in Malawi's wildlife conservation areas
- Illegal small arms held by individuals for self-protection
- Illegal manufacture, sale and use of homemade firearms
- Illegal use of licensed small arms, primarily for poaching wildlife<sup>8</sup>

Speaking at the 62nd UN General Assembly First Committee's Thematic Debate on Conventional Weapons, a Malawian official said that his country had in recent years witnessed an increase in, and alarming flow of, SALW from conflict areas, particularly in Africa: 'Arms flow into Malawi caused fear among the citizens, due to the corresponding increase in armed robberies, burglaries, gender-based violence and other violent crimes, such as carjacking, which, until recently, were unheard of in Malawi ...' Furthermore, the country's natural resources, including wildlife, were being decimated by the reckless use of illegal weapons by poachers in the country's game reserves and other areas. The continued supply of SALW was a real threat to peace and security – not only in Malawi, but also in the continent as a whole, where those weapons were used to perpetuate armed conflicts and crime, causing immense numbers of casualties and creating massive refugee flows. In short, those weapons were a catalyst to violence.

The official further added, 'Malawi [therefore] supported ongoing efforts towards the elaboration of an arms trade treaty, which would be a significant step towards the standardization of international trade in conventional arms.'<sup>9</sup>

In its report to the 4th Biennial Meeting of States, to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms

and Light Weapons in All Its Aspects in 2010, the government of Malawi identified three challenges relating to its SALW problem:

- The possibility of sudden influxes of arms from conflict zones
- An increase in violent crime associated with illegally possessed firearms
- The ease of cross-border and internal trafficking

Malawi's location makes it vulnerable to cross-border and internal trafficking of goods, including firearms. The government stated that the MPS is generally under-resourced, hampering its ability to fulfil its mandate.<sup>10</sup>

Because the MPS does not issue an annual report or regular crime statistics, there seem to be two conflicting views regarding crime, and in particular violent, firearm-related crime, in Malawi. Some argue, especially civil-society organisations, that violent crime is getting worse, whereas others, the police in particular, claim that the crime situation is stable and that recent incidents have been 'isolated cases'. Either way, despite the lack of detailed information, one cannot compare the rates of violent crime in Malawi with those experienced in South Africa.

## **Regulation of the firearms sector in Malawi**

Malawi is signatory to both the SADC Firearms Protocol and the UNPoA. As a signatory to these instruments, the government of Malawi has committed itself to implementing a range of measures to address the illicit proliferation of firearms, ammunition and other related materials, as well as to strengthening controls over legal stockpiles of weapons.

A National Focal Point (NFP) was established in 2006 to oversee and coordinate the implementation of these agreements in Malawi. The NFP is responsible for liaising with other SADC member countries on firearm-related issues. It draws membership from both civil society and various government departments, including Education, Wildlife and Parks, Immigration and the Malawi Prison Service.

Malawi has one firearms dealer, Dynamic Explosives Ltd. As at the time of this research, another company has applied for a permit but at the time of writing approval has not been given. Private security firms are not armed. By law, civilians may possess only pistols, revolvers, rifles, airguns and shotguns.

As at 2014, there were approximately 10 000 to 12 000 legally registered firearms in Malawi, including those owned by parastatals, such as the Reserve Bank, the Wild Life Authority, etc. One explanation that has been given for the limited number of legal firearm owners is the difficulty that many experience in obtaining a firearm licence. It also has been argued that this drives the market for illegal firearms.<sup>11</sup> The government has greatly discouraged the possession and ownership of handguns, as there is the perception that they are readily used in crime. Shotguns are the most commonly owned category of firearm in Malawi, and are used to protect livestock and crops in farming areas and districts with national parks.

## Illegal firearms

Illegal firearms found in Malawi include Z-88 pistols (South African make), and Makarov pistols, revolvers and AK-47s (reportedly from Mozambique). Research undertaken by the Institute for Security Studies (ISS) in 2010 established that illegal firearms were predominantly found in the main cities. Blantyre was particularly noted as having a problem with illegal firearms. There have also been cases where people have illegally acquired firearms while working in another country, often South Africa, and then trafficked them to Malawi. Several individuals working in South Africa are thought to have acquired firearms for protection during the xenophobic violence in 2008 and later returned home with them.<sup>12</sup> Detecting these firearms remains a challenge for the MPS, particularly given the capacity constraints at the borders.

The lending of licensed firearms presents a further challenge for law-enforcement officers in Malawi. Legally owned firearms are reportedly lent to unlicensed individuals. This may be because it is difficult to obtain a firearm licence and there is lack of knowledge of the regulations and procedures that need to be followed to obtain a licence.

Similarly, a major problem has recently emerged over inheritance procedures that are not correctly adhered to. By law, firearms belonging to deceased owners should be handed in to the authorities (i.e. the MPS) for safekeeping within two weeks of the death of the licensee until a transfer of ownership has been processed. A deceased person's family may identify a beneficiary for the firearm, who must then apply for a firearm licence. Once issued, the transfer of ownership can be processed. However, in most instances, families tend to simply nominate an individual to pass the firearm on to, and do not notify the MPS.<sup>13</sup>

The illegal lending and transfer of firearms are not only crimes, but also cause for broader concern, as firearms may well end up in the hands of people who are not familiar with the correct procedures for handling, securing and maintaining them, which increases the risk of accidents and theft.

## Policy and legislation

Malawi's Firearms Act 14:01 of 1967 provides for the use and possession of, and dealing in firearms. Other legal provisions are contained in the Explosives Act of 1968, the National Parks and Wildlife Act of 1992 and the Police Act of 2012. Under the Police Act, the Inspector General of Police is given the power to restrict the purchase of firearms and to demand that all registered owners of firearms deliver them to the nearest police station. The Customs and Excise Act of 1969 also contains some control measures relating to firearms.<sup>14</sup>

The 1967 Firearms Act has serious gaps regarding the control of illicit trafficking in firearms. For instance, the Act does not expressly provide for brokering activities, nor does it seem to recognise any natural or legal person as a broker other than the Registrar of Firearms. The police and military do not make use of brokers to acquire firearms.

Recognising that the 1967 Act is now out of date when it comes to contemporary regional and international obligations, the Malawian government adopted a new National

Firearms Control Policy in 2012. Consultations and workshops focusing on development of the policy and legislation took place with various stakeholders, including civil society. The Malawi Law Commission, with the support of the ISS, also undertook a visit to South Africa to consult with the South African Police Service on their experiences of adopting and amending firearm-control legislation. Malawi's 2012 policy addresses issues that were not covered in the 1967 Act, including:

- Restricting the number of firearms that may be possessed by civilians
- Stipulating an age requirement for applicants
- Requirement for firearm competency
- Prohibiting civilian possession and use of light weapons
- Restrictions on the possession and use of firearms<sup>15</sup>

Although the 1967 Act did not cover some of the above issues, several provisions were, in practice, adhered to in the past. For example, the government limits the number and type of firearms that civilians may own. A civilian may possess only one firearm, and licences are approved only for certain types of firearms, none of which are considered light weapons.

The 2012 policy aimed to reduce both firearm-related crime in Malawi, and the availability of illegal firearms and their related materials. It also sought to promote stricter monitoring of all legally owned firearms and reduce the irresponsible use of legally acquired firearms. Several instruments informed the development of the new policy, including:

- The UNPoA
- The SADC Protocol
- The Bamako Declaration
- Malawi's Vision 2020 (a national long-term development perspective)
- The Millennium Development Goals<sup>16</sup>

## Brokering

Malawi's 2012 National Firearms Control Policy defines brokering as:

- Acting for a commission, advantage or cause, whether pecuniary or otherwise; or
- Facilitating the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials; and thereby acting as an intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and buyer or recipient thereof.<sup>17</sup>

Part 4.11 of the policy states that firearm dealers, brokers and gunsmiths

will be responsible for keeping updated information and records on firearms in their custody and will ensure that all such firearms are kept in safe places as prescribed by the law. They will also furnish the Registrar of Firearms with relevant information as and when required.<sup>18</sup>



## Regulating authority

The Registrar of Firearms is the central authority with respect to the acquisition of firearms and the only legal authority that can issue licences to civilians to acquire, possess, carry or transfer firearms or ammunition in Malawi.

This authority regulates the issuing of permits and licences for exporting and importing firearms. Dealers (there is only one firearm dealer in Malawi at present) are accountable to the registrar for all the transactions they conduct, and are required to keep a register and periodically submit a return to the registrar.

The Firearms Act of 1967 regulates the following activities:

- Import and export of firearms and ammunition
- All sales of firearms and ammunition
- Granting permits to acquire or transfer firearms or ammunition
- Firearm manufacture
- Transport and possession of firearms

The Firearms Act prohibits illegal importing, exporting and dealing in firearms; manufacturing, repairing or testing; and the illegal carrying or possession of a firearm.

There are some ambiguities in the licensing procedures, however. For instance, two different currencies are quoted in the legislation. There are also inadequacies surrounding the definition of weapons – for instance, there is no definition of light weapons. The legislation also lacks provisions on arms embargoes. There are also no controls for pawning or pledging, and requirements for the marking of state-owned firearms are lacking.

## National Focal Point and firearms policy

In 2007 the MPS, in collaboration with civil society, produced a first draft of a National Policy for the Control of Firearms and Other Related Materials in Malawi. This policy aims to 'provide clear guidance to all stakeholders on how best the problem of proliferation of firearms in Malawi can be combated'.<sup>19</sup> It also 'propagates the establishment of the NFP on Small Arms and Light Weapons as an interagency body that will co-ordinate action and oversee the implementation of this policy'.<sup>20</sup>

An important aspect of this policy is that it recognises that, to achieve its objective, a number of strategies are needed, including a review of existing legislation, as follows:

- Realignment of the Firearms Act with international and subregional instruments
- Baseline research on the nature and scope of the problem of SALW in Malawi
- Development of policies, standards and procedures for the more effective processing of applications to manufacture, import, export, transit, deal in and own firearms (including ownership by state entities)

- Enhancing the capacity of the Central Firearms Registry
- Donor support to review the Act and public-awareness campaigns to inform people of the dangers of illegal firearms and the serious consequences to safety and security in the country

The policy lists as one of its objectives the need to develop procedures and processes for importing, exporting and transiting firearms through Malawi, and to establish requirements for, and records of, brokers.

This draft still needs consultation with additional stakeholders and it needs to be approved at the political level. Notwithstanding, an NFP on SALW was established in April 2006 and meets regularly. Notably, the focal point includes civil-society organisations, such as the Centre for Human Rights and Research. The Ministry of Home Affairs and Internal Security have political authority over the NFP, and the inspector general of the MPS has the power to appoint its coordinator.

In its progress report dated August 2007, the NFP noted a number of challenges it faces and key priority areas:

- Commissioning an in-depth study of crime and illegal firearms in Malawi, including transfer controls etc.
- Hosting a workshop to finalise the draft National Policy for the Control of Firearms and Other Related Materials in Malawi (participants to include the NFP on SALW and other government bodies and civil society). This workshop could also form the basis for capacity building of the NFP.
- Commissioning research and a process to redesign and update the Firearms Act of 1967.
- Sourcing assistance for the expansion and development of the Central Firearms Registry's computerised database.<sup>21</sup>

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# Chapter 6: Mauritius

## **Historical overview**

Mauritius is an Indian Ocean island state 2 030 km<sup>2</sup> in size, situated some 2 400 km off the south-east coast of Africa. Historians speculate that Arab and Malay mariners visited the island from the 10th century, which at the time had no human inhabitants. Mauritius was explored by Portuguese seafarers in the early 16th century; it became a Dutch colony in 1638. Throughout the remainder of the 17th century, the colony was largely maintained, using slave labour, as a replenishment stopover for Dutch trading and naval vessels arriving from Madagascar. The Dutch abandoned the colony in 1710 owing to harsh weather conditions, livestock disease and drought. Mauritius became a French colony in 1715 when the island's agriculture sector, particularly sugar-cane farming, was developed. In 1810, during the Napoleonic Wars, Mauritius was captured by the British military and it subsequently became a British colony. The island territory remained under British administration and control until 1968, when Mauritius was granted independence.

Mauritius does not have a recent history of violence, armed conflict or arms proliferation. It is widely considered to be one of the more stable states within SADC. Regular free elections are held, and the country has relatively good record in respect of human rights. Since independence, Mauritius has gradually become a middle-income country. Its economy has diversified from being dependent on agriculture and the country has developed stable industrial, financial and tourism industries.

## **Small arms and light weapons: Control and proliferation**

### **Firearms control legislation: Licensing and use**

Mauritius is a signatory to the SADC Protocol, the UNPoA and the Bamako Declaration.

The Firearms Act 2 of 2006, which replaced legislation that had been promulgated in 1947, contains provisions relating to firearm ownership, use, trade and transfers in Mauritius. According to the Mauritian police, the 2006 legislation was introduced because the previous measures were deemed to be inadequate. Civilian firearm licences are predominantly issued for hunting (mainly for stags/deer, hares and wild pigs), which is permitted to take place only in designated hunting grounds or ranches. The official hunting season lasts for four months, usually from 1 June to 30 September.

Only in exceptional circumstances are handgun licences issued by the Mauritian authorities. Licences are usually for hunting firearms, or issued to prominent business people and employees of private security businesses that offer protection during cash/valuables-in-transit. On average, only about 25 handgun licences are issued each year in Mauritius.<sup>1</sup>

As of September 2007 there were approximately 7 500 licensed firearms in Mauritius, most of which were hunting rifles and shotguns. Private security companies possessed 135 firearms; security personnel in the banking sector possessed 111; and other businesses 25.<sup>2</sup> Only Mauritian citizens who are 18 years or older, physically fit and mentally stable are entitled to apply for a firearm licence. Under the provisions of Section 3 of the Firearms Act of 2006, 'no individual shall hold more than two firearms at any time'.<sup>3</sup>

Before the 2006 Act, people were permitted to possess more than two licensed firearms. According to the Commissioner of Police, those in possession of more than two firearms after the new Act were required to surrender the surplus firearms to the police. The owners of these firearms were given the opportunity to sell their firearms to other licensed individuals in Mauritius (no exporting of firearms is permitted). The police destroy any unsold firearms, and no financial compensation is provided to the owners. The police anticipated that approximately 2,500 surplus firearms would be handed over to them, of which 500 would be sold.<sup>4</sup>

To obtain a firearm licence, an applicant is required to have a firearm safe installed in his or her home. The safe should be permanently fixed to a wall, and the police are required to inspect the safe and approve its installation. A firearm applicant is also required to undergo a screening process. Applicants will not be granted a licence if they have committed a firearms-related offence, or have a history of serious drug and alcohol abuse, and/or domestic violence. According to the head of the police's Central Firearm Index (CFI), 'If you can't respect your own wife, how can you be expected to be a responsible firearm owner?'<sup>5</sup> In addition, the commissioner of police reviews each application and personally determines whether an applicant should be granted a licence or not.<sup>6</sup>

Firearm licence applicants are also required to undergo a competency test, which involves displaying proficiency in the disassembling and reassembling of the type of firearm for which he or she is seeking a licence. At the time of compiling this chapter, the police were considering the introduction of more stringent competency testing, which they envisaged would be administered by the police training school. This training would comprise three components: knowledge of the law; handling of firearms and their safekeeping; and target shooting. Applicants will be required to pay for this service and will be issued with a competency certificate if the test is successfully completed.<sup>7</sup> The current competency certificate is valid for five years.

Following the death of a firearms licensee, the police are required to take possession of the firearm and ammunition that were in possession of the deceased licensee and transfer them to the police armoury.<sup>8</sup>

Once the police have approved a firearm licence, an import permit is issued for the weapon that the applicant is seeking to acquire. The firearm in question must be marked with the manufacturer's serial number 'or any other mark by which the firearm can be identified'.<sup>9</sup> According to firearm dealers, it takes an average of three to four months for a successful firearm licence applicant to receive a licence.<sup>10</sup> Firearm licences must be renewed on an annual basis.

Licensed individuals are permitted to purchase only small amounts of ammunition at one time – usually a maximum of 25 rounds. In most cases, licensees are permitted to purchase a maximum of 200 rounds a year. However, hunting associations are permitted to exceed the 200 round limit.<sup>11</sup>

## **Firearms and foreign nationals**

Before 2006 non-Mauritian nationals were not permitted to import firearms into Mauritius. Foreign hunters had to make use of firearms belonging to owners of hunting grounds or hunting clubs. However, under firearm control legislation introduced in 2006, foreign nationals, under certain conditions, are allowed to temporarily import personal hunting rifles and/or shotguns. On their arrival at the Mauritian point of entry, individuals are required to surrender their firearms to customs officials, who must then deliver the firearms to the police armoury for safekeeping. The head of a registered hunting ground or hunting club is then required to collect the weapons, sign an affidavit and take responsibility for the firearms.

Prior to the departure of the foreign hunter, the head of the hunting ground must deliver the weapon to the police armoury. The police then transfer the firearm to the customs officials at the port of exit for collection by the owner. A foreign hunter requires an import permit to bring firearms into Mauritius, and an export permit to take them out. Importing personal handguns into Mauritius is not permitted to anyone, including hunters.

## **Firearm and ammunition dealers**

There are three companies licensed to deal in firearms and ammunition in Mauritius. As the firearms market in Mauritius is small, these dealers usually combine their trade in firearms and ammunition with other businesses.

All firearm dealers are required to maintain registers of their stock and transactions, and submit monthly reports to the CFI. If a firearm dealer ceases business operations, all firearms and ammunition stock must be handed over to the police for safekeeping.

## **Licensing hunting firearms**

The Mauritian hunting grounds are on state-owned land that is let to the managers of the hunting grounds. There are about 120 hunting grounds in Mauritius, 67 of which are registered. For the most part, members of hunting associations use these hunting grounds. Hunting associations are required to submit annual reports to the CFI, which must include the following information:

- List of members

- Date and place of hunting activities
- Firearms used
- Amount of ammunition used
- Catalogue of incidents or injuries<sup>12</sup>

According to the CFI, the reason for these reports is to determine the extent to which people who have acquired licensed firearms for hunting are actually engaging in hunting and game-shooting activities. Individuals who have not hunted for a significant period of time may be required to hand their firearms over to the police.<sup>13</sup>

## **Record keeping and state firearms**

The CFI maintains the Central Firearm Registry, which keeps all records relating to civilian firearm licences; firearm dealers and gunsmiths and their stocks; firearms used for hunting and game-shooting; the import and export of firearms; and government firearm holdings.

The police and military possess firearms. However, the police carry firearms only while conducting special operations, such as during the protection of VIPs, and to provide security for cash-in-transit operations and for banks. During such operations, one firearm is kept in each police patrol car; firearms are also kept at police stations.<sup>14</sup>

## **Firearm-related crime**

As at 2014, Mauritius had a population of approximately 1.3 million<sup>15</sup> and the crime rate is very low. For instance, on average, from 2002 to 2008, 95 homicides, and 13 203 assaults and related offences per year were reported.<sup>16</sup> Firearm crime is negligible. According to the Mauritian police, between 2004 and 2007 there were four criminal incidents involving firearms. Hunting accidents tend to be infrequent.<sup>17</sup>

The low incidence of firearm crime is partly attributable to the fact that smuggling of firearms into Mauritius is rare. When this does take place, it is usually unintentional – for example, in most cases people who have immigrated to Mauritius with firearms have neglected to declare weapons in their possession to the authorities.<sup>18</sup>

## **Regulation and control of arms brokering**

Section 32 of the Firearms Act 2 of 2006 prohibits arms-brokering activities in Mauritius. The Act states:

No person shall act on behalf of another, whether in return for a fee, commission or other consideration, or not, to negotiate any contract or other arrangement in connection with, manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-forwarding, supplying and delivering firearms, their parts or components or ammunition or any other act performed by a person, that lies outside the scope of his regular business activities and that directly facilitates the brokering activities.

## Arms acquisition

In terms of acquiring firearms, ammunition and related equipment for the official security forces, the Mauritian government tends to import directly from foreign manufacturers. Such orders are typically small, but are nevertheless put out for tender, a process that is administered by the prime minister's office. As brokering in Mauritius is prohibited by law, only foreign individuals or entities are permitted to submit tender documents.

Firearm and ammunition dealers also source their stock directly from foreign manufacturers, predominantly in Europe (e.g. Austria, the Czech Republic, Germany, Finland and Sweden).<sup>19</sup> The same dealer also stated that he previously used to import firearms and ammunition from a broker based in South Africa, but that the process of securing the imported items proved to be expensive and time-consuming (because of South African arms export regulations).<sup>20</sup>

## Regulation of business, financial transactions and money laundering

Mauritius has become a significant transit point for foreign investments, particularly for trade and transactions destined for Asia. For example, Mauritius is the largest source of foreign direct investment in India. There are close to 30 000 global companies registered in Mauritius, including more than 800 licensed global funds. The Mauritius Freeport, a free-trade zone, was created to boost trade.<sup>21</sup> In recognition that such arrangements are vulnerable to abuse by criminal entities (including those engaged in illicit arms brokering), the Mauritian government has established various controls to counter money laundering and terrorist financing, as well as mutual legal assistance measures.

The key anti-money-laundering legislation in Mauritius is the Financial Intelligence and Anti-Money Laundering Act of 2002, which replaced the Economic Crime and Anti-Money Laundering Act of 2000. The 2002 Act is supplemented by regulations, which have been amended on a number of occasions. The Act defines the crime of money laundering in the following terms:

- Any person who: engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime, where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.
- A bank, financial institution, cash dealer or member of a relevant profession or occupation that fails to take such measures as are reasonably necessary to ensure that neither it nor any service offered by it, is capable of being used by a person to commit or to facilitate the commission of a money laundering offence shall commit an offence.<sup>22</sup>

In terms of this legislation, money-laundering offences can be described as follows:

- Concealing, disguising, converting or removing property to or from the jurisdiction,



knowing, or having reasonable grounds to suspect, that it is the proceeds of criminal actions with the intent to avoid prosecution or a confiscation order.

