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CONSEJO DE DERECHOS HUMANOS  
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de los Derechos Humanos  
58º período de sesiones

**CUESTIONES CONCRETAS DE DERECHOS HUMANOS**

**Prevención de las violaciones de los derechos humanos cometidas  
con armas pequeñas y armas ligeras**

**Documento final presentado por Barbara Frey, Relatora Especial,  
de conformidad con la resolución 2002/25\*\* de la Subcomisión**

**Resumen**

En el presente informe final de la Relatora Especial encargada de preparar un amplio estudio de la prevención de las violaciones de los derechos humanos cometidas con armas pequeñas y armas ligeras se abordan dos principios jurídicos internacionales que son esenciales para entender el carácter y la amplitud de la obligación del Estado de prevenir las violaciones de los derechos humanos cometidas con armas pequeñas: la responsabilidad de los Estados de

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\* De conformidad con la resolución 60/251 de la Asamblea General, de 15 de marzo de 2006, titulada "Consejo de Derechos Humanos", todos los mandatos, mecanismos, funciones y responsabilidades de la Comisión de Derechos Humanos, incluida la Subcomisión, fueron asumidos a partir del 19 de junio de 2006 por el Consejo de Derechos Humanos. En consecuencia, desde la misma fecha, la signatura E/CN.4/Sub.2/\_ de la serie de documentos en que la Subcomisión presentaba sus informes a la anterior Comisión de Derechos Humanos ha sido sustituida por la signatura A/HRC/Sub.1/\_.

\*\* Los anexos al informe se distribuyen tal como fueron recibidos, en el idioma original solamente.

ejercer la debida diligencia para impedir el uso indebido de las armas pequeñas por entidades privadas y la importancia del principio de la legítima defensa en relación con las obligaciones del Estado en materia de derechos humanos de impedir la violencia relacionada con el uso de las armas pequeñas. Los anexos al presente informe contienen un resumen y análisis de las respuestas de los Estados Miembros de las Naciones Unidas al cuestionario de la Relatora Especial.

De conformidad con la normativa de los derechos humanos, los Estados tienen la obligación primordial de optimizar la protección de los derechos humanos, en especial en relación con el derecho a la vida. Este compromiso entraña obligaciones negativas y positivas; los funcionarios estatales deben abstenerse de cometer violaciones con armas pequeñas y los Estados deben adoptar medidas para reducir a un mínimo la violencia armada entre agentes privados. El párrafo 1 del artículo 2 del Pacto Internacional de Derechos Civiles y Políticos impone a los Estados partes la obligación afirmativa de impedir que los particulares incurran en actos que violen los derechos fundamentales, en particular el derecho a la vida.

Las medidas efectivas mínimas que los Estados deberán adoptar para cumplir con su obligación de ejercer la debida diligencia para impedir la violencia con armas pequeñas deben ir más allá de la mera tipificación como delitos de los actos de violencia armada. Los Estados deben exigir además condiciones mínimas para el otorgamiento de licencias para evitar así el acceso a las armas pequeñas a las personas más proclives a usarlas indebidamente. También debería aplicarse otra medida efectiva para proteger el derecho a la vida, como se sugiere en el Proyecto de principios sobre la prevención de las violaciones de los derechos humanos cometidas con armas pequeñas propuesto por la Relatora Especial.

El principio de la legítima defensa ocupa un lugar importante en la normativa internacional de los derechos humanos, pero no supone un derecho consiguiente e independiente a la posesión de armas pequeñas, ni mejora la obligación de los Estados de ejercer la debida diligencia en cuanto a su posesión por civiles. En cambio, como se indica en el presente informe, existe un amplio ámbito en el que los Estados deben y pueden reglamentar, y efectivamente reglamentan, la posesión de armas de fuego en armonía con los principios de la legítima defensa. La legítima defensa es una excepción ampliamente reconocida, aunque jurídicamente proscrita, de la obligación universal de respetar la vida ajena. Es la base para la exención de la responsabilidad penal que puede alegar cualquier agente estatal o no estatal. El derecho internacional no apoya una obligación jurídica internacional por la que se exija a los Estados facilitar el acceso a las armas de fuego por razones de legítima defensa. El principio de la legítima defensa no niega la responsabilidad de los Estados de ejercer la debida diligencia para impedir el acceso a las armas a las personas más proclives a usarlas indebidamente. El Estado está especialmente obligado a proteger a los grupos vulnerables, en particular a las víctimas de la violencia en el hogar, del uso indebido de las armas pequeñas.

El Artículo 51 de la Carta de las Naciones Unidas se aplica a los Estados que actúan en ejercicio del derecho de legítima defensa en caso de ataques armados contra su soberanía nacional. No se aplica a las situaciones de legítima defensa por parte de particulares.

## ÍNDICE

	<i>Párrafos</i>	<i>Página</i>
INTRODUCCIÓN.....	1 - 7	4
I. LAS OBLIGACIONES CON ARREGLO A LAS NORMAS INTERNACIONALES DE DERECHOS HUMANOS DE IMPEDIR EL USO INDEBIDO DE LAS ARMAS PEQUEÑAS POR AGENTES NO ESTATALES.....	8 - 18	5
A. La norma de la debida diligencia en relación con el uso indebido por agentes privados.....	10 - 14	6
B. Medidas efectivas para cumplir con la obligación de la debida diligencia.....	15 - 18	8
II. EL PRINCIPIO DE LA LEGÍTIMA DEFENSA EN RELACIÓN CON LAS VIOLACIONES DE LOS DERECHOS HUMANOS COMETIDAS CON ARMAS PEQUEÑAS Y ARMAS LIGERAS.....	19 - 39	11
A. La legítima defensa como exención de la responsabilidad penal, no como un derecho humano.....	20 - 25	11
B. Requisitos de necesidad y proporcionalidad para invocar la legítima defensa.....	26 - 32	14
C. La alegación de legítima defensa no niega la obligación de ejercer la debida diligencia para prevenir la violencia en el sector privado.....	33 - 37	17
D. Legítima defensa de los Estados contra la fuerza de otros Estados.....	38 - 39	20
III. CONCLUSIONES Y RECOMENDACIONES.....	40 - 46	22
<i>Anexos</i>		
I. Summary of Responses Received from United nations Member States to the Special Rapporteur’s Questionnaire.....		24
II. Summary and analysis of responses received from United Nations Member States to the Special Rapporteur’s questionnaire.....		53
III. Excerpts of United Nations Member States’ laws and regulations concerning possession and use of small arms and light weapons.....		61

## INTRODUCCIÓN<sup>1</sup>

1. El presente informe de la Relatora Especial encargada de preparar un amplio estudio de la prevención de las violaciones de los derechos humanos cometidas con armas pequeñas y armas ligeras se presenta de conformidad con la resolución 2002/25, la decisión 2003/105, la decisión 2004/123 y la decisión 2005/110 de la Subcomisión de Promoción y Protección de los Derechos Humanos, así como la decisión 2003/112 de la Comisión de Derechos Humanos. Se anexan al presente informe un resumen y un análisis de las respuestas de los Estados al cuestionario elaborado por la Relatora Especial de conformidad con la decisión 2003/105 de la Subcomisión y la decisión 2004/124 de la Comisión.
2. El informe principal complementará los primeros informes preparados por la Relatora Especial. En su informe preliminar (E/CN.4/Sub.2/2003/29) se describen las consecuencias adversas para los derechos humanos del uso indebido de las armas pequeñas en tiempos de paz. La Relatora Especial estableció un marco jurídico para analizar cómo las normas existentes de derechos humanos definen las obligaciones de los Estados en tres situaciones diferentes, a saber, para prevenir: a) las violaciones a de los derechos humanos cometidas con armas pequeñas por agentes estatales; b) los abusos de los derechos humanos causados por agentes privados; y c) la transferencia de armas pequeñas en situaciones en que sea probable que se usen para cometer violaciones graves de los derechos humanos. En el informe de la Relatora Especial sobre la marcha de los trabajos (E/CN.4/Sub.2/2004/37) se abordan los efectos perjudiciales para los derechos humanos y la seguridad humana atribuibles al uso de armas pequeñas en situaciones de conflicto armado. En su informe sobre la marcha de los trabajos, la Relatora Especial examinó el derecho internacional humanitario y las obligaciones con arreglo a la normativa de los derechos humanos en relación con la disponibilidad, el uso indebido y la transferencia de armas pequeñas, y examinó las repercusiones de la disponibilidad y el uso indebido de armas pequeñas sobre las cuestiones relacionadas con los sexos, en el contexto de los derechos humanos.
3. En el presente informe final se delinearán además dos principios jurídicos: las responsabilidades de los Estados con arreglo a la norma de la debida diligencia de adoptar medidas alternativas para impedir el uso indebido de las armas pequeñas por agentes no estatales, y las implicaciones del principio de la legítima defensa sobre las políticas estatales en materia de armas pequeñas.
4. El marco normativo de los derechos humanos para todo el presente estudio se basa en el principio de que los Estados deben esforzarse para proporcionar la máxima protección de los derechos humanos al mayor número de personas, tanto en sus propias sociedades como en la comunidad internacional. En otras palabras, para cumplir con sus obligaciones con arreglo a la normativa internacional de los derechos humanos, los Estados deben promulgar y hacer cumplir leyes y políticas que ofrezcan la máxima protección de los derechos humanos al mayor número de personas. En relación con las violaciones cometidas con armas pequeñas, este principio,

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<sup>1</sup> Ms. Frey would like to express her thanks to Ms. Lora Lumpe and Ms. Jennifer Johnson for their invaluable research assistance in preparing this report. Ms. Frey is also grateful for funding support from the Canadian Department of Foreign Affairs and International Trade for the summary and analysis of State responses to the questionnaire.

-el de la máxima protección de los derechos humanos- significa que los Estados tienen la responsabilidad negativa de impedir violaciones por parte de funcionarios estatales y la responsabilidad afirmativa de incrementar la seguridad pública y reducir la violencia perpetrada con armas pequeñas por agentes privados.

5. En consecuencia, se pide a los Estados que adopten medidas eficaces para reducir la demanda de armas pequeñas, garantizando la seguridad pública mediante el debido cumplimiento de la ley. Los funcionarios estatales, incluidos los encargados de hacer cumplir la ley, están al servicio de sus respectivas comunidades y tienen la obligación de proteger a todas las personas promoviendo el imperio de la ley e impidiendo actos ilegales. Sus acciones deben estar en consonancia con los derechos humanos y con el alto nivel de responsabilidad exigido por su profesión. (Código de conducta para funcionarios encargados de hacer cumplir la ley, resolución 34/46 de la Asamblea General, de 17 de diciembre de 1979.)

6. Para elevar a un máximo la protección de los derechos humanos, los Estados también deberán adoptar medidas eficaces para reducir a un mínimo la violencia en el sector público, imponiendo sanciones penales a las personas cuyo uso de armas pequeñas sea violatorio de la ley y, además, impidiendo el acceso a esas armas a las personas más proclives a usarlas indebidamente. Por último, en relación con las consideraciones sobre los derechos humanos extraterritoriales, los Estados tienen la obligación de impedir la transferencia transfronteriza de armas pequeñas y de armas ligeras cuando exista la posibilidad de que esas armas sean usadas para violar los derechos humanos o el derecho internacional humanitario.

7. A la Subcomisión le incumbe un papel crítico en el análisis de la cuestión de las consecuencias para los derechos humanos de la disponibilidad, la transferencia y el uso indebido de las armas pequeñas. En ningún otro foro de las Naciones Unidas se ha abordado esta cuestión. No obstante los efectos bien documentados y devastadores de las armas pequeñas sobre los derechos de las personas a nivel mundial, la recientemente concluida Conferencia de las Naciones Unidas encargada de examinar los progresos alcanzados en la ejecución del Programa de Acción para prevenir, combatir y erradicar el tráfico ilícito de armas pequeñas y ligeras en todos sus aspectos no produjo ningún documento final en que se hiciera referencia a los derechos humanos.

## **I. LAS OBLIGACIONES CON ARREGLO A LAS NORMAS INTERNACIONALES DE DERECHOS HUMANOS DE IMPEDIR EL USO INDEBIDO DE LAS ARMAS PEQUEÑAS POR AGENTES NO ESTATALES**

8. Uno de los aspectos principales de este estudio ha sido un análisis de la medida en que los Estados son responsables de impedir los abusos de los derechos humanos cometidos mediante el uso de armas pequeñas por agentes no estatales, en particular civiles, en situaciones ajenas a conflictos. Para añadir urgencia a este cuestión, desde que la Relatora Especial destacó por primera vez el carácter grave de las violaciones de los derechos humanos causados por agentes no estatales (E/CN.4/Sub.2/2003/29, párrs. 30 a 35), ha aumentado el número estimado de muertes relacionadas con armas de fuego en contextos ajenos a conflictos. Se estima actualmente que la violencia con armas de fuego produce entre 200.000 y 270.000 homicidios y

suicidios por año<sup>2</sup>. Los elevados niveles de violencia con armas de fuego en contextos distintos de conflictos no sólo provocan muertes y lesiones, sino que redundan en una menor protección de todos los derechos humanos, en una atmósfera de inseguridad comunitaria. La gravedad de estas relaciones exige una renovada atención a las bases jurídica y normativa, con arreglo a las normas internacionales de derechos humanos, para responsabilizar a los Estados de impedir violaciones razonablemente previsibles en el sector privado, perpetradas con armas pequeñas.

