
Country Reports

The following countries 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 small arms and light weapons: Mozambique, Lesotho, Malawi, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. Edited versions of their reports are re-printed below.

All, except for South Africa, indicated that they had no specific legal provisions to prevent or regulate brokers and brokering activities. Thus, it was felt that arms brokers tended to exploit the situation in Southern Africa and were often guilty of fuelling conflict.

Each also indicated that while other laws may be able to be used, they would have to investigate the feasibility of either amending existing laws or designing new ones to deal specifically with brokering. However, it was also felt that in tandem to new laws or provisions, law enforcement agencies would have to be trained to detect violations and the capacity of officers would have to be enhanced. It was also stated that illicit brokering often went hand-in-hand with money laundering and corruption and this also needed to be tackled.

Members of the SARPCCO Legal Sub-committee present as well as the delegate from the SARPCCO Secretariat undertook to put the brokering issue on their agendas especially in light of the SADC Protocol possible entry into force in 2004. Countries also expressed their appreciation for the assistance of NGOs and the offer by the Dutch – Norwegian Initiative to help where possible.

Lesotho

The spread of small arms is a global threat to human security, human rights and international humanitarian law, and such weapons undermine peace-building and conflict-prevention efforts.

The devastating effects of conflict are that often the unsuspecting victims in a society are forced to flee with the result that those internally displaced are no longer economically active, with the resulting adverse impact on social and economic development often taking decades to overcome.

The Peace and Security Council of the African Union has been established as an organ for prevention management and resolution of conflicts. It has laid out mechanisms to achieve this. On the other hand, New Partnership for Africa's Development's (NEPAD) mandate includes a peace and stability initiative that map out the promotion of long-term conditions for development and security. The initiative under NEPAD shows that diplomacy and concrete efforts to disarm,

demobilize and reintegrate ex-combatants are integral and complementary to each other.

Regionally, the SADC Protocol on Firearms and Ammunition marks a significant advance in the region's commitment to prevent, combat and control the proliferation of and illicit trafficking in small arms and light weapons. At the same time, civil society organizations in the region have undertaken concrete actions to tackle small arms proliferation. The challenge which still remains, is to sustain the momentum that has been built, to enhance and develop existing practical initiatives and to ensure that the commitments contained in the SADC Declaration, the Protocol and the UN Programme of Action are effectively implemented.

The SADC instruments are a clear acknowledgement of the existing political will to tackle the proliferation of small arms and light weapons in Southern Africa. The region is well aware that illicit arms, especially that used in the commission of violent crimes, contribute to the high level of instability, prolonged conflict and social dislocation. These activities do have a link with drug trafficking, terrorism, transnational organized crime, mercenary activities and violent criminal acts. Their tendency to pose danger to the well being of people in the region, their social and economic development and the right to live in peace, is a well-known factor.

Measures to be taken:

- The region agrees on the need to put legislative measures, institutional structures and collective actions in place to prevent, control and reduce the unrestricted availability of small arms and light weapons.
- There is consensus that there is need to have an international instrument for identifying and tracing small arms and a permanent mechanism for monitoring embargoes and sanctions.
- It has since become apparent that small arms are weapons of choice in most recent conflicts. The unrestricted supply of arms promotes a culture of violence and impunity.
- Concerted national, regional and international efforts be undertaken alongside those of regional organizations to address the following:
 - Strict export and imports permits;
 - Strong brokering laws;
 - Ensuring safety of stockpiles;
 - Destroying surplus arms;
 - Restraint in trade to regions of conflict;
 - Strict observance of security Council's embargoes;
 - Strengthening and creating community police forums which enhance cooperation, trust and collaboration between local communities;
 - Maintain a register of all small arms brokers, the bureaucratic act of registration does not count as

much as the ability to scrutinise, approve or refuse licenses;

- There be a regulation of deals made by brokers;
- Develop a political arrangement on cooperation to identify and trace small arms within the region;
- In SADC arms transfer pose a bigger threat to neighbouring countries emerging from civil strife than those involved in it;
- There is need to focus on national implementing measures, legislative and administrative effective measures including use of authenticated end-user certificates to ensure effective control over arms transfers.