- Acquiring, possessing or using property, with knowledge that it represents the proceeds of criminal conduct.
- Failing to disclose information that another person is possibly engaged in money laundering, which is related to the proceeds of crime.<sup>23</sup>

The new legislation resulted in the creation of the Financial Intelligence Unit in August 2002, which replaced the Economic Crimes Office. The Financial Intelligence Unit is required to respond to suspected incidents of money laundering, report on suspicious transactions and exchange information on combating money laundering and the financing of terrorism, where required. The National Committee for Anti-Money Laundering and Combating the Financing of Terrorism has also been established. This committee coordinates and monitors the implementation of legislation and policy on the combating of money laundering and terrorism financing, and makes recommendations for changes to legislation, when required.<sup>24</sup>

Terrorism regulations can be used to prevent illicit arms brokering and prosecute those involved in it in circumstances where brokers are facilitating arms transfers to insurgent and/or terrorist groups. In Mauritius there is a range of legislation relating to terrorism, including the Convention for the Suppression of the Financing of Terrorism Act 2003; the Prevention of Terrorism (Special Measures) Act of 2003; the Prevention of Terrorism (Special Measures) (Amendment) Act of 2003; and the Prevention of Terrorism Act (2002). This body of legislation provides for measures to combat and suppress terrorism in Mauritius, including enhanced intelligence gathering, investigation and enforcement.<sup>25</sup>

The Mutual Assistance in Criminal and Related Matters Act of 2003 makes provision for mutual assistance between Mauritius and other states or international criminal tribunals in relation to serious offences and related matters.<sup>26</sup>

## **Allegations of arms brokering in Mauritius**

This legislation does not, however, relate to brokering in major conventional arms. It has been alleged that a Mauritian-registered business was involved in arms brokering. Jasper Consulting, a business registered in Mauritius, has been linked to the brokering of the sale of military aircraft to the South African government on behalf of British Aerospace. Investigations by the South African National Prosecuting Authority have alleged that Jasper Consulting may have been used as a vehicle for bribery and money laundering in relation to the British Aerospace–South Africa aircraft deal.<sup>27</sup>

In 2012 Kathi Lynn Austin of the Conflict Awareness Project (CAP), an NGO dedicated to investigating and bringing to justice arms traffickers, reported that Andrei Kosolapov and Sergei Denisenko, suspected former business associates of convicted arms broker Viktor Bout, were allegedly operating Mauritian-registered aviation businesses as a ‘new launching pad for gunrunning to UN-embargoed countries’. Austin, with great international media fanfare, also accused a number of other individuals, including relatives of Mauritian

Minister of Labour, Industrial Relations and Employment Shakeel Mohamed, and business entities, such as Gibson & Hills Ltd, of engaging in a range of criminal activities, including illicit arms brokering and money laundering.<sup>28</sup>

The Mauritian government swiftly responded by initiating a commission of inquiry into the allegations in the CAP report. The report, however, provided no credible evidence of illicit arms brokering by Kosolapov and Denisenko or their alleged associates, and most of the implicated individuals refuted the allegations. Gibson & Hills responded to the CAP report with a detailed document in which they stated: 'In a style very close to Dan Brown, the author uses a mix of reality, fiction and fantasy to stimulate minds and induce paranoia, if not provoke hysteria ... [and] is excessively bold in making a series of free and unfounded allegations.'<sup>29</sup>

During a parliamentary debate in November 2012 the Mauritian prime minister stated that the Independent Commission Against Corruption had found the CAP report to be 'quite vague', and that Austin may have to be interviewed. The prime minister reported that the CAP had sent a letter to the Mauritian authorities requesting government protection 'from any individuals who felt exposed by our August Report' in the event that Austin be required to give evidence in Mauritius.<sup>30</sup>

In July 2012 Kosolapov indicated that he was considering taking legal action against Austin for defamation, while the Mauritian Minister of Labour, Industrial Relations and Employment (and two of his relatives) initiated legal proceedings against her for defamation in the Mauritian Supreme Court, and were claiming a total of 100 million Mauritian rupees (about US\$2.8 million) in damages.<sup>31</sup>

# Conclusion

Despite being a country with low levels of small-arms possession and crime, Mauritius is one of only two states in SADC that has established legislative controls relating to arms brokering. This is largely due to an attempt to mitigate the possible negative consequences of the island's economic approach of encouraging foreign businesses to use Mauritius as a base for international transactions. As revealed in the government's prompt response to the allegations made by the CAP, it is clear that the regulation of arms brokers is a priority for the national authorities. The Mauritian government has also established a myriad of controls and mechanisms relating to money laundering, which are useful weapons in its armoury to combat illicit arms brokering. In this regard, the Mauritian approach to regulating arms brokers may be a useful model for similar states in southern Africa.

# Notes

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# Chapter 7: Mozambique

## Background

Any discussion on the illicit trafficking of SALW in Mozambique is necessarily influenced by the country's decades of civil war. First, the Mozambique Liberation Front (FRELIMO) fought a struggle for independence between 1964 and 1975 against the Portuguese colonial authority. After gaining independence in 1975, the country faced renewed civil war between the Marxist FRELIMO government and the Rhodesian- and, later, South African-backed rebels, the Mozambique National Resistance (RENAMO). The war ended in 1992 with the signing of the General Peace Agreement. There then followed a peace process overseen by the UN Operation in Mozambique, which remained in force until the country's first democratic elections, in 1994.

During these civil wars, millions of military firearms and light weapons were supplied to both the government and opposition forces. These weapons became diffused throughout the country (either deliberately or because of theft, sale or loss). Since the end of the civil war in 1992, concerted efforts have been made to locate and destroy weapon caches by the government of Mozambique and NGOs, which have been assisted by international organisations and neighbouring states. Nevertheless, a significant number of arms caches remain in Mozambique. These cached weapons, many of which were hidden by former combatants, are a significant potential source of illicit arms in Mozambique and neighbouring countries.

One legacy of the many decades of conflict is Mozambique's lack of economic development. It has qualified for assistance from the International Monetary Fund's Heavily Indebted Poor Countries initiative. In 2011 Mozambique's estimated GDP per capita was US\$975 and life expectancy at birth was just 50 years.<sup>1</sup>

Mozambique has very long coastal and land borders. The total length of its frontiers is 4 571 km; these are shared with Malawi, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Mozambique has a coastline of 2 470 km – one of the longest in Africa. Adding to this vulnerability, to the north-west of Mozambique lies the war-torn Great Lakes region of Central Africa, while South Africa, to the south, suffers from high levels of armed crime, and Zimbabwe has political instability. There are therefore many factors that may stimulate demand for illicit weapons in Mozambique's near and more distant

neighbours. Unfortunately, policing such lengthy borders and coastline is a very difficult task for Mozambique's law-enforcement authorities.

In addition to facing risks from arms trafficking, Mozambique has also been identified as a transit point for south Asian cannabis and heroin. Although there are risks that it could be used as a centre for money laundering, 'the lack of a well-developed financial infrastructure limits the country's utility as a money-laundering centre'.<sup>2</sup>

## **Trafficking in small arms and light weapons**

### **Main sources of illicit arms in Mozambique**

The major source of illicit weapons in Mozambique is the stockpiles of weapons established by FRELIMO and RENAMO during the decades of fighting (first by FRELIMO against the Portuguese colonial forces and later during the civil war). During the civil war of 1975 to 1992, an estimated 1.5 million small arms were distributed to civilians by both FRELIMO and RENAMO.<sup>3</sup> Accurate records of these distributed weapons, however, were not kept.

Since 1992, hundreds of thousands of firearms have been collected by the Mozambican government and NGOs (particularly by a disarmament project known as the TAE (Arms into Hoes) campaign, run by the Mozambique Council of Christian Churches). The extent of the arms caches is also indicated by the record of Operation Rachel, a joint project between Mozambique and South Africa, which between 1995 and 1999 located and destroyed 11 891 firearms, 6 351 anti-personnel mines, 7 015 mortars, over three million rounds of ammunition and many more SALW located in caches in Mozambique.<sup>4</sup>

There are two forms of arms caches in Mozambique. The first category is large-scale caches that were hidden by RENAMO before the end of the civil war as a contingency in case the peace process broke down. Secondly, informants also stated that numerous caches containing small numbers of weapons were established. These are hidden and their whereabouts known to only certain individual combatants. In both cases the diffusion risk comes from people who see the weapons stored in the caches as profitable commodities and sell them illegally.

Informants also said that during the struggle against the apartheid government in South Africa the ANC established arms caches in Mozambican territory. The people who know the location of these caches may also be tempted to sell the arms for profit.

Military-style weapons were diffused throughout Mozambique during the decades of warfare through two mechanisms. Military weapons were deliberately distributed to civilians during the conflict, so that they could use them to defend their homes and villages. One informant said in the course of this study that during the war he had supervised the dispersal of 5 000 firearms to civilians. According to this informant, these weapons had hitherto not yet been collected. It was also stated that deserters took their weapons with them when they left their military units and camps, and then distributed them among the general population.

A survey by Peters et al<sup>5</sup> notes that there is the potential for weapons legally purchased by civilians in Mozambique from the country's two authorised gun dealers (one in Maputo and one in Beira) to be diverted to illicit markets: 'The Maputo shop reported selling 943 firearms since opening in 2001, mostly to private security companies.'<sup>6</sup> Concerning the private security industry, Peters et al note that one company estimated that it lost 20 firearms each year, and that employees may illicitly loan more firearms to criminals.<sup>7</sup>

In addition, there is illicit craft production of firearms in Mozambique. Peters et al note that 1 173 craft weapons were destroyed in Inhambane Province between 2002 and 2005, but only 45 rounds of 'home-made' ammunition were destroyed.<sup>8</sup> It is therefore likely that craft-produced firearms use industrially produced ammunition.

The seizure of so many craft-produced weapons (equivalent to more than six years of sales inventory of one of the country's two gun dealers) strongly suggests that the impression of Mozambique being flooded with weapons cached during the civil war is wrong. There may well be millions of arms in Mozambique but, as noted above, informants explained that these were carefully hidden and their location known only to ex-combatants and a limited number of civilian community members. Weapons hidden in caches may come to pose a very serious potential problem, but as long as they remain hidden they are not being trafficked or used in crimes.

### **Arms trafficked into and out of Mozambique**

Informants said that Mozambique's neighbouring states of South Africa, Malawi, Tanzania and Zimbabwe were the main destinations for arms trafficked out of Mozambique. Zimbabwe is the most concerning, as, according to informants, weapons were being purchased by members of the opposition to the Mugabe government in anticipation of civil conflict or perhaps a breakdown of the governing authority. It was not possible to verify these allegations.

Several informants stated that they feared that Mozambique could be used as an arms-trafficking corridor because it has large ports that serve the landlocked countries to the west. These ports are key transit points for goods going to and from Zimbabwe, Zambia, Malawi and other countries. Mozambique may therefore be perceived as a strategic location for traffickers wishing to offload arms to be transported to other countries in southern Africa.

Informants interviewed during this research noted that weapons were also being illicitly transported into Mozambique. At first, this may seem to be unlikely, given the large quantities of arms already present in the country. Nevertheless, the phenomenon can be explained by the demand for firearms coming from urban criminal gangs. Leão<sup>9</sup> documents a general feeling that violence is more prevalent in the capital city (though these opinions may well be unreliable), and that there are two types of armed criminal activities – organised gangs and petty crime motivated by poverty. Criminal groups require different types of firearms from those commonly found in weapon caches in Mozambique. Urban criminals, in particular, have most use for handguns and find much less utility in assault rifles and light weapons, found in the wartime caches.

Informants also expressed concern that firearms of Chinese origin are being trafficked into Mozambique.

Another factor that may corroborate the notion that weapons are said to be trafficked into Mozambique is that the wartime caches are located in Mozambique's rural areas. Informants pointed out that it was easier for some criminal organisations to obtain firearms from South Africa than from certain rural parts of Mozambique, and it should be noted that Maputo, the capital, is just a few hours' drive from the South African border. In addition, informants also noted that people engaged in other forms of illicit trafficking (such as in stolen vehicles) possess firearms for personal protection.

### **Circulation of arms inside Mozambique**

Weapons originating in the rural areas and from neighbouring countries circulate in Mozambique's cities. The civil war arms caches are in the rural areas, so weapons from former civil war stocks found in the cities are likely to have been trafficked internally.

Informants also said that there was theft from stockpiles of police firearms. Police stations are targeted by criminals looking to steal the weapons held there.

A case in point occurred in 2009 when 16 policemen were suspended for several offences, including 'hiring out their weapons'.<sup>10</sup> Peters et al<sup>11</sup> state that private security companies believed that their employees might rent out their professional-use firearms. They note that although there were no reported 'losses of weapons from military armouries ... During a visit to a provincial police station, it was evident that the police lack the capacity to securely store seized and recovered weapons.' The armed forces have also been involved in diversion of weapons. In November 2012 it was reported that three members of the Mozambican Armed Forces had been arrested for stealing firearms and selling them.<sup>12</sup>

### **National legislation**

As of 2012, arms transfers involving Mozambique are legislated for primarily by the 2007 Arms and Ammunition Act.<sup>13</sup> The legislation was enacted following a review of national legislation that was initiated in June 2006 under the auspices of the COPRECAL (Comissão Interministerial para a Prevenção, Combate e Erradicação do Tráfico Ilícito de Armas Ligeiras e de Pequeno Porte – the Interministerial Commission for the Prevention, Combating and Eradication of Illicit Trafficking of Small Arms and Light Weapons) to bring it into conformity with UN standards.<sup>14</sup> COPRECAL includes the Ministries of Interior, Defence, Justice, Foreign Affairs, and representatives of the armed forces, customs and migration.<sup>15</sup>

The legislation contains several provisions covering the trade in arms. It provides that individuals or organisations can apply for authorisation from the Ministry of Industry and Trade and the police for the production, assembly, repair, import and export of weapons and ammunition.<sup>16</sup> Specifically, Article 47(1) states that 'a licence to import, export, re-import, re-export and transit of SALW, ammunitions and other related materials must be granted by the National Commissioner of Police'.<sup>17</sup> Authorisation requests must include



identity details of the licence applicant, his or her location and the type of activity. After consulting relevant sources, such as the police registers, the law stipulates that a licence is only granted after an inspection verifying the security of the applicant's premises, and his capacity to fulfil obligations and conditions required by the licence. In practice, the official position is that Mozambique does not export arms.<sup>18</sup>

The law specifies the procedures needed to import, export, re-import and re-export arms. Authorisation for these movements is granted by the National Commander of Police, and the customs service enforces the regulations. Individuals are allowed to import or export up to three firearms and 500 rounds of ammunition, which are held as personal possessions – for example, guns used for hunting or recreation.

Article 33 states that firearm dealers in Mozambique must be licensed by the Ministry of Industry and Trade, have secure storage facilities and keep accurate records. They are allowed to operate in the provincial capitals, including Maputo. Purchase of ammunition requires special permission; stocks are limited and subject to record-keeping requirements (Articles 36 and 39 of the Act).

### **Other relevant legislation**

Criminal sanctions associated with illegal possession, transfer and use of firearms are defined in Act no. 10/1987, which imposes penalties of between six months and 12 years of imprisonment.<sup>19</sup> Other relevant laws are:<sup>20</sup>

- Law 33551 of 21 February 1944, which covers customs and imports
- Law 30/1999 covering customs tariffs
- Law 3/1997 on illicit drug trafficking
- The Penal Code, as amended by Statute 10/1987, which deals with firearms.

Of particular relevance to brokering activities are Act no. 7/2002 (money laundering) and Act no. 19/1991, which concerns crimes against state security.

Act no. 19/1991 covers arms transfers if they are associated with activities that threaten state security, such as spying, piracy, mercenarism, terrorism, sabotage, or an attack against the head of state or any other foreign public entity. Article 13 of the Act, which covers terrorism, contains explicit provisions against the 'import, manufacture, stockpiling, purchase, sale or disposal, use and bearing' of explosives or firearms if they are knowingly to be used in a crime against state security. Punishments include prison sentences of 12 to 16 years.

Article 12 covers mercenarism and contains sections covering 'whoever voluntarily recruits, organises, finances, provides, equips, trains and transports' mercenaries (defined as people who 'violently attempt to topple down, a legally constituted foreign government').<sup>21</sup>

These two articles could therefore be used to cover certain activities carried out by arms brokers if they are engaged in aiding acts of terrorism or equipping mercenaries. Although



these provisions clearly strengthen Mozambique's laws in this area, they are nonetheless an insufficient substitute for specific brokering legislation for several reasons. First, they do not explicitly cover the activity of arranging arms transfers. Secondly, proving involvement in terrorist activities or assisting mercenaries in another country would be difficult. Lastly, many types of illicit arms transfers are not explicitly covered by these two articles – such as arranging to supply criminal organisations. Taking these shortcomings into account, it would be more effective to promulgate new legislation that specifically regulates brokering and prosecutes people who engage in such activities without explicit authorisation.

Law no. 7/2002, the Money Laundering Act, concerns controls over financial transfers. The scope of Mozambique's anti-money laundering legislation was defined in Act 3 of 1997, and in addition to covering 'extortion, corruption, embezzlement, black-marketing and tax evasion', the legislation also covers illegitimate financial transfers concerning terrorism and the 'manufacture, import or export [and] trading of arms and explosives'.<sup>22</sup>

Regulations supplementing law no. 7/2002 were approved in 2004, to the effect that the law requires financial institutions to undertake customer due diligence, maintain records and obtain information on large or unusual financial transactions. Suspicious transactions are to be reported to the prosecutor without alerting the object of suspicion.

The Money Laundering Act therefore covers some activities involved in illicit brokering – specifically the financing of arms deals. Although this is a useful piece of legislation, it covers one aspect of illicit brokering, and does not involve a system by which brokers are regulated or licensed.

### **Lack of national laws governing brokering**

To summarise, Mozambique has only basic legislation to regulate the import, export and possession of firearms. It is a positive sign, however, that the legislation was reformed in 2007. Mozambique also has legislation in two areas – crimes against state security and money laundering, which, between them, cover some brokering activities.

Nevertheless, Mozambique does not have specific legislation or regulations concerning arms brokering.<sup>23</sup> This omission makes it vulnerable to exploitation by arms brokers. If illicit brokers start to operate in Mozambique, or its citizens illicitly broker weapons elsewhere, then Mozambique would lack the legislative tools to control their activities or bring them to justice. The omission of explicit brokering controls in the 2007 legislation is a lost opportunity.

### **Mozambique's international commitments concerning brokering**

Mozambique ratified the SADC Protocol with Resolution 37/2002, which tasked the Ministry of the Interior and the Ministry of Foreign Affairs with the implementation of the protocol. Mozambique is also committed to implementing the UNPoA.

In addition, Mozambique is a party to the legally binding Firearms Protocol of the UNTOC. Mozambique signed the protocol in 2001 and ratified it on 26 September 2006. This protocol includes numerous measures aimed at preventing illicit trafficking of firearms and

contains an additional legally binding commitment concerning arms brokering. Article 15 states that:

1. States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:
  - (a) Requiring registration of brokers operating within their territory
  - (b) Requiring licensing or authorization of brokering or
  - (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction
2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.

Developing legislation to regulate brokering by Mozambique would therefore represent a fulfilment of its commitments under the UNTOC.

## **Arms procurement**

Informants stated that the government of Mozambique undertook all procurement of military equipment without the use of brokers. There are no known commercial sales agents for military equipment based in Mozambique. Informants also said that individuals intending to purchase firearms do so directly from dealers, and did not generally use brokers.

Private security companies are not authorised to obtain licences for weapons on behalf of their employees. Instead, employees of private security companies have to apply for a licence on an individual basis. There is no authorised industrial production of arms in Mozambique.

## **Mozambique's capacity to implement legislation**

The *Mozambique National Report on the UNPoA* (2012)<sup>24</sup> states that it 'requires assistance in order to develop laws, regulations and procedures governing brokering of SALW'. Several informants echoed this, mentioning Mozambique's need to develop institutional capacity so that it can fully implement brokering legislation. There would be a need for technical assistance on the nature of the brokering problem, on global standards and best practices, and on the development of legislation. In particular, Mozambique's law-enforcement agencies may have the competence when it comes to apprehending smugglers of illicit weapons, but they would need additional training to apprehend violators of brokering legislation.

Law-enforcement agencies lack resources, and particularly timely, accurate data and intelligence on small-arms challenges in the region, especially illicit trafficking of weapons. These problems are compounded by Mozambique's extensive coastline and land borders, which leave it vulnerable to illicit flows of arms.

Similarly, informants lamented the fact that customs authority personnel do not have sufficient capacity to properly monitor movements of goods in and out of the country. In particular, they stated that there was only one X-ray scanner, which is in Maputo, so other ports have to rely on manual searches.

### **Additional assistance**

Even the best legislation will be ineffective if regulatory and law-enforcement agencies lack the capacity to enforce it. Assistance from governments, NGOs and international organisations would help Mozambique to develop the following areas, which were identified as issues by informants:

- Police intelligence gathering
- Basic data and indicators on the extent of the small-arms problem
- Analysis of arms being trafficked in and out of the country, and internally
- Improved resources and training for customs personnel

In addition, NGOs need assistance when working with ex-combatants to promote the safe surrender of firearms that diffused in the community and weaponry remaining in caches.

### **Potential for illicit brokering in Mozambique**

Mozambique is vulnerable to two forms of illicit brokering. The most serious concerns small-scale movements of illicit weapons. In 2002 Albino Forquilha, the national director of the Mozambique Christian Council's Peace, Justice and Reconciliation Department, estimated that there were between 6 and 10 million SALW in Mozambique beyond state control.<sup>25</sup> The inaccuracy of this estimate highlights the greatest challenge – the lack of accurate information on the true scale of the extent of illicit arms caches in the country. Most of the weapons described by Forquilha have, hitherto, remained in their caches. However, we cannot rely upon them remaining there for eternity.

Informants said that criminals involved in trafficking arms employ 'fixers'. Although Mozambique has not yet been implicated in a high-profile brokering scandal, it is likely that these 'fixers' broker small-scale transactions between criminal organisations (both inside and outside Mozambique) and parties that are engaged in trafficking weapons. In particular, the activity of these brokers is likely to be focused on supplying gangs in neighbouring countries – especially South Africa – with arms obtained from Mozambique's civil-war caches, as well as supplying criminals in Mozambique's cities with handguns, primarily via South Africa.

The second vulnerability is that brokers could use Mozambique's ports and links to landlocked countries in southern Africa to facilitate illicit movements of weapons through Mozambique.

In both cases, Mozambique lacks both the legal tools and law-enforcement capacity to actively control brokering activities and prosecute brokers who operate illegally. The lack

of explicit reference to arms brokering or transiting in its 2007 legislation is a missed opportunity. If it is to fulfil its obligations under the SADC Protocol and the UNPoA, Mozambique needs to expedite the development of specific regulations to control arms brokering.

And, just as importantly, the country will have to improve its law-enforcement and border-control capacity if it is to adequately prevent, or at least reduce, illicit movements of arms. Such a task will clearly require international financial and technical assistance. Without this development, any new legislation will be very difficult to implement or enforce.

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## Chapter 8: Namibia

### **Historical overview**

From 1884 until 1915, Namibia was administered by Germany as a colonial protectorate. In 1915, during World War I, under the League of Nations territory framework, South Africa was mandated to administer the territory and subsequently occupied and took responsibility for governing Namibia, which was referred to as South West Africa at the time. Namibia was granted independence from South Africa in 1990 by means of a negotiated agreement following close to four decades of armed conflict between the South African security forces and the South West Africa People's Organisation. Twenty years after independence, Namibia became a democracy in the legal and political sense.

Arms, and particularly SALW, played a central role in Namibia's colonial history, and have been one of the fundamental aspects of the country's culture. The use of firearms, particularly those used in hunting and sports shooting, is well entrenched in Namibia, where hunting is a source of foreign income. Civilians also seek to acquire firearms for their personal protection. Between 1998 and 2002, a re-registration of all firearms in Namibia was undertaken. During this exercise 90 038 firearms were licensed to the Namibian Police Force and 86 571 were licensed to civilians. From the beginning of 2003 to the end of 2006, 27 166 firearms were licensed.<sup>1</sup> Most active members of the Namibian Defence Force, police and paramilitary are armed. There are also a number of private security businesses that offer an armed-response service.