9. De conformidad con las normas de derechos humanos, los Estados deben brindar la máxima protección al derecho a la vida<sup>3</sup>. Este compromiso entraña obligaciones tanto negativas como positivas; los funcionarios estatales deben abstenerse de cometer violaciones con armas pequeñas y los Estados deben adoptar medidas para reducir a un mínimo la violencia armada entre agentes privados. En las siguientes secciones del presente informe se expondrá la autoridad jurídica en que se funda la responsabilidad positiva de los Estados -la debida diligencia- de proteger los derechos humanos de la violencia armada en el sector privado. A continuación se proponen en el informe las medidas efectivas necesarias conforme al principio de la debida diligencia para maximizar la protección de los derechos humanos en el contexto de esa violencia.

#### **A. La norma de la debida diligencia en relación con el uso indebido por agentes privados**

10. De conformidad con el párrafo 1 del artículo 2 del Pacto Internacional de Derechos Civiles y Políticos, los Estados deben respetar y garantizar los derechos humanos a todos los individuos. La garantía de los derechos humanos entraña la acción positiva del Estado contra los abusos razonablemente previsibles por parte de agentes privados. Los observadores jurídicos, en especial en la esfera de los derechos de la mujer, han señalado desde hace mucho tiempo la responsabilidad de los Estados, en virtud de la debida diligencia, de prevenir las violaciones de los derechos humanos en el sector privado<sup>4</sup>. Uno de esos observadores, John Cerone, ha

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<sup>2</sup> Graduate Institute of International Studies, Small Arms Survey 2004: Rights at Risk, Oxford University Press, 2004, p. 175. The highest regional concentration of firearm homicides is in Latin America and the Caribbean, with 40% of the estimated cases, and Africa, with 20 percent. The authors of the above study suggest that Latin American urban areas experience the highest rates of assaults, threats, robberies and sexual offences committed with firearms. North America experiences the highest regional firearm suicide rate. Id., pages 175-77.

<sup>3</sup> See, The Right to Life in International Law 15 (Ramcharan, B.G., ed. 1985) (“As a norm of *jus cogens*, no government may deny the existence of the right to life and a higher duty and standard of protection of the right is imposed upon governments.”).

<sup>4</sup> S. Farior, “The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential” (1997) 10 Harv. Hum. Rts. J. 213, 225 (“By virtue of Article 2 of the Covenant, states violate their obligations under the Covenant if they fail to exercise due diligence to end slavery and the slave trade by private actors within their jurisdiction”); R.J. Cook, “State Responsibility For Violations of Women’s Human Rights” (1994) 7 Harv. Hum. Rts. J. 125; D. Shelton, “Private Violence, Public Wrongs and the Responsibilities of States” (1989) 13 Fordham Intl. L. J. 1, 23.

realizado un estudio útil y completo sobre la aplicación del principio de la debida diligencia en relación con las normas internacionales de derechos humanos, señalando referencias a la debida diligencia en los informes de los relatores especiales de las Naciones Unidas, los representantes especiales de las Naciones Unidas y el Secretario General; comentarios, opiniones y observaciones finales de órganos creados en virtud de tratados de derechos humanos; informes sobre reuniones de grupos de expertos; resoluciones de la Comisión de Derechos Humanos y del Consejo Económico y Social; declaraciones de la Asamblea General, y textos preparados por publicistas<sup>5</sup>.

## 1. El Comité de Derechos Humanos

11. El Comité de Derechos Humanos ha abordado periódicamente las responsabilidades de los Estados partes en el Pacto Internacional de Derechos Civiles y Políticos en relación con la debida diligencia. Por ejemplo, en su Observación general N° 6 (1982) sobre el derecho a la vida, el Comité interpretó de manera general la obligación del Estado de proteger el derecho a la vida conforme al artículo 6, señalando que "el Comité considera que los Estados Partes no sólo deben tomar medidas para evitar y castigar los actos criminales que entrañen la privación de la vida, sino también evitar que sus propias fuerzas de seguridad maten de forma arbitraria". En la Observación general N° 18 (1989) sobre la no discriminación, el Comité instruyó a los Estados partes a que al informar sobre el párrafo 1 del artículo 2 y los artículos 3 y 26 del Pacto, no se limitaran solamente a citar disposiciones de sus constituciones o de sus leyes. "Si bien esta información es sin duda alguna útil, el Comité quisiera saber si sigue existiendo algún problema de discriminación de hecho, practicada ya sea por las autoridades públicas, la comunidad o por personas u órganos privados". Asimismo, en su Observación general N° 27 (1999) sobre la libertad de circulación, el Comité de Derechos Humanos señaló que "el Estado parte debe velar por que se protejan los derechos garantizados por el artículo 12, no sólo de la injerencia pública, sino también de la privada" (párr. 6). En la Observación general N° 31 (2004) sobre la índole de la obligación jurídica general impuesta a los Estados Partes en el Pacto, el Comité elaboró aún más los requisitos del párrafo 1 del artículo 2, afirmando que: "las obligaciones positivas de los Estados partes de velar por los derechos del Pacto sólo se cumplirán plenamente si los individuos están protegidos por el Estado, no sólo contra las violaciones de los derechos del Pacto por sus agentes, sino también contra los actos cometidos por personas o entidades privadas que obstaculizarían el disfrute de los derechos del Pacto en la medida en que son susceptibles de aplicación entre personas o entidades privadas" (párr. 8).

12. El Comité de Derechos Humanos también ha aplicado la norma de la debida diligencia en su jurisprudencia. En la comunicación N° 859/1999, *Jiménez Vaca c. Colombia*, el Comité determinó que hubo violación del párrafo 1 del artículo 6 del Pacto, en parte, porque el Estado no ejerció la debida diligencia para investigar quién fue el culpable del atentado contra la vida del denunciante, impidiéndole así vivir con seguridad en Colombia. Para cumplir con su obligación en virtud del artículo 2 del Pacto, el Comité determinó en *Jiménez Vaca c. Colombia* que "el Estado parte tiene la obligación de procurar que no ocurran violaciones análogas en el futuro" (párr. 9).

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<sup>5</sup> John Cerone, "The Human Rights Framework Applicable To Trafficking in Persons And Its Incorporation into UNMIK Regulation 2001/4," International Peacekeeping, The Yearbook of International Peace Operations, Volume 7, 2001, 43 - 98 (2002) (footnotes omitted).

## 2. Otros órganos creados en virtud de tratados y procedimientos especiales

13. Otros órganos creados en virtud de tratados de derechos humanos también han reconocido las responsabilidades de los Estados de ejercer la debida diligencia en comentarios, casos y observaciones finales. El Comité para la eliminación de todas las formas de discriminación contra la mujer afirmó en el párrafo 9 de su recomendación general N° 19 que "en virtud del derecho internacional y de pactos específicos de derechos humanos, los Estados también pueden ser responsables de actos privados si no adoptan medidas con la diligencia debida para impedir la violación de los derechos o para investigar y castigar los actos de violencia e indemnizar a las víctimas". En su comunicación N° 4/1991 (CERD/C/42/D/4/1991), *L. K. c los Países Bajos*, el Comité para la Eliminación de Discriminación Racial determinó que el Estado había violado el apartado a) del artículo 4 del Tratado porque no procedió a "investigar los hechos con la debida diligencia y rapidez", en respuesta a propósitos y amenazas racistas proferidos por particulares. En sus observaciones finales sobre el informe de los Emiratos Árabes Unidos (A/50/18), el Comité para la Eliminación de la Discriminación Racial recomendó al Estado parte que "haga todo lo posible por evitar que se maltrate a los trabajadores extranjeros, sobre todo a las empleadas domésticas extranjeras, y que tome todas las medidas convenientes para evitar todo acto de discriminación racial contra ellos".

14. La aplicación de la norma de la debida diligencia para proteger los derechos de particulares de abusos por agentes privados también es evidente en los informes de los procedimientos especiales de las Naciones Unidas. Por ejemplo, en el informe reciente del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, el autor señala que "los Estados tienen la obligación legal de actuar con la "debida diligencia" para proteger la vida de las personas frente a los ataques de delincuentes, por ejemplo terroristas, atracadores a mano armada, saqueadores y traficantes de droga" (E/CN.4/2006/53, párr. 47). En particular, el Relator Especial usó este ejemplo en su informe para rechazar concretamente las políticas de "tirar a matar" de diversos gobiernos, y para pedir a los Estados que hacen frente a amenazas terroristas o de otra índole que aclaren sus políticas a la luz de las exigencias de los derechos humanos y formen en consecuencia a sus funcionarios encargados de hacer cumplir la ley.

### B. Medidas efectivas para cumplir con la obligación de la debida diligencia

15. Habida cuenta de la existencia de la obligación de ejercer la debida diligencia entre las normas internacionales de derechos humanos, se plantea la cuestión de las medidas concretas que deberán adoptar los Estados para cumplir con esta norma en relación con la prevención de los abusos de los derechos humanos cometidos con armas pequeñas por agentes no estatales. El marco jurídico para el examen de la acción estatal necesaria comienza con el párrafo 2 del artículo 2 del Pacto Internacional de Derechos Civiles y Políticos, en que se estipula que cada Estado parte debe "dictar las disposiciones legislativas o de otro carácter que fueren necesarias para hacer efectivos los derechos reconocidos en el presente Pacto". Conforme al artículo 2, los Estados deben adoptar disposiciones legislativas para hacer responder a los particulares de la violación del derecho a la vida de otras personas. Desde luego, cada Estado dispone de leyes nacionales que penalizan el homicidio. Además de adoptar legislación de carácter general, los



órganos de derechos humanos han recalcado la necesidad de nuevas medidas efectivas "mediante algún mecanismo de control" para proteger contra violaciones de derechos fundamentales<sup>6</sup>.

16. Por lo tanto, las medidas efectivas mínimas que los Estados deberán adoptar para impedir la violencia con armas pequeñas deben ir más allá de la penalización de los actos de violencia armada. De conformidad con el principio de la debida diligencia, es razonable que los órganos internacionales de derechos humanos exijan a los Estados que impongan un requisito mínimo para el otorgamiento de licencias con el propósito de impedir el acceso a las armas pequeñas y armas ligeras a las personas más proclives a usarlas indebidamente<sup>7</sup>. El reconocimiento de este principio se afirma en las respuestas al cuestionario del Relator Especial encargado de un estudio exhaustivo sobre la prevención de las violaciones de los derechos humanos cometidas con armas pequeñas y armas ligeras, que indican la existencia generalizada de la práctica estatal de otorgar licencias a particulares para la posesión de armas pequeñas y municiones<sup>8</sup>. Los criterios para el otorgamiento de licencias pueden variar de un Estado a otro, pero en la mayoría de los procedimientos para el otorgamiento de licencias se considera lo siguiente: a) la edad mínima del solicitante; b) los antecedentes penales, en particular cualesquier incidentes de violencia interfamiliar; c) prueba de un propósito legítimo para obtener un arma; y d) aptitud mental<sup>9</sup>. Otros criterios propuestos incluyen el conocimiento de las leyes relativas a las armas pequeñas, prueba de haber recibido formación sobre el debido uso de un arma de fuego y prueba disponer del almacenamiento debido. Las licencias deberán renovarse periódicamente para evitar transferencias a personas no autorizadas. Estos criterios para el otorgamiento de licencias no son barreras insuperables para la posesión legítima de armas por civiles. Existe un amplio consenso internacional respecto del principio de que las leyes y procedimientos que rigen la posesión de armas pequeñas por civiles deben seguir siendo prerrogativa fundamental de los distintos Estados<sup>10</sup>. Si bien la reglamentación de la posesión de armas de fuego por civiles sigue siendo motivo de contestación en los debates públicos, debido en gran parte a los esfuerzos de los fabricantes de armas de fuego y de las organizaciones partidarias de esas armas basadas en los Estados Unidos de América, existe de hecho un consenso casi universal sobre la necesidad de

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<sup>6</sup> Human Rights Committee, General Comment 7, describes steps beyond mere legislation that States must take to prevent torture, "Because such cases nevertheless occur, it follows from article 7, read together with article 2 of the Covenant, that States must ensure an effective protection through some machinery of control."

