

IANSA position paper: Appropriate use of small arms by state officials *

The misuse of small arms by government agents can result in violations of the right to life, liberty and security and foster a climate of insecurity that affects the economic and social rights of individuals and communities. Rules to prevent misuse of small arms & light weapons by military forces and law enforcement agencies have been agreed internationally, but often misuse is affected by both demand-side and supply-side factors. A lethal pattern of misuse can encourage increased civilian firearm ownership and misuse: as long as communities do not trust those who police them, they will not be willing to give up their own small arms and may wish to arm themselves further. Likewise, inadequate stockpile management of the weapons used by the security sector can supply small arms to the illicit market.

Existing norms to regulate the use of small arms by the security sector include the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Unfortunately very few States have incorporated the Code of Conduct or the Basic Principles into their national legislation. According to these norms, law enforcement officials (who can include police, soldiers, paramilitary units, border guards, presidential guards, intelligence services, customs and immigration officers when carrying out law enforcement duties) are only entitled to use lethal force if strictly necessary to protect life, and then only to the minimum extent. Government officials, including law enforcement and other security officials, must not use small arms against people except:

- in self-defence or defence 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.

Enforcing these rules requires a clear chain of command over all officials authorised by law to use force, particularly lethal force.

States must take measures not only to prevent and punish deprivation of life and injury by criminal acts, but also to prevent arbitrary extrajudicial killings or other serious human rights violations by their own security forces. The use of force by the state must be governed by the rule of law and be fully accountable, and must be both necessary and proportionate.

How does the Programme of Action (PoA) address the problem?

The PoA does not directly refer to reducing the misuse of small arms by state officials, but there are a number of indirect references.

The two UN agreements described above, the Code of Conduct and the Basic Principles, are supported in the Preamble of the PoA. States agreed on

developing and implementing agreed norms and measures at the global, regional and national levels that would reinforce and further coordinate efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects.

States further agreed in the PoA to consider assisting interested States to build their law enforcement capacity (III.6). Security Sector Reform (SSR) typically includes increasing police capacity and professionalism while at the same time promoting oversight, transparency and adherence to international

* For reasons of style only, the terms 'weapons', 'small arms' and 'firearms' are used interchangeably in this paper. All these terms more properly refer to 'small arms and light weapons (SALW)'. These are weapons that can be carried and used by one or two people, including handguns, assault rifles, machine guns, grenade launchers, anti-tank or anti-aircraft guns and light mortars. Light weapons, ammunition, grenades, landmines, and explosives are also part of this category.

human rights standards. These measures contribute to reducing the demand for small arms, a goal agreed in paragraph 7 of the opening declarative sentences of the PoA.

In addition, States agreed to establish adequate, detailed standards for managing the stockpiles of small arms used by state officials (II.17) and to review state stockpiles regularly, so that surpluses can be destroyed (II.18).

Progress since 2001

Global progress

Security Sector Reform has recently become prioritised within donor assistance guidelines. Much greater funding is likely to become available now that SSR fits into three of the six activities specified by the **OECD Donor Assistance Coordination (DAC)** guidelines for technical co-operation and civilian support in the area of security and development:

1. Management of security expenditure through improved civilian oversight and democratic control of budgeting, management, accountability and auditing of security expenditure.
2. Enhancing civil society's role in the security system to help ensure that it is managed in accordance with democratic norms and principles of accountability, transparency and good governance.
3. Security system reform to improve democratic governance and civilian control.

SSR is now more likely to receive funding from overseas development aid budgets, since it will be considered a contribution towards achieving the Millennium Development Goals. However, these broader SSR activities to improve the accountability, transparency and governance of the security sector do not provide guidance on how and when the security sector should use appropriate force with small arms.

So far, global instruments on small arms have not explicitly promoted the UN Code of Conduct or the UN Basic Principles. However, they have been incorporated into some agreements at the regional and national level.

Regional and national progress

The Best Practice Guidelines (2005) for implementing the **Nairobi Protocol** provide a set of standards for the possession and use of firearms by state employees, including training in firearm legislation, penalties for loss or theft, and a permit required for each firearm possessed (which should also be registered centrally).

In South-Eastern Europe, linking small arms management with security sector reform is mandated by the Implementation Plan of the **South Eastern Europe Stability Pact** (2001). All States in the region are undergoing some form of SSR. Evidence there has shown that the voluntary handing in of small arms is more likely where communities feel better protected by the police and the judicial system.