No arms, including SALW, or ammunition are currently manufactured in Namibia, with the exception of de-mining equipment and vehicles. Consequently, all legal arms and ammunition, including major conventional weaponry for the Namibian Defence Force, are imported. According to both the Namibian Arms and Ammunition Dealers Association and the Namibian Police Force, as of September 2007 there were 30 registered or licensed firearm dealers in Namibia, most of which were based in urban areas.<sup>2</sup> According to the Namibian Arms and Ammunition Dealers Association, five of these dealers imported their stock directly from other countries. Rosenthal Guns, a company that trades as both a dealer and wholesaler, was the largest civilian importer of small arms and small-arms ammunition in Namibia.

## Arms-control architecture and policy environment

Namibia is a signatory to the SADC Protocol, the UNPoA and the Bamako Declaration.

The high-level government National Management Committee on Small Arms, Light Weapons and Explosives determines the appropriate SALW control strategy for Namibia, but is primarily guided by the Namibian Action Plan (for arms control and disarmament) of 2005. The National Management Committee comprises the permanent secretaries of the departments of Safety and Security (chair); Office of the President; Foreign Affairs; National Planning Commission; Home Affairs and Immigration; Defence; Finance; Environment and Tourism; Agriculture, Water and Forestry; Justice and Attorney-General; as well as the Director of the Central Intelligence Agency.

The Namibian Action Plan has its origins in Namibia's First National Conference on Small Arms and Light Weapons, which took place in October 2002.<sup>3</sup> The conference was attended by 120 participants, including government officials, parliamentarians and civil-society representatives. The objectives of the conference were to raise awareness of SALW issues among civil society, and to raise the international profile of Namibia's progress in implementing the UNPoA, the Bamako Declaration and the SADC Protocol.

The National Management Committee also directs the National Focal Point on Small Arms and Light Weapons, which comprises representatives from the Ministry of Safety and Security, Namibian Defence Force, Ministry of Finance, Ministry of Foreign Affairs, Office of the President, Ministry of Environment and Tourism, Ministry of Agriculture, Water and Forestry, Ministry of Justice and Auditor-General, Ministry of Home Affairs and Immigration, as well as academia and civil society.

The National Focal Point has established regional focal points in each of Namibia's 13 regions, and is responsible for implementing the Namibian Action Plan. The National Focal Point has a secretariat based in the Ministry of Safety and Security.<sup>4</sup> The terms of reference and standard working procedures for the National Focal Point were finalised in April 2007. However, insufficient resources have hampered the comprehensive implementation of the Action Plan.<sup>5</sup>

Until recently, government authorities have not perceived arms brokering and related activities in Namibia to be a problem, so they have not prioritised the regulation and control of arms brokering and arms-brokering activities, even in the envisaged amendments of the Arms and Ammunition Act 7 of 1996.<sup>6</sup> In fact, there is no mention of arms brokering in the Action Plan. However, in a 2007 report compiled by the secretariat of the National Focal Point, the Namibian government envisaged the establishment of a Firearms Crime Investigation Unit, which would, among other things, seek to 'identify the role players in the illegal firearms trade, such as syndicates, gangs or groups gathering or stockpiling firearms for illegal purposes'.<sup>7</sup>

In 2010, following considerable international debate on arms brokering, the Namibian government established a task team to formulate recommendations on the regulation of arms brokers and arms-brokering activities within the borders of Namibia, and

on arms-brokering activities among Namibian citizens and permanent residents in other countries. This task team's aim was to review and assess the relevance and effectiveness of Namibia's existing measures, policies and legislation to regulate arms brokers and arms-brokering activities; assess the relevance for Namibia of international best practice on the regulation of arms brokers and arms-brokering activities; and formulate recommendations for the government on enhancing the regulation of arms brokers and arms-brokering activities.<sup>8</sup>

## **Legislation on regulation, control and combating of arms-brokering activities**

### **Arms-control legislation**

In Namibia two pieces of legislation contain provisions that have the potential to regulate arms brokers and arms-brokering activities: the Arms and Ammunition Act 7 of 1996 and the Defence Act 1 of 2002.

The Arms and Ammunition Act regulates the manufacture, trade, transfer, use and possession of SALW. The Namibian government is currently in the process of amending Namibia's firearm-control legislation to bring it into line with the SADC Protocol and to strengthen domestic firearm controls.<sup>9</sup> The Arms and Ammunition Act makes no specific provision for the regulation of arms-brokering activities.<sup>10</sup> However, it does include a number of relevant aspects, which are outlined below.

In terms of Chapter 3 of the Act, individuals or organisations that seek to trade in arms and ammunition in Namibia require a dealer's licence, which is issued by the Namibian Police Force and is valid for three years.<sup>11</sup> Dealers are required to establish and maintain registers on all arms and ammunition acquired, disposed of, transferred and sold.<sup>12</sup> Most dealers maintain manual registers. However, Rosenthal Guns, which was the oldest (the firm was established in 1908) and largest arms and ammunition wholesaler in Namibia, maintains electronic records.<sup>13</sup> Dealers are also required to submit monthly returns to the Firearm Registry of the Namibian Police Force.

The Namibian Police Force uses dealers' firearm sales records as a source of information when investigating firearm-related crime. For example, some arms and ammunition dealers claimed that the Firearm Registry would contact them on a regular basis to enquire whether certain firearms (if the registration numbers were present) had been sold by those dealers.<sup>14</sup>

Only licensed arms and ammunition dealers, and appropriate government agencies, such as the Namibian Defence Force, are permitted to import and export commercial consignments of arms and ammunition, and an import permit, issued by Namibian Police Force, is mandatory. Arms and ammunition dealers, and those state agencies that import arms and ammunition are required to provide the Namibian Police Force with an inventory of the goods that they seek to import.

Holders of Namibian firearm licences may export specified personal firearms and ammunition. However, such exports require an export permit issued by the Namibian

Police Force, and are dependent on the policy and legislation of the state to which the firearms and ammunition are being exported. Non-Namibian citizens may purchase firearms and ammunition in Namibia, but require a letter of permission from the appropriate authority in their country of residence.

Only firearms that are used for hunting and sport shooting are permitted for import, namely bolt-action rifles of all calibres, doubles of all calibres, shotguns (pump action and semi-automatic), and semi-automatic rifles with magazine capacities not exceeding five rounds. Importing custom or unconventional firearms requires the permission of the Namibian Police Force. Importing pistols, revolvers or automatic rifles (and the ammunition for these types of firearms) is not permitted. Such weapons are required to be surrendered at the legal port of entry for safekeeping until the departure of the licence holder from Namibia.<sup>15</sup>

### **Recruitment of personnel for employment in situations of armed conflict**

Related to the issue of regulating arms-brokering activities is the recruitment of Namibians to serve in private military/security or 'mercenary' organisations in foreign countries. The Namibian Constitution (Article 4(8)(b)) specifies that Namibians are not permitted to serve in the military or security forces of other countries without the written permission of the Namibian government.

In addition, the Defence Act criminalises the involvement of Namibians in the military, reserve or any auxiliary force of any country without the written permission of the minister of defence as an offence punishable with a fine, prison sentence or both.

### **Other legislation**

There are three other key pieces of legislation that have the potential to restrict both domestic and international arms-brokering activities in Namibia: the Customs and Excise Act 20 of 1998, the Extradition Act 11 of 1996 and the International Co-operation in Criminal Matters Act 9 of 2000.

In terms of the Customs and Excise Act, all individuals entering Namibia are required to declare all goods in their possession that were purchased, acquired, remodelled or repaired outside Namibia, as well as goods that are prohibited, restricted or controlled under any law. All goods for export must also be declared. The customs and excise controller has the power to detain persons suspected of violating the provisions of the Act. Violation of the Act can result in the forfeiture of the goods in question and/or a fine and/or imprisonment. Customs officials are authorised to open and examine containers or packages in the absence of the importer or exporter.<sup>16</sup>

The Extradition Act legislates for the extradition of individuals accused of crimes committed in certain countries, mainly those with which Namibia has an extradition agreement. In addition, it makes provision for the prosecution and punishment of the extraditable offence in Namibia in accordance with the laws of Namibia. A key aspect of the Act, as regards the combating of illicit brokering activities, is the issuing of provisional warrants of arrest on grounds of urgency. This is particularly important



with respect to the enforcement of red-letter notices issued by the International Police Commission (Interpol).<sup>17</sup>

The International Co-operation in Criminal Matters Act provides for the following between Namibia and other states: mutual provision of evidence; mutual execution of sentences and compensatory orders; and confiscation and transfer of the proceeds of crime. All requests by Namibia to other states are undertaken by means of letters of request.<sup>18</sup>

## **Arms brokering and related activities in Namibia**

The brokering of legitimate arms-related transactions has taken place in Namibia, as well as outside of Namibian territory by Namibian residents and citizens. Much of the brokering entails the supply of arms and ammunition to the Namibian security forces.

A number of Namibian citizens were also involved in the brokering of a multi-million-dollar deal between British Aerospace (BAE)/Saab and the South African government in the mid to late 1990s. There appears to have been no recent evidence of significant cases of illegal brokering.

### **Legal brokering**

According to the National Focal Point, the Namibian Police Force acquires most of its firearms and ammunition from dealers. All police arms and ammunition contracts are put out to tender and, in principle, only licensed dealers (in Namibia) are eligible to submit tender documents.<sup>19</sup> In this regard, dealers that are successful in securing a police contract essentially act as brokers. The Ministry of Defence normally acquires its arms, ammunition and military equipment directly from manufacturers, and does not make use of brokers.<sup>20</sup> Arms and ammunition dealers import most of their stock directly from overseas manufacturers, mainly in Europe and the US.

Windhoek Maschinenfabrik (Pty) Ltd,<sup>21</sup> the main defence equipment manufacturer of de-mining vehicles in Namibia, does not generally make use of brokers, as it prefers to import its component parts and raw materials directly from suppliers. The company sells its products directly to government, the UN and de-mining organisations.<sup>22</sup>

### **Extraterritorial arms brokering: BAE and the South African arms deal**

In 1999 BAE Systems and Saab were awarded a tender to supply the South African Air Force with military aircraft, which was part of a larger South African arms-procurement process. Following numerous allegations of corruption, fraud, money laundering and racketeering against individuals and entities associated with this transaction, criminal investigations were initiated by government agencies in Liechtenstein, South Africa and the UK, among others. These investigations revealed the existence of a group of arms brokers who had allegedly been clandestinely contracted by BAE to lobby the South African government on BAE's behalf.<sup>23</sup> To date, the various investigations have named two Namibian nationals as having been part of this group of covert brokers.

Investigators said that there were reasonable grounds to allege that these brokers paid bribes and engaged in other corrupt activities to obtain significant advantage over their

competitors in the tendering process. According to South African investigators, the BAE/Saab proposal 'did not offer the best value for money, when measured against a pre-determined system for assessing technical capability and cost', and investigators said that the decision to award the tender to BAE/Saab was primarily the result of a deliberate intervention by the South African minister of defence at the time.<sup>24</sup>

An investigation by the UK's Serious Fraud Office (SFO) into the global operations of BAE revealed that BAE made use of an international network of both overt and covert 'advisors' for marketing and/or brokering purposes. Only the overt advisors were publicly declared by BAE. Up until the early 1990s, both categories of advisors were paid by the British arms manufacturer directly, but just before the South African deal this arrangement was replaced by a system whereby offshore intermediaries or front companies (with no open links with BAE) were constructed to remunerate covert advisors.<sup>25</sup>

According to BAE, these measures were allegedly undertaken 'to ensure commercial confidentiality and to avoid intrusion by media and anti-arms campaigners'. However, the SFO was convinced that this 'opaque' arrangement existed 'to ensure that corrupt payments could be made, and that it would be difficult for law enforcement agencies to penetrate the system.'<sup>26</sup>

The SFO's view was reinforced in February 2010, following almost two decades of allegations of corruption in BAE's foreign operations, when BAE admitted guilt on the charges of 'false accounting and making misleading statements', in concurrent settlement arrangements with the SFO and the US Department of Justice. These admissions related to deals in Saudi Arabia, central Europe and Tanzania. BAE consequently agreed to pay penalties of close to GBP300 million.<sup>27</sup>

Red Diamond Trading Ltd, a company registered in the British Virgin Islands in 1998, was a key BAE front company used in brokering arms transactions, and played a central role in the South African deal. The Allgemeines Treuhandunternehmen (ATU) General Trust, a subsidiary of ATU in Liechtenstein, held Red Diamond's shares, and a board of directors nominated by BAE administered the trust. Guido Meier (an ATU employee responsible for overseeing the ATU General Trust) testified to Liechtenstein investigators that Red Diamond's principal purpose was to administer certain consultancy contracts on behalf of BAE, without BAE being publicly linked to the contracts.<sup>28</sup>

In terms of the BAE/Saab transaction with the South African government, the SFO indicated that BAE-related UK bank statements reflected total financial transfers in excess of GBP115 million to both overt and covert advisors to facilitate the successful conclusion of the deal. GBP103 million flowed from Red Diamond to covert advisors, with Kayswell Services Ltd being named as the largest beneficiary of these funds, receiving some GBP37 million.<sup>29</sup>

Kayswell Services was established in the British Virgin Isles in 1994. It was 60% owned by John Bredenkamp (a Zimbabwean national); the remaining 40% ownership share was evenly divided between Julien Pelissier (a UK resident), Trevor Wilmans (a Namibian national), Walter Hailwax (a Namibian national) and Rick Passaportis (a Zimbabwean

national). Kayswell Services negotiated an agreement with BAE in 1994, but this was substituted with an agreement with Red Diamond in 1999.<sup>30</sup>

The SFO investigation into Kayswell Services also revealed the existence of two additional entities: Jasper Consulting<sup>31</sup> (established in Mauritius) and Aviation Consulting Services Worldwide SA. Both entities appeared to have the same shareholding and ownership arrangements as Kayswell Services.<sup>32</sup>

Bank records that were seized by the Commercial Crimes Unit of the Regional Police of Liechtenstein reflected significant payments between Red Diamond, Kayswell Services and the owners of these companies between December 2000 and September 2005. Kayswell Services' bank statements revealed a number of significant payments made during the same period (see Table 1):<sup>33</sup>

**Table 1: Bank Statements of Kayswell Services**

John Bredenkamp	GBP2 656 683.17
Walter Hailwax	GBP375 890.30
Rick Passaportis	GBP313 487.10
Julien Pelissier	GBP469 933.23
Trevor Wilmans	GBP454 420.35
Aviation Consulting Services Worldwide SA	GBP787 994.49

Source: Karla Susanne Saller, affidavit in the High Court of South Africa (North Gauteng High Court, Pretoria), in the application between the National Director of Public Prosecutions (applicant) and Fana Hlongwane (respondent) for a preservation in terms of Section 38(1) of the Prevention of Organised Crime Act 121 of 1998 in respect of the funds in bank account number 30.450.767.7 held at Banque Pasche (Liechtenstein), 2 March 2010.

The primary focus of all three investigations related to alleged corrupt and/or criminal actions by BAE, its employees and associated advisors in their efforts to secure the tender to supply military aircraft to the South African government. In the case of Kayswell Services (and related entities), investigations revealed allegations of bribery with a view to influencing South African defence officials, as well as the suspicious transfer of funds to Fana Hlongwane, a special advisor to the South African minister of defence at the time of the aircraft tendering process. Hlongwane has been a focal point of all three criminal investigations.<sup>34</sup>

According to testimony given by Allan McDonald (one of the main BAE employees relating to the BAE tendering campaign in South Africa) to SFO investigators, it was alleged that the individuals directly involved with Kayswell Services (and related entities) had suggested to BAE that consideration be given to 'financially incentivising' the key South African decision makers in favour of the BAE tender. It was also stated that these individuals had boasted that they had direct access to, and the ability to influence, a prominent procurement official in the South African Department of Defence.

McDonald claimed that the actions of Kayswell Services did not influence the South African government's decision to select BAE/Saab as the preferred bidder. This view,

however, was not shared by the SFO.<sup>35</sup> Investigations by the Liechtenstein authorities revealed that there was a transfer of US\$500 000 in February 2001 from Aviation Consulting Services Worldwide SA to Shun Hing, a Hong Kong company with firm links to Fana Hlongwane. In addition, the investigation by the South African authorities revealed that there was a transfer of over US\$1 million from Jasper Consulting to Hlongwane Consulting Pty (Ltd), a business owned by Hlongwane.<sup>36</sup>

## Illegal brokering

There is no evidence to suggest that significant levels of illegal arms brokering (which is the transfer of arms and ammunition without the necessary permits) have been taking place in Namibia. However, the Namibian Police Force have indicated on a number of occasions that they lacked the capacity and resources to comprehensively patrol their borders with Angola, Botswana and South Africa.<sup>37</sup>

Namibians have previously been recruited for military/security or 'mercenary' activities in foreign countries. For example, in March 2004, 28 Namibians were arrested in Zimbabwe on suspicion of arms trafficking and being part of a *coup d'état* plot to overthrow the government of Equatorial Guinea.<sup>38</sup> Most of those arrested had served in the South African security forces, or its proxies, during the war for Namibia's independence.<sup>39</sup> Before this incident, there had been a series of allegations by civil-society and media organisations that Namibians had been recruited to military-related services in the Angolan Civil War.<sup>40</sup>

However, one example indicates that the Namibian government has the necessary political will to take action against those organisations that seek to recruit Namibians for 'mercenary'-related activities. In October 2007 the Namibian government terminated the operations of the Namibian branch of US-based Special Operations Consulting-Security Management Group (SOC-SMG), and deported two US citizens who had been managing the organisation. SOC-SMG was accused by the Namibian authorities of recruiting Namibians, mainly ex-combatants, for security-related contracts in Afghanistan and Iraq.<sup>41</sup> It has been alleged that SOC-SMG was seeking to recruit some 3 000 Namibians.<sup>42</sup>

## Potential for illegal brokering

Namibia's current firearms control legislation allows for citizens of SADC states (Namibian non-residents) to purchase firearms in Namibia, and export them to their country of residence (subject to relevant national firearm controls). This is particularly rife among Angolan citizens. For such a transaction to legally take place, the non-citizen in question requires an official export permit from Namibian Police Force.

However, interviews with the Namibian police, and arms and ammunition dealers revealed that there is typically no communication between the police and the authorities of the state where the individual is seeking to export the arms/ammunition, so it is difficult to ascertain whether such firearm(s) and ammunition physically leave Namibian soil. This state of affairs has the potential to allow for certain individuals to stockpile and illegally trade in firearms and ammunition in Namibia.

## Conclusion

By all accounts, the government of Namibia continues to be committed to regulating arms brokers and brokering activities. However, as revealed in its 2012 report on its national implementation of the UNPoA, updated SALW legislation, which includes brokering controls, is still to be enacted. This delay may be linked to internal dynamics within the Namibian Police Force and the legislature, but may also be due to lack of domestic expertise on arms-brokering regulations. In fact, in this 2012 report the Namibian government requests international assistance on brokering controls.<sup>43</sup> Consequently, technical support from states with specialist knowledge in the area of arms brokering may be the catalyst for accelerating reforms of arms control in Namibia.

## Notes

- 1 Brigitte Weidlich, Government wants gun ban, *The Namibian*, 27 September 2007, <http://allafrica.com/stories/200709270504.html> (accessed 17 July 2013).
- 2 Jürgen Cronjé (chairman, Namibian Arms and Ammunition Dealers Association), personal communication, 26 September 2007; Ignatius Nangombe (head of the Namibia Firearms Registry, Ministry of Safety and Security), personal communication, 26 September 2007.
- 3 Republic of Namibia, Namibian National Action Plan 2005, Pretoria: SaferAfrica and Saferworld, 2005, 5.
- 4 Republic of Namibia, Namibian National Action Plan 2005, 9.
- 5 Republic of Namibia, Namibian National Action Plan on Small Arms and Light Weapons Report 2002–2007, Windhoek: Namibian National Focal Point on Small Arms and Light Weapons Secretariat, 2007; Moses Shaama (head of Namibian National Focal Point on Small Arms and Light Weapons Sub Division, Ministry of Safety and Security), personal communication, 26 September 2007.
- 6 Ignatius Nangombe, personal communication; Moses Shaama, personal communication, 26 September 2007.
- 7 Republic of Namibia, Namibian National Action Plan on Small Arms and Light Weapons Report 2002–2007, 15.
- 8 Namibian National Focal Point on Small Arms and Light Weapons, Terms of reference for the Namibian National Focal Point on Small Arms and Light Weapons Working Committee on Arms Brokering in the Republic of Namibia, 2010, 10.
- 9 For example, firearm competency testing will be introduced as a prerequisite for civilians to acquiring a firearm licence.
- 10 Ignatius Nangombe, personal communication, 26 September 2007.
- 11 Ignatius Nangombe, personal communication; Moses Shaama, personal communication, 26 September 2007.
- 12 Ignatius Nangombe, personal communication; Jürgen Cronjé, personal communication, 26 September 2007.
- 13 Demonstration of electronic registration system provided to the author by the staff of A Rosenthal on 26 September 2007. The system was designed and established at the initiative and expense of A Rosenthal, who are seeking to sell the system to the Namibian Police Force, and other arms and ammunition dealers.
- 14 Jürgen Cronjé, personal communication; W Kohl (master gunsmith, the Gun Shop), personal communication, 28 September 2007.
- 15 Republic of Namibia, Clarification on policy on bringing firearms into Namibia. Windhoek, Government Printer, n.d.
- 16 Ray H Goba, Legislation and organised crime in Namibia, in Charles Goredema (ed.), *Organised crime in southern Africa: Assessing legislation* (monograph no. 56), Pretoria: ISS, 2001, 81.
- 17 Ibid.
- 18 Ibid.
- 19 Ignatius Nangombe, personal communication; Moses Shaama, personal communication, 26 September 2007.
- 20 Mathias Shiweda (managing director, Windhoek Maschinenfabrik (Pty) Ltd), personal communication, 26 September 2007; James Auala (chief executive officer, August 26 Holding Company (Pty) Ltd), personal communication, 27 September 2007.
- 21 This company is associated with the Namibian Ministry of Defence.
- 22 Mathias Shiweda, personal communication, 26 September 2007; James Auala, personal communication, 27 September 2007.
- 23 Stefaans Brümmer and Sam Sole, How arms 'bribes' were paid, *Mail & Guardian*, 5 December 2008, 2–3.
- 24 William John Downer, founding affidavit in the High Court of South Africa (North Gauteng High