<sup>7</sup> The need for international principles with regard to selection, training and oversight of State actors is discussed above in Section I(a).

<sup>8</sup> 35 out of 38 responding States indicated that they licence private ownership; three – Czech Republic, Qatar and Ukraine – did not answer the question.

<sup>9</sup> See States' responses to Part 2, Annex I. See also A/Conf.192/2006/PC/CRP.17, Conference room paper submitted by the Chairman, Preparatory Committee for the United Nations Conference to Review Progress Made in 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 (proposing consensus criteria for licences).

<sup>10</sup> Ibid.

normas mínimas razonables en las legislaciones nacionales para el otorgamiento de licencias de posesión a civiles para promover la seguridad pública y proteger los derechos humanos<sup>11</sup>. Este consenso es un factor en que deberán considerar los mecanismos de derechos humanos al ponderar las responsabilidades afirmativas de los Estados para prevenir violaciones de los derechos humanos fundamentales en casos que entrañan violencia perpetrada con armas de fuego en el sector civil.

17. Los órganos de derechos humanos encargados de supervisar la acción del Estado para proteger el derecho a la vida deben considerar también otras medidas efectivas. Estas medidas son análogas a las directrices de las Naciones Unidas adoptadas para ofrecer una protección significativa a otras obligaciones relativas a los derechos humanos fundamentales<sup>12</sup>. Estas incluyen:

- a) La prohibición de la posesión por civiles de armas diseñadas para uso militar únicamente (rifles de asalto automáticos y semiautomáticos, ametralladoras y armas ligeras);
- b) La organización y promoción de amnistías para alentar la retirada de armas de su uso activo;
- c) El requisito del marcado y de la facilitación de información por los fabricantes;
- d) La incorporación de la perspectiva de género en los esfuerzos de concienciación del público para garantizar que se satisfagan las necesidades especiales y los derechos humanos de las mujeres y los niños, en especial en situaciones posteriores a conflictos.

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<sup>11</sup> More than 50 States have strengthened their national laws on civilian possession since 2001. At the January 2006 Preparatory Committee for the United Nations Conference to Review Progress made in 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, the Chairman submitted a conference room paper including a proposed declaration of principles about the national regulation of civilian possession after at least twelve States spoke in favor of including the issue at the Review Conference. A/Conf.192/2006/PC/CRP.17. Only the United States spoke explicitly against the reference to the regulation of civilian possession of small arms and light weapons. Despite this apparent consensus, there was no outcome document from the Small Arms Review Conference, held 24 June -7 July, 2006 that made reference to the regulation of civilian possession.

<sup>12</sup> See, Istanbul Protocol, The Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Section II.B.1, 9 August 1999, <http://www.unhchr.ch/pdf/8istprot.pdf> (accessed 6 July 2006) (establishing certain obligations that States must respect to ensure protection against torture). See also Human Rights Committee, General Comment 17, (each state has a duty to take “*every possible economic and social measure ... to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means*”) (emphasis added).

18. El proyecto de principios propuesto por la Relatora Especial (E/CN.4/Sub.2/2005/35), en particular los principios 10 a 14, tienen la intención de elaborar para los Estados la naturaleza de su obligación de ejercer la debida diligencia conforme a las normas internacionales de derechos humanos, en especial en relación con los agentes no estatales.

## **II. EL PRINCIPIO DE LA LEGÍTIMA DEFENSA EN RELACIÓN CON LAS VIOLACIONES DE LOS DERECHOS HUMANOS COMETIDAS CON ARMAS PEQUEÑAS Y ARMAS LIGERAS**

19. En el presente informe se analiza y reconocer el principio de la legítima defensa en la normativa de los derechos humanos y se evalúa su debido lugar en el establecimiento de principios de derechos humanos que rijan las armas pequeñas y las armas ligeras<sup>13</sup>. Los contrarios a la reglamentación estatal de la posesión de armas de fuego por civiles alegan que el principio de la legítima defensa defiende legalmente el "derecho" a poseer armas pequeñas, negando o minimizando así sustancialmente el deber de los Estados de reglamentar su posesión<sup>14</sup>. En el presente informe se llega a la conclusión de que el principio de legítima defensa ocupa un lugar importante en la normativa internacional de los derechos humanos, pero que no supone un derecho legal consiguiente e independiente a poseer armas pequeñas, ni mejora la obligación de los Estados de ejercer la debida diligencia para reglamentar su posesión por civiles.

### **A. La legítima defensa como exención de la responsabilidad penal, no como un derecho humano**

20. La legítima defensa es una excepción ampliamente reconocida, aunque jurídicamente proscrita, de la obligación universal de respetar la vida ajena. La legítima defensa sirve de base para la exención de responsabilidad que puede alegar cualquier agente estatal o cualquier entidad no estatal. La legítima defensa se designa algunas veces como un "derecho". Esa interpretación

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<sup>13</sup> Because of the severe limits on space and the breadth of issues that need to be covered in this study, the author does not attempt here to undertake a full legal discussion of the principle of self-defence in international law. For an authoritative discussion of this complex topic, see, Antonio Cassese, International Criminal Law (2003). In addition, the legal concepts discussed herein assume a non-conflict setting. Situations of mass human rights abuse and armed conflict involve international humanitarian law and security law principles that require an extended if not completely separate set of legal and policy considerations. For the Special Rapporteur's findings and recommendations regarding role of small arms and light weapons in violations of human rights and international humanitarian law in armed conflict, see her progress report, E/CN.4/Sub.2/2004/37.

<sup>14</sup> David Kopel, Paul Gallant, Joanne Eisen, "Is Resisting Genocide a Human Right?" 81 Notre Dame Law Review, N° 4 (2006) at 1 ("...the Universal Declaration of Human Rights affirms the existence of a universal, individual right of self-defense, and also a right to revolution against tyranny... Taken in conjunction with Anglo-American human rights law, the human rights instruments can be read to reflect a customary or general international law recognizing a right of armed resistance by genocide victims.").

carece de un respaldo jurídico adecuado. La legítima defensa se caracteriza más correctamente como un medio para proteger el derecho a la vida y, como tal, como base para evitar incurrir en responsabilidad por violar los derechos ajenos.

21. No se establece explícitamente ningún derecho humano internacional a la legítima defensa en las fuentes fundamentales del derecho internacional: tratados, derecho consuetudinario o principios generales. Mientras que el derecho a la vida es reconocido en prácticamente todos los principales tratados internacionales de derechos humanos, el principio de la legítima defensa se reconoce explícitamente en uno solo, a saber, en el artículo 2 del Convenio para la Protección de los Derechos Humanos y de las Libertades Fundamentales (Convenio Europeo de Derechos Humanos)<sup>15</sup>. Sin embargo, la legítima defensa no se reconoce en el Convenio Europeo de Derechos Humanos como derecho. Según un observador, la función de esta disposición es sencillamente eliminar del ámbito de aplicación del párrafo 1 del artículo 2 el homicidio necesario para defenderse frente a la violencia ilícita. No supone un derecho que el Estado deba ratificar<sup>16</sup>.

22. La legítima defensa se reconoce en general en el derecho internacional consuetudinario como una defensa frente a la responsabilidad penal de conformidad con la práctica estatal. Sin embargo, no existen pruebas de que los Estados hayan promulgado la legítima defensa como un derecho independiente en su legislación interna, y tampoco existen pruebas de *opinio juris* que obliguen a los Estados a reconocer un derecho consiguiente e independiente a la legítima defensa que se vean obligados a aplicar en el contexto de sus jurisdicciones nacionales como derecho consiguiente.

23. Asimismo, en el derecho penal internacional se establece la legítima defensa como base para evitar la responsabilidad penal, no como un derecho independiente. El Tribunal Penal Internacional para la ex Yugoslavia señaló los elementos universales del principio de legítima

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<sup>15</sup> [European] Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force, Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively. Article 2 states:

- (1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law
- (2) Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - (a) in defence of any person from unlawful violence;
  - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

<sup>16</sup> John Cerone, "A Human Right of Self-Defense?" George Mason Journal of Law, Economics, & Policy (accepted for 2006 publication).

defensa<sup>17</sup>. El Tribunal señaló que el principio de legítima defensa enunciado en el párrafo 1 del artículo 31 del Estatuto de Roma refleja disposiciones que figuran en la mayoría de los códigos penales nacionales y que constituyen una norma del derecho internacional consuetudinario<sup>18</sup>. Como se establece claramente en el párrafo introductorio del artículo 31, la legítima defensa se identifica como una de las "circunstancias eximentes de responsabilidad penal". La defensa legal definida en el apartado d) del artículo 31 se aplica a:

una conducta que presuntamente constituya un crimen de la competencia de la Corte como consecuencia de coacción dimanante de una amenaza inminente de muerte o lesiones corporales graves para él u otra persona, y en que se vea compelido a actuar necesaria y razonablemente para evitar esa amenaza, siempre que no tuviera la intención de causar un daño mayor que el que se proponía evitar.<sup>19</sup>

Así, en el derecho penal internacional se designa la legítima defensa como una norma que ha de seguirse para determinar la responsabilidad penal, y no como un derecho independiente de aplicación vinculante para los Estados.

24. En la jurisprudencia de los órganos internacionales de derechos humanos se es favorable a exigir que los Estados reconozcan y evalúen la legítima defensa como parte de los derechos de los acusados a las debidas garantías procesales. Algunos miembros del Comité de Derechos Humanos han alegado incluso que el párrafo 2 del artículo 2 del Pacto Internacional de Derechos Civiles y Políticos exige que los tribunales nacionales consideren la circunstancias personales de un acusado al condenar a una persona a muerte, en particular los posibles alegatos de legítima defensa, sobre la base de la obligación de los Estados partes de proteger el derecho a la vida<sup>20</sup>. Conforme a las jurisdicciones del derecho consuetudinario, los tribunales deben tener en cuenta las circunstancias fácticas y personales al condenar a la pena de muerte en casos de homicidio. Asimismo, en las jurisdicciones del derecho civil: "hay que tener en cuenta diversas

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<sup>17</sup> Antonio Cassese, *International Criminal Law* 223, n. 2 (2003) (citing *Prosecutor v. Kordić and Čerkez*, ICTY (Trial Chamber) (26 February 2001), at § 451). "In *Kordić and Čerkez* a Trial Chamber of the ICTY held that self-defence as a ground for excluding criminal responsibility is one of the defences that 'form part of the general principles of criminal law which the International Tribunal must take into account in deciding the cases before it'." *Id.* at 223 (citing *Prosecutor v. Kordić and Čerkez*, ICTY (Trial Chamber) (26 February 2001), at § 449).

<sup>18</sup> Antonio Cassese, *International Criminal Law* 223, n. 2 (2003) (quoting *Prosecutor v. Kordić and Čerkez*, ICTY (Trial Chamber) (26 February 2001), at § 451).

<sup>19</sup> Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, *adopted* July 17, 1998, *as corrected by the procès-verbaux of* November 10, 1998, July 12, 1999, and May 8, 2000.

<sup>20</sup> See, Human Rights Committee, Communication N° 806/1998, *Thompson v. Saint Vincent and the Grenadines*. U.N. Doc CCPR/C/70/D/806/1998 (5 December 2000). In his dissent, Lord Colville said self-defence was an avenue for the defence to counter accusations of homicide which must result in acquittal of any crime, "unless the prosecution can satisfy the tribunal of facts that the defendant's actions, which led to the death, exceed a proportional response, in his own perception of the circumstances, to the threat with which he was faced." (para. 5.).

circunstancias atenuantes o agravantes como la legítima defensa, la necesidad, la perturbación y la capacidad mental del acusado para pronunciar una sentencia condenatoria en cada caso de homicidio"<sup>21</sup>.

25. Una vez más, la interpretación del Comité apoya el requisito de que los Estados reconozcan la legítima defensa en el contexto del derecho penal. Conforme a esta interpretación de la normativa internacional de los derechos humanos, el Estado deberá exonerar a un acusado por usar armas de fuego en circunstancias extremas cuando sea necesario y proporcional ante una amenaza inminente a la vida. Aún así, ninguna de estas autoridades enumera una obligación jurídica internacional afirmativa por la que se exija al Estado que autorice el acceso del acusado a un arma de fuego.

### **B. Requisitos de necesidad y proporcionalidad para invocar la legítima defensa**

26. Los órganos internacionales y los Estados definen universalmente la legítima defensa en términos de necesidad y de proporcionalidad<sup>22</sup>. El éxito de una alegación de legítima defensa dependerá de las circunstancias. Por ejemplo, cuando se usen armas pequeñas y armas ligeras en legítima defensa, salvo que la acción haya sido necesaria para salvar una o más vidas y el uso de la fuerza con armas pequeñas haya sido proporcional a la amenaza de fuerza, la legítima defensa no exonerará de la responsabilidad por violar el derecho a la vida de otra persona.