A number of SSR programs have been launched since 2001. One example is community-based policing in Malawi. With civil society cooperation, the government has engaged community representatives in hundreds of Community Policing Forums across the country. Posters, radio, TV and other media are used to raise awareness of basic human rights standards for policing and the dangers of firearms proliferation. Through these means, the demand for guns has been kept low and communities are less afraid to report illegal weapons to the police.

IANSA recommendations to States:

- **Incorporate existing UN standards for appropriate use of force into the RevCon outcome documents, existing national legislation, codes of practice, or oversight mechanisms for the security sector.**

The RevCon should call for implementation in law and practice by all states of the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These UN standards are directly relevant to reducing the demand for small arms and the misuse of those arms, making them a vital tool in curbing the illegal trade. They should be included as an annex to the RevCon outcome documents.

- **Ensure that recruitment and training policies for law enforcement agencies create professional organisations that are responsive and accountable to the community as a whole.**

States should ensure that all law enforcement officials are recruited through proper screening procedures, have appropriate ethical and psychological qualities for the effective exercise of their functions and receive continuous and thorough professional training on the acceptable conditions for the use of force. In training law enforcement officials, special attention must be given to the promotion and protection of human rights as a primary duty of all state officials. Law enforcement officials should not just be taught how to pull the trigger, they should be taught when to do so (and when not to do so) using human rights criteria.

In addition to training to prevent the misuse of their own guns, law enforcement officials should be trained in how to intervene to stop armed violence, particularly gender-based violence. Local law enforcement officers are often the first to respond to, and intervene in, instances of gender-based armed violence (including homophobic violence against men), so it is essential that police are trained to respond effectively and sensitively.

- **Establish effective and accountable procedures for reporting and investigating incidents when officials use their weapons.**

Transgressions by armed officials should be investigated and prosecutions brought if necessary. Too often police and security forces are seen to escape accountability for their actions. Eliminating impunity in cases of small arms misuse is vital to gain the trust of communities and prevent further arms proliferation.

- **Enforce proper security and management of all police small arms & light weapons and ammunition, including the mandatory destruction of surplus stock.**

If weapons are issued to police without adequate precautions, off-duty officials can use the weapons to commit intimate partner violence and other criminal actions. States should ensure that law enforcement agencies rigorously account for firearms, including to whom small arms and ammunition are issued and when. Weapons under the control of officials must be stored in a secure manner when not in use, and should not be taken home unless in exceptional circumstances. Stockpile security is also essential to prevent theft of small arms used by state security services. Confiscated, obsolete or surplus weapons should be destroyed with independent verification as soon as possible.

- **Promote confidence-building measures between police and communities.**

Confidence building measures should be a continuing activity and police-community relations should be governed by respect for human rights and promoting the rule of law. Ensuring that police are provided with training in the global human rights standards applying to the appropriate use of small arms is a significant first step to building the trust between law enforcement agencies and local communities.. This would help reduce the perception among some police services that members of the community are their adversaries rather than the people for whom they are providing a service.

- **Promote community-based policing initiatives.**

Community-based policing is representative of, responsive and accountable for providing a service to the whole community based on international standards, incorporating principles of transparency and partnership between police and civil society. Community councils should be created to advise community-based policing programs directly about conditions, needs, perceptions and possible solutions to security problems.

- **Ensure that private military and security services are brought within national legal frameworks to guarantee accountability and to prevent misuse of small arms by these actors.**

Private military and security services often have access to large quantities of small arms, and enforcing appropriate standards for the use of these weapons is typically more difficult than in the state security sector. These private companies should be regulated according to the strictest possible standards. The private security sector should register every weapon with the state, there should be state oversight of the recruitment, training and use of armed private security guards, severe penalties for weapons lost or stolen, and small arms must not be taken home or possessed by 'off-duty' employees.

- **Mobilise resources for reform measures aimed at improving the functioning, transparency and accountability of the security sector.**

Mistrust of the security sector can increase the demand for small arms as a means of personal protection, but so can the lack of an effective police presence. Many States lack the capacity to ensure that the security sector provides a reliable, comprehensive and accountable service. Increased financial and technical support from donors and multilateral agencies is needed to ensure this happens.