- Court, Pretoria) in the matter between the National Director of Public Prosecutions (applicant) and Fana Hlongwane (respondent) for an *ex parte* order in terms of Section 38(1) of the Prevention of Organised Crime Act 121 of 1998, Cape Town, 2 March 2010.
- 25 Affidavit by Gary Daniel Murphy, principal investigator, Serious Fraud Office (UK), London, 9 October 2008; Court of Justice of the Principality of Liechtenstein, letter to the acting national director, National Prosecuting Authority of South Africa, titled 'International legal assistance in criminal proceeding. Criminal proceedings against Fana Hlongwane et al. on account of suspected money laundering pursuant to Article 165 (1) (2) and (3) of the Liechtenstein Criminal Code (SIGB). Request for information on the subject matter and status of proceedings, and interrogation of Fana Hlongwane', 6 October 2008.
  - 26 Affidavit by Gary Daniel Murphy, principal investigator, Serious Fraud Office (UK), London, 9 October 2008.
  - 27 David Leigh and Rob Evans, BAE admits guilt over corrupt arms deals, *The Guardian*, 6 February 2010, [www.guardian.co.uk/world/2010/feb/05/bae-systems-arms-deal-corruption](http://www.guardian.co.uk/world/2010/feb/05/bae-systems-arms-deal-corruption) (accessed 20 August 2010).
  - 28 Karla Susanne Saller, affidavit in the High Court of South Africa (North Gauteng High Court, Pretoria), in the application between the National Director of Public Prosecutions (applicant) and Fana Hlongwane (respondent) for a preservation in terms of Section 38(1) of the Prevention of Organised Crime Act 121 of 1998 in respect of the funds in bank account number 30.450.767.7 held at Banque Pasche (Liechtenstein), 2 March 2010.
  - 29 Affidavit by Gary Daniel Murphy, principal investigator, Serious Fraud Office (UK), London, 9 October 2008; Stefaans Brümmer and Sam Sole, How arms 'bribes' were paid, *Mail & Guardian*, 5 December 2008, 2–3.
  - 30 BAE dismantled Red Diamond in 2001 due to changes in UK anti-bribery legislation and BAE's commitment to abide by the US Foreign Corrupt Practices Act.
  - 31 During the SFO search of the UK offices of Kayswell Services in October 2006, evidence was found that Jasper was seeking to enter into an agreement with Airbus Industries GIE, a subsidiary of EADS, the French aerospace consortium. It was reported that the agreement would involve consultancy services in Namibia, but it is unclear if a deal was concluded.
  - 32 Stefaans Brümmer and Sam Sole, How arms 'bribes' were paid, *Mail & Guardian*, 5 December 2008, 2–3.
  - 33 Karla Susanne Saller, affidavit in the High Court of South Africa (North Gauteng High Court, Pretoria), in the application between the National Director of Public Prosecutions (applicant) and Fana Hlongwane (respondent) for a preservation in terms of Section 38(1) of the Prevention of Organised Crime Act 121 of 1998 in respect of the funds in bank account number 30.450.767.7 held at Banque Pasche (Liechtenstein), 2 March 2010.
  - 34 Karla Susanne Saller, affidavit in the High Court of South Africa (North Gauteng High Court, Pretoria), in the application between the National Director of Public Prosecutions (applicant) and Fana Hlongwane (respondent) for a preservation in terms of Section 38(1) of the Prevention of Organised Crime Act 121 of 1998 in respect of the funds in bank account number 30.450.767.7 held at Banque Pasche (Liechtenstein), 2 March 2010; Affidavit by Gary Daniel Murphy, principal investigator, Serious Fraud Office (UK), London, 9 October 2008; Court of Justice of the Principality of Liechtenstein, letter to the acting national director, National Prosecuting Authority of South Africa, titled 'International legal assistance in criminal proceeding. Criminal proceedings against Fana Hlongwane et al. on account of suspected money laundering pursuant to Article 165 (1) (2) and (3) of the Liechtenstein Criminal Code (SIGB). Request for information on the subject matter and status of proceedings, and interrogation of Fana Hlongwane', 6 October 2008.
  - 35 Affidavit by Gary Daniel Murphy, principal investigator, Serious Fraud Office (UK), London, 9 October 2008.
  - 36 Karla Susanne Saller, affidavit in the High Court of South Africa (North Gauteng High Court, Pretoria), in the application between the National Director of Public Prosecutions (applicant) and Fana Hlongwane (respondent) for a preservation in terms of Section 38(1) of the Prevention of Organised Crime Act 121 of 1998 in respect of the funds in bank account number 30.450.767.7 held at Banque Pasche (Liechtenstein), 2 March 2010; William John Downer, founding affidavit in the High Court of South Africa (North Gauteng High Court, Pretoria) in the matter between the National Director of Public Prosecutions (applicant) and Fana Hlongwane (respondent) for an *ex parte* order in terms of Section 38(1) of the Prevention of Organised Crime Act 121 of 1998, Cape Town, 2 March 2010.
  - 37 William Brisley, *Brokering: Legislation and enforcement*, in N Stott, S Meek and E Schroeder (eds), *Understanding and regulating arms brokering in southern Africa: Workshop report*, 15–17 March 2004, Johannesburg, 43–48. See also M Boer, Namibia, in Chandré Gould and Guy Lamb (eds), *Hide and seek: Taking account of small arms in southern Africa*, Pretoria: Centre for Conflict Resolution, Gun Free South Africa and Institute for Security Studies, 2004, 115–130; Republic of Namibia, Statement by Major-General TJ M'lukeni, Deputy Inspector-General of operations, Namibian Police Force, head of delegation during the general exchange of views of the United Nations Conference to Review Progress Made in the Implementation of

the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (UNPoA) (2001), New York, 26 June 2006.

- 38 The Namibians were arrested along with 13 South Africans, 24 Angolans, three individuals from the DRC, one Briton and a Zimbabwean.
- 39 Tangeni Amupadhi, Namibian 'mercenaries' named, *The Namibian*, 15 March 2004, <http://allafrica.com/stories/200403150766.html> (accessed 17 July 2013).
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## Chapter 9: South Africa

### Introduction

South Africa is the largest producer, exporter and importer of arms on the African continent. The South African defence industry produces and exports numerous categories of arms, ammunition and military/security equipment. Industry sources estimate that by 2012 the defence sector employed 15 000 people and contributed R12 billion in annual turnover to the national economy.<sup>1</sup>

South Africa also has the highest number of registered firearm dealers in Africa, with more than 80 legal commercial firearm entities in operation. In recent years South Africa's arms exports have experienced significant growth. For example, in 2011 the South African cabinet approved arms export licences to the value of R9.2 billion to some 82 countries, which was more than a 100% rand-value increase (current prices) over 2007, when export permits worth R4 billion were approved.

The value of South African arms imports fluctuates from year to year. Between 2001 and 2007 cabinet approved an annual average of R4.3 billion worth of arms import licences from 65 countries. According to the Stockholm International Peace Research Institute (SIPRI), South Africa was the destination for 41% of all arms exports to sub-Saharan Africa between 2007 and 2011.<sup>2</sup>

Historically, South African-based brokers have played a significant role in the country's arms-transfer economy and in facilitating arms exports to other African countries. Most brokering activities have been pursued in accordance with South African arms-control policy and legislation. However, some transactions were in direct violation of UN Security Council arms embargoes and some have been linked to alleged mercenary activities. Brokers were also central to the South African National Defence Force's (SANDF) controversial procurement of naval vessels, submarines and military aircraft in the late 1990s, and some were linked to corrupt activities. Given these dynamics, the South African government has been compelled to institute a number of arms-brokering controls over the past 15 years. Several investigations into the activities of arms brokers by the South African authorities have taken place in recent years, which have yielded mixed results.



## Arms brokering during apartheid

From the late 1960s until the mid-1990s the facilitation of arms transfers into and out of South Africa was primarily the responsibility of the Armaments Development and Production Corporation (Armcor), which was established in 1968.<sup>3</sup> Armcor operated as the agent for the South African military and typically took an amoral approach to arms exports. In an attempt to increase South African arms exports, a dedicated sales and marketing department called Nimrod was created. During the 1970s and 1980s, Armcor arranged the export of South African arms to numerous destinations, many of which were contentious, such as Angola, Chile (under Augusto Pinochet), Haiti, Israel, Morocco, Somalia, Portugal and the then Rhodesia. Portugal and Rhodesia used South African arms in wars against African liberation movements.<sup>4</sup>

In 1963 the UN Security Council imposed a voluntary arms embargo against South Africa through Resolution 181, mainly because of the state's racially targeted internal repression. In 1977 this embargo became mandatory on all UN member states, by means of Resolution 421, as the impact of the voluntary embargo had been ineffectual and because state violence and human-rights violations in South Africa had intensified. Therefore, to acquire arms, and military components, equipment and technology, Armcor increasingly relied on international arms brokers to expedite covert transfers to South Africa. Front or shell companies, as well as forged documentation were generally used in these processes.<sup>5</sup> From 1977 to 1981 it was estimated that arms and military equipment from 15 countries were shipped to South Africa.<sup>6</sup> In 1984 the chairman of the UN Special Committee Against Apartheid, Joseph Garba, stated:

We had hoped that the mandatory arms embargo, reinforced by the collective will and commitment of the members of the Security Council, would at least reduce the capacity of the apartheid regime to carry on its wars against the people of South Africa and Namibia, and against independent African states, and indeed persuade it to begin a process of dismantling apartheid. I hardly need to tell you that these hopes have not been fulfilled.<sup>7</sup>

In 1989, in a further attempt to boost arms exports, Armcor contracted independent marketing agents, both domestic and foreign, to broker arms-export deals from South Africa. A lack of expertise in the arms industry did not exclude individuals from being appointed as agents. Inadequate background checks and monitoring of the methods and activities of such individuals were evident.<sup>8</sup>

This cavalier approach to brokering controls proved to be Armcor's undoing. In 1994 a commission of inquiry was established to investigate the organisation's export practices. This followed the activities of Eli Wazan, one of Armcor's foreign marketing agents in the Middle East. The commission of inquiry made recommendations to significantly overhaul South African arms-export controls, which included the removal of most of Armcor's export decision-making authority. According to the commission of inquiry, their investigations

... exposed a world of freewheeling and idiosyncratic characters; of intrigue, deception and subterfuge; of lucrative and often extravagant commissions

and of high living; of deliberately disguised conversations; of communications shrouded in complex documentation and cryptic notes; of deals structured to conceal their true nature; a world with its own rules and code of conduct, in which intimidation, threats and actual peril are ever present; a world, also, of unpredictable allegiances and loyalties: the world, in short, of arms dealers.<sup>9</sup>

The commission of inquiry also found that there was

... a general, institutional lack of responsibility at Armscor regarding the end destination of South African arms exports. This lack of responsibility was evident at policy, operational and organisational levels. The bodies and officials answerable for this lack of responsibility include the previous Cabinet, the Defence Foreign Policy Committee and Armscor itself. These bodies appear to have been motivated primarily by commercial considerations in overseeing South African arms exports. They paid scant regard to human life, human rights and political developments...<sup>10</sup>

### **Illicit arms brokering in the 1990s**

From the early 1990s, there was a series of allegations and/or disclosures about South African arms brokers facilitating the supply of arms, ammunition and military equipment to conflict hot spots in Africa. Some of these individuals had previously been associated with Armscor as marketing agents. Others were former South African security-forces personnel, many of whom had links to mercenary and private military organisations. Viktor Bout, one of the most notorious post-Cold War international arms brokers, temporarily took up residence in Johannesburg in 1997 with his family, presumably in an effort to expand his emerging international business network.

During the 1990s most of South Africa's illicit arms brokering activities involved supplying arms to Angola's rebel movement, UNITA. They were also part of wider UN Security Council sanctions-busting activities involving the smuggling of food, fuel, mining equipment and diamonds. Arms brokers were also involved in facilitating training in the use of certain military equipment and major conventional arms.

A report by the UN Panel of Experts on Angola (referred to as the Fowler Report) identified South African nationals Ronnie and Joe de Decker as having brokered arms for diamond business arrangements with UNITA between 1993 and 1994.<sup>11</sup> The report also implicated other individuals with South African connections, such as Manuel Roque and Johannes Parfirio Parreira, in trafficking arms to UNITA. Human Rights Watch documented the sanctions busting and estimated, based on South African police information, that there had been more than 50 flights out of South Africa destined for UNITA-held territory in 1997 alone.<sup>12</sup>

South African arms brokers were also linked to arms transfers to other contentious destinations in Africa. For example, Willem Tertius Ehlers (known as Ters Ehlers), a former South African senior naval officer and private secretary to former South African president PW Botha, arranged arms transfers in violation of UN sanctions to the Forces Armées

Rwandaes – the main force behind the Rwandan genocide – in eastern Zaire (DRC) in June 1994.

A detailed report on arms brokering by Brian Wood and Johan Peleman provides further information on this trafficking activity, among others, in the DRC in the late 1990s. Their report also implicated Belgian and German nationals based in South Africa in the supply of arms to the Republic of Congo in 1997 during a period of armed conflict. For example, following the issuance of an Interpol arrest warrant, Belgian national Geza Mezosy was extradited to Belgium in 1998 to stand trial on charges of fraud and illegal arms trafficking to the former Yugoslav republics of Croatia and Bosnia-Herzegovina. Mezosy was found guilty and received a two-year prison sentence.<sup>13</sup>

South African arms brokers were also active in West Africa in the mid-1990s, where arms and military equipment were incorporated into private military/mercenary commercial contracts with the governments of Liberia and Sierra Leone, with private South African military company Executive Outcomes being the main interlocker.<sup>14</sup> The entities received training from South African private military contractors and were later implicated in human-rights violations during civil wars and internal repression in the late-1990s.

The South African authorities were initially unable to effectively suppress these illicit activities, as 117 airports in South Africa had international status, and lacked adequate police, customs, immigration and air-traffic controls. The busiest airport for arms smuggling was allegedly Gateway International Airport in Pietersburg (now Polokwane). By 1998 the South African authorities had prioritised its response to these sanctions-busting activities, and had reduced the number of airports with international status to fewer than 10, introduced mobile X-ray units at airport customs checkpoints and significantly extended air-traffic-control reach.<sup>15</sup> In May 1998 the South African Civil Aviation Authority expelled more than 20 pilots and some private air-cargo enterprises operating from Gateway International Airport, and charged them with violating civil-aviation regulations in relation to sanctions-busting flights supplying arms to UNITA in Angola.<sup>16</sup>

Bout and his associates established joint ventures with local air-charter companies and transportation enterprises. One of his more lucrative operations was smuggling arms to UNITA. The following aviation businesses were reportedly linked to Bout: Air Cess, Air Pass, Southern Cross Airline, Flying Dolphin, Southern Gateway Corporation and Norse Air Charter. Bout's business practices drew the attention of elements of the criminal underworld, and in 1998 masked men gained access to his residence. They assaulted Bout's mother-in-law and made off with in excess of US\$6 million in cash. Shortly afterwards Bout was allegedly shot at while driving his luxury vehicle.<sup>17</sup>

The South African authorities also took an interest in Bout's dealings, and the US government asked South Africa to apprehend him for alleged money laundering. However, no legal action was taken, as the South African Department of Justice said there was insufficient evidence.<sup>18</sup> These developments contributed to Bout's decision to leave South Africa with his family, and he relocated his southern African operations base to Swaziland. Nonetheless, it was alleged that businesses linked to Bout continued to

operate in South Africa, and in 2005 an aircraft owned by Bout was reportedly used in the extraordinary rendition of a Pakistani national from Pretoria.<sup>19</sup>

## **Policy and legislation in post-1994 democratic South Africa**

In 1995 the South African cabinet, taking into consideration the recommendations of the commission of inquiry into the activities of Wazan and Armscor, issued a memorandum on conventional arms control. This initiated an overhaul of South Africa's arms export controls. The cabinet established a committee for conventional arms control, named the National Conventional Arms Control Committee (NCACC). Official permits approved by the NCACC were required for arms transfers, including temporary transfers for marketing purposes. The rationale and principles of the NCACC required the government to take the following factors into account when evaluating arms sales:<sup>20</sup>

- To be guided by respect for human rights and fundamental freedoms in the recipient country.
- To consider cases where the political, social, cultural, religious and legal rights are seriously and systematically violated by the authorities of that country.
- The internal and regional situation in the recipient country, in the light of existing tensions or armed conflicts.
- The record of compliance of the recipient country with regard to international arms-control agreements and treaties.
- The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs, and the objective of using minimum human and economic resources for armaments.
- The degree to which arms sales are supportive of South Africa's national and foreign interests.

The cabinet memorandum eventually became law in 2002 with the establishment of the National Conventional Arms Control Act 41 of 2002. The Act provided for additional controls, enhanced criteria for arms exports and oversight measures. Given South Africa's historical challenges regarding the illicit activities of certain arms brokers, the Act also included significant brokering controls. Section 1(i) of the Act defined 'brokering services' as:

- (a) Acting as an agent in negotiating or arranging a contract, purchase, sale or transfer of conventional arms for a commission, advantage or cause, whether financially or otherwise.
- (b) Acting as an agent in negotiating or arranging a contract for the provision of services for a commission, advantage or cause, whether financially or otherwise.
- (c) Facilitating the transfer documentation, payment, transportation, freight forwarding, or any combination of the aforementioned, in respect of any transaction relating to buying, selling or transfer of conventional arms.

(d) Acting as intermediary between any manufacturer or supplier of conventional arms, or provider of services, and any buyer or recipient thereof.<sup>21</sup>

A key brokering regulation of the Act stipulated that all individuals and entities involved in brokering had to be registered with the Directorate for Conventional Arms Control (DCAC), in the Department of Defence. All registrations were subject to the approval of the NCACC. In addition, in an attempt to disqualify disreputable arms brokers, Section 14 of the Act stipulated that a person or entity would be refused a permit to transfer arms if that person and/or their company had been convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine (both in South Africa and abroad).

Of critical importance, Section 26 of the Act made provision for the extra-territorial nature of arms transfers, and stated that legal action may be taken against any South African citizen, permanent resident and juristic person alleged to have committed an offence in terms of the Act, whether it be in South Africa or abroad. The Act also made allowance for foreign citizens to be tried in South African courts for offences outlined in the Act.<sup>22</sup>

The National Conventional Arms Control Act was amended in 2008 and was assented to on 14 April 2009. The principal changes were the expansion of definitions, including those relating to brokering services, and the inclusion of dual use goods under the auspices of the Act given South Africa's membership of the Wassenaar Arrangement, a multilateral export-control regime.<sup>23</sup> By implication, the National Conventional Arms Control Amendment Act 73 of 2008 therefore provided for controls over brokering services relating to dual-use goods. The Amendment Act also made provision for the creation of an Industry Compliance Programme, which, according to Section 25 of the Amendment Act, should 'encourage good practices', and stated that 'the Minister may, in concurrence with the Committee, prescribe a grading system and terms of grading in terms of which persons may be graded in accordance with their history of compliance with the Industry Internal Compliance Programme'.<sup>24</sup>

In addition, given the historical connection between mercenaries and arms brokering, the Amendment Act critically linked conventional arms controls with controls over mercenaries and private military entities prescribed in the Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act 27 of 2006. The Amendment Act was also cross-referenced to other relevant pieces of legislation, such as the Firearms Control Act 60 of 2000, the Non-Proliferation of Weapons of Mass Destruction Act 87 of 1993 and the Explosives Act 26 of 1956 (as amended).

The regulations for the National Conventional Arms Control Act (as amended) were published in May 2004 and then amended in April 2012, which provided further details on arms-control requirements. These Acts provide for enhanced control over arms brokers. Permit holders are required to submit status reports on arms transfers relating to their issued permits, supporting documentation and six-monthly plans on intended arms transfers to the DCAC. In addition, the regulations critically clarified the authority boundary between the National Conventional Arms Control Act (as amended) and

the Firearms Control Act 60 of 2000, which had led to some confusion and possible loopholes, as the latter dealt with controls over the import, export and transit of firearms and related ammunition. The regulations for the National Conventional Arms Control Act (as amended) state that:

The National Commissioner of the South African Police Service must submit for approval to the Committee any application for the export of firearms and ammunition controlled in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000), where the quantity of the firearms exceeds 10 firearms per type, and the quantity of ammunition exceeds 20,000 per calibre.<sup>25</sup>

## **Arms brokering post-1994**

### **Arm Scor and the disposal of surplus ammunition**

Arm Scor continued to court controversy after the establishment of the NCACC. One of the main incidents surrounding Arm Scor was the suspected sale of hundreds of millions of rounds of surplus ammunition between 1998 and 2004, allegedly in contravention of a South African cabinet memorandum of 1997, which required all surplus state ammunition of 12.7 mm calibre or less to be destroyed.<sup>26</sup>

In 2005 the then South African defence secretary, January Masilela, at the request of the NCACC appointed auditing firm First Consulting to investigate the alleged ammunition transfers, as well as other suspected transgressions by senior Arm Scor officials. First Consulting's report was classified, but copies were leaked to the media. According to *Business Day*, the report stated that millions of rounds of 7.62 mm and 5.56 mm ammunition had been sold to a company in Germany, Industrie Spreewerk Lübben, supposedly to be destroyed, but the ammunition was then re-exported to commercial clients in the US. The document implicated Arm Scor and DCAC officials in circumventing and misleading the NCACC. It also highlighted that government arms controls had been 'blatantly violated', including the use of expired end-user certificates.<sup>27</sup> Senior Arm Scor officials, including the CEO, Sipho Thomo, and head of the DCAC, Fred Marais, were suspended as a result of the report. Thomo and other Arm Scor officials were reinstated shortly afterwards.

In 2005 investigative-journalism magazine *Noseweek* alleged that a German national, Wolfard Fritze, of Swiss-registered company FGS Frex was involved in brokering the surplus ammunition transfers. *Noseweek* based its allegations on a private investigation conducted by Ivan Monsieur, then director of South African-based New Generation Ammunition (NGA).<sup>28</sup>

### **Strategic defence package**

In the late 1990s the South African cabinet and Parliament approved the Defence Review, which outlined options for the size, role, doctrine, posture, structure, weaponry and equipment of the SANDF. Extensive discussions at government level and in the SANDF (particularly the navy and air force) ensued on the type of arms and equipment that may

be required for the South African military to effectively fulfil its constitutional obligations. Cabinet agreed that government would purchase a strategic defence package (largely by means of loans) consisting of naval corvettes, submarines, light utility helicopters, jet trainers and combat aircraft. Offsets would be a key component of the deal. The government consequently called for tenders.

Representatives and agents from several foreign companies and governments, including arms brokers, subsequently arrived in South Africa to promote defence products and services, and to attempt to build relationships with and influence relevant South African decision makers. South Africans with expertise in the domestic arms industry and/or connections with the governing party, the African National Congress (ANC) were recruited as agents or brokers by these foreign defence firms.

In 1999 the successful bidders were announced. Defence contractors in Britain, Sweden, Italy and Germany were selected. It was publicised that the total deal would cost R30 billion (in 1999 prices). Allegations of corruption, fraud and misconduct surfaced shortly thereafter, implicating South Africans and foreign defence contractors (and their representatives). Given the allegations, investigations into the South African arms deal were pursued in Britain, Germany, South Africa and Sweden.