27. El uso de armas pequeñas y de armas ligeras por el Estado o entidades no estatales eleva automáticamente el umbral de gravedad de la amenaza que debe mostrarse para justificar el uso de las armas pequeñas o armas ligeras en legítima defensa, como lo exige el principio de proporcionalidad. Debido al carácter letal de estas armas y las obligaciones imperativas en materia de derechos humanos impuestas a todos los Estados y particulares respecto del derecho a la vida<sup>23</sup>, las armas pequeñas y las armas ligeras sólo podrán usarse en legítima defensa en las

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<sup>21</sup> Human Rights Committee, Communication N° 1077/2002, *Jaime Carpo et al. v. Philippines*, U.N. Doc. CCPR/C/77/D/1077/2002 (15 May 2003) (dissenting opinion of Mr. Nisuke Ando).

<sup>22</sup> The presence of the principle of self-defence in emerging international criminal law reflects the global uniformity of the principle of self-defence and its elements. Antonio Cassese summarized the required elements of self-defence as a justification for criminal action in customary international criminal law as:

“(i) the action in self-defence is taken *in response to an imminent or actual unlawful attack* on the life of the person or of another person; (ii) there is *no other way of preventing or stopping the offence* [necessity]; (iii) the unlawful conduct of the other *has not been caused by the person acting in self-defence*; (iv) the conduct in self-defence is *proportionate* to the offence to which the person reacts.”

Antonio Cassese, International Criminal Law 222 (2003).

<sup>23</sup> Ibid. (“[T]he life, body, and dignity of human beings are protected by international norms having the rank of *jus cogens*, and are therefore not derogable by either States or Individuals.”).

circunstancias más extremas únicamente, concretamente, cuando el derecho a la vida esté ya amenazado o injustificablemente comprometido.

28. Los requisitos para el uso justificable de la fuerza en legítima defensa por funcionarios del Estado se establece en los Principios Básicos de las Naciones Unidas sobre el empleo de la fuerza y de armas de fuego por los funcionarios encargados de hacer cumplir la ley. En circunstancias excepcionales que exigen el uso de la fuerza para proteger la vida, los funcionarios estatales podrán usar armas de fuego alegando legítima defensa o la defensa de otros como justificativo de su decisión de recurrir a la fuerza<sup>24</sup>. Sin embargo, de ser posible para evitar la amenaza sin recurrir a la fuerza, la obligación de proteger la vida incluye el deber de los funcionarios encargados de hacer cumplir la ley de utilizar otros métodos de contención y de solución de conflictos, no violentos y no letales<sup>25</sup>.

29. Por lo tanto, las graves consecuencias del uso de armas de fuego exigen directrices más detalladas y más rigurosas que otros medios de fuerza<sup>26</sup>. Aún cuando el uso de un arma de fuego no produzca la muerte, las lesiones causadas por los disparos pueden ser paralizantes y dolorosos, y pueden inmovilizar a una persona durante un período mucho más prolongado que otros métodos de inmovilización temporal<sup>27</sup>. En el manual de capacitación para la policía sobre

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<sup>24</sup> United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, (Hereinafter “U.N. Basic Principles”), Principle 9.

<sup>25</sup> U.N. Basic Principles, Principle 4 (“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”). See, Office of the United Nations High Commissioner for Human Rights, Professional Training Series N° 5/Add.3, Human Rights Standards and Practice for the Police 23 (2004).

<sup>26</sup> U.N. Basic Principles, Article 9 states “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.” See also, Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Second periodic report of States parties due in 1996, Addendum: Ireland (28 April 1999) U.N. Doc. CCPR/C/IRL/98/2, para. 113. “The Human Rights Committee, in its comments on Ireland’s first periodic report (A/48/40, para. 612) emphasized the importance of the issuing of rules and guidelines on, inter alia, the use of firearms, and ensuring the strict enforcement thereof by law enforcement officials.” Id. The regulations governing the use of firearms by the Gardaí forces in Ireland thereafter developed are detailed in the Irish Garda Code 25.42. Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Second periodic report of States parties due in 1996, Addendum: Ireland (28 April 1999) U.N. Doc. CCPR/C/IRL/98/2, para. 117.

<sup>27</sup> Small Arms Survey 2001: Profiling the Problem, A Project of the Graduate Institute of International Studies, Geneva, 216-17 (“Victims of small arms injuries often require resource-intensive surgery, followed by prolonged hospitalization and rehabilitation. . . . For the

prácticas y normas de derechos humanos elaborado por la Oficina del Alto Comisionado para los Derechos Humanos se estipula que las armas de fuego sólo se usarán en circunstancias extremas<sup>28</sup>. Todo uso de un arma de fuego por un funcionario encargado de hacer cumplir la ley fuera del contexto situacional mencionado será probablemente incompatible con las normas de derechos humanos.

## 1. El Comité de Derechos Humanos

30. El Comité de Derechos Humanos ha aprobado la ecuación de necesidad y proporcionalidad en materia de legítima defensa para su uso por los agentes del orden público. En *Suárez de Guerrero c. Colombia* el Comité de Derechos Humanos determinó que María Fanny Suárez de Guerrero había sido privada arbitrariamente de la vida mediante el uso de un armas de fuego por agentes del orden público en Colombia puesto que "no hay pruebas de que la acción de la policía fuera necesaria en legítima defensa o de otros, ni de que fuera necesaria para la detención o para impedir la huida de las personas interesadas"<sup>29</sup>. El Comité de Derechos Humanos determinó además que la intensidad de la fuerza usada para provocar la muerte de la Sra. Guerrero "no estaba de acuerdo con las exigencias de la aplicación de la ley en las circunstancias del caso" y que, por lo tanto, "el derecho a la vida no estaba debidamente protegido por la ley colombiana de conformidad con lo requerido por el párrafo 1 del artículo 6"<sup>30</sup>. Por otra parte, en *Burrell c. Jamaica*<sup>31</sup>, el Comité de Derechos Humanos sostuvo que la muerte intencional de un recluso, después de que algunos guardianes de la prisión fueron tomados como rehenes y luego liberados, fue consecuencia del pánico de los guardianes, y no resultado de la necesidad de defenderse legítimamente. Burrell no ponía a nadie en peligro, de suerte que se justificara su muerte por agentes estatales; todos los guardianes ya habían sido liberados, por lo que "ya no existía la

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individual, the repercussions from firearm injury are profound . . . [including] long-term, often permanent, psychological trauma and social marginalization.”).

<sup>28</sup> Office of the United Nations High Commissioner for Human Rights, Professional Training Series N° 5/Add.3, Human Rights Standards and Practice for the Police 24 (2004). The handbook further states that:

Firearms are to be used only in self-defence or defence of others against imminent threat of death or serious injury, *or* to prevent a particularly serious crime that involves a grave threat to life, *or* to arrest or prevent the escape of a person posing such a threat and who is resisting efforts to stop the threat and in every case, only when less extreme measures are insufficient. Intentional lethal use of force and firearms shall be permitted only when strictly unavoidable in order to protect human life.

<sup>29</sup> *Husband of Maria Fanny Suarez de Guerrero v. Colombia*, Communication N° R.11/45 (5 February 1979), U.N. Doc. Supp. N° 40 (A/37/40) at 137 (1982), para. 13.2.

<sup>30</sup> *Ibid.*, para. 13.3.

<sup>31</sup> *Rickly Burrell v. Jamaica*, Communication N° 546/1993, U.N. Doc. CCPR/C/53/D/546/1993 (1996).



necesidad de utilizar la fuerza"<sup>32</sup>. Por lo tanto, las autoridades de Jamaica habían transgredido el derecho del señor Burrell a la vida, y no las asistía la alegación de legítima defensa<sup>33</sup>.

## 2. Tribunal Europeo de Derechos Humanos

31. El Tribunal Europeo de Derechos Humanos también reconoció la ecuación de necesidad y proporcionalidad en materia de legítima defensa, presente en los Principios Básicos. En *Nachova y otros c. Bulgaria*, el Tribunal determinó que hubo violación del derecho a la vida cuando dos individuos fueron muertos a tiros por un miembro de la policía militar que trataba de detenerlos. Para llegar a esta conclusión, el Tribunal rechazó el argumento del Gobierno de Bulgaria de que las acciones del oficial militar no violaban el derecho a la vida porque en las circunstancias estaba cumpliendo con su deber, conforme a la legislación de Bulgaria, de proteger "en la medida de lo posible... la vida de la persona contra la cual usaban la fuerza...". En cambio, el Tribunal adoptó la norma de que "Cualquier uso de la fuerza no debe ser más que el "absolutamente necesario...". El Tribunal sentenció que:

El uso de armas de fuego potencialmente letales pone inevitablemente en peligro la vida humana, aún cuando existan normas ideadas para reducir el riesgo a un mínimo. En consecuencia, el Tribunal considera que en ninguna circunstancia podrá ser "absolutamente necesario" en el sentido el párrafo 2 del artículo 2 del Convenio Europeo el uso de armas de fuego para detener a personas sospechosas de un delito no violento, que no represente una amenaza para la vida o la integridad física, aún cuando el no hacerlo suponga que se pierda la oportunidad de detener al fugitivo<sup>34</sup>.

32. En *McCann y otros c. el Reino Unido*, el Tribunal interpretó el párrafo 2 del artículo 2 del Convenio Europeo de Derechos Humanos, que incluye la legítima defensa como excepción al derecho a la vida, en el sentido de que deben existir una necesidad y proporcionalidad absolutas para justificar el uso de la fuerza por agentes estatales en transgresión del derecho a la vida<sup>35</sup>.

### C. La alegación de legítima defensa no niega la obligación de ejercer la debida diligencia para prevenir la violencia en el sector privado

33. El deseo de cada persona de portar un arma en legítima defensa debe considerarse en el contexto más amplio de la obligación del Estado de maximizar la protección de los derechos

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<sup>32</sup> Ibid. at para. 9.5.

<sup>33</sup> In the Burrell case the Human Rights Committee also held that State Parties have a negative duty not to kill arbitrarily and that they have a positive duty to protect the lives of inmates while in State custody. In this case Jamaica had breached both of those duties. Ibid., at para 9.5.

<sup>34</sup> *Nachova and Others v. Bulgaria*, Application. Nos. 43577/98 and 43579/98) [2004] ECHR 89 (26 February 2004), at para. 105.

<sup>35</sup> *McCann and Others v. United Kingdom*, Application N° 18984/91, para. 148-49, Strasbourg, 5 September 1995. See also *Öcalan v. Turkey*, Application N° 46221/99, Strasbourg 12 March 2003.

humanos. El Estado está obligado en virtud del derecho internacional a promover la aplicación de la ley y reprimir la violencia privada creando un sistema jurídico y social en el que la obligación general sea evitar el uso de la fuerza cuando se disponga razonablemente de medios de legítima defensa no violentos<sup>36</sup>.

34. Aún cuando existiese un "derecho humano a la legítima defensa", no negaría la responsabilidad del Estado de ejercer la debida diligencia para maximizar la protección del derecho a la vida en la sociedad mediante una reglamentación razonable de la posesión de armas por civiles. Si bien no existe un mandato internacional que prohíba toda posesión por civiles, tampoco existe un mandato que permita a cada persona portar un arma. El Estado debe considerar a la comunidad en general, y no sólo al individuo, al cumplir con su obligación de minimizar la violencia física.

35. Por ejemplo, aún cuando existiese un "derecho" a la legítima defensa, ello no negaría la responsabilidad del Estado de ejercer la debida diligencia para evitar el acceso a las armas de las personas más proclives a usarlas indebidamente. Como lo revelan las respuestas al cuestionario del Relator Especial, el examen previo para determinar las probabilidades de su uso indebido es una de las medidas usadas comúnmente por los Estados en aplicación de su interés legítimo de prevenir la violencia con armas pequeñas por parte de agentes no estatales. Esta práctica común del Estado es ejemplo de la aplicación responsable del principio jurídico de la debida diligencia elaborado en muchos órganos internacionales sin repercusión negativa aparente sobre el derecho a la legítima defensa. Así, se infiere que los Estados, cuando menos, deberían aplicar normas para evitar que tengan acceso a las armas ciertas personas de las que, sobre la base de factores como su edad, antecedentes penales, violencia personal o incapacidad mental, podría anticiparse razonablemente su incompreensión o incumplimiento de los requisitos de necesidad y proporcionalidad necesarios para invocar la legítima defensa.