Lastly, destruction of unwanted weapons in SADC has not yet extended to small arms, though the potential for this appears strong with the spreading implementation of the SADC Protocol.

The acquisition of firearms and the regulation of their use in Lesotho is governed by the Internal Security (Arms and Ammunition) Act 1966 as amended by the Internal Security (Arms and Ammunition) Amendment Act 1999. There is no provision on brokering.

Lesotho does not manufacture firearms. All legal firearms are imported into the country by the government and Firearms Dealers. It is not known whether the firearms dealers use brokers to acquire their stocks. There are three firearms dealers in the country, namely, AK's Arms and Ammo, Lesotho Firearms Company, and Maluti Arms. Sections 9 to 16 of the International Security (Arms and Ammunition) Act 1966 governs the activities of firearms dealers. A dealer has to acquire an import permit from the police.

Lesotho ratified the SADC Protocol on the Control of Firearms, Ammunition and other related materials on the 27th November 2002.

Following the ratification of the Protocol, the National Focal Point was established under the chairmanship of the Lesotho Mounted Police Services.

The commissioner of police who is the administration of the Internal Security (Arms and Ammunition) Act has been designated the National Contact Point.

The membership of the National Focal Point is as follows:

1. Lesotho Mounted Police Service
2. Lesotho Defence Force
3. National Security Service
4. Ministry of Foreign Affairs
5. Immigration
6. Lesotho Revenue Authority

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7. Private Security Association
 8. Attorney General's Chambers

The responsibilities and functions of the National Focal Point include, among others, the review of the national police on firearms and make recommendations for onward transmission to government.

The Transformation Resource Centre (TRC), a non-governmental Organization based in the country is currently researching the problems of illegal proliferations of firearms in the country. We hope their research will assist in reviewing the firearms legislation in order to comply with the SADC protocol. Their research is conducted in consultation with the Police, Defence Force and the National Security Service.

Malawi

The sole piece of legislation that attempts to govern the use, possession and dealing in firearms is the Firearms Act and the rules and Regulations made under the said Act. This piece of legislation is an old one. It has serious gaps therefore regarding the control of illicit trafficking in firearms. Notably the Act does not expressly provide for matters of brokering – the issue that is under discussion today. Within the confines of the Firearms Act, the Register of Firearms may very well be understood as an intermediary as defined by the SADC Protocol on the Control of Firearms, Ammunition and other Related Materials and the UN Protocol supplementing the UN Convention against Transnational Organized Crime. The Law does not seem to recognise any natural or legal person as a broker other than the Register of Firearms.

The Register of Firearms is the central authority with respect to the acquisition of firearms. This authority regulates the issuance of permits and licenses for the exportation and importation of firearms. The law in some senses confuses the role and duty of firearms dealers. These are persons that are issued with licenses to deal with specific types of firearms, but must, as a matter of law, apply to the Register of Firearms to acquire through importation specific types of firearms. These firearms dealers are accountable to the Register of Firearms for all the transaction they conduct.

The ratification by Malawi of the SADC Protocol means that Malawi's legislation governing the use, possession and dealing in firearms needs to be made reflective of this Protocol and a process is currently underway to do this.

Mauritius

The current practice regulating the possession of a firearm is governed by the Firearm Act of 1982. This act defines lawful possession and makes illegal all possession falling outside the lawful possession. The issue or refusal to issue a firearm licence is the

responsibility of the National Commissioner of Police. The law also provides the conditions to be fulfilled by a particular applicant such as:

- How and to whom the application is to be directed;
- Conditions to be fulfilled for qualifications:
 - Character
 - Reason
 - Buying from whom
 - Health
 - Competency to handle a firearm – like security measures, safekeeping, etc.

All possession falling outside the legal possession is regarded as unlawful. A person found in unlawful possession is prosecuted before court and if found guilty the law makes a mandatory provision for imprisonment for at least 1 year and a maximum of 15 years together with a fine of not less than 10,000 and not more than 100,000 rupees. Firearm licences are not granted to minors, nor are the same transferable without the approval of the National Commission. Further, pawning is an offence the Firearms Act. The National Commission has also the power to withdraw any firearm licence of any holder who acts in breach of any condition imposed on him or if the holder no more deserves to be in possession of a firearm or if convicted by a court for an offence under the Firearms Act.