The investigation by the UK's Serious Fraud Office into the actions of BAE Systems was arguably the most revealing in terms of the problematic role that arms brokers had played in securing the contract for BAE. Along with Saab (of Sweden), BAE had been awarded a tender to supply the South African Air Force with jet trainers and combat aircraft. This investigation revealed the existence of a group of arms brokers who had allegedly been clandestinely contracted through front companies by BAE to lobby the South African government on BAE's behalf.<sup>29</sup> Red Diamond Trading Ltd, established in the British Virgin Isles in 1998, was allegedly one such front company. Investigators have stated that there were reasonable grounds to allege that these brokers paid bribes and engaged in other corrupt activities to obtain significant advantage over their competitors in the tendering process. It was also suspected that the decision to award the tender to BAE/Saab was primarily the result of a deliberate intervention by the defence minister at the time, Joe Modise.<sup>30</sup> Further information on the BAE investigation is included in the Namibia and Zimbabwe chapters of this publication.

In Sweden, Saab admitted having paid R24 million in bribes in an attempt to secure a tender for Saab's Gripen combat aircraft in South Africa. The payments had been made through Saab's South African subsidiary, Sanip, which was controlled by BAE at the time.<sup>31</sup> In addition, a senior Swedish trade unionist was implicated in facilitating the payment of funds to the influential National Union of Metalworkers of South Africa (which was aligned to the ANC).<sup>32</sup>

In Germany an audit of Ferrostaal (a company that was awarded the contract to supply the South African navy with submarines), conducted by US law firm Debevoise and Plimpton, revealed that over R300 million in 'questionable' payments had been paid in relation to the South African submarine deal.<sup>33</sup>



Various investigations and legal proceedings relating to the arms deal in South Africa have been undertaken – by, for example, Parliament and the Auditor-General – which have exposed the problematic role of arms brokers. Schabir Shaik is a case in point. At the time of the arms deal Shaik was a financial advisor to Jacob Zuma, then a key government decision-maker in the arms deal. In 2005 Shaik was convicted of corruption and fraud relating to soliciting bribes from French arms manufacturer Thomson-CSF for Zuma.<sup>34</sup> Shaik was imprisoned in 2008 with a 15-year sentence, but was released on medical parole the following year. Investigations and numerous media reports have pointed to a host of other arms-brokering individuals and entities allegedly involved in bribery.<sup>35</sup>

## Attempted coup in Equatorial Guinea

In early March 2004 a group of alleged mercenaries (mainly South Africans) were arrested for contravening Zimbabwean weapons, aviation and immigration laws at Harare International Airport while on board a leased Boeing aircraft that had originated in South Africa. Simon Mann, a former British Special Air Services soldier (and South African resident) led the group. At the same time another group of alleged mercenaries led by Nick du Toit, a former South African special forces operator and arms broker, were arrested in Malabo, Equatorial Guinea, on charges of attempting to overthrow the government of President Obiang.<sup>36</sup> Mann's group claimed that they were travelling to a diamond mine in the DRC to fulfil a security contract, and therefore had landed in Harare to procure a previously ordered consignment of arms, ammunition and equipment from the government-owned Zimbabwe Defence Industries (ZDI).<sup>37</sup>

Within a short space of time, it became clear that Mann's group was actually en route to Malabo to join the group led by Du Toit to orchestrate an attempted *coup d'état*. The details of this coup plot were hatched in 2003, and by early 2004 the plan was common knowledge in the intelligence community.<sup>38</sup> The subsequent trials in Harare and Malabo, and investigations by journalists, revealed that a mercenary arms-brokering nexus in South Africa that had been prominent in the 1990s, had persisted.

Mann and Du Toit had initially planned to secure the weapons through a business associate of the latter (and an alleged co-conspirator in the coup plot), Henri van der Westhuizen, who reportedly had high-level contacts in the Ugandan military. However, this plan did not materialise. It was then agreed to attempt to source the weapons from ZDI, using Du Toit's Bahamas-registered brokering company, Military Technical Services.<sup>39</sup> Mann and Du Toit travelled to Harare in early February 2004 to arrange a deal with ZDI using the pretence of procuring the weapons for a security contract at a mine in the DRC. It was also reported that in an attempt to help persuade ZDI to supply them with the weapons, Du Toit propositioned an additional, larger order from ZDI to supply arms for a rebel group in the Katanga region of the DRC.<sup>40</sup> The detail of the deal that was brokered with ZDI is included in the Zimbabwe chapter of this publication.

Mann, along with most of the group who were arrested in Harare, was convicted and imprisoned in Zimbabwe on various weapons, immigration and aviation charges. He was extradited to Equatorial Guinea in 2008, where he received a prison sentence of 34 years



for conspiring to overthrow the government of President Obiang. Du Toit and his group were also imprisoned in Equatorial Guinea on the same charges.

Most of the Zimbabwe group were released from prison in Harare after about a year. Mann and Du Toit were pardoned by Obiang and released in late 2009.<sup>41</sup> Mann returned to the UK, where he penned his memoirs, *Cry havoc*,<sup>42</sup> of the failed coup plot and his incarceration. He was subsequently employed by MODA Solutions,<sup>43</sup> which, according to its website, 'provides a complete premier security services [sic] to a range of international and high-profile clients worldwide ... [including] Presidential and Royal Families, Governments and NGOs, International celebrities, Political and business figures, and international corporations'.<sup>44</sup> Mann became an active blogger following the release of his book.<sup>45</sup> Du Toit relocated to Yemen where a vehicle sales company employed him.<sup>46</sup>

Eight individuals suspected of involvement in the coup plot were charged in South Africa under the Regulation of Foreign Military Assistance Act 15 of 1998, but were acquitted in the Pretoria Regional Court.<sup>47</sup> Mark Thatcher (a South African resident at the time), son of former British prime minister Margaret Thatcher, was fined R3 million and received a suspended sentence from a South African court after a plea bargain with South African authorities for his involvement in the plot.<sup>48</sup>

### **Tusk Trading and Côte d'Ivoire**

In December 2006 the UN Security Council Group of Experts on Côte d'Ivoire exposed the brokering activities of a Belgian national operating out of Cape Town. The man in question, Michel Vandenbosch, had acted in contravention of the UN Security Council arms embargo against Côte d'Ivoire.

Vandenbosch had facilitated a deal with the Ivorian police for 269 000 rounds of small arms ammunition through one of his South African businesses, Tusk Trading Pty Ltd. Tusk Trading had invoiced the Ivorian police for the ammunition, who then made an up-front payment of US\$903 953 to Tusk Trading. The ammunition, which had been sourced from a supplier in Iran, however, had not been received by the Ivorian police, and the order was subsequently cancelled.<sup>49</sup> Nonetheless, Vandenbosch declined to refund the Ivorian authorities, claiming that the funds had been used to cover his costs relating to the negotiation of the arms deal.<sup>50</sup>

During various interviews with the Group of Experts and Vandenbosch between 2006 and 2008, Vandenbosch indicated that Tusk Trading was registered in the British Virgin Islands to export/import 'hardware, clothing, footwear, military paraphernalia and accessories'.<sup>51</sup> However, Tusk Trading was not registered as a broker with the South African DCAC. Vandenbosch nevertheless claimed that given where his company was registered, registering it with the South African authorities as an arms broker was unnecessary.<sup>52</sup> The South African government confirmed that neither Vandenbosch nor Tusk Trading were registered with the DCAC, and claimed that he had committed a criminal offence (under the National Conventional Arms Control Act), as the Act legislates for brokering activities both in South Africa and foreign countries. Vandenbosch left South Africa in late 2007, avoiding possible arrest.<sup>53</sup>

## Speedboats to Iran

In January 2009 a state-of-the-art Bladerunner 51 (the *Bradstone Challenger*) civilian speedboat was loaded onto a cargo vessel in Durban and shipped to Iran on a disguised Iranian-owned vessel, the *Diplomat*.<sup>54</sup> The speedboat was manufactured in the UK and contains US components. Consequently, the UK and US governments actively sought to prevent Iran from acquiring the speedboat over concerns that it would be reverse engineered and militarised. The US government asked the South African authorities to prevent the transfer of the speedboat from South African territory. However, it was reported that it 'went ahead because, said one source, no one [in South Africa] saw the US notice sent by fax over a weekend'.<sup>55</sup>

The US and UK governments' fears were confirmed when in August 2010 it was reported that the Iranian military had replicated and militarised the speedboat. General Ali Fadavi of the Revolutionary Guards' navy was quoted as saying: 'The Bladerunner is a British ship that holds the world speed record. We got a copy [on which] we made some changes so it can launch missiles and torpedoes.' Fadavi also confirmed that Iran had acquired the vessel via South Africa.<sup>56</sup>

A number of companies with South African connections were allegedly involved in brokering the Iranian speedboat deal, including Scavenger Manufacturing, Icarus Marine and Austral Aero-Marine. Scavenger Manufacturing (based in Pretoria), which was co-owned by Ters Ehlers, was identified as the shipper. The companies involved denied any wrongdoing.<sup>57</sup> Following a complaint from members of the Wassenaar Arrangement about South Africa's involvement in the speedboat incident, a South African government investigation revealed that the transfer had taken place within the law, as the Bladerunner 51 was 'not controlled under the National Conventional Arms Control Act and its accompanying regulations'.<sup>58</sup>

## New Generation Ammunition, and UN missions in Burundi, Côte d'Ivoire and Liberia

In January 2010 the South African Police Service (SAPS) confiscated a consignment of small arms ammunition allegedly destined for UN peace operations in Burundi, Côte d'Ivoire and Liberia. The supplier of the ammunition, NGA, had negotiated the contract with the UN headquarters in New York the previous year, and had obtained end-user certificates from the UN missions in the three countries, and authorisation from the NCACC for the ammunition transfers. However, a series of logistical and administrative challenges resulted in NGA pursuing the option of transporting the ammunition for Côte d'Ivoire and Liberia via Kinshasa, which was not included in the export permit and authorisation documentation. There were also allegedly a number of other discrepancies with the documentation.<sup>59</sup>

Both NGA and the SAPS subsequently pursued a series of legal actions in the North Gauteng High Court, Pretoria. In February 2010, following a recommendation by the SAPS, the NCACC revoked the export permits issued to NGA. The NCACC considered the allegations against NGA to be 'of such gravity that they warrant thorough investigation

by the SAPS and the National Prosecuting Authority'.<sup>60</sup> The Priority Crimes Litigation Unit in the Office of the National Director of Public Prosecutions subsequently undertook an investigation.<sup>61</sup> In October 2012 the South African minister of Justice and Constitutional Development provided a written response to a formal question from the Democratic Alliance in the National Assembly indicating that 'NGA has been liquidated and no transgressions found as confirmed by the United Nations'.<sup>62</sup>

The NGA case has implications for South African arms-brokering controls. The NGA court papers indicated that two officials (South African nationals) from the UN observer mission in Côte d'Ivoire had accompanied an NGA representative to meetings with senior SANDF officials, in an attempt to solicit SANDF logistical support for the transfer of the ammunition in November 2009. In December 2009 one of the officials from the UN observer mission in Côte d'Ivoire sent an email to a senior SANDF officer requesting an update on the outcome of the discussions from the November 2009 meetings. Such actions arguably constituted brokering services, as Section 1(c) of the National Conventional Arms Control Act 41 of 2002 defines brokering services as 'facilitating the transfer of documentation, payment, transportation or freight forwarding, or any combination of the aforementioned, in respect of any transaction relating to buying, selling or transfer of conventional arms'. The South African director-general of the Department of Justice and Constitutional Development flagged the actions of the two South African nationals in a letter to the UN secretary-general.<sup>63</sup>

### **Helicopters for Iran and the deputy president**

In March 2012 South Africa-based newspaper the *Sunday Times* provided details of a failed operation to smuggle US-manufactured Bell helicopters via South Africa to Iran in possible contravention of a UN Security Council arms embargo. In the *Sunday Times* article, Barry Oberholzer, director of Cape Town-based 360 Aviation, implicated himself and 360 Aviation in illicit arms brokering by claiming that he had created a front company, Gemini Moon 477 (registered in Johannesburg) to facilitate the deal with Iran. The plan was to contract Canadian-based Eagle Copters to purchase the Bell helicopters from Hudson Flight LLC in Texas, US, which were then to be transported to South Africa, where they would be deregistered and then re-registered in an attempt to bypass the stipulations of the original end-user certificates. It was then envisaged that the helicopters would be shipped to Iran from South Africa. It was also revealed that another South African front company, Tigris International, had re-exported aircraft to Iran in 2009.<sup>64</sup>

In the same article the *Sunday Times* reported that South African Deputy President Kgalema Motlanthe's life partner, Gugu Mtshali, was 'implicated in soliciting a R104 million bribe to obtain a sanctions-busting deal with Iran'. This was based on an allegation by Oberholzer that Mtshali was present with two business associates (Joe Mboweni and Raisaka Masebelanga) at a February 2011 meeting with 360 Aviation representatives. A key discussion point at the meeting was how to secure a letter of support from the South African government (possibly through Deputy President Motlanthe) for the

helicopter deal.<sup>65</sup> The deputy president referred the allegations to the South African Public Protector, who exonerated both Motlanthe and Mtshali.<sup>66</sup>

The Public Protector, however, did find that an agreement to procure the letter was reached at the meeting, and that a R10 million commission would be paid to Mboweni and Masebelanga for the letter.<sup>67</sup> A letter of support was eventually sourced from the Department of Trade and Industry (DTI), signed by acting Deputy Director-General Riaan le Roux as a result of lobbying by Herman Moeketsi, who was reportedly Masebelanga's cousin and business partner. The DTI subsequently instigated an investigation by auditing firm Grant Thornton, which stated that the DTI officials involved had been grossly negligent and had 'failed to protect the interest of South Africa at large... thereby placing South Africa at risk of engaging in sanctions-busting deals with Iran'. However, no commissions were paid, as the helicopter deal was never concluded.<sup>68</sup>

The Directorate for Priority Crime arrested Oberholzer in Cape Town in September 2012 on fraud and theft charges of more than R3 million in relation to another business transaction with a US client. 360 Aviation had reportedly failed to deliver all the helicopter components, despite being paid the full transaction amount. Oberholzer spent several nights in jail but was released on R50 000 bail.<sup>69</sup>

## **Administration and enforcement of brokering controls**

As indicated above, the DCAC has been responsible for the registration and oversight of registered arms brokers. A registration database has been established and maintained, and legitimate brokering transactions have been regulated by means of issuing or denying arms transfer permits. However, in July 2009, the Auditor-General raised concerns about some of the administrative processes within the DCAC, which included lack of consistency with regard to the processing, validity and oversight of permits. The DCAC indicated that it would rectify these matters.<sup>70</sup>

For more than five years the National Conventional Arms Control Inspectorate has been active in investigating allegations of infringements of the National Conventional Arms Control Act, and was involved in most of the cases mentioned above. For example, in March 2012, the inspectorate reported that 38 cases were under investigation at that time, some of which involved arms brokering.<sup>71</sup> The international dimension of many of the cases has however complicated and delayed investigations at times because of the need for mutual legal assistance to be approved and provided before investigations could continue.

## **Conclusion**

Since 1995 the South African government has established the most comprehensive brokering controls on the African continent. However, implementing these controls has been challenging, given the apartheid legacy of unscrupulous arms trading and intentional arms embargo busting by the defence establishment, which has often involved arms brokers. The lucrative nature of illicit arms deals, the existence of private military and organised criminal networks, and the sophisticated finance and banking sector, led to

the continuation of illegal arms brokering in South Africa throughout the 1990s and early 2000s. The authorities' active response to illicit arms brokering over the past 10 years appears to have yielded some positive results.

South African arms-control initiatives and implementation provide useful guidance to other African states seeking to establish or revise their national brokering policy and laws. However, it should be noted that these controls are being implemented in the context of the largest defence industry on the African continent with a long history of arms-brokering activities. In addition, implementing these controls has recently become more complex, with the regulation of brokering in dual-use goods and technologies becoming a legal requirement.

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# Chapter 10: Swaziland

## Historical overview

Swaziland is a small landlocked country of approximately 17 000 km<sup>2</sup> with a population in the region of 1.4 million.<sup>1</sup> The country has been ruled by an absolute monarchy since it gained its independence from Britain in 1968. The kingdom has a total border length of 535 km, which it shares with South Africa and Mozambique.<sup>2</sup> Swaziland has 18 recognised airports, of which 17 have unpaved runways. It has 13 acknowledged border-crossing points.

Swaziland has limited resources to combat crime and, according to an assistant commissioner of the Royal Swaziland Police Force (RSPF),<sup>3</sup> since 2003 there have been a number of incidents of firearm-related crime, including situations with criminals in possession of automatic firearms. Levels of violent crime have resulted in significant challenges for the RSPF, which has limited human resources. This state of affairs has led to a growth in the private security industry.

Historically, arms brokers considered Swaziland a relatively safe transit point for moving illicit arms and ammunition. Many of these arms were transported to conflict areas in southern and central Africa. Most smuggling activities were recorded before 1994.<sup>4</sup> Since then, one incident of alleged arms smuggling has been uncovered involving a controversial international arms broker, Viktor Bout (see also Chapter 9 for more on Bout's activities). A subsidiary of Bout's business network, Air Cess, was registered with the Swaziland Aviation Authority in 1997. Some media reports have alleged that Air Cess was involved in several transfers of illegal weapons, but the allegations were never conclusively proven and the company was not prosecuted in Swaziland.<sup>5</sup>

One of the main reasons behind the failure to prosecute Bout was the absence of a comprehensive arms-control policy and lack of legislation in Swaziland. The Swaziland Arms and Ammunition Act of 1964 does not make provision for the illegal activities that Bout allegedly pursued from Swaziland. Since 1997 the Swaziland Aviation Authority, and Customs and Excise Department have improved control and oversight mechanisms in an attempt to prevent arms smugglers from using Swaziland as a transit point. The Arms and Ammunition Act has also been reviewed and in late 2007 was in the process of being amended.



## Laws and regulations

Regulation and control of firearms in Swaziland is legally enforced by means of the Arms and Ammunition Act, which was last amended in 1990. As indicated above, this legislation does not include specific provisions for the regulation of arms-brokering activities. However, a NFP on SALW has been established, which has the potential to further strengthen firearms controls, including controls over arms brokers.

According to information provided by another source in the RSPF's legal department, the NFP should, as a matter of priority, review the Arms and Ammunition Act, and ensure that Swaziland's firearms legislation conforms to regional guidelines and practices, including the regulation of arms-brokering activities.<sup>6</sup>

## Dealers/brokers

As at the time of drafting this report, and as indicated above, Swaziland did not have any specific legislative provisions that sought to control brokering and/or brokering activities on its territory. The Arms and Ammunition Act did, however, make provision for the control of firearms dealers,<sup>7</sup> who are defined as persons who by way of trade or business sell or otherwise transfer, repair or test firearms or ammunition. The legislation also requires firearm dealers to be licensed. Nevertheless, there is a need to tighten up firearm-control legislation to regulate arms brokers and incorporate sections to criminalise breaches of UN Security Council arms embargoes.

Swazi legislation does not make provision for extra-territorial control over Swazi citizens involved in the arms trade or in the violation of international arms embargoes. Neither does it make provision for the prosecution of foreigners making use of Swazi territory as a base for illicit arms-brokering activities.

According to a senior official from the Swaziland Ministry of Foreign Affairs and Trade, 'Swaziland does not have a problem with firearm brokers'.<sup>8</sup> The same official also mentioned that there were several agencies within the government that were working on the brokering issue. He did, however, concede that these agencies were not well informed about arms brokering and that they needed expert support on this issue. In the absence of arms-brokering regulations and controls, arms brokers can operate from Swaziland with relative impunity.

## Importing and exporting arms

Swaziland does not report details of its arms imports and exports to the public or to the UN Conventional Arms Register. This makes it very difficult to ascertain the extent of the legal arms trade in Swaziland. However, ad hoc information is available. For example, it has been reported that Swaziland acquired firearms from South Africa between 1996 and 2000 to the value of approximately US\$380 000,<sup>9</sup> and as at 2013 the country had purchased nine armoured combat vehicles from Australia and South Africa.<sup>10</sup>

A source stated that government does not use civilian arms dealers for state procurements, but rather engages in state-to-state transactions.<sup>11</sup> According to Assistant

RSPF Commissioner Dlamini, the government of Swaziland has sourced firearms from South Africa.<sup>12</sup> This arrangement has changed recently, however, as it has become difficult to procure firearms from its neighbour owing to tightened regulations, which has led to Swaziland more recently sourcing its weaponry from India. Firearms to be imported for civilians and state use require an official permit. On delivery, all firearms are required to be declared to the director of the Crime Investigating Bureau.

## **Personal possession of firearms and their control**

Swazi citizens and permanent residents may be granted a firearm licence if they comply with the requirements set out in the Arms and Ammunition Act. The main activities for which people apply for firearms are hunting, personal protection and the protection of property. Applicants are mostly business people and individuals involved in the private security industry.

The Arms and Ammunition Act makes provision for the licensing of pistols, revolvers, rifles, shotguns and other lethal barrelled weapons. It explicitly prohibits the possession and licensing of 'arm(s) of war' to civilians. By prohibiting arms of war, the legislation effectively prevents civilians from possessing fully automatic firearms.

The Central Firearms Registry has, in recent times, become noticeably rigorous in the application of the Arms and Ammunition Act, and its regulations. Civilians have found it time-consuming and increasingly difficult to secure firearm licences from the registry. This approach, according to the RSPF is an attempt to ensure that only people whose cases have true merit are issued with firearm licences. However, this process may inadvertently lead to the illegal trade in firearms.

## **Firearm crime**

Swaziland has experienced a number of incidents of armed robberies, but the number is relatively low compared to its neighbours. In one event, in November 2001 the *Times of Swaziland* reported that on 1 October 2001, two Swazi citizens were charged with the murder of the editor of the *Swazi Observer*. The murder weapon, an R5 rifle, had been stolen from a policeman at Mahlangatsha Police Station in April 2001. However, the director of the Crime Investigating Bureau speculated that automatic firearms used in other criminal incidents had probably been sourced from South Africa and Mozambique.<sup>13</sup>

## **Capacity to implement the SADC Protocol (and other arms-control agreements)**

Swaziland has signed the SADC Protocol, which entered into force in November 2004.<sup>14</sup> The country subsequently ratified the protocol in August 2006.<sup>15</sup> According to Swaziland's Ministry of Foreign Affairs, however, there is limited capacity to ensure the country complies with protocol. According to Martin, it was the responsibility of various departments of government to approach the Ministry of Foreign Affairs with a request that the departments in question would like Swaziland to become a party to a specific instrument. The ministry would then prepare the appropriate documentation and submit

the application to the appropriate international or regional governing body. However, many government departments do not consistently take such action, and there are a number of cases where Swaziland does not comply with the requirements of a particular instrument to which it is a signatory. In conclusion, better controls over all trafficking of arms into and out of Swaziland are essential if efficient control over illicit trade in firearms is to be achieved. Container and truck scanners are not in place at airports or border crossings, making it easier for criminal elements to conceal arms and ammunition in goods that are not controlled.