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<sup>36</sup> A.J. Ashworth, "Self-Defence and the Right to Life", 34 Cambridge L.J. 282, 289 (1975) ("The preservation of human life must rank high among state interests, and the interests in the minimization of physical violence, in the promotion of law enforcement and in . . . 'the suppression of private warfare' all have a bearing upon the justifiability of force.") Ashworth further writes that,

a legal system which supports the maximum protection for every human life should provide that a person attacked ought if possible to avoid the use of violence, especially deadly force, against his attacker. This might be termed the "human rights" approach to self-defence, since it accords with the provision in the European Convention that no life shall be deprived of protection unless absolutely necessary for a lawful purpose. This approach, supported by the state interest in the minimisation of violence, would result in a general duty to avoid the use of force where non-violent means of self-protection are reasonably open to the person attacked.

36. Habiéndose establecido que el deber afirmativo de los Estados de imponer alguna reglamentación sobre la libre posesión no es incompatible con el principio de legítima defensa, podrían señalarse también otras instancias de reglamentación apropiada. Por ejemplo, el Estado tiene obligaciones especialmente importantes cuando se trata de proteger los derechos de grupos vulnerables, en particular a las víctimas de la violencia en el hogar, que están más expuestas al riesgo del uso indebido de un arma de fuego en el hogar. La presencia de un arma de fuego en el hogar puede convertir fácilmente la violencia en el hogar en homicidio en el hogar. Estudios recientes han revelado que, en los Estados Unidos, hubo uso de armas de fuego en el 59% de todos los homicidios de mujeres perpetrados por sus compañeros íntimos.<sup>37</sup>, y el hecho de poseer una o más armas de fuego en el hogar incrementa en 7,2 veces la probabilidad de que una mujer sea asesinada por su compañero íntimo<sup>38</sup>. No obstante las justificaciones de legítima defensa para poseer un arma de fuego, las investigaciones indican que rara vez se usan las armas de fuego para impedir delitos o matar a delincuentes<sup>39</sup>. Más bien, suelen volverse contra la mismísima persona que tal vez tenga los mejores argumentos en favor de la legítima defensa: la propia mujer<sup>40</sup>. Frente a esa evidencia y ante el mandato jurídico de ejercer la debida diligencia elaborado por los órganos de derechos humanos para prevenir la violencia contra la mujer, en particular

"el deber que los gobiernos tienen de evitar el empleo de la violencia contra la mujer y actuar con la necesaria diligencia para prevenir, investigar y, de conformidad con la legislación nacional, castigar los actos de violencia contra la mujer, ya se trate de actos perpetrados por el Estado o por particulares..."<sup>41</sup>,

el Estado tiene la obligación jurídica internacional irrefutable de mantener impedido el acceso a las armas pequeñas a las personas con un historial de violencia en el hogar.

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<sup>37</sup> US Bureau of Justice Statistics, 2002, cited in Small Arms Survey 2004: Rights at Risk, A Project of the Graduate Institute of International Studies, Geneva, 183.

<sup>38</sup> James E. Bailey, MD, MPH, et. al., "Risk Factors for Violence Death of Women in the Home," Archives of Internal Medicine 157, N° 7 (1997): 777-782.

<sup>39</sup> In 2003 only 203 justifiable homicides by private citizens using firearms were reported by the U.S. Federal Bureau of Investigation's Uniform Crime Reports, including 163 with handguns. This number compares to the 17,108 suicides, 11,829 homicides and 762 accidental deaths caused by firearms in 2003, Centers for Disease Control and Prevention.

<sup>40</sup> K.M.Grassel et al., "Association between Handgun Purchase and Mortality from Firearm Injury," Injury Prevention 9 (2003) (reporting that women who were murdered were more likely, not less likely, to have purchased a handgun in the three years prior to their deaths.)

<sup>41</sup> The elimination of violence against women, Commission on Human Rights resolution 1996/49, para. 4.

37. El examen previo para determinar la probabilidad del uso indebido, y el retiro de las armas cuando exista un historial de violencia en la familia son dos ejemplos en que la obligación del Estado de ejercer la debida diligencia para reglamentar el uso de las armas de fuego es:

a) coherente con las prácticas comunes de los Estados; y b) no incompatible con el principio de la legítima defensa. Esas reglamentaciones pueden aplicarse sin implicar cuestiones de confiscación generalizada que plantean con gesto poco sincero los contrarios a toda reglamentación de la posesión por civiles. Otras instancias de esa reglamentación podrán evaluarse sobre la base de la experiencia reunida en Estados que la han aplicado y sobre la base de los criterios analizados en el presente documento y el proyecto de principios.

#### **D. Legítima defensa de los Estados contra la fuerza de otros Estados**

38. Por último, es importante abordar brevemente la alegación de que el Artículo 51 de la Carta de Naciones Unidas ofrece a los particulares un derecho legal a la legítima defensa<sup>42</sup>. En el Artículo 51 de la Carta se reconoce la facultad de los Estados de recurrir a la fuerza contra otro Estado en legítima defensa, individual o colectiva<sup>43</sup>. Este artículo es aplicable a los Estados Miembros de las Naciones Unidas que actúan en defensa de ataques armados contra su soberanía. El Artículo 51 ofrece una excepción a la prohibición general de la amenaza o el uso de la fuerza en el derecho internacional, a tenor de lo dispuesto en el párrafo 4 del artículo 2 de la Carta<sup>44</sup>. El derecho internacional consuetudinario también vincula a los Estados que actúan en

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<sup>42</sup> Don Kates, "Individuals' Right to Self-Defence under International Law," 2003, excerpted in *Small Arms Survey 2004: Rights at Risk*, A Project of the Graduate Institute of International Studies, Geneva, 181 (the right to individual self-defence is implicit in Article 51 of the U.N. Charter).

<sup>43</sup> Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. N° 993, 3 Bevens 1153, entered into force Oct. 24, 1945, Article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

<sup>44</sup> Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. N° 993, 3 Bevens 1153, *entered into force* Oct. 24, 1945, Article 2(4) ("All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."). See also, *Repertory of Practice of United Nations Organs (1945-1954)*, *Repertory of Practice of United Nations Organs Supplements N° 1-9 (1954-1999)*, Vol. I-III, Article 51, available at <http://www.un.org/law/repertory/art51.htm>. In particular, *Repertory of Practice of United Nations Organs Supplement N° 5 (1970-1978)*, Vol. II., Article 51, para. 8-19, discuss Article 51 and Article 2(4) of the U.N. Charter, as well as Article 51 in relation to the principle of proportionality.

legítima defensa contra otros Estados a respetar las condiciones de necesidad, proporcionalidad e inminencia de la amenaza<sup>45</sup>.

39. El derecho a la legítima defensa en el derecho internacional no está orientado hacia la preservación de las vidas de particulares en el país de que se trate; se trata, más bien, de la preservación del Estado<sup>46</sup>. La intención del Artículo 51 no era su aplicación a situaciones de legítima defensa de particulares<sup>47</sup>. Nunca se ha debatido en el Consejo de Seguridad o en la Asamblea General la aplicación en modo alguno del Artículo 51 a particulares<sup>48</sup>. Antonio Cassese señala que se suele confundir erróneamente el principio de la legítima defensa reclamado por particulares con la legítima defensa con arreglo al derecho internacional público, como es el caso del Artículo 51<sup>49</sup>. "Éste se aplica a la conducta de los Estados o entidades

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<sup>45</sup> The equation on self-defence in international customary law is a measure of necessity, proportionality and immediacy to justify the use of force by one State against another State. It was established in the United States Supreme Court's 1837 *Caroline* case and codified in Article 51 of the Charter of the United Nations (June 26, 1945, 59 Stat. 1031, T.S. N° 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945).

<sup>46</sup> John Cerone, "A Human Right of Self-Defense?" George Mason Journal of Law, Economics, & Policy (accepted for 2006 publication).

<sup>47</sup> See, General Assembly, U.N. Doc. A/RES/48/88 (20 December 1998) ("Reaffirming once again that, as the Republic of Bosnia and Herzegovina is a sovereign, independent State and a Member of the United Nations, it is entitled to all rights provided for in the Charter of the United Nations, including the right to self-defence under Article 51 thereof"); Kofi A. Annan, Secretary-General's address to the General Assembly, New York (23 September 2003) ("Article 51 of the Charter prescribes that all States, if attacked, retain the inherent right of self-defence."); Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994), para 2 ("Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited.")

<sup>48</sup> *Repertory of Practice of United Nations Organs Supplement N° 6 (1979-1984)*, Vol. III, Article 51, para. 13. ("On several occasions the question of the bearing of Article 51 on the items under consideration gave rise to constitutional discussion in the Security Council . . . In each of the seven situations, action by a Member State, claimed to have been taken in individual or collective self-defence, gave rise to questions concerning the application of Article 51 and the rights and obligations of Member states under that Article."); *see also See also Repertory of Practice of United Nations Organs (1945-1954)*, *Repertory of Practice of United Nations Organs Supplements N° 1-9 (1954-1999)*, Vol. I-III, Article 51, *available at* <http://www.un.org/law/repertory/art51.htm>.

<sup>49</sup> Antonio Cassese, International Criminal Law 223 (2003).

paraestatales, en tanto que aquél tiene que ver con las acciones de particulares contra otros particulares... Suele haber confusión [entre ambos]"<sup>50</sup>.

### III. CONCLUSIONES Y RECOMENDACIONES

**40. Para cumplir con sus obligaciones en virtud de las normas internacionales de derechos humanos, los Estados deben promulgar y aplicar leyes y políticas para maximizar la protección de los derechos humanos del mayor número de personas. Los Estados deben considerar a la comunidad en general y no sólo al individuo al cumplir con su obligación de minimizar la violencia promoviendo la aplicación de la ley y reprimiendo la violencia privada. La normativa internacional de los derechos humanos compromete a los Estados a "respetar y a garantizar" los derechos humanos de todas las personas sujetas a su jurisdicción. Conforme a este mandato, los Estados tiene la obligación positiva de proteger a los individuos de violaciones por agentes estatales y no estatales.**

**41. Los Estados deben adoptar medidas efectivas para reducir la necesidad de que las personas se armen, garantizando un clima de seguridad pública fundado en el cumplimiento de la ley, y deben empeñarse en proteger el estado de derecho e impedir actos ilegales, mediante la formación pertinente.**

**42. Los Estados también deberán adoptar medidas efectivas para minimizar la violencia perpetrada por agentes privados armados. Los Estados deben imponer sanciones penales contra la personas que usen armas para violar la ley. Se exige además a los Estados, en virtud del principio de la debida diligencia, que impidan el acceso a las armas pequeñas a las personas más proclives a usarlas indebidamente. De conformidad con la norma de la debida diligencia, los órganos internacionales de derechos humanos deben exigir que los Estados apliquen una norma mínima para el otorgamiento de licencias para impedir que agentes privados recurran a armas pequeñas para violar los derechos humanos.**

**43. Otras medidas efectivas compatibles con la debida diligencia incluyen la prohibición de la posesión por civiles de armas destinadas al uso militar; el patrocinio de programas efectivos de amnistía para reducir el número de armas en uso activo; el requisito del marcado y de la facilitación de información por los fabricantes; y la incorporación de políticas en las que se tenga en cuenta la perspectiva de género en relación con las armas pequeñas. Los Estados tienen el deber afirmativo conforme a la normativa internacional de los derechos humanos de proteger a los grupos más vulnerables al uso de armas pequeñas, en particular las víctimas de la violencia en el hogar.**

**44. El principio de la legítima defensa, reconocido internacionalmente como exención de la responsabilidad penal, no es incompatible con la responsabilidad de los Estados de ejercer la debida diligencia para reglamentar la posesión por civiles de armas pequeñas. No existe un derecho independiente o consiguiente en la normativa internacional de derechos humanos sobre la legítima defensa que exija que los Estados faciliten el acceso de los civiles a las armas pequeñas; el principio de la legítima defensa tampoco menoscaba la**

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<sup>50</sup> Ibid.