Types of Licences

- Game license
- Private security services
- Self protection

All firearms issued are registered and the central firearm registry falls under the control of the crime records office. Mauritius has an electronic database, which originates from India. It is simple to operate and maintain. Every "transaction" involving a firearm is recorded on the database. These include the following applications: finger printing, issuing of permits or licences, any inquiries, personal information on firearms (both those destroyed and those still in state or civilian possession).

Mauritius has a population of around 1.2 million. There are around 4300 firearm holders of around 6400 firearms. The figures clearly establish that the number of firearms is relatively low and Mauritius does not have a paramilitary service. All firearms are registered with the police. Mauritius is a signatory the SADC Protocol on the Control of Firearms, Ammunition and other Related Materials. Mauritius complies with all except the section providing for the regulation of brokering and the Firearms Act might have to be reviewed on the said issue. Historically, Mauritius does not have an influx of firearms, legally or illegally. It is an island and has only two ports of entry, which are well controlled, and the suggested improvements

will make it the ideal controllable environment for all law enforcement agencies operating there.

To date, Mauritius has not experienced massive inflows of firearms in the country; however there are suggestions that organized crime operations are targeting the island as a springboard for the movement of firearms to other conflict islands. The Mauritius Police is not experiencing increases in levels of violent crimes involving firearms, neither there is an increase in smuggling activities concerning firearms on the island. The police feel that transnational organized criminal organizations may in the future use the stability on the island to conduct their activity by moving firearms from one conflict area to another without these firearms entering Mauritius. The Mauritius Police has embarked on process to review the present Firearm Act. The new South African legislation, which covers Brokering, is being used as a model to work from with input from the criminal record office. The new Firearm Act, which will be tabled before the parliament, will hopefully address the issue of brokering.

Mozambique

Since the end of the civil war in 1992, the government of Mozambique has not imported or exported firearms. Individuals can apply for a licence to own a firearm for self-protection or hunting. They normally get these arms from South Africa. Since 1995 we have been undertaking one of the most well known operations in the region – Operation Rachel that aims to locate, collect and destroy arms caches.

Parallel to Operation Rachel is another operation performed under the auspicious of the Christian Council of Mozambique – Tools for Arms.

There is an internal process in Mozambique to review national legislation and one of the issues to be considered and addressed is “brokering”.

Namibia

See Mr Brisley’s presentation above.

South Africa

South Africa’s *National Conventional Arms Control Act, 2002 (No. 41 of 2002)*, regulates the transfer and transit of weapons across state borders. The Act was given presidential assent on 20 February 2003.

The objectives of the Act are to:

- ensure the implementation of a legitimate, effective and transparent arms control system;

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- foster national and international confidence in the control procedures;
 - provide for an inspectorate to ensure compliance with the provisions of the legislation;
 - provide guidelines and criteria to be used when assessing applications for permits made in terms of the act;
 - ensure adherence to international treaties and agreements; and
 - ensure proper accountability in the trade of conventional arms.

In the Act, 'brokering services' means:

- (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; and
- (d) acting as intermediary between any manufacturer or supplier of conventional arms, or provider of services, and any buyer or recipient thereof.

The law thus recognises the role of brokers in the arms trade and "trade" is also defined.

Provisions of the Act include:

- Requirements that must be adhered to in order to export firearms;
- Guidelines and criteria that are to be taken into account when considering marketing, contracting and export permits;
- Requirements for the registration of all persons involved in brokering and regulations on the transactions that brokers may perform.

This law makes provision for a National Conventional Arms Control Committee (NCACC) - a Cabinet appointed committee of 8 Ministers and 4 deputy Ministers that is charged to carry out government policy and to ensure political oversight and therefore to regulate conventional arms transfers - conventional arms includes small arms.

No person may trade in conventional arms unless registered with the secretariat and in possession of a permit authorised by the Committee and issued by the secretariat. The Act also takes into

consideration whether or not someone trading in arms has a conviction for certain crimes either in South Africa or abroad.

