



Kenya Action Network on Small Arms (KANSAs)

PRESS RELEASE

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Addressing Armed Violence through Arms Reduction in Kenya



The 15th day of this month marks 11 years since the signing of the Nairobi Declaration on the problem of Small Arms and Light Weapons (SALW), in the Great Lakes and Horn of Africa Region. A majority of member states to this declaration have further signed the legally binding Nairobi Protocol on SALW and its associated Best Practice Guidelines on Arms Control and Management. As a signatory to these instruments, Kenya symbolically marks the 15th March of every year with the destruction of illegal firearms as a sign of commitment to eradicating these tools of violence. On this day therefore, the government might be telling the public and the international community what progress it has made in fulfilling its commitments under these instruments.

With this in mind, on 2nd February 2011, KANSAs held a consultative meeting to appraise its members on the current situation in Kenya as it relates to the specific efforts being used to manage and control the proliferation and misuse of illicit SALW in the country, in light of the new constitutional dispensation. Given Kenya's leading role and Civil Society's complementary and oversight role in the fight against illicit SALW, it is important that a true picture of state of affairs on this issue is shared from different perspectives.

KANSAs's consultative meeting sought to focus on three distinct but over-arching issues and made various observations under each, as follows:

A. To identify gaps within the existing SALW legislation and the proposed laws related to the new Constitution that have elements of SALW, including the National Police Service (NPS) Bill, with a view to recommend actions to provide sufficient safeguards against unnecessary use of firearms. We note;

- The worrying contrast between international requirements for Law Enforcement Agents to use firearms as a last resort, and the weak provisions of the current Firearms Act, and the Draft Police Service Bill which provide insufficient safeguards against unnecessary use of firearms by Law Enforcement Agencies.
- With profound dismay, the rise in incidences of extra-judicial executions carried out by the police and a worrying trend in which civilians have subjected police officers to unwarranted physical confrontations.
- While considering the merits and demerits of arming civilians, private security personnel and untrained Kenya Police Reserves (KPR), KANSAs is strongly opposed to this measure because it would greatly increase the challenges of ensuring accountable use of legal firearms in Kenya, and, provoke criminals into seeking and using firearms more frequently, which would increase the ferocity of property crimes.

B. To assess progress in regional and national policy and legal frameworks related to SALW management and control. We note:

- That despite the government having signed the Nairobi Declaration and the Nairobi Protocol on SALW, it has only paid lip service to the implementation of these instruments, especially as relates to: strengthening measures to address civilian possession of firearms and developing Kenya's National

SALW policy to guide the review of relevant firearm laws in line with the provisions of the mentioned instruments. The Draft Policy, which was started in 2005 and completed in July 2009, is still shelved at the Ministry of Internal Security 'waiting cabinet approval,' despite having been validated by a wide range of stakeholders. Additionally, the government has not committed itself to review the firearms act and related legislation.

C. To evaluate the progress of past anti-illicit SALW interventions by the state;

- The government has in the past, commissioned numerous disarmament operations mainly in pastoralist areas, as reactionary "options of last resort" in a bid to mop up civilian-owned firearms which were invariably used in carrying out livestock raids. These are largely uncoordinated and have not sufficiently reduced demand for illicit firearms in the country. This is because the efforts have not been accompanied by measures to guarantee security of vulnerable communities who have opted to arm themselves.

Recommendations

In light of the issues identified, KANSAs recommends that even as the Government of Kenya prepares to mark the 11th anniversary of the Nairobi Declaration and, as its interest in taking leadership in international arms control measures like the Arms Trade Treaty continues, the following measures should be undertaken domestically and internationally:

The Ministry of Internal Security should;

- Submit the **Draft National Policy on SALW** to the cabinet for approval and rapidly review the **Firearms Act** and related legislation, ensuring that these laws are in line with the new Constitution and the provisions of the Nairobi Protocol on SALW, especially in the areas of penalties for illegal possession, accountability by law enforcement agents, security of government stockpiles and collection and disposal of illicit arms.
- Work alongside the national parliament to speed the passage of draft legislation, to establish an Independent Police Oversight Authority, and thereafter work to support its proper resourcing and functioning.
- Either begin broader reforms to professionalize recruitment, management and deployment of the Kenya Police Reserve, or initiate a process of disbanding it and increasing numbers of police officers deployed where the KPR services may be needed.

The Government of Kenya must;

- Fully commit to and implement the **Nairobi Declaration** and the **Nairobi Protocol** with specific reference to the 'Best Practice Guidelines' tool, the **United Nations Programme of Action on Illicit Small Arms and Light Weapons in All Its Aspects (UNPOA)**, the **IGAD Peace and Security Strategy**, the **Bamako Declaration**, the **Windhoek African Position on SALW** and the **United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**.
- Establish and foster mutually beneficial bilateral/multi-lateral collaborations with neighboring countries so as to address cross-border influx of illicit SALW, and coordinate disarmament efforts in line with the provisions of the yet to be approved **Best Practice Guidelines on Practical Disarmament** related to the Nairobi Protocol on Small Arms.
- Stand firm against proposals aimed at allowing private security guards to carry firearms. Further, in the spirit of arms reduction, discourage civilian and or private possession of firearms. Caution must be taken to ensure that firearms are ONLY deployed after a determination is made, that they are needed and that their use will be exceptional, and proportionate to the legitimate object to be achieved.
- Address sections on the use of firearms by Law Enforcement Agents within the various police Bills especially the National Police Service Bill, to ensure that safeguards are in place to cover the practicalities of decision-making and appropriate procedures in the event that force or firearms are employed. This will guarantee accountability in the use of firearms and ensure that law enforcement agents use them only as a last resort to protect life and uphold human rights. Indeed, as stated in 1990 United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials guideline:

"Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Note to reader

KANSAs

KANSAs is a national civil society network whose mandate is to coordinate and spearhead advocacy campaigns and public education initiatives on the dangers posed by the unabated proliferation and misuse of illicit SALW in Kenya. The network is supported by Safeworld and other international organisations.

Prepared by KANSAs Steering Committee