**responsabilidad del Estado de ejercer la debida diligencia para impedir el acceso a las armas pequeñas a las personas más proclives a usarlas indebidamente. Más bien, los Estados deberían cumplir con su responsabilidad de ejercer la debida diligencia en el contexto de la legislación sobre la legítima defensa, en particular la determinación de la probabilidad de que quienes posean armas de fuego las usen únicamente por necesidad y con proporcionalidad.**

**45. El Artículo 51 de la Carta de las Naciones Unidas se aplica a los Estados que actúan en legítima defensa en caso de ataque armado contra su soberanía. No se aplica a las situaciones de legítima defensa de particulares.**

**46. La Subcomisión de Promoción y Protección de los Derechos Humanos debería actuar para aclarar las responsabilidades positivas de los Estados de prevenir las violaciones de los derechos humanos perpetradas con armas pequeñas. Para ello, la Relatora Especial encargada de preparar un amplio estudio sobre la prevención de las violaciones de los derechos humanos cometidas con armas pequeñas y armas ligeras acogería con agrado la aprobación por la Subcomisión del Proyecto de principios sobre la prevención de las violaciones de los derechos humanos cometidas con armas pequeñas (E/CN.4/Sub.2/2005/35) como importante contribución a la determinación actual de las medidas relativas a las armas pequeñas y las armas ligeras que deberán aplicar los Estados en favor de la realización de los derechos humanos internacionales en las comunidades del mundo entero.**

**Annexes**

**Annex I**

**Summary of Responses Received from United Nations Member States  
to the Special Rapporteur's Questionnaire**

**Part 1. Use of small arms and light weapons by law enforcement**

**Regulating the use of small arms, light weapons and ammunition**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are there laws regulating possession and use?	SALW ammo <sup>1</sup>	SALW ammo	SALW ammo <sup>2</sup>	SALW ammo <sup>3</sup>	SALW ammo	SALW ammo	SALW ammo <sup>4</sup>	SALW ammo <sup>5</sup>	SALW ammo <sup>6</sup>	SALW ammo	SA <sup>7</sup> ammo	SALW ammo <sup>8</sup>	SA <sup>9</sup>	SALW ammo	SALW ammo <sup>10</sup>	SALW ammo <sup>11</sup>	SALW ammo <sup>12</sup>	SA <sup>13</sup>	SA ammo
Are there laws regulating the process for issuance to state agents?	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo <sup>14</sup>	SALW ammo <sup>15</sup>	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SA	SALW ammo	SA	SALW ammo	SALW ammo	SA ammo	
Are there laws regulating the process of collection from state agents that leave service?	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SA	SALW ammo	SA	SALW ammo	SALW ammo	SA ammo	SA
Are retiring officers allowed to keep their weapons?	No	SA ammo	No	No	No	SALW ammo	No	SALW ammo	SALW ammo	No	No	No	SA	No	No	No	No	No	No



**Part 1. Use of small arms and light weapons by law enforcement (*continued*)**

**Regulating the use of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are there laws regulating possession and use?	SALW ammo	SALW ammo	SALW ammo <sup>16</sup>	SALW ammo <sup>17</sup>	SALW ammo	SA ammo <sup>18</sup>	SALW ammo <sup>19</sup>	SALW ammo <sup>20</sup>	SALW	SALW ammo	SALW ammo <sup>21</sup>	SALW ammo	SALW ammo <sup>22</sup>	SALW ammo <sup>23</sup>	SALW ammo <sup>24</sup>	SALW ammo	SA ammo <sup>25</sup>	SA ammo	SA ammo <sup>26</sup>
Are there laws regulating the process for issuance to state agents?	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo		SALW ammo	SALW ammo	SALW	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo		SA ammo	SA ammo
Are there laws regulating the process of collection from state agents that leave service?	SALW ammo	SALW ammo	SALW ammo	SALW ammo <sup>27</sup>	SALW ammo		SALW ammo	SALW ammo	SALW	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo		SA ammo	SA ammo
Are retiring officers allowed to keep their weapons?	No	No	No	No	No		No	SALW ammo	No	No		No	No	No	No	SA		No	SA ammo



**Part 1. Use of small arms and light weapons by law enforcement (continued)**

**Investigating misuse of small arms, light weapons and ammunition**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do you have laws requiring investigation of incidents of alleged misuse of small arms?	Yes	Yes	Yes <sup>30</sup>	Yes	Yes	Yes		Yes	Yes	Yes	Yes <sup>31</sup>	Yes <sup>32</sup>	Yes	Yes	Yes <sup>33</sup>	Yes <sup>34</sup>	Yes	Yes	Yes
Are those investigations carried out by someone independent of the agency accused?	Yes	Yes	Yes	Yes	Yes	Yes <sup>35</sup>		Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
Is there judicial oversight of the investigative process?	Yes	Yes	Yes	Yes	Yes	No <sup>36</sup>		Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes
Are the investigative proceedings made available to the public?	No	Yes	Yes	Yes	Yes	No		Yes	No	No <sup>37</sup>	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Are sanctions imposed against state agents who have misused small arms?	Yes	N/A	Yes	Yes	Yes	Yes		Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Are sanctions imposed against commanding/superior officers who authorize the misuse of small arms?	Yes	No	Yes	Yes	Yes	Yes		Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Is there a process for compensating civilians and their families who have been injured or killed due to misuse of small arms by state security forces?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is there regular funding allocated in the national budget to support such investigations?	Yes <sup>38</sup>	Yes	Yes	No	Yes	Yes		Yes	No	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

**Part 1. Use of small arms and light weapons by law enforcement (*continued*)**

**Investigating misuse of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do you have laws requiring investigation of incidents of alleged misuse of small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>39</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes <sup>40</sup>
Are those investigations carried out by someone independent of the agency accused?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes		Yes	Yes
Is there judicial oversight of the investigative process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes		Yes	No
Are the investigative proceedings made available to the public?	No	Yes	Yes	No	No		Yes	Yes	Yes	Yes		No	Yes	Yes	No	Yes		Yes	Yes
Are sanctions imposed against state agents who have misused small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Are sanctions imposed against commanding/superior officers who authorize the misuse of small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes		Yes	Yes
Is there a process for compensating civilians and their families who have been injured or killed due to misuse of small arms by state security forces?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Is there regular funding allocated in the national budget to support such investigations?	Yes <sup>41</sup>	Yes	Yes		Yes		Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	Yes

**Part 1. Use of small arms and light weapons by law enforcement (*continued*)**

**Security and storage of small arms, light weapons and ammunition**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco	
Are there existing laws governing the storage of small arms by state agents?	Yes	Yes	Yes	Yes	Yes	Yes		Yes <sup>42</sup>	Yes	Yes	Yes <sup>43</sup>	Yes	Yes	Yes	Yes <sup>44</sup>	Yes	Yes	Yes	Yes	Yes
Are off-duty agents allowed to keep their government-issued small arms?	No	No	Yes	No	No	Yes		Yes	Yes	Yes <sup>45</sup>	Yes	No	No	No	No	No	No	No	No	Yes
Are sanctions imposed against state agents for violations of laws on safe storage of small arms?	Yes	N/A	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes			Yes
Are there laws requiring training of forces in securing and safely storing small arms?	Yes	Yes	No		Yes	Yes		Yes	No	Yes	Yes	No	Yes	Yes	No <sup>46</sup>	Yes	Yes	Yes <sup>47</sup>		Yes
Do you allocate funding in your national budget for the facilities and resources to safely and securely store small arms?	Yes <sup>48</sup>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	Yes	No <sup>49</sup>	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Are private storage facilities being inspected?	No	Yes	Yes	No	No	Yes		No		Yes		Yes <sup>50</sup>	Yes	No	Yes	Yes	Yes	N/A <sup>51</sup>		Yes



**Part 1. Use of small arms and light weapons by law enforcement (*continued*)**

**Data collection**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are there national laws requiring the collection and maintenance of data on the use of small arms?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	N/A	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Do you allocate funding in your national budget for the collection of this data?	Yes <sup>58</sup>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes <sup>59</sup>	N/A	No	Yes	No	No	Yes	Yes	No	No
Is this data disaggregated by gender?	No	Yes	Yes	No	No	No		No	No	Yes	N/A	No	No	Yes	No	Yes			No
Is this data public?	No	Yes	No		No	No		Yes	Yes	No <sup>60</sup>	N/A	No	No	Yes	No	Yes	No	No	No

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are there national laws requiring the collection and maintenance of data on the use of small arms?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes			Yes <sup>61</sup>
Do you allocate funding in your national budget for the collection of this data?	Yes	Yes	Yes		Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No			Yes
Is this data disaggregated by gender?	Yes	No	Yes	No	No		Yes	No	No	N/A		Yes	Yes	Yes	No	Yes			
Is this data public?	No	No	Yes	No	No		Yes	Yes	No	N/A	No <sup>62</sup>	No	No <sup>63</sup>		No	No			No

**Part 2. State regulation of armed individuals and armed groups**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are there laws requiring the licensing of all private ownership of small arms and ammunition?	Yes <sup>64</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>65</sup>	Yes	Yes	Yes <sup>66</sup>	Yes	Yes <sup>67</sup>	Yes	Yes <sup>68</sup>	Yes <sup>69</sup>	Yes	Yes	Yes
Are there laws specifying limits to the type and number of weapons that can be held by individuals?	No	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
If seeking to own several weapons, does the need for each one have to be justified separately?	Yes	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is there a periodic review of the licences?	Yes	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Are there laws requiring screening or background investigation on individuals seeking ownership of small arms and ammunition based on:	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Age?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criminal record?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Psychological profile?	Yes	Yes	No	Yes	Yes	Yes		Yes			Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes
Incidents of family violence?	Yes	Yes	No	Yes	No	Yes		Yes	No	Yes	No	No	No	Yes	No	Yes	No	Yes	No
• If yes, is the partner automatically notified of the request for a licence?	No	Yes				No		No		No				Yes					
• Justification of need?	Yes	Yes	No	Yes	Yes	Yes		Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
• Are there laws requiring training for seeking ownership of small arms and/or ammunition?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	No <sup>70</sup>	No	No	No	No	Yes	Yes	Yes	No



**Part 2. State regulation of armed individuals and armed groups (continued)**

(continued)	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
• Do those laws require training be completed before issuing a licence?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No
• Do those laws require training in the safe use and handling of small arms and/or ammunition?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No
• Do those laws require training in the safe storage and maintaining security of small arms and/or weapons?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	No
• Do you allocate funding in your budget for licensing, screening and/or training private owners of small arms and ammunition?	No	No	No	No	Yes	Yes		Yes	No	No <sup>71</sup>	No	No	No	No	No	Yes	Yes	No	No
• Is there a database of licensed owners of small arms and ammunition?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
• Is that database public?	No	Yes	No	No	No	No		No	Yes	No	No	No		Yes	No	Yes	No	No	No
• Do you allocate funding in your budget for maintenance of the database?	Yes <sup>72</sup>	No	Yes	Yes	No	Yes		Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No
• Are there programmes allowing for periodic amnesties for individuals who want to turn in small arms?	No	No	Yes	Yes	Yes	No		Yes	No	No	No	No	No	Yes	No	No	No	Yes	No
• Are there laws requiring the collection and maintenance of data on the use of small arms by private owners?	No	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	No <sup>73</sup>	Yes <sup>74</sup>	Yes	Yes	No	No	Yes	Yes	No

**Part 2. State regulation of armed individuals and armed groups (continued)**

(continued)	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
<ul style="list-style-type: none"> <li>Are there laws requiring that the collection and maintenance of data on the use of small arms in incidents of crime including the type of firearm, use of the firearm and the type of injury caused?</li> </ul>	Yes	Yes	No	No	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	No <sup>75</sup>	No	Yes		Yes
<ul style="list-style-type: none"> <li>Do you allocate funding in your budget for the collection of this data?</li> </ul>	Yes <sup>76</sup>	No	No	No	Yes	No		Yes		Yes	Yes	Yes	No	No	No	Yes	Yes		No

**Part 2. State regulation of armed individuals and armed groups (continued)**

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are there laws requiring the licensing of all private ownership of small arms and ammunition?	Yes	Yes <sup>77</sup>	Yes <sup>78</sup>	Yes <sup>79</sup>	Yes		Yes	Yes <sup>80</sup>	Yes	Yes <sup>81</sup>	Yes	Yes	Yes <sup>82</sup>	Yes	Yes <sup>83</sup>	Yes		Yes <sup>84</sup>	Yes <sup>85</sup>
Are there laws specifying limits to the type and number of weapons that can be held by individuals?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	No	Yes	Yes	Yes	Yes <sup>86</sup>	Yes	No	Yes		Yes	Yes
If seeking to own several weapons, does the need for each one have to be justified separately?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>87</sup>	Yes	Yes	Yes		Yes	Yes
Is there a periodic review of the licences?	No	No	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Are there laws requiring screening or background investigation on individuals seeking ownership of small arms and ammunition based on:	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes <sup>88</sup>
Age?	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes	Yes	Yes <sup>89</sup>	Yes	Yes	Yes		Yes	Yes
Criminal record?	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Psychological profile?	Yes	Yes	Yes	Yes	Yes		No	Yes		Yes	Yes	Yes	Yes		No	Yes		Yes	Yes
Incidents of family violence?		Yes	Yes		Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
• If yes, is the partner automatically notified of the request for a licence?		Yes			No		Yes			No		No	Yes	Yes	Yes <sup>90</sup>	Yes		Yes	Yes
• Justification of need?	Yes	Yes	Yes		Yes		Yes	Yes		Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes
• Are there laws requiring training for seeking ownership of small arms and/or ammunition?	No	Yes <sup>91</sup>	Yes <sup>92</sup>	No <sup>93</sup>	Yes		No	Yes	No	No <sup>94</sup>	Yes	Yes	Yes	Yes	Yes	No		Yes	Yes <sup>95</sup>