The legislation gives authority to the South African government to have complete extraterritorial rights over the activities of anyone registered to sell arms in South Africa, as well as to take action against non-South Africans who contravene the Act within South Africa. If a South African broker wishes to broker a deal between one country and another he has to come to the Committee to get authorisation, other s/he is in contravention of the Act. This of course does become difficult to police.

A court convicting a person of an offence in terms of the Act may, in addition to any other penalty, which it may impose, order seizure of any goods, in respect of which the offence was committed. The penalties are quite severe.

One objective of the Act is to prevent brokers from becoming owners of military equipment. S/he can facilitate but cannot become a "boot" salesman ending up with a lot of stock to sell to whom ever comes first. We ensure that the suppliers are genuine registered manufacturers (accredited by their government) and similarly that the buyers on the other end are also registered or accredited by their governments. Whenever conventional arms are exported, a person authorised by the government of the country to which the arms are exported must issue a certificate before the arms are exported. The broker fulfils the role between the two.

South Africa has a number of brokers on its books and South Africa is satisfied that it is regulating their activities according to its legislation. While the broker once registered does not need a licence/permit for each brokering transaction, he or she will have to be identified by the supplier or purchaser. The permit thus identifies each of the parties.

Swaziland

Swaziland has an Arms and Ammunition Act of 1964 which has been amended from time to time. There is no provision that regulates brokering activities. The Act thus needs to be reviewed and updated in order to be compliant with the SADC Protocol and other international protocols. A proposal has been submitted to Cabinet for the establishment of a National Focal Point. In the meantime the police are doing everything possible within its means while political support is garnered.

Tanzania

Very few member states in the SADC Region have specific provisions on brokering in their national legislation, and that includes the United Republic of Tanzania. When one reads provisions of Article 5 (3) of the SADC Firearm Protocol, as well as the similar provision

under Article 15 (1) of the UN Firearm Protocol, it seems that member states are required to:

- a) Include provisions that control licensing or authorization of brokering in national legislation and regulation.
- b) Register disclosure on import licenses or authorisation or accompanying documents of the names and location of brokers involved in the transaction.
- c) Articles 7 and 12 of the UN protocol also require states to retain records regarding brokers and brokering, and to exchange information among themselves.

Now that majority of member states in the SADC region have ratified the SADC protocol, harmonization of legislation should take place and incorporate similar provisions on brokering in our national legislations.

The control of brokers and brokering in Tanzania

Tanzania has two basic legislations that control the illicit use and proliferation of small arms and light weapons. In both legislations, namely the Armaments Control Act No.1 of 1991 and the Arms and Ammunition Act No.2 of 1991, there is no provision on brokers and brokering, in that Tanzania does not manufacture firearms except for ammunition which is mainly for domestic use.

The Government did not find it necessary to have the provision on brokers and brokering in that all firearm licences on imports and exports are Government controlled and there is no way that an individual can possess a firearm without his or her application going through Village, District, Regional Committees, have the licence issued by the Director of Criminal Investigation, and have the record kept at the Central Arms Registry. There is special board made up of those institutions that deal with small arms and light weapons for military and security use. The question of brokering does not apply here since all required firearms have to be authorized by the board for the institutions to acquire them directly from manufacturers.

The need to understand and regulate brokering registration and regulations

Tanzania, has implemented both the SADC Protocol and the UN Programme of Action to an advance stage by establishing the entire necessary infrastructure from the national to the village level.

The Government of Tanzania has established national policy on firearms and is now having a special task working on harmonization of legislation. The Government has conducted various operations and public education and awareness programmes that have resulted in the surrender and recovery of huge amounts of illicit firearms which are now being publicly destroyed by fire and then cut into pieces with a gun-cruncher in various regions. In 2003, 1000 firearms were destroyed in Dar es Salaam and another 921 in

Mwanza. In 2004, 1847 firearms were destroyed in Mbeya, and destruction process will continue in the rest of the regions.