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# Chapter 11: Tanzania

## **Historical overview**

The United Republic of Tanzania was constituted in 1964 after Tanganyika and Zanzibar achieved independence from Britain. Tanzania is a democratic state; the island of Zanzibar has semi-autonomous status. The country is 949 087 km<sup>2</sup> in size with land borders of 3 861 km in length and a sea border of 1 424 km. As at 2014, the country had a population of about 49.6 million.<sup>1</sup> Tanzania shares borders with eight countries: Burundi, DRC, Kenya, Malawi, Mozambique, Rwanda, Uganda and Zambia.

## **Overview of arms proliferation, crime and violence**

The ability of the government of Tanzania to control the proliferation of SALW has been hampered by intermittent armed conflicts in Burundi, DRC, Rwanda and Uganda. In addition, the police and the Tanzania Revenue Authority have insufficient resources to control the country's extensive borders and points of entry, including 124 airports, four major seaports, six smaller ports and 54 lake ports.<sup>2</sup>

An additional contributing factor to small-arms proliferation has been persistent armed cattle rustling between communities in Tanzania and neighbouring countries (particularly Kenya). However, in 2012 there was a more than 60% reduction in reported cattle rustling incidents, which decreased from 11 845 in 2010 to 4 428 in 2011.<sup>3</sup> Other than the continued challenge of cattle rustling, small-arms-related crime in Tanzania is relatively low, with on average less than one small-arms homicide per 100 000 people annually.<sup>4</sup>

The smuggling of SALW in Tanzania can be divided into two basic categories: theft of arms from police and military armouries, and the trafficking of arms and ammunition to or from rebel forces involved in the Great Lakes conflicts, especially the long-running instability in the eastern DRC.

## **Laws and regulations on arms brokering**

At the time of drafting this report, Tanzania had no specific legislation in place to give law-enforcement officials comprehensive authority to regulate arms brokers or the broad range of arms-brokering activities. Nonetheless, the UN Office for Disarmament Affairs reported that Tanzania had started to amend its arms-control legislation in 2010, which

was to replace the existing outdated legislation.<sup>5</sup> It was envisaged that the new legislation would include arms-brokering controls, as required by both the SADC Protocol and the Nairobi Protocol. (Tanzania is a party to both instruments.)

The complexity of the legislation and the numerous laws contribute to the challenge of enforcing effective control over SALW in general, as well as arms brokering.<sup>6</sup>

Tanzania's Arms and Ammunition Act 1 of 1991 was established to regulate possession of firearms by civilians. The Act made provision for the regulation of storage, imports, exports and other dealings in arms and ammunition. It also stipulated the requirements for licensing firearms. The Act was amended in 2001, incorporating additional control measures, but specific brokering controls were not included.<sup>7</sup> In addition, the Act makes provision for the establishment of a National Armaments Control Advisory Board,<sup>8</sup> stipulating that the board consists of 11 members appointed by the Tanzanian president.

Since 2007 the government has enacted several laws that have relevance for the regulation of arms brokering. Most of these focus on combating money laundering and preventing the financing of terrorism.<sup>9</sup> Given that it is often legally challenging to physically link arms brokers to illicit arms transfers, pursuing the illegal proceeds from arms smuggling is often a more fruitful approach to prosecuting illicit arms brokers and restricting their operations.

## **Arms dealers and brokers**

The government's capacity to monitor brokering activities was enhanced in 2011 when the UN Regional Centre for Peace and Disarmament donated an electronic registration system for brokers and for issuing brokering licences. The advantages of the system are, reportedly, the consolidation of arms-brokering information on a single database and the ability to search and organise the captured data. The data can be exported to other programs for analysis and the system has the ability to exchange information with other interested parties.<sup>10</sup>

There are two registered arms dealers in Tanzania: Tanganyika Arms Limited and the Mzinga Corporation. Tanganyika Arms Limited, located in the capital, Dar es Salaam, is licensed to sell arms and ammunition to civilians. The company's stock is made up of pistols, revolvers, rifles and various types of shotguns, including semi-automatic models. Senguro, the armourer in charge, reported that business was stable even though obtaining firearm licences could be tedious and time-consuming. However, he maintained that firearm controls did not have an adverse effect on his business.<sup>11</sup> Unlike arms dealers in other countries, such as Swaziland, Mauritius and Botswana, which also sell various other products such as fishing tackle, clothing, and, in some cases, dog food, Tanganyika Arms deals exclusively in arms and ammunition, and does not have diversified business interests. Mzinga Corporation is a state-controlled arms dealer and manufacturer licensed to sell arms and ammunition to the state and the private sector.<sup>12</sup>

Control over the actions of dealers is strictly monitored by means of reports that must be sent to the police registrar on all sales and purchases. All firearms destined to be imported must first be authorised by the registrar. The transport of firearms to dealers' premises must be reported to the police, who provide protection and security during transportation.

## **Imports and exports of arms**

Section 12(1) of the Armaments Control Act 2 of 1991 explicitly prohibits the import and export of armaments to or from Tanzania without authorisation in the prescribed form granted by the National Armaments Control Advisory Board. This section of the Act also includes the provision that no armaments can be 'imported into or exported from the United Republic [of Tanzania] ... except with and under the terms of an authorization in the prescribed form granted by the Board'. This provides for the prosecution of brokers that may use Tanzanian territory as a transit point for small arms and ammunition to other countries.

Section 12(2) of the Act provides for the control of armaments imported into Tanzania. It places the responsibility on the person in charge of the vessel, aircraft, vehicle or other conveyance that has any armament on board for reporting the contents of the cargo to the authorities at the entry point. The person in charge must provide the appropriate authority with the cargo manifest.

The Act also restricts the import of armaments to a specific point of entry, as prescribed in writing by the minister. The reporting requirement and restriction on entry points apply not only to armament imports, but also to armaments in transit and armaments intended for transshipment. This section of the Act may be used to address the challenge of prosecuting large shipping companies who might be involved in arms-brokering activities. It places the burden of verifying the cargo content on the transportation company and provides for a subsequent layer of control over illicit armament transportation.

## **Transport of armaments**

The Armaments Control Act provides the most effective control mechanism over the transportation of armaments in Tanzania. Section 8(2) of the Act makes provision for the board to supervise and regulate the manufacture, importation, conveyance and disposition of armaments in Tanzania. Section 11(1) prohibits any person from carrying, conveying or having in their possession or under their control any armaments, except under and in accordance with the terms of an authorisation in the prescribed form granted by the board. However, Section 11 excludes armaments in transit belonging to a foreign government for which permission has been granted by the Tanzanian authorities.

Section 8(2) of the Act makes it possible to prosecute any person who attempts to transfer armaments through Tanzania without authorisation. The Act also makes provision for prosecution relating to goods in transit where the requisite permission was not obtained

from the government. This section of the Act also empowers the government to confiscate the armaments shipment and to prosecute the person in charge of the cargo in such cases.

Section 19(l) of the Act makes provision for the minister to establish regulations to support the Act. The minister may require manufacturers, importers or sellers of armaments, and their accessories, to keep records of transactions and to produce these records and returns to the board.<sup>13</sup> This section of the Act effectively provides for the control of armaments and brokering-related activities through regulations, as opposed to legislative changes. Regulations are easier to amend (compared to the Act itself) and can be shaped to address new and unanticipated issues.

## **Extra-territorial controls**

Currently, Tanzanian legislation does not make provision for extra-territorial controls for either Tanzanian citizens involved in arms brokering outside its territory or for foreigners conducting brokering within its territory. This issue is one of the points that need to be addressed in the reviewed Arms and Ammunition Act.

## **Age of the laws**

Although Tanzanian laws relating to arms control are generally more recent than those of several other countries in southern Africa, certain key aspects of the legislation are outdated. Terminology and concepts have changed over time, and firearms legislation needs to keep up with international trends if it is to remain effective.

For example, the Arms and Ammunition Act does not mention primers or propellants, although it does use the antiquated terms ‘percussion cap’ and ‘gun powder’. These terminologies might well be applicable to older firearms circulating in the region but do not apply to modern firearms, and this might offer brokers an opportunity to circumvent prosecution.

## **Personal possession and control**

Civilian firearm owners are registered with the Central Firearms Registry and their details are captured electronically on a central database. The database has fields for photographs and fingerprints to assist with positive identification. The registry completed a comprehensive re-registration process for all firearm owners in 2006, and since then members of the registry have followed up with owners of firearms who did not participate in re-registration.

## **Capacity to implement arms control**

According to Deputy Police Commissioner Hayuma, Tanzania is progressing steadfastly with the implementation of control mechanisms over firearms and ammunition.<sup>14</sup> Many arms have been destroyed since 2005 and firearm amnesties implemented. The *Tanzania Daily News* reported in December 2012 that 304 illegal firearms were surrendered to police during a firearm amnesty period.<sup>15</sup> The government has also established the NFP on Arms Management and Disarmament in line with regional and international obligations regarding arms control.

## Investigations into incidents of arms brokering

### British Aerospace and the radar transaction

In September 1999, BAE Defence Systems Limited entered into a contract with the government of Tanzania to supply a mobile radar system. This radar equipment, which had both military and civilian capability, was to be installed at the airport in Dar es Salaam. German-based Siemens Plessey Electronic Systems had previously attempted to secure the radar deal in 1992, with a contract price of approximately US\$198 million. However, negotiations were suspended after it was deemed that the equipment was unaffordable.<sup>16</sup> BAE acquired Siemens Plessey Electronic Systems in 1997. Subsequently, the radar equipment discussions were reopened and a new contract price of US\$39.97 million was negotiated.<sup>17</sup>

At the time of these negotiations, the International Civil Aviation Organization, the World Bank, UK Secretary for International Development Clare Short and UK Chancellor of the Exchequer Gordon Brown opposed the deal on the grounds that the equipment was not a priority for Tanzania and that less expensive radar equipment could be acquired.<sup>18</sup> The deal was also criticised, as the Tanzanian government needed to borrow money to finance the purchase. As a World Bank spokesperson put it, 'We are concerned that such a large expenditure is going to purposes whose justification is not clear to us ... To put it in context, US\$40 million is about one-third of basic national education costs in Tanzania.'<sup>19</sup> The International Civil Aviation Organization deemed the radar equipment to be excessively expensive, outdated and inappropriate.<sup>20</sup> Despite this criticism, however, the UK government, following endorsement by British and Tanzanian heads of state, granted an export licence for the radar system. The government of Tanzania subsequently secured a loan from Barclays Bank in the UK to finance the deal.<sup>21</sup>

Two businessmen with connections to Tanzania, Shailesh Pragji Vithlani and Tanil Kumar Chandulal Somaiya, who had been previously associated with the Siemens Plessey Electronic Systems bid, were central to facilitating the BAE deal. The main contribution of these two interlockers was to secure the support of key Tanzanian government officials for the radar equipment. Throughout the negotiation process, Vithlani and Somaiya operated through two business entities, Merlin International (registered in Tanzania) and Envers Trading Corporation (registered in Panama). As the radar equipment had military capability, Vithlani and Somaiya effectively acted as arms brokers.<sup>22</sup>

The radar deal was shrouded in controversy from the onset, with allegations of corruption directed at the arms brokers, BAE and senior Tanzanian government officials. In September 2003, following allegations of bribery and corruption in relation to a number of BAE business transactions, the UK's Serious Fraud Office (SFO) initiated an investigation into BAE's dealings in Chile, the Czech Republic, Qatar, Romania, Saudi Arabia, South Africa and Tanzania. As a consequence of these investigations, the SFO began legal proceedings in the City of Westminster Magistrates' Court in 2010 against BAE, with the government of Tanzania being a focal point.



The SFO investigation revealed that BAE had agreed to pay the two brokering entities, Merlin International and Envers Trading Corporation, 31% of the contract value for their services. These fund transfers were recorded as technical services in the BAE accounting system. Of the total contract price, 1% was transferred directly to Merlin International by BAE, and 30% was channelled through Red Diamond Trading, which had been established by BAE in the British Virgin Isles in 1998 as a front company to surreptitiously pay advisors (see the chapters on Namibia and South Africa for more information on Red Diamond Trading). According to the judgment, BAE had paid approximately US\$12.4 million to the brokering entities.<sup>23</sup>

The SFO investigation indicated that Vithlani had transferred a portion of the BAE funds to certain Tanzanian public officials in positions of influence during the radar contract negotiations to manipulate the outcome of the negotiations. For example, the Tanzanian attorney-general, Andrew John Chenge, and the governor of the Bank of Tanzania, Idris Rashidi, both of whom were central to the radar purchase, allegedly received funds from Vithlani through front companies. The SFO investigators uncovered bank statements that showed Chenge had received over US\$1.5 million between June 1997 and April 1998 through Franton Investments Limited, a Jersey-registered company that he controlled. In May 1998, US\$600 000 was transferred from Franton Investments Limited to Langley Investments Limited, which was controlled by Rashidi.<sup>24</sup> Two BAE officials, Jonathan Mark Colman and Christopher Nuqvi, were also implicated in receiving kickbacks of US\$600 000 and US\$400 000, respectively.<sup>25</sup>

According to a confidential July 2007 cable from the US Embassy in Dar es Salaam, released by Wikileaks, Edward Hoseah, director-general of the Prevention and Combating of Corruption Bureau in Tanzania, described the deal as 'dirty' and indicated that officials from the Ministry of Defence and some senior-level military officers had benefited financially from it.<sup>26</sup> Reflecting on the deal in 2010, Clare Short was reported as saying:

It was an obviously corrupt project. Tanzania did not need a new military air traffic control, it was out-of-date technology, they did not have any military aircraft – they needed a civilian air traffic control system and there was a modern, much cheaper one.<sup>27</sup>

In November 2010 BAE pleaded guilty in court to 'failing to keep accounting records sufficient to show and explain the transactions of the company contrary to Section 221 of the Companies Act 1985'. This was directly in relation to the Tanzanian radar deal. The judge ordered BAE to make 'an *ex gratia* payment for the benefit of the people of Tanzania in a manner to be agreed between the SFO and the Company'. In 2012 the SFO, BAE, the UK Department for International Development and the Tanzanian government signed an agreement to allow for 'the payment of £29.5 million plus accrued interest to be paid by BAE Systems for educational projects in Tanzania'. The bulk of the money was earmarked for textbooks.<sup>28</sup>

Chenge became a cabinet minister in Tanzania in January 2006, but resigned in 2008, after which he became a Member of Parliament. In 2011 the Tanzanian Prevention

and Combating of Corruption Bureau controversially concluded that it had been unsuccessful in gathering sufficient evidence to take legal action against Chenge. However, Eliezer Feleshi, director of Public Prosecutions, reportedly claimed that future investigations could not be ruled out.<sup>29</sup> In 2007 the Kisutu Resident Magistrates' Court in Dar es Salaam issued an international warrant for Vithlani's arrest after charging him with perjury in relation to investigations into the radar deal. At the time of writing, Vithlani, who reportedly has British citizenship, allegedly travelled regularly between the UK (his country of residence) and Switzerland, despite being on the Interpol wanted list.<sup>30</sup>

## **Vehicles and helicopters for the Tanzanian military**

It has been alleged that both Vithlani and Somaiya were linked to other controversial arms-brokering activities in Tanzania. For example, in 2004 the two businessmen secured a contract through Merlin International to facilitate the supply of 628 vehicles from Italian industrial vehicle company IVECO to the Tanzanian Ministry of Defence and National Service at an estimated cost of US\$108 million.<sup>31</sup> However, according to international arms industry investigator Andrew Feinstein, the Tanzanian government 'paid the suppliers the full amount of the purchase price in 2006, [but] only 350 of the vehicles had arrived in the country by 2009'.<sup>32</sup> Feinstein also claimed that Vithlani and Somaiya had fraudulently indicated that they were the owners of INCAR Tanzania, the official Tanzanian representative for IVECO, but acquired ownership of the business only in 2006 (two years after the tender documents were submitted). Military sources had also expressed apprehension about the appropriateness of the IVECO vehicles, given their high fuel consumption and maintenance costs.<sup>33</sup>

Vithlani and Somaiya have also been associated, through Merlin International, with deals involving the purchase of four Bell helicopters from Italian firm Agusta in 2004 (to the value of US\$20 million), speedboats for the Tanzanian military and a Gulfstream jet (at a cost of US\$40 million) for the Tanzanian president.<sup>34</sup> As with the IVECO transaction, the Bell helicopter deal allegedly had a scandalous dimension, as another brokering entity, Khaisa Enterprises, claimed to have legitimately secured the deal with the Tanzanian military. According to Khaisa Enterprises, an arrangement had been made to supply six helicopters from French manufacturer Eurocopter. Khaisa Enterprises subsequently sued the Ministry of Defence and National Service in the High Court in Dar es Salaam for breach of contract. In their court papers, Khaisa Enterprises indicated that, to secure the deal, they had funded technical visits by senior Tanzanian military delegations to France, the US, South Africa and the United Arab Emirates to evaluate various helicopter options. Khaisa Enterprises further claimed that the Bell helicopters, which were twice the price of the Eurocopter product, had previously been rejected by the Tanzanian military because of their 'inferior quality and [the fact they] were civilian helicopters'.<sup>35</sup>

## **Weapons smuggling into the eastern DRC**

The November 2009 report of the UN Security Council Group of Experts on the DRC alleged that individuals in Tanzania had been responsible for facilitating arms and ammunition transfers to the FDLR, a formidable rebel group operating in the eastern

DRC. The group reported that these arms were illicitly shipped into the province of South Kivu via Lake Tanganyika. The key FDLR individuals were allegedly Lieutenant Colonel Félicien Nsanzubukire and Major Mazuru. The former had allegedly travelled to Kigoma, Tanzania, on a number of occasions. The Group of Experts also implicated Bande Ndagundi, a Congolese resident of Dar es Salaam, for having specifically ‘coordinated the delivery of military equipment to FDLR’ and for working with various rebel groups ‘to destabilize eastern Democratic Republic of the Congo and thereby increase his political relevance’.<sup>36</sup> The Tanzanian police responded by launching an investigation into the activities of Ndagundi.<sup>37</sup>

## Conclusion

The government of Tanzania has made significant progress in improving its controls over arms brokering, despite not have specific brokering elements in its arms-control legislation. The government has shown a firm political will to take action against corruption linked to brokering. However, the persistent instability in the eastern DRC continues to expose Tanzania to the risk of having its territory exploited by illicit arms brokers. Hence, it is vital for the government of Tanzania to consider prioritising the amendments to its arms-control legislation, which should include arms-brokering provisions.

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## Chapter 12: Zimbabwe

### Introduction

Zimbabwe gained internationally recognised independence from Britain and became a multiracial democracy in 1980 following a decade of civil war. Under colonial rule, Zimbabwe (referred to as Rhodesia at the time) established a small-arms production capability in the early 1940s to support the Allied war effort (via South Africa) against Nazi Germany. Two arms production facilities were constructed, the Rhodesia Ordnance Factory and the Salisbury Ordnance Factory, but both were liquidated shortly after the end of World War II due to lack of profitability.<sup>1</sup>

Between the mid-1960s and late 1980s, the white minority government under the leadership of Ian Smith claimed to have domestic arms-production capability. However, this principally appeared to have been an attempt to mask the transfer of arms to Rhodesia in violation of a UN arms embargo imposed in 1966.<sup>2</sup> Nonetheless, a plant to manufacture Israeli small arms under licence for Rhodesian government forces was established during this period. Arms brokers reportedly played a prominent role in both facilitating arms-embargo-busting activities for the Rhodesian government as well as smuggling weapons to the indigenous liberation armies.

In 1984 the Ministry of Defence in Zimbabwe created the state-owned company ZDI, primarily as a response to the aggressive regional policy of apartheid South Africa at the time. ZDI was to be a domestic source of key products and services for the Zimbabwean military, and initiated projects in the areas of explosives, small-arms ammunition and military clothing.<sup>3</sup> To date, ZDI operations have remained relatively small by international standards. ZDI also branched out into arms brokering. Many of the incidents of arms brokering involving ZDI have been widely regarded as controversial, as discussed later in the chapter.

As with most southern African governments, Zimbabwe has not established specific laws or systems to control arms brokering. This is possibly because much of the brokering has been undertaken on behalf of the Zimbabwean government or by individuals with close connections to the political elite of the ruling party. Taking these issues into consideration, this chapter provides an overview of brokering legislation and controls, and analyses certain incidents of arms brokering in post-independence Zimbabwe.

## Brokering-related legislation in Zimbabwe

Zimbabwe is a signatory to the SADC Protocol, the UNPoA and the Bamako Declaration. As with most other southern African states, arms brokering in Zimbabwe has predominantly involved facilitating transactions involving SALW and ammunition. Zimbabwe's firearms control legislative document, the Firearms Act of 1956 (as amended), however, does not include a brokering component. There are nevertheless elements in this legislation that relate to the trade and transportation of firearms and ammunition. All firearm dealers require an official licence and are obliged to maintain registers of their stock and transactions. Any person who transports firearms and ammunition across Zimbabwean soil is required to carry an official licence or have a permit.

For several years, the Zimbabwean authorities have sought to amend the firearms control legislation to align it with the SADC Protocol. If the legislation is enacted, it will include a section that prohibits arms-brokering intermediaries. Part II (Section 23) of the draft amended legislation states that:

No person shall facilitate the transfer, documentation or payment in respect of any transaction relating to the buying/selling of firearms, ammunition or other related materials and... any person who contravenes this section shall be guilty of an offence and liable to a fine, which may be prescribed from time to time or one-year imprisonment.

The enactment of this law had been indefinitely delayed in the Zimbabwean Parliament as at the time of drafting this article. The delay was due to domestic political instability and related tensions between rival political parties, the Movement for Democratic Change (MDC) and the Zimbabwe African National Union Patriotic Front (ZANU-PF). A power-sharing arrangement between the MDC and ZANU-PF resulted in other more pressing legislative priorities taking precedence.

## Incidents of arms brokering

Since the late 1990s there have been a number of contentious arms-brokering incidents involving Zimbabwean citizens and government officials. Cases have involved facilitating arms transfers to the Zimbabwean armed forces, as well as to other governments. There is evidence to suggest that Zimbabweans have been associated with violating several UN Security Council arms embargoes. Zimbabwean nationals have also brokered arms transactions in other countries on behalf of non-Zimbabwean arms manufacturers. This section provides an analysis of the key incidents.