**Part 2. State regulation of armed individuals and armed groups (continued)**

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
• Do those laws require training be completed before issuing a licence?	No	No <sup>96</sup>	Yes	No <sup>97</sup>	Yes		No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No		Yes	
• Do those laws require training in the safe use and handling of small arms and/or ammunition?	N/A	Yes	Yes	Yes <sup>98</sup>	Yes		Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No		No <sup>99</sup>	
• Do those laws require training in the safe storage and maintaining security of small arms and/or weapons?	N/A	Yes	Yes	No <sup>100</sup>	Yes		Yes	Yes	Yes <sup>101</sup>	No	Yes	Yes	Yes	Yes	Yes	No		No	
• Do you allocate funding in your budget for licensing, screening and/or training private owners of small arms and ammunition?	N/A	Yes	Yes	No <sup>102</sup>	No		Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	No		Yes	
• Is there a database of licensed owners of small arms and ammunition?	Yes	Yes	Yes <sup>103</sup>	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
• Is that database public?		Yes	Yes <sup>104</sup>	No	No		No	No	No	No		No	No	Yes	No	No		No	No
• Do you allocate funding in your budget for maintenance of the database?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	
• Are there programmes allowing for periodic amnesties for individuals who want to turn in small arms?		Yes	Yes	No	No		Yes	No	Yes	No	Yes	No	Yes	Yes	No	No		Yes	No
• Are there laws requiring the collection and maintenance of data on the use of small arms by private owners?		Yes	Yes	No	Yes		Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes		Yes	Yes

**Part 2. State regulation of armed individuals and armed groups (continued)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
<ul style="list-style-type: none"> <li>Are there laws requiring that the collection and maintenance of data on the use of small arms in incidents of crime including the type of firearm, use of the firearm and the type of injury caused?</li> </ul>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	No		Yes	
<ul style="list-style-type: none"> <li>Do you allocate funding in your budget for the collection of this data?</li> </ul>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	No	No	Yes	Yes	Yes	No	No		Yes	

### Part 3. Manufacture and transfer of small arms, light weapons and ammunition

#### Manufacture of small arms, light weapons and ammunition

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do you have state owned or operated manufacturers of small arms?	No	Yes <sup>105</sup>	Yes	Yes	No	No		Yes	No	No	Yes	No	No <sup>106</sup>	No	No	Yes	No	No	No
Do you have privately owned manufacturers of small arms?	Yes	No	No	No	No	No		Yes	No	Yes	No	No	No	No	No	Yes	No	No	No
Do you provide State subsidies to private manufacturers of small arms?	No	No	No		No	No		No	No	No	No	No	N/A	No	N/A	No	No	No	No
Do you have national laws and/or enforceable policies which regulate the manufacture of small arms?	Yes <sup>107</sup>	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes <sup>108</sup>	Yes <sup>109</sup>	Yes	N/A	No	Yes	Yes <sup>110</sup>	Yes	No	No
Do these laws require that manufacturers of small arms be licensed?	Yes	Yes	Yes	Yes		Yes		Yes	Yes	Yes	Yes	Yes	N/A	No	N/A	Yes	Yes	No	N/A
Are there minimum requirements for issuance of licences?	Yes	Yes	Yes	Yes		Yes		Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Do those licences have to be renewed on a regular basis?	No	Yes	Yes			Yes		No	Yes	No	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Do you allocate funding in your national budget for the collection of data and maintenance of a database?	Yes	No <sup>111</sup>		Yes		No		Yes	No	No <sup>112</sup>	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Are there procedures for investigating violations of laws by manufacturers of small arms?	Yes	Yes	No	Yes		Yes		Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Are there sanctions in place for violations by manufacturers?	Yes	No	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Manufacture of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do you have state owned or operated manufacturers of small arms?	No	No	No	Yes	No		No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes <sup>113</sup>	No	-- <sup>114</sup>
Do you have privately owned manufacturers of small arms?	No	No	Yes	Yes	Yes		Yes	No	No	Yes	Yes	Yes	No	No	No	Yes		No	No
Do you provide State subsidies to private manufacturers of small arms?	N/A	No	No	No	Yes		No	No	No	No		No	No	No	No	No		No	No
Do you have national laws and/or enforceable policies which regulate the manufacture of small arms?	N/A	Yes	Yes	Yes	Yes	Yes <sup>115</sup>	Yes	Yes	Yes	Yes	Yes <sup>116</sup>	Yes	Yes	Yes	Yes <sup>117</sup>	Yes		Yes	Yes <sup>118</sup>
Do these laws require that manufacturers of small arms be licensed?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A <sup>119</sup>	Yes	Yes	Yes	Yes	N/A <sup>120</sup>	N/A	Yes		Yes	Yes
Are there minimum requirements for issuance of licences?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes		Yes	Yes
Do those licences have to be renewed on a regular basis?	N/A	Yes	Yes	No	Yes	Yes	No	Yes	N/A	No	Yes	Yes	Yes	N/A	N/A	Yes		Yes	No
Do you allocate funding in your national budget for the collection of data and maintenance of a database?	N/A	Yes	Yes	No	Yes		No	No	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes		Yes	
Are there procedures for investigating violations of laws by manufacturers of small arms?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes		Yes	Yes
Are there sanctions in place for violations by manufacturers?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes		Yes	Yes

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Transfer of small arms, light weapons and ammunition**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are manufacturers of small arms permitted to sell or transfer directly to state agencies, including law enforcement and security forces?	Yes	Yes	Yes	N/A <sup>121</sup>	N/A <sup>122</sup>	Yes		Yes	No	Yes	Yes	No	Yes	Yes	N/A <sup>123</sup>	Yes	No <sup>124</sup>	N/A	N/A <sup>125</sup>
Are manufacturers of small arms permitted to sell or transfer directly to private persons or groups?	Yes	No	No	N/A		Yes		Yes	No	Yes	Yes	No	No	Yes	N/A	Yes	No	N/A	N/A
Are manufacturers of small arms permitted to sell small arms outside the state to other governments?	No	No	No	N/A		No		Yes	Yes <sup>126</sup>	Yes	Yes	No	No	Yes	N/A	Yes	No	N/A	N/A
Are manufacturers of small arms permitted to sell small arms outside the state to private individuals or groups?	No	No	No	N/A		No		Yes	Yes	Yes	Yes	No	No	Yes	N/A	Yes	No	N/A	N/A
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms within the state?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Do those laws contain procedures for investigating and verifying the end user of these small arms?	Yes	Yes	No	N/A	Yes	Yes		Yes	Yes	Yes	Yes	N/A <sup>127</sup>	No	Yes	N/A	Yes	Yes	Yes	Yes
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms outside the state?	Yes	Yes	Yes	N/A		Yes		Yes <sup>128</sup>	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes <sup>129</sup>	Yes	No	No



**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Transfer of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do those laws contain procedures for investigating and verifying the end user of these small arms, including the risk of diversion?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A	Yes	Yes	N/A	Yes	Yes	N/A	No
Do your laws contain requirements for verifying the human rights situation in buyer state or region?	Yes	No <sup>130</sup>	Yes	N/A		Yes		Yes	Yes	Yes	No <sup>131</sup>	N/A		Yes	N/A	No	No	Yes	No
Before transfer, do you assess if there is risk the small arms will be used in internal repression?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you assess whether there is a situation of armed conflict in which the small arms might be used?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you investigate whether the end use of the small arms might be to commit acts of aggression or force on neighbouring countries or territories?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you assess the potential impact of small arms on regional stability?	Yes	N/A <sup>132</sup>	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you assess the risk of whether small arms will be used in acts of terrorism or organized crime?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Transfer of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do you use any of the above criteria in your decision whether or not to export small arms?	Yes	N/A	Yes	N/A		Yes		Yes	No	Yes	Yes	No		Yes	N/A	No	N/A	N/A	N/A
Do you allocate funding in your national budget for making these assessments in decisions to export?	No <sup>133</sup>	Yes	Yes	N/A		Yes		Yes	No	No	Yes	No		Yes	N/A	No	N/A	N/A	N/A
Are there sanctions in place should a manufacturer or state agent transfer small arms in violation of these considerations?	Yes	N/A	No	N/A		Yes		Yes	No	Yes	Yes	Yes		Yes	N/A	Yes	N/A	N/A	N/A

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Transfer of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are manufacturers of small arms permitted to sell or transfer directly to state agencies, including law enforcement and security forces?	N/A	No	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes	Yes	Yes	No	Yes <sup>134</sup>	No	Yes	Yes <sup>135</sup>		No
Are manufacturers of small arms permitted to sell or transfer directly to private persons or groups?	N/A	No	Yes	Yes	Yes <sup>136</sup>	No	Yes	Yes	N/A	No	No	No	No	No	No	Yes			No
Are manufacturers of small arms permitted to sell small arms outside the state to other governments?	N/A	No	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes	Yes	Yes	No	No	No	Yes			No
Are manufacturers of small arms permitted to sell small arms outside the state to private individuals or groups?	N/A	No	Yes	Yes	Yes	No	Yes <sup>137</sup>	Yes	N/A	No	No	No	No	No	No	Yes			No
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms within the state?	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>138</sup>	Yes	Yes	Yes	Yes	Yes	Yes <sup>139</sup>	Yes	Yes	Yes		Yes	Yes
Do those laws contain procedures for investigating and verifying the end user of these small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes		Yes	Yes
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms outside the state?	Yes	Yes	Yes <sup>140</sup>	Yes <sup>141</sup>	Yes	Yes	Yes	Yes <sup>142</sup>	No <sup>143</sup>	Yes	Yes <sup>144</sup>	Yes	Yes	Yes	N/A	Yes		Yes	Yes

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (continued)**

**Transfer of small arms, light weapons and ammunition (continued)**

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do those laws contain procedures for investigating and verifying the end user of these small arms, including the risk of diversion?	Yes	Yes	No <sup>145</sup>	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes		Yes	Yes	N/A	Yes		Yes	Yes
Do your laws contain requirements for verifying the human rights situation in buyer state or region?	N/A	Yes	Yes	Yes	Yes		Yes <sup>146</sup>	Yes	N/A	Yes	Yes		Yes		N/A	yes			
Before transfer, do you assess if there is risk the small arms will be used in internal repression?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	
Before transfer, do you assess whether there is a situation of armed conflict in which the small arms might be used?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	
Before transfer, do you investigate whether the end use of the small arms might be to commit acts of aggression or force on neighbouring countries or territories?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes			
Before transfer, do you assess the potential impact of small arms on regional stability?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes			
Before transfer, do you assess the risk of whether small arms will be used in acts of terrorism or organized crime?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Transfer of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do you use any of the above criteria in your decision whether or not to export small arms?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	
Do you allocate funding in your national budget for making these assessments in decisions to export?	N/A	Yes	Yes	No	Yes		No	Yes	N/A	No	Yes		Yes		N/A	Yes			
Are there sanctions in place should a manufacturer or state agent transfer small arms in violation of these considerations?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	Yes <sup>17</sup>

**Notes**

<sup>1</sup> Waffengebrauchsgesetz 1969 (Weapons Usage Act) and Kriegsmaterialgesetz (War Material Act).

<sup>2</sup> Ley No. 17.798 sobre control de Armas, Explosivos y Elementos Similares, y los Reglamentos Institucionales de las FF.AA., Carabineros y Policia de Investigaciones como autoridades encargados por la Ley 17.798.

<sup>3</sup> Decreto 2535 del 17 diciembre de 1993; Decreto Reglamentario 1809 de 1994.

<sup>4</sup> Act No. 119/2002 Coll. On firearms and ammunition, as amended, effective as of 1 January 2003; Act No. 13/1993 Coll., Customs Act; Act No. 283/1991 Coll. On Police of the Czech Republic, as amended, section 39 et sequential.

<sup>5</sup> Police Act.

<sup>6</sup> Georgian Law “On Weapons”.

<sup>7</sup> Law 3169/2003 on “Matters Concerning the Possession and Use of Firearms by Police Officers and article 1 of the Decision 8517/4/7mb of the Minister of Public Order dated 17 February 2004. The Government of Greece has drafted legislation that would regulate the possession and use of light weapons. As of September 2005, this legislation was being considered by Parliament.

<sup>8</sup> Firearms and Ammunitions Law of 2001.

<sup>9</sup> Law of the Kyrgyz Republic on “Small Arms”, 9 June 1999.