Tanzania has learned a lot from the list of all recovered or surrendered firearms, in that most of them have either been illicitly manufactured within the country or crossed the vast unprotected land borders, most of which are land-locked. Some of the land-locked member states do import and export their commodities through Tanzania and there are chances that some of the transit cargo may include illicit firearms and may come into the country without the knowledge of the relevant authorities. There is good evidence that refugees have been a big source of illicit firearms that have so far been recovered in the country.

Now that Tanzania has a record of illicit firearms that have been recovered, the Government is in the process of computerising the entire firearms database and will be able to trace the origins of these firearms. The Government of Tanzania believes that the harmonization of legislation, which will also include brokering, is necessary and since Tanzania has started the process, SARPPCO partners especially the legal sub-committee will be invited this year to participate.

Zambia

Firearms dealers

Zambia has a total of six (6) Firearms Dealers. These are the Registered Dealers that have been authorised to import firearms and ammunition for sale to members of the general public in Zambia.

Annual allocations

The annual allocation given to the firearms dealers per year is as follows:

- RIFLES 275
- S/GUN 309
- PISTOLS 138
- AMMUNITION 1103350 (ASSORTED)

This allocation is shared among the six firearms Dealers, and the Minister of Home Affairs may increase or reduce this allocation whenever he deems it fit.

Source

Zambia does not manufacture firearms for sell but has authorised the dealers to import straight from the manufacturers, like Brazil, Germany, Russia, South Africa and Italy.

The provision of firearms' licences

The firearms licences are issued to applicants once every year. The firearm licence is a requirement that qualifies an individual to purchase or acquire a firearm from the Dealer shop.

Licensing and registration of firearms

The licensing of firearms is done by the Councils on recommendation from the Registrar's Office, whilst the registration is done by the Central Firearms Registry based at Headquarters in Lusaka.

Firearms in circulation for the past six years (1998-2003)

• SHOTGUNS	43295
• RIFLES	32277
• PISTOLS	11070
TOTAL	86642

Zambia is committed to enhancing measures put in place to control the movements and to monitor all the registered firearms in circulation. One of the measures, being the reduction in annual allocation and the limited number of firearms dealers.

Inspections

The office of the Registrar of firearms has the responsibility of inspecting any consignment that is brought into the country by the firearms dealer to make sure the right type of firearms and the correct number has been imported before allowing their sale to the general public with valid firearms licences. The Armouries are inspected every year to make sure they meet the standard required by the law.

The following companies are the manufacturers from whom sporting rifles, shotguns, pistols and all assorted sporting ammunition is imported.

SWARTKLIP PRODUCTS LTD
P. O. BOX 997
CAPE TOWN
SOUTH AFRICA.

ROSSI FIREARMS
RUA AMADEO ROSSI
143- CAIXA
POSTAL 28
93030-220-SAO LEOPOLDO-RS
BRASIL

CESKA ZBROJOVKA SVATOPLUKA CESH
68827 UTERSKEY BROD
CZECH REPUBLIC

SELLIER AND BELLOT 1283 JSC,
LIDICKA 667 25813
VLASIM
CZECH REPUBLIC

CLEVER
PONTE FLORIO
37033 MONTORIO (VERONA)
MONTOMO
ITALY

PETORIA METAL PROCESSING
CHURCH STREET EXTENTION
PRETORIA WEST
SOUTH AFRICA

MASTEN-WRIGHT, INC.
P.O. BOX 1896
NEW HAVEN
CT 06508
UNITED STATES OF AMERICA

KYNAMCO LIMITED
P.O. BOX 42 ROYSTON
SG89L2
ENGLAND
UNITED KINGDOM

GAMO INDUSTRIES EL. S.A
P. O. BOX 16
08830 SANT BOIDE LIOBREGAT
BARSELONA
SPAIN

Zimbabwe

Zimbabwe has two pieces of legislation which deal with firearms – the first being the Firearms Act which deals with firearms that civilians (private persons or institutions) may possess and the second being the Public Order and Security Act which amongst other things prohibits acquisition, possession, and use of arms of war by private persons or institutions.

There is no specific regulation that makes reference to brokering in these Acts and indeed this workshop has been an eye-opener in explaining the implications of brokering for national security. Zimbabwe is also signatory to the SADC Protocol and the issue of brokering must be taken on board. The process of ratification is underway.