## Arms smuggling to Sierra Leone and Liberia

A number of sources have alleged that ZDI was involved in arms smuggling to the Revolutionary United Front rebel group in Sierra Leone and Charles Taylor's regime in Liberia in the late 1990s. Both countries were under a UN Security Council arms embargo at the time. In 2002 an article in the *Indian Ocean Newsletter* alleged that Tshinga Dube, the CEO of ZDI at the time, had received payments from Leonid Minin, an infamous arms

broker, who had been implicated by the UN for violating a number of UN Security Council arms embargoes in Africa.<sup>4</sup> The payments were allegedly for illicit arms transfers to Liberia and Sierra Leone. In response to this article, Dube was quoted as saying:

It is totally false that we have supplied weapons to the West Africans ... It is unfair for people to want to conclude that, because ZDI used the same (international) bank that [the Revolutionary United Front] and the Liberians use, we therefore were supplying arms to them. That is simply not true.<sup>5</sup>

A UN Security Council report on the exploitation of natural resources in the DRC, published in October 2002, also reported on the alleged link between Dube and Minin.<sup>6</sup> In June 2008 *City Press* in South Africa revived the alleged ZDI–Minin link. Journalist Waldimar Pelser claimed that he had been provided with copies of some of Minin’s bank statements, which detailed a series of deposits from ZDI as well as payments made directly to Dube, all between December 1998 and June 1999, a period in which Minin facilitated the transfer of a large consignment of small arms and ammunition to Liberia.<sup>7</sup> ZDI once again denied the link. A press statement from ZDI’s public relations office, which was published in the *Zimbabwe Independent* on 17 July 2008, stated the following:

A Waldimar Pelser ... is on the rampage, writing articles in the media about ZDI as the most evil company in Africa. However, the author of these documents is so ignorant about what happens in the arms trade. The UN has a database and precisely knows every arms trader and where arms are traded. In all our operations we have never dealt with any West African country ... we have never heard of the name Minin [sic], who Pelser claims to be our trading partner.<sup>8</sup>

## Arms transfers to Sri Lanka

In the mid- to late 1990s, a ZDI arms transaction with the Sri Lankan government was mired in controversy. The deal, which involved ZDI’s selling mortar bombs, ammunition, smoke grenades and anti-personnel mines to Sri Lankan buyers, prominently featured certain arms brokers. It was reported that ZDI had been contracted by the Sri Lankan government to supply the arms in question. Six consignments were dispatched to Sri Lanka – four by aircraft and two by ship. The arms were to have been manufactured by ZDI, with a Sri Lankan company, the General Trading Company, purportedly playing a central role in facilitating the deal. The financial requirements were arranged through the South Korean company, Kolon International, which had close ties with the General Trading Company. The Sri Lankan government paid a substantial deposit for arms to Kolon International before the goods were dispatched to Colombo, Sri Lanka.<sup>9</sup>

It was reported in the Sri Lankan media that all four shipments by air and one of the shipments by sea were delivered. The remaining consignment by sea, which contained some 32 000 mortar bombs (of 81 mm calibre) failed to reach the Sri Lankan government.<sup>10</sup> At the time it was widely speculated that the Sri Lankan rebel group, the Liberation Tigers of Tamil Eelam (LTTE), had apprehended this consignment. This conjecture was sparked by the emergence of a fax, which the LTTE claimed to have



written, that was sent to the US Embassy in Colombo on 11 July 1997. The following assertions were included in the fax:

We, the Tamil Tigers, inform you that on July 11, 1997 we have hijacked a vessel carrying arms, sailing under Liberian flag. The name of the vessel [is] 'Stillus Victoria'. On the deck of the vessel there were 12 containers containing 32,400 mortar bombs 81 mm, destined for Colombo Sri-Lanka, Ministry of Defence. We know that the manufacturer and the supplier of the mortar bombs is Zimbabwe Defence Industry from Harare, Zimbabwe. We also know that Col. Dube of Zimbabwe Defence Industry executed the deal. The cargo was confiscated by us and the vessel's crew was released by us unharmed. We make known and warn that we will take action against all persons participating in the supply of military equipment used against the legitimate rights of the Tamil people and we will severely punish those concerned.<sup>11</sup>

The fax, however, did not appear on LTTE letterhead and the document was not accompanied by further confirmations from the LTTE on this matter. In fact, the LTTE denied knowledge of the fax, and the group's supporters suggested that it was possibly a smear campaign against the LTTE.<sup>12</sup> Consequently, it was reported that the US government regarded the authenticity of the fax as dubious.<sup>13</sup> *Time* magazine, however, published a claim by Dube that his briefcase, which included key documents relating to this deal, had been stolen from him at an airport in Rome shortly before the disappearance of the arms shipment.<sup>14</sup>

In the months that followed the alleged arms heist, statements and comments from various stakeholders were widely quoted. Some of the statements were inconsistent, which suggested duplicity on the part of one or more of the parties involved in this incident.

In August 1997 it was reported that ZDI representatives had informed Sri Lankan military officials that the missing shipment had been dispatched from Zimbabwe and then transported through Mozambique by road, where it had been loaded onto a ship (co-chartered with an Israeli company) in Beira, which then departed on 24 May 1997. It was reported that, according to ZDI, the ship was the *Limmasul Victoria*, which travelled west to Walvis Bay, and then east to Madagascar where it arrived on 2 July 1997. The cargo was then scheduled to be ferried to Colombo.<sup>15</sup> Most of this information corresponded with the liner bill of lading, which was also supplied to the Sri Lankan authorities. However, this document indicated that the arms would be transported on board the *Stillius Limasol*, which was owned by the Stillius Shipping Company, based in Cyprus.<sup>16</sup>

In September 1997 it was reported that ZDI informed the Sri Lankan government that that the consignment was locally manufactured, and that an Israeli company, LBG Military Supplies, was entirely responsible for transporting the arms to Sri Lanka (which contradicted the earlier reported statement). ZDI allegedly suggested that LBG Military Supplies could have been deceived into loading the arms onto another ship. This was, however, denied by the Israeli company, which claimed that it had only provided certain components for the manufacture of the mortars.<sup>17</sup>



In March 1998 it was reported in the Sri Lankan press that ZDI had provided the Sri Lankan government with a letter (dated 21 July 1997), supposedly from LBG Military Supplies, confirming that the Israeli company was responsible for transporting the arms. The letter stated that the arms had been offloaded in Sri Lanka on 11 July 1997, but possibly to the LTTE. Ben Tsouk of LBG Military Supplies, however, claimed that the letter was a forgery.<sup>18</sup>

Shortly afterwards, the Zimbabweans released another letter (dated 23 July 1997), also allegedly from LBG Military Supplies. This letter contradicted previous statements by both ZDI and LBG Military Supplies, claiming that LBG Military Supplies had dispatched the arms from Rijeka, Croatia on 28 May 1997. The letter also revealed possible collusion between LBG Military Supplies and ZDI to provide misleading information on the missing arms consignment. For example, the letter stated: 'I suggest that we together will keep to the version as you have directed me to be on the B/L [bill of lading] that the goods left from Beira Mozambique through Madagascar to Sri Lanka.'<sup>19</sup> The legitimacy of this letter however, has not been verified.

Relations between ZDI and the Sri Lankan government soured after these disclosures, as the Sri Lankan government argued that ZDI was in breach of contract. This mainly related to the arms received by the Sri Lankans, which, they claimed, were not manufactured in Zimbabwe, but were of European origin, and some of which were substandard. The Sri Lankan military then allegedly instructed Kolon International to withhold the transfer of a significant portion of the funds to ZDI.<sup>20</sup> The Zimbabwean media reported that Kolon International did not transfer the funds to ZDI but that they were used to pay commissions to senior Sri Lankan military officials who had helped facilitate the deal.<sup>21</sup> In November 2002 it was reported in the Sri Lankan media that the Sri Lankan government investigation had concluded that senior officials from the Sri Lankan military and ZDI had possibly used this arms deal to defraud the Sri Lankan military.<sup>22</sup>

The findings of investigations by journalists, government officials and researchers of this controversial deal revealed the following:

- ZDI, rather than manufacturing the arms, had apparently acted as a broker in sourcing the arms from LBG Military Supplies in Israel. Ten years later, ZDI, through its own admission, may have inadvertently provided evidence to partially support this premise. That is, in a ZDI press release published on 17 July 2008, it was stated that 'in the first place we do not manufacture arms but ammunition. We specialise in training ammunition, which has no war head [*sic*].'<sup>23</sup> Two years earlier, the Zimbabwe Parliamentary Committee on Defence and Home Affairs had criticised ZDI's poor manufacturing competence, claiming that the company had 'no capacity' to supply the Zimbabwe security forces with the ammunition they require.<sup>24</sup>
- The *Stillius Limasol*, *Limmasul Victoria* and the Stillius Shipping Company did not exist and there was no record of any ship with the arms consignment in question having disembarked from Beira.<sup>25</sup> It was concluded that the liner bill of lading was a forgery, allegedly an attempt by ZDI to disguise the origin of the arms. In addition, the

documentation relating to the second arms shipment by sea (which was delivered) was also counterfeit.<sup>26</sup>

- The whereabouts of the missing arms shipment remains unknown. It is widely accepted that the LTTE captured the arms consignment, which is based on evidence that the LTTE was responsible for having hijacked other commercial cargo in the late 1990s, regularly employed subterfuge to acquire arms, and that there was an increase in the use of mortars by the LTTE shortly after the ZDI arms went missing. Nonetheless, no conclusive proof has emerged to support this theory.<sup>27</sup>

## Arms brokering and the DRC

Since the late 1990s, ZDI, Zimbabwean businessmen and prominent Zimbabwean government officials have been associated with arms brokering activities in the DRC. These activities were initially undertaken to support the thousands of Zimbabwean soldiers deployed in the DRC to bolster the Congolese government in its war efforts against Rwandan- and Ugandan-backed rebel groups. The activities allegedly continued after Zimbabwe's military withdrawal from the country.

In 1998 the presidents of the DRC and Zimbabwe negotiated an arms-for-minerals transaction. In terms of this agreement, ZDI would supply arms and military equipment to the DRC government and, in exchange, Ridgepoint Overseas Developments Ltd,<sup>28</sup> headed by controversial Zimbabwean businessman Muller Conrad 'Billy' Rautenbach, would become responsible for the management of Gécamines, the DRC state mining company. Ridgepoint would then also acquire a 37.5% share in Gécamines. It was subsequently reported that two Zimbabwean companies, Wheels of Africa (owned by Rautenbach) and Zvinavashe Transport (owned by the late Vitalis Zvinavashe, former commander of the Zimbabwe Defence Forces), transported the arms to the DRC.<sup>29</sup> This arms-for-minerals deal, however, proved to be an unprofitable exercise for the Zimbabwean government and was short-lived.<sup>30</sup>

There have been numerous independent reports linking other high-profile Zimbabweans to arms brokering in the DRC. Prominent examples have included John Bredenkamp, a business tycoon, and Emmerson Mnangagwa, former Speaker of Parliament and cabinet minister.<sup>31</sup> Bredenkamp has denied the allegation. In a letter to the *Executive Intelligence Review* (6 July 2007), which was in response to comments published in the 29 June 2007 issue, Bredenkamp stated:

You state that I am 'a major arms broker throughout Africa'. This is a wholly erroneous and extremely damaging allegation. I have repeatedly stated that my involvement in the defence sector is that of a passive investor in Aviation Consultancy Services, a company that represents a number of leading aircraft manufacturers, both civil and military ...<sup>32</sup>

In 2008 the UN Security Council Group of Experts on the DRC reported that 53 tons of small-arms ammunition was transferred from the DRC to Zimbabwe in two consignments in August for use by the Zimbabwean armed forces. The UN expressed concern that

this ammunition, which had previously been imported into the eastern DRC, may have been re-exported to Zimbabwe in violation of the end-user certificate supplied by the original exporter.<sup>33</sup>

At the time of writing this report, Bredenkamp, Mnangagwa and Rautenbach (as well as a number of their business entities) were included on the US government's list of specially designated nationals (economic and trade sanctions) because of their close association with President Robert Mugabe and ZANU-PF. ZDI also appears on this list. This sanctions list is

based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.<sup>34</sup>

### **British Aerospace and the South African arms deal**

In the late 1990s BAE secured a tender to supply the South African government with military aircraft (see also Chapter 9: South Africa). Investigations by government authorities in Liechtenstein, South Africa and the UK were initiated following allegations of criminal practices by BAE relating to this tender. These investigations revealed the existence of undisclosed brokering entities linked to BAE. One of the more prominent brokering groups was Kayswell Services, registered in the British Virgin Islands and majority owned by John Bredenkamp (60%); another Zimbabwean, Rick Passaportis, reportedly had a 10% ownership stake.

Investigations by the UK's SFO and the Commercial Crimes Unit of the Regional Police of Liechtenstein revealed that Kayswell Services had received approximately GBP37 million from Red Diamond, a BAE front company, in relation to the South African deal.<sup>35</sup> Funds were then transferred from a Kayswell Services bank account in Liechtenstein to its owners and shareholders. John Bredenkamp reportedly received GBP2 656 683, while Rick Passaportis received GBP313 487.<sup>36</sup> The SFO investigation also exposed the existence of two other brokering groups, Jasper Consulting and Aviation Consulting Services Worldwide SA, both of which had the same shareholding and ownership arrangements as Kayswell Services.<sup>37</sup>

Investigations implicated individuals linked to Kayswell Services for recommending that BAE should consider 'financially incentivising' the key South African officials in support of the BAE tender. In addition, these individuals had allegedly claimed that they were in a position to influence a key procurement official in the South African Department of Defence.<sup>38</sup> The Liechtenstein authorities discovered evidence of a transfer of US\$500 000 in February 2001 from Aviation Consulting Services Worldwide SA to Shun Hing, a Hong Kong company linked to Fana Hlongwane, a special advisor the South African minister of defence at the time. Similarly, South African investigators uncovered evidence of a transfer of over US\$1 million from Jasper Consulting to Hlongwane Consulting Pty (Ltd), a business entity owned by Hlongwane.<sup>39</sup>

## Mercenaries, ZDI and Equatorial Guinea

In March 2004 a group of mercenaries (predominantly South Africans) led by Simon Mann (a British national), who were allegedly en route to stage a coup against the government of Equatorial Guinea, were arrested at Harare Airport (see also Chapter 9: South Africa). The group indicated that they had landed at Harare Airport to collect a consignment of arms, ammunition and equipment from ZDI.<sup>40</sup> Jonathan Samkange, the lawyer for the alleged mercenaries, claimed that his clients were allegedly in possession of a written agreement with ZDI for a consignment of 61 AK-47s, 150 hand grenades, 10 rocket-propelled grenade launchers and 75 000 rounds of ammunition, for which they had paid US\$180 000. He alleged that the weapons were to be used to protect mining interests in the DRC.<sup>41</sup> A Zimbabwean businessman, Martin Bird, was reportedly central to the facilitation of this deal.<sup>42</sup>

According to media reports in the immediate aftermath of the alleged mercenaries' arrest at Harare International Airport, the ZDI's Dube was allegedly at the airport at the time of the mercenaries' arrest to help Mann take delivery of the arms, and was reportedly 'incensed' by Mann's arrest, as it had cost him a 'good regular customer'.<sup>43</sup> During the court case, however, the Zimbabwean government claimed that the weapons deal with Mann was part of a 'sting operation'.<sup>44</sup>

### Other arms-brokering cases

In December 2007 South African police officials at O.R. Tambo International Airport retrieved an arms consignment of 50 CZ-75 9 mm Parabellum handguns. The consignment was reported to belong to Zimbabwean police, as the weapons had Zimbabwean serial numbers in addition to the original Czech serial numbers.<sup>45</sup> Brokering activities were suspected. Thus far, there has been no media coverage indicating the extent to which further investigations have been carried out.

On 16 April 2008, a Chinese cargo ship docked at Durban harbour with a consignment of arms and ammunition destined for the Zimbabwean security agencies. The South African government provided its approval for this consignment to be transported to Zimbabwe via South African territory.<sup>46</sup> However, this development took place during a turbulent electoral process in Zimbabwe, in which the political opposition alleged that the ruling party had intimidated and tortured its supporters.

Consequently, the dock workers in Durban harbour refused to offload the consignment, and some South African civil-society groups took legal steps in an attempt to prevent the delivery of the arms and ammunition. Given this situation, the Chinese cargo ship departed from Durban to seek an alternative delivery point. However, intense international and regional criticism of the arms shipment prompted the Chinese government to recall the consignment. Nonetheless, it has been reported that the arms consignment was delivered to ZDI in Harare.<sup>47</sup> According to the shipping documentation, a Chinese arms broker, Poly Technologies Inc., was involved in this transaction.<sup>48</sup>

On 23 January 2011, the *Sunday Times* in the UK reported that in late 2010 the Zimbabwean government had clandestinely transferred arms to Laurent Gbagbo's

administration in Ivory Coast. The arms consignment allegedly comprised small arms, mortars and ammunition, which was mainly of Chinese origin. The transfer was facilitated by ZDI, and was supposedly dispatched with the blessing of President Mugabe as part of an arms-for-oil exchange agreement with the Gbagbo regime.

The *Sunday Times* report was derived from ‘highly placed intelligence sources in Zimbabwe’s capital’, but this information is yet to be verified by other independent sources. If such an arms transfer did take place, the implications for the Zimbabwean government could be serious, as it would have been a direct violation of the UN arms embargo (which has been in place since 2002). In addition, such an arms transfer would have taken place in flagrant disregard of the decisions and resolutions of the UN Security Council, the AU and ECOWAS, all of which condemned Gbagbo’s refusal to step down as head of state following his defeat in the November 2010 presidential elections to his political rival, Alassane Ouattara.

## Conclusion

As this chapter has indicated, the Zimbabwean government, and in particular ZDI, does not have an exemplary record regarding international arms dealings and brokering. UN investigative panels have implicated Zimbabwe’s government in the contravention of a number of UN arms embargoes throughout Africa. A European Union arms embargo has been imposed against the Zimbabwean government, and ZDI is subject to US government economic and trade sanctions. Hence, given this state of affairs, the activities of the Zimbabwean government and ZDI arguably undermine SADC’s efforts to effectively regulate arms-brokering activities.

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## Chapter 13: Conclusion

This monograph has discussed the situation of arms brokering in selected countries in Southern Africa. It notes that several policy efforts have been made over the years to help African governments in the fight against the uncontrolled movement of small arms into and across the continent. These include the politically binding Bamako Declaration<sup>1</sup> and the more recent UNPoA, as articulated at the Second Continental Conference of African Government Experts on Illicit Trade in SALW of December 2005. Others include legally binding instruments, such as the SADC Firearms Protocol; the Nairobi Protocol;<sup>2</sup> and the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials. More recently, the UN reported that the Economic Community of Central African States (ECCAS), has initiated a process to elaborate a legal instrument for the control of SALW in central Africa under the São Tomé and Príncipe Initiative.<sup>3</sup> As part of a larger effort to implement the UNPoA, the states of central Africa have also agreed on the importance of regulating arms brokering.

At a regional consultative seminar in May 2003, ECCAS member states<sup>4</sup> agreed that it was a priority to:

- Establish an effective licensing system for international importation, exportation and transiting of SALW
- Control the activities of intermediaries and brokers

### **Bamako Declaration**

The Bamako Declaration, although only politically binding, had a significant impact both continentally and internationally. It led to a number of subregional legally binding conventions and influenced aspects of the UNPoA.<sup>5</sup> With respect to brokers and their activities, the Bamako Declaration recommends that AU member states should:

Encourage the codification and harmonization of legislation governing the manufacture, trading, *brokering*, [emphasis added] possession and use of small arms and ammunition. Common standards should include, but not be limited to, marking, record keeping and control governing imports, exports and the licit trade.<sup>6</sup>

The Bamako Declaration strongly emphasises the responsibility of arms supplier countries in preventing the diversion of weapons and encourages states to:



1. Accept that trade in small arms should be limited to governments and authorized registered licensed traders.
2. Actively engage, support and fund the efforts of OAU Member States in addressing the problem of the illicit proliferation, circulation and trafficking of small arms and light weapons in the continent.
3. Seriously consider ways to discourage and eliminate the practice of dumping excess weapons in African countries and in violation of arms embargoes.
4. Enact appropriate legislation and regulations to control arms transfers by manufacturers, suppliers, traders, brokers [and] shipping and transit agents.
5. Enact stringent laws, regulations and administrative procedures to ensure the effective control over the transfer of small arms and light weapons, including mechanisms with a view to facilitating the identification of illicit arms transfers.<sup>7</sup>

The African Common Position on the UN Review Process on the Plan of Action on Small Arms and Light Weapons) is an important framework document that complements the Bamako Declaration.<sup>8</sup> It recognises, for example, the need for African states to address the fundamental issues and root causes of conflict as important means by which armed violence in general, and in particular the availability, supply and demand for SALW, can be significantly reduced, if not eliminated. The African Common Position urges states to adopt, as soon as possible, where they do not exist, the necessary legislative and other measures to establish as a criminal offence under national law the illicit manufacturing of, trafficking in, and illegal possession and use of SALW, ammunition and other related materials – and for states to provide for rehabilitation and reintegration assistance to demobilised soldiers, ex-combatants and, in particular, child soldiers.

Importantly, the African Common Position to the Review Conference noted that a number of other initiatives introduced since 2001 have enriched the broader debate on illicit SALW. Some of these initiatives are related to the civilian possession of military-style SALW, the transfer of SALW to armed non-state actors, the Transfer Control Initiative, as well as the Arms Trade Treaty. No mention is made of the need to improve regulation of brokers or their activities.

However, the conference also agreed that the AU Commission convene a technical and legal workshop with the aim of developing a legally binding instrument to prevent, combat and eradicate the illicit trade in SALW.<sup>9</sup> This development could be an important vehicle to establish a common approach to brokers and brokering activities, enhancing the control and regulation of brokering on the continent.

## **Nairobi Protocol**

The Nairobi Protocol was adopted in April 2004 and entered into force on 5 May 2006. It elaborates on the Nairobi Declaration of March 2000 and made the region the second in Africa after SADC to adopt a legally binding instrument on small arms. Under the

agreement, governments are obliged to address the problem of internal conflict, which has served as a magnet for light weapons flowing into central and eastern Africa.

The Nairobi Protocol requires states to pass laws outlawing the illicit manufacture, trafficking, possession and misuse of SALW. Its preamble expresses concern about

the supply of small arms and light weapons into the region and conscious of the need for effective controls of arms transfers by suppliers and brokers outside the region (including measures against transfer of surplus arms) to prevent the problem of illicit small arms and light weapons.<sup>10</sup>

To complement the protocol and to help member states effectively implement its provisions, the Regional Centre for Small Arms and Light Weapons issued best-practice guidelines for the implementation of the Nairobi Declaration and Protocol.<sup>11</sup> These were adopted in June 2005.

The guidelines are significant, as they set high common standards and elaborate detailed provisions that go beyond UNPoA and Bamako commitments, providing a progressive model that may be applicable to other regions or sub-regions in Africa. In particular, the criteria to be used when authorising small-arms transfers are very comprehensive and elaborate on how states' existing responsibilities under international law should inform transfer-licensing decisions.<sup>12</sup> These are, according to a conflict specialist, 'the most comprehensive regional guidelines to date on small arms transfers (and other SALW issues) and most closely reflect states' obligations under international law'.<sup>13</sup>

Under the Nairobi Protocol's Article 10, which pertains to the import, export, transfer and transit of SALW:

- a. Each State Party shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons
- b. Before issuing export licences or authorisations for shipments of small arms and light weapons, each State Party shall verify:
  - i. That the importing States have issued import licences or authorisations and
  - ii. That without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit
- c. The export and import licence or authorisation and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description [of] and the quantity of the small arms and light weapons and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States
- d. The importing State Party shall inform the exporting State Party of the receipt of the dispatched shipment of small arms and light weapons

- e. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorisation procedures are secure and that the authenticity of licensing or authorisation documents can be verified or validated

Under Article 3, pertaining to 'Legislative Measures':

- c. States Parties undertake to incorporate in their national laws:
  - xii. Provisions regulating brokering in the individual State Parties

Under Article 11, pertaining to 'Dealers, Brokers and Brokering':

- 1. State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include:
  - i. Regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing
  - ii. Registering all brokers operating within their territory
  - iii. Ensuring that all registered brokers seek and obtain authorisation for each individual transaction taking place
  - iv. Ensuring 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
  - v. Licensing, registering and checking regularly and randomly all independent manufacturers, dealers, traders and brokers

Under the guideline in Chapter 3 pertaining to 'Tracing and Brokering':

### 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 follows:

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
- (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

(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

(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 [a] 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

## ECOWAS Convention

The preamble to the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and other Related Materials (2006) notes that its signatories are 'deeply concerned about the uncontrolled flow of small arms and light weapons into Africa in general, and West Africa in particular, and aware of the need to effectively control the transfer of arms by suppliers and arms brokers'.<sup>14</sup>

It defines 'brokering' as 'work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; this includes the provision of financial support and the transportation of small arms and light weapons.'

Article 20 of the convention states:

1. Member States shall register all citizens and all companies incorporated in their territory that are brokering small arms and light weapons, including financial agents and transportation agents on armament and shall make such registration a requirement for their licit operation

2. Member States shall ensure that all registered small arms and light weapons brokering agents obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place
3. Member States shall require that all small arms and light weapons brokering license applications for authorisation provide full disclosure of relevant import and export licences or authorisations and associated relevant documents, the names and locations of all brokering and shipping agents involved in the transaction and the transit routes and points of the small arms and light weapons shipments
4. Member States shall adopt such legislative and other measures to punish and establish as a criminal offence the illicit brokering of small arms and light weapons
5. Brokering activities may be assessed under Article 1 and 6 of the present convention

### **Africa, the UN Firearms Protocol and the UNPoA**

All African countries subscribe to the UNPoA and many have signed and/or ratified the 2001 UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (the UN Firearms Protocol).

Article 5 (2) (a) and (b) and Article 14 of the UN Firearms Protocol:

Requires provisions relating to the illicit trafficking in firearms and those acting as accomplices or who organise, direct, aid, abet, facilitate or council the commission of such offences. Requires adequate legislation regulating the activities of those who engage in small arms and light weapons brokering.

Section II, Article 14 of the UNPoA provides for

... adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering, including shipping and transit agents. This should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control.<sup>15</sup>

### **Southern Africa and the SADC Firearms Protocol**

The member states of SADC, by drafting and signing the SADC Firearms Protocol, are committed to reducing the proliferation of SALW in the region. Angola, the DRC and Madagascar still need to accede to the Protocol (see Table 2 for more details).

The aim of SADC is to create a community providing for regional peace and security and an integrated regional economy. In line with this, the SADC Firearms Protocol entered into force on 8 November 2004.

A number of southern African states have established NFPs to help coordinate the activities of different government agencies working on various aspects of small arms.

**Table 2: SADC Firearms Protocol, ratification status as of 30 May 2008**

Country	Signature	Ratification
Angola	–	–
Botswana	14.08.01	14.08.01
DRC	14.08.01	–
Lesotho	14.08.01	27.09.02
Madagascar	–	–
Malawi	14.08.01	24.09.02
Mauritius	14.08.01	04.01.02
Mozambique	14.08.01	20.09.02
Namibia	14.08.01	08.10.04
South Africa	14.08.01	27.01.03
Swaziland	14.08.01	01.08.06
Tanzania	14.08.01	24.12.02
Zambia	14.08.01	01.01.03
Zimbabwe	14.08.01	Ratified and deposited but not yet recorded as such by the SADC Secretariat

These NFPs are in the process of developing national action plans. Some have hosted national conferences, and participants have usually included state agencies, parliamentarians, traditional leaders, civil-society organisations (such as trade unions and non-governmental associations), and locally based international organisations. Besides drawing up an action plan and budget, many aim to raise awareness among the general public, and to inform state security agencies and private-sector arms and ammunition companies of the nature of their national, regional and international commitments.

The SADC Firearms Protocol commits member states to standards relating to, among others:

- The coordination of procedures for the import, export and transit of firearm shipments<sup>16</sup>
- The regulation of firearms brokering
- A review of national firearms legislation

It therefore commits member states to incorporate into their national laws as a matter of priority, ‘provisions that regulate firearm brokering in the territories of State Parties’ (Article 5.3 (m)).

The SADC Firearms Protocol defines ‘brokering’ as:

- Acting for a commission, advantage or cause, whether pecuniary or otherwise or
- To facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials

And thereby acting as intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and buyer or recipient thereof.

The SADC Firearms Protocol requires each member state:

- To enact national legal measures to ensure proper controls over the manufacturing, possession and use of firearms and ammunition
- To promote legal uniformity and minimum standards as to the manufacture, control, possession, import, export and transfer of firearms and ammunition
- To ensure the standardised marking of firearms at the time of manufacture
- To destroy surplus, redundant or obsolete state-owned firearms and related materials
- To become party to international instruments relating to the prevention, combating and eradication of illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms, ammunition and other related materials
- To establish as criminal offences the illicit manufacturing, possession, trafficking and use of firearms, ammunition and other related materials
- To establish national inventories of firearms held by security forces and other state bodies and to enhance their capacity to manage and maintain their secure storage
- To develop and improve transparency in firearms accumulation, flow and policies relating to civilian owned firearms and to establish national firearms databases to facilitate the exchange of information on firearms imports, exports and transfers

Although other SADC member countries are aware of the need to control brokering, South Africa and Mauritius are currently the only SADC member states with specific domestic brokering laws.<sup>17</sup> Botswana, for example, undertook in 2002 a review of the legislation regulating the circulation and/or transfer of SALW, and has now decided that its Arms and Ammunition Act should be amended to make any form of brokering an offence.<sup>18</sup> As of May 2008, this process was still being undertaken.

At a workshop hosted by the ISS in March 2004, most member states of SADC presented reports on the current situation with respect to brokering laws in their countries and how they view regulating brokering activities in the context of their efforts to curb the proliferation of SALW.<sup>19</sup>

At that time, all countries except for South Africa indicated that they had no specific legal provisions to prevent or regulate brokers and brokering activities. Therefore, it was felt that arms brokers tended to exploit the situation in southern Africa and were often guilty of fuelling conflict. Since then, only Mauritius has enacted a new firearms Act, which includes provisions to regulate brokering activities.

Each member state also indicated that although other laws may be used, they would have to investigate the feasibility of either amending existing laws or design new ones to deal specifically with brokering. However, it was also felt that in tandem with new laws or provisions, law-enforcement agencies would have to be trained to detect violations

and the capacity of officers would have to be heightened. It was also stated that illicit brokering often went hand in hand with money laundering and corruption, and this also needed to be tackled.

Today, all of the other southern African countries are in the process of redrafting legislation to include controls on the flow of weapons into the region. The region has recently begun to address the topic of arms-transfer controls and the problems that occur when there are minimal national regulations to control brokers and their activities.

## **Southern African Regional Police Chiefs Cooperation Organisation**

In 1999, the SADC Council identified the SARPCCO<sup>20</sup> as the implementation agency for the SADC Policy on Small Arms and Cross Border Crime Prevention.<sup>21</sup> However, it was not until August 2007, at the 12th SARPCCO Annual General Meeting in Lusaka, Zambia, that the Council of Police Chiefs resolved that the NFP Coordinators' Forum (to be known as the Regional Coordinating Committee on Small Arms and Light Weapons) would act as the implementing body and driving force, as envisaged by Article 17 of the SADC Firearms Protocol. Article 17 (covering institutional arrangements) provides for state parties to 'establish a Committee to oversee the implementation of this Protocol'.

## **Developing standard operating procedures**

In part because of the slow progress being made with respect to the review of national legislation among its member countries, the SARPCCO Secretariat, in conjunction with the central firearm registries of member countries, is developing standard operating procedures to serve as guidelines for implementing regional standards with regard to the SADC Firearms Protocol. A draft standard operating procedures manual details procedures to be used for the import and export of firearms and ammunition, including import procedures, requirements for import licences, requirements for temporary import licences/permits/authorisations, export of firearms and ammunition, and transit procedures and requirements.

This manual defines brokering as:

- Acting for a commission, advantage or cause, whether pecuniary or otherwise or
- To facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials and thereby acting as intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials, and buyer or recipient thereof

Chapter 6 of the manual outlines the record-keeping requirements for manufacturers, dealers, gunsmiths, brokers and individuals. Registrars are required to record the following information (among other items) for record-keeping and control purposes:

1. Details of manufacturers/dealers/gunsmiths/brokers and individuals who have applied to the registrar for licences/permits/authorisations:
  - a. Trading name of manufacturer or gunsmith
  - b. Issued registration number



- c. Physical address
  - d. Contact details of responsible person
  - e. Inspection reports/returns
2. Details of manufactured firearms:
- a. Make and type
  - b. Calibre
  - c. Action of firearm
  - d. Serial number
  - e. Unique markings
  - f. Date of manufacture
3. Details for record-keeping purposes:
- a. Name and surname as per identification documents
  - b. Identification number and/or passport number
  - c. Date of birth
  - d. Contact numbers of the applicant
  - e. Contact numbers of spouse, if applicable
  - f. Contact numbers of friends and family
  - g. Contact number of employer, if applicable
  - h. Postal address of the applicant
  - i. Previous physical address, if applicable
  - j. Previous employer, contact details and physical address
  - k. Recent photograph (less than five years old)

## **Impact of UN Group of Governmental Experts on Africa**

One of the continuing frustrations for those who advocate comprehensive SALW controls is the slow progress of international efforts to strictly control arms-brokering activities. This contradicts the fact that there is wide recognition that international action to control brokering activities is critical to the success of the efforts to curb the proliferation of illicit SALW.

In December 2001 the UN General Assembly adopted Resolution 58/241 on small arms, which mandated the UN to hold broad-based consultations with member states, interested regional and subregional organisations, international agencies and experts in the field on steps to enhance international cooperation to prevent, combat and eradicate illicit brokering in SALW.

In 2004, during its 59th session, the UN General Assembly passed Resolution 59/86, which included a request for the secretary-general to continue the current 'broad-based consultations' on brokering with a view to:

Establishing, after the 2006 review conference and no later than 2007, a group of governmental experts (GGE), appointed by him on the basis of equitable geographical representation, to consider further steps to enhance international

cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, and requests the Secretary-General to report to the General Assembly at its sixtieth session on the outcome of his consultations.<sup>22</sup>

On 7 June 2006 the UN secretary-general appointed a Group of Governmental Experts (GGE) from the following 25 States: Argentina, Brazil, Bulgaria, China, Egypt, Finland, France, Israel, Jamaica, Japan, Jordan, Kenya, Korea, Lithuania, Netherlands, Nicaragua, Norway, Pakistan, Poland, Romania, Russian Federation, Senegal, South Africa, UK and US. The GGE began its work after the UN conference to review progress made in the implementation of the UNPoA, which was held from 26 June to 7 July 2006. The first session of the GGE took place in Geneva, 27 November to 1 December 2006. The second and third sessions took place in New York (19–23 March and 4–8 June 2007). At its third session, the group adopted a consensus report.<sup>23</sup>

The GGE found that illicit brokering activities in SALW are generally undertaken by means of complex logistical and financial arrangements; that they can destabilise conflict-prone areas; and that they have contributed to the violation of UN Security Council arms embargoes, and as such:

- States, which have not already done so, are encouraged to develop adequate national laws, regulations and administrative procedures to control SALW brokering activities. Such laws, regulations and administrative procedures would be more effective if they were integrated into national export control systems.
- International, regional and subregional organisations are encouraged to organise training courses and workshops for national experts and relevant law-enforcement officials to share information on lessons learnt and practices regarding national arms-brokering legislation and enforcement. For this purpose, states and appropriate international and regional organisations in a position to do so should seriously consider rendering assistance.
- States are encouraged to put in place measures aimed at preventing the forgery and misuse of end-user certificates or other documents that might be relevant for the conduct of brokering activities.
- States are encouraged to put in place internal measures as appropriate for validating the authenticity of documentation submitted by the broker, such as import licence or end-user certificates and/or letters of credit.
- States are encouraged to voluntarily cooperate with other states with a view to facilitating national decision-making and national cross-checking procedures, including the validation of relevant documents for screening the legitimacy of all parties involved in a proposed SALW brokering activity.
- To facilitate international cooperation, states are encouraged to designate a national point of contact on brokering in SALW, which could be the national points of contact under the UNPoA. The UN Office for Disarmament Affairs could facilitate communication between national points of contact.

- States are encouraged to voluntarily cooperate with other states in law-enforcement efforts to investigate illicit brokering activities in SALW.
- States are encouraged to voluntarily engage in or strengthen bilateral or, where appropriate, multilateral cooperation pertaining to the investigation and prosecution of an individual or a legal entity allegedly involved in illicit brokering in SALW.
- States and relevant international, regional and subregional organisations in a position to do so should, upon request, seriously consider rendering technical, legal, financial and other support to interested states to reinforce national measures to prevent, combat and eradicate the illicit brokering in SALW in all its aspects.

The GGE report therefore seems to reinforce the need to locate efforts at strengthening controls over brokering activities at the national and regional levels. This is important because, although policy responses and efforts at the global level to control small arms have borne fruit, they do not always adequately elaborate on what is exactly required from member states. Evidence also suggests that small-arms control efforts at the national and regional level may be more effective and wider-ranging. States in regional groupings may in many instances share more common understandings of the nature of the small arms problem in a particular geographical region and may therefore be more attuned to what is required to successfully address the issue. Allowing either individual states or states in a region to agree on more stringent measures also facilitates greater coordination and cooperation. Furthermore, agreements negotiated at a subregional or regional level are often more stringent than those agreed at the global level.

The importance of subregional protocols in providing coherent frameworks for African states to control the flow of small arms both into and across the region cannot therefore be understated or overemphasised.

The need to have more stringent controls over arms brokering is maturing as an issue in Africa and, as described in this monograph, there have been important developments at the subregional levels. A significant recent change in Africa is the understanding that it is not only those countries that are arms producers that need to regulate brokers, but that all countries must control brokers and brokering activities as one way of stemming the tide of the proliferation of small arms. It is now widely accepted that illicit brokering plays an important part in the diversion of SALW into the illicit trade, in violations of UN Security Council and regional arms embargoes, and in facilitating access to arms by transnational organised crime syndicates, groups intent on exacerbating political conflicts or those carrying out acts of terror.

There is also increasing recognition that a significant proportion of grey and illicit market weapons used in conflict zones are transferred by arms brokers.<sup>24</sup> The UN exposed the role of brokers in trafficking when it embarked on several landmark investigations, including in Angola (2000–2001) and the DRC (2001 and 2004).

According to a report by the International Physicians for the Prevention of Nuclear War and Safer-Net 2001, ‘arms brokers often operate in one country while arranging trade

between entities in others. As a consequence they often operate beyond the reach of national laws.<sup>25</sup> It is therefore increasingly acknowledged that it is imperative that regional and common approaches should be developed in conjunction with greater controls and increased transparency over legal transfers if the illicit arms trade is to be better controlled. Without standardised legal requirements by all countries, an arms broker can simply move operations to where there is an opportunistic legislative vacuum.<sup>26</sup> This acknowledgment is largely due to the efforts of the governments of Norway and the Netherlands, who launched an initiative (the Dutch Norwegian Initiative) to gather international support for national, regional and international efforts to regulate arms brokering.

The policies and regulations at both regional and subregional levels in Africa (and within a global context and framework as a result of the recent GGE on brokering) may in the future go a long way to stem the illicit activities of international arms brokers in southern Africa.

However, it is clear that both the SADC and SARPCCO secretariats have a special responsibility to ensure that the SADC Firearms Protocol – as well as other agreements, such as the UNPoA and the Bamako Declaration – are implemented at a national level, and that laws and regulations are harmonised as much as possible in the southern African region.

African countries are open to dealing with brokering and have expressed the view that ‘the failure of the international community to hold arms manufacturers, their agents and brokers to account has been largely responsible for the uncontrolled illicit proliferation of small arms and light weapons in Africa, with its attendant consequences on the continent’.<sup>27</sup> Africa also supports the ‘legally binding international instrument to enable States to trace the flow of small arms and light weapons from source to identify points of diversion into illicit networks’ and the introduction of ‘authenticated end-user certificates as a means of monitoring the export and transit of SALW’.<sup>28</sup>

In addition, SADC and SARPCCO members are well aware of

the implications of the widely accepted view that progress in addressing the question of illicit brokering depends largely on the level of international cooperation, particularly in information sharing, compliance, and law enforcement – that States need to agree on guidelines for authorizing exports, imports and transit of small arms and light weapons and that consensus needs to be built on what criteria should be applied by States when assessing transfer applications and that the issue of end-user certificates deserves special consideration by States.<sup>29</sup>

## Notes

1 See Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Bamako, Mali, December 2000, [www.globalpolicy.org/security/smallarms/regional/bamako.htm](http://www.globalpolicy.org/security/smallarms/regional/bamako.htm) (accessed 9 July 2008).

2 See Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the

Great Lakes Region and the Horn of Africa, Nairobi, Kenya, April 2004, [www.smallarmsnet.org/docs/saaf12.pdf](http://www.smallarmsnet.org/docs/saaf12.pdf) (accessed 9 July 2008).

3 UN, Central African states agree on elaboration of legal instrument to control small arms, press release AFR/1540, DC/3071, New York: UN Department of Public Information, 2007.

4 Eleven countries are members of ECCAS – Angola, Burundi, Cameroon, Central African Republic, Chad,

- the Republic of Congo, DRC, Equatorial Guinea, Gabon, Rwanda, and São Tomé and Príncipe.
- 5 Adopted in Bamako, Mali in December 2000, by the member states of the then Organisation of African Unity.
  - 6 [www.un.org/en/africa/osaa/pdf/au/cap\\_smallarms\\_2000.pdf](http://www.un.org/en/africa/osaa/pdf/au/cap_smallarms_2000.pdf)
  - 7 See Bamako Declaration, Article 3 A (vii) B (iv).
  - 8 [www.un.org/events/smallarms2006/pdf/arms060627zimb-eng.pdf](http://www.un.org/events/smallarms2006/pdf/arms060627zimb-eng.pdf)
  - 9 With a reservation made by Egypt.
  - 10 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa
  - 11 Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on SALW, Nairobi, Kenya, June 2005, [www.recsasec.org/pdf/Best%20Practice%20Guidelines%20Book.pdf](http://www.recsasec.org/pdf/Best%20Practice%20Guidelines%20Book.pdf) (accessed 9 July 2008).
  - 12 International Alert, Implementation of the PoA in Africa, [http://209.85.165.104/search?q=cache:y8QtWfOp8MJ:www.international-alert.org/pdfs/BtB\\_Africa.pdf+%22Implementation+of+the+PoA+in+Africa%E2%80%99%E2%80%99%22&hl=en&ct=clnk&cd=2&gl=za&client=firefox-a](http://209.85.165.104/search?q=cache:y8QtWfOp8MJ:www.international-alert.org/pdfs/BtB_Africa.pdf+%22Implementation+of+the+PoA+in+Africa%E2%80%99%E2%80%99%22&hl=en&ct=clnk&cd=2&gl=za&client=firefox-a) (accessed 9 July 2009).
  - 13 K Epps, Regional dimensions of small arms transfer standards, *The Ploughshares Monitor*, 28:2, 2007, 16–18.
  - 14 [www.poa-iss.org/.../ECOWAS/ECOWAS%20Convention%202006.pdf](http://www.poa-iss.org/.../ECOWAS/ECOWAS%20Convention%202006.pdf)
  - 15 Report of the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9–20 July 2001 (A/CONF.192/15).
  - 16 The word ‘firearm’ in the SADC Firearms Protocol means:
    - (a) Any portable lethal weapon that expels or is designed to expel, a shot, bullet, or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorization in the respective State Parties,
    - (b) Any device which may be readily converted into a weapon referred in paragraph (a),
    - (c) Any small arm as defined in Article 1 of the SADC Protocol,
    - (d) Any light weapon as defined in Article 1 of the SADC Protocol.
  - 17 P Cross, R de Caris, E Hennop and A Urqhart, *Law of the gun: An audit of firearms control legislation in the SADC region*. London: SaferWorld, 2003.
  - 18 SaferAfrica, First National Consultative Conference on Firearm Control, Ownership and Administration in Botswana: Towards a safe and secure nation, 13–15 May 2003. Pretoria: SaferAfrica.
  - 19 ISS, *Understanding and regulating arms brokering in southern Africa: Report of a workshop hosted by the ISS*, 15 – 17 March 2004. Pretoria: ISS.
  - 20 The Southern African Regional Police Chiefs Co-operation Organisation (SARPPCO) was established in 1995 to coordinate work between the police forces and services in southern Africa on issues that undermine security and stability in the subregion. A legal framework for cooperation, the Agreement in Respect of Cooperation and Mutual Assistance in the Field of Crime Combating, entered into force in July 1999.
  - 21 See SADC Council decision, 13–14 August 1999.
  - 22 [www.un.org/events/smallarms2006/pdf/N0448142.pdf](http://www.un.org/events/smallarms2006/pdf/N0448142.pdf)
  - 23 UN, *The Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN A/62/163, New York: UN, 2007, <http://disarmament2.un.org/cab/brokering/GGE%20brokering/GGEbrokering.htm> (accessed 9 July 2008).
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  - 29 Chairperson’s summary, UN First Biennial Meeting of States to Consider the Implementation of the UNPoA, New York, 7 – 11 July 2003, New York: UN.

### About this monograph

Illicit arms brokering continues to be a challenge to many governments in the world, and more so in African countries, where armed conflicts continue to threaten peace and security. This monograph presents an assessment of selected Southern African countries with regard to arms brokering, and concludes that the practice of illicit arms brokering presents both legal and operational hurdles. This points to a need for countries to coordinate efforts through the implementation of various arms control instruments.

### About the ISS

The Institute for Security Studies partners to build knowledge and skills that secure Africa's future. It provides policy advice, practical training, technical assistance and independent research.

### Acknowledgements

This monograph was made possible with funding provided by the government of Norway. The ISS is also grateful for support from the other members of the ISS Partnership Forum: the Hanns Seidel Foundation and the governments of Australia, Canada, Denmark, Finland, Japan, Netherlands, Sweden and the USA.

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