<sup>10</sup> Police Act, Sect. 13D; Criminal Code Act, Section 140, 233 and 378 (g); Firearms Act.

<sup>11</sup> Ley Federal de Armas de Fuego y Explosivos.

<sup>12</sup> Loi No. 943 du 18 Juin 1971 et OS.G947 du 16 Octobre 1980 sur les Armes et munitions.

<sup>13</sup> Law on Firearms of Mongolia.

<sup>14</sup> There are regulations.

<sup>15</sup> No. 283/1991 Coll. On Police of the Czech Republic, as amended, section 39 et sequentia.

<sup>16</sup> Sections 3, 4, 5 and 6 of Implementing Rules and Regulations of Presidential Decree 1866, as amended by Republic Act 8294; Rule XI of Standard Operating Procedure 13 and Executive Order 522.

<sup>17</sup> Law of 21 May 1999 on Firearms and Ammunition, as amended.

<sup>18</sup> Police Code 23 of 1999.

<sup>19</sup> Act on Special Measures for the Defense Industry and Enforcement Decree; Act on Control of Firearms, Swords, Explosives, etc.; Foreign Trade Act; Presidential decrees and enforcement decrees; and Public Notice on the Export and Import of Strategic Goods.

<sup>20</sup> Law 295/2004 on the Regime of Arms and Ammunition; articles 46-52 of Law 17/1996 on the Regime of Firearms and Ammunition; and Law 360/2002 on the Status of Policemen.

<sup>21</sup> Firearms Control Act of 2000 and Firearms Control Regulations of 2004.

<sup>22</sup> Sudan Police Force Law.

<sup>23</sup> Possession of hunting guns and small revolvers and ammunition therefore is permitted; the rest of the weapons are carried only by the armed forces.

<sup>24</sup> Firearms Act and Police Service Act.

<sup>25</sup> Articles 12, 15 and 151 of Ukrainian law “About Police” of 20 December 1990. The norms for usage of ammunition are laid out in “Shooting Course - Order of the Ministry of the Interior of Ukraine”, of 25 November 2003 (No. 1444).

<sup>26</sup> As of June 2005 (when the response was submitted), the law “About Weapons” was still under development in the Republic of Uzbekistan. Currently, all questions related to small arms, light weapons and ammunition are regulated by regulations of the relevant Ministries and Agencies. The control-licensing activities of the Ministry of the Interior, as determined by the regulation of 20 August 2001, No. 226, do not cover light weapons. They regulate small arms and ammunition to the small arms such as: rifled-barrel army models, special-order training models (including gelded ones), sport large-calibre arms (7.62 mm and more), small-calibre arms, hunting rifled-barrel arms, and smoothbore firearms and ammunition to all of these weapons, which belong to organizations and individual citizens, except those weapons that are in possession of the Ministry of the Interior, Ministry of Defense and Ministry on Emergency

Situations, as well as State Customs Committee and National Security Agency. The Agency Regulations of the Ministry of the Interior, National Security Agency, Ministry of Defense, and the Office of Public Prosecutor: the possession and use of weapons by the members of the Armed Forces is regulated by the Armed Forces manual/regulations as well as individual regulations of distinct kinds of the Armed Forces.

<sup>27</sup> Ministry of Defence internal regulations.

<sup>28</sup> Article 34 of Law 295/2004 on the Regime of Arms and Ammunition; order of the minister of Administration and Interior 1020/1996 on the preparation, organization and conduct of the firing training of Ministry personnel.

<sup>29</sup> Instructions for securing the safety of weapons, ammunition and special means of the internal security forces is affirmed by the order of the Ministry of the Interior of Ukraine of 6 July 2001 (No. 541). Instructions about the safety measures for the use with firearms is affirmed by the order of the Ministry of the Interior of Ukraine of 25 November 2005 (No. 1444).

<sup>30</sup> Código de Justicia Militar, Ley No. 17.798, Código Penal y la reglamentación de cada Institución.

<sup>31</sup> Presidential Decree 22/1996 on “Disciplinary Law for Police Personnel” and provisions of Law 3169/2003.

<sup>32</sup> Criminal Law 1952 and Firearms and Ammunitions Law 2001.

<sup>33</sup> Police Act.

<sup>34</sup> Art. 157, Código de Justicia Militar; arts. 31 y 36, Ley Federal de Armas de Fuego y Explosivos; El Código Penal Federal.

<sup>35</sup> If the incident is serious.

<sup>36</sup> The Attorney General oversees such investigations.

<sup>37</sup> Publicity during the investigatory phase is at the discretion of the public prosecutor’s office. If charges are made, the court proceedings are public (with a few specific exceptions).

<sup>38</sup> There is no regular budget allocation, but money for investigations and damages is granted via the national budget as needed.

<sup>39</sup> Law 218/2002 on the Organization and Functioning of the Romanian Police; Regulation 193/1992 on the Organization of the Committees and Commissions for Human Rights and Humanitarian Law in the Ministry of Administration and Interior; Instruction 776/1998 on the Organization, Coordination and Control of the Activity of Labor Protection in the Ministry of Administration and Interior Units; article 21 of Law 90/1996 on the Coordination of the Labor Protection Activity; Law 550/2004 on the Organization and Functioning of the Romanian Police.

<sup>40</sup> Articles 247, 248, 249, 250, 297 of the Criminal Code of the Republic of Uzbekistan; Manual for performance of Garrison duties.

<sup>41</sup> Through the budget of the National Army.

<sup>42</sup> Firearms Act.

<sup>43</sup> Articles 3, 5, 7 and 8 of Decision 8517/4/7-mb of the Minister of Public Order, dated 17 February 2001.

<sup>44</sup> Firearms Act.

- <sup>45</sup> With special permit by the relevant authority.
- <sup>46</sup> There is no legal requirement for such training, but training on safe storage is given to law enforcement agents.
- <sup>47</sup> Law on Police Organization and Law on Armed Forces.
- <sup>48</sup> There is no regular budget allocation, but money is granted via the national budget as needed.
- <sup>49</sup> Secure storage is the responsibility of relevant departments and is funded through their budgets.
- <sup>50</sup> During police investigations; not routinely.
- <sup>51</sup> There are no private storage facilities.
- <sup>52</sup> Executive Order 61, designating the Philippine Constabulary as Government custodian of firearms, ammunition and explosives.
- <sup>53</sup> Law 295/2004 on the Regime of Arms and Ammunition.
- <sup>54</sup> Government orders, rather than law.
- <sup>55</sup> Control over the storage of weapons is regulated by the control-licensing agencies (order of the Ministry of the Interior of the Republic of Uzbekistan No. 226 of 20 August 2001). For the forces of the Ministry of the Interior see “Manual for the service of artillery weaponry of the interior forces and army training colleges”; for the forces of the Ministry of Defense, see “Instructions for organizing the registration, storage and issuance of small arms and ammunition to the Armed Forces”.
- <sup>56</sup> Except for military forces.
- <sup>57</sup> Sudan Law for Weapons and Ammunition, 1986.
- <sup>58</sup> Funding is allocated as part of the Normal Budget.
- <sup>59</sup> Funded by the general budget allocated for the police.
- <sup>60</sup> Depersonalized statistics are published.
- <sup>61</sup> The database of owners and users of the small arms is being formed according to the order of the Ministry of the Interior of the Republic of Uzbekistan No. 105 of 26 May 1998.
- <sup>62</sup> Regulation 87 and 88 of the Firearms Control Regulations, 2004 prescribe the types of information which must be kept by central databases. No provision is made by the Firearms Control Act, 2000 for such information to be made public. Applications may be made under the Promotion of Access to Information Act, 2000 to obtain certain records. In addition, the reporting duties of the national Conventional Arms Control Committee (in terms of Section 23 of the National Conventional Arms Control Act, 2002) implies the collection of data regarding all conventional arms exported and provides for this data to be made public.
- <sup>63</sup> Some data are made public, but others are not.
- <sup>64</sup> Such laws are enacted at the state level.
- <sup>65</sup> Firearms Act (1/1998, as amended).
- <sup>66</sup> Articles 7 and 10 of Law 2168/1993 and Common Ministerial Decision 4325/99 of the Ministers of Culture and Public Order.



- <sup>67</sup> Law of the Kyrgyz Republic on “Licensing”, 3 March 1997.
- <sup>68</sup> Firearms Act. As of March 2005, the Firearms Act will be repealed and replaced by a new enforcement act.
- <sup>69</sup> Constitución Política de los Estados Unidos Mexicanos, art. 10; Ley Federal de Armas de Fuego y Explosivos, arts. 24-27, 34-35.
- <sup>70</sup> Training is required only in cases where licences are for athletes.
- <sup>71</sup> The fees for using these services are raised by the competent authority.
- <sup>72</sup> There is no regular budget allocation, but money is granted via the normal budget process as needed to collect this data.
- <sup>73</sup> The possession and use of small arms by private individuals is prohibited in Greece. In special cases and when the conditions of the law concur (special weapons of protection or security) private individuals are granted a licence by the competent police authorities.
- <sup>74</sup> Only in cases where weapons are used in crime.
- <sup>75</sup> No legal requirement to maintain this data, but records are kept.
- <sup>76</sup> There is no regular budget allocation, but money is granted as needed to maintain the database.
- <sup>77</sup> With the exception of shotguns acquired before 1990.
- <sup>78</sup> Standard Operating Procedure 13, enacted at the state level.
- <sup>79</sup> Weapon and Ammunition Statute, applied at national level.
- <sup>80</sup> Law 295/2004 on the Regime of Arms and Ammunition.
- <sup>81</sup> Act 190/2003 Coll. On Firearms and Ammunition, as amended; Notice of the Ministry of the Interior 555/2003 Coll.
- <sup>82</sup> Applied at the federal level.
- <sup>83</sup> Firearms Act 16:01 and Firearms (Amendment) Regulations No. 3 of 2004.
- <sup>84</sup> Applied at the federal level.
- <sup>85</sup> The Law of the Republic of Uzbekistan “About Licensing of Certain Types of Activities”. Also, in accordance with the order of the Ministry of the Interior of the Republic of Uzbekistan No. 226 of 20 August 2001, there are regulations regarding issuances of special permits for import/export, acquisition, transport, storage and carrying, and realization of weapons. Ammunition can be sold to citizens who are members of hunting societies and who have permits for the storage and carrying of weapons, and only through special stores.
- <sup>86</sup> Regulation of the Arms Law of 1997.
- <sup>87</sup> There is only one weapon allowed per individual.
- <sup>88</sup> According to the established order, a permit for the acquisition of weapons can be issued based on a citizen’s application only after investigating the citizen’s identity, health, criminal history, lifestyle (abuse of narcotics, alcohol, leading to police detentions), behaviour at work and at home, affairs, and other important circumstances. In case there are foundations for refusal of a licence, the Ministry of the Interior notifies the citizen about the refusal without providing grounds for this refusal.
- <sup>89</sup> Not less than 30 years of age for firearms and 25 years for air guns.

- <sup>90</sup> The partner of a firearms licence applicant is interviewed before a licence is granted to the applicant.
- <sup>91</sup> A licensee must be a member of a gun club or shooting association.
- <sup>92</sup> National Police Commission Resolution 97-162 states that an applicant is required to undergo a Gun Safety Seminar and a Responsible Gun Ownership Seminar.
- <sup>93</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety and use of weapons.
- <sup>94</sup> There is an exam of qualification, abilities and skills connected with the use of SALW.
- <sup>95</sup> According to current regulations, the right to own weapons is given only to the members of the hunting society (those who have a hunting licence), which, according to its constitution must require passing relevant exams (“hunting minimums”).
- <sup>96</sup> Some gun clubs require such training.
- <sup>97</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety and use of weapons.
- <sup>98</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety and use of weapons.
- <sup>99</sup> Legislation to do so was under consideration in 2005.
- <sup>100</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety, storage and use of weapons.
- <sup>101</sup> For security companies.
- <sup>102</sup> Applicants for a permit pay a fee to support the licensing review system.
- <sup>103</sup> Firearms Information Management System stores all names of registered firearms holders nationwide and their licensed firearms.
- <sup>104</sup> Subject to the provisions of disclosure of information involving and/or relating to firearms and explosives.
- <sup>105</sup> Bangladesh Ordnance Factories.
- <sup>106</sup> There is no manufacture of SALW and ammunition in the Kyrgyz Republic.
- <sup>107</sup> Austrian Trade Act, Federal Gazette 194/1994 (Gewerbeordnung).
- <sup>108</sup> For war weapons, the War Weapons Control Act.
- <sup>109</sup> Article 5 of Law 2168/1993.
- <sup>110</sup> Ley Federal de Armas de Fuego y Explosivos, Titulo Tercero, Capitulo 1; Capitulo IV del Reglamento de la Ley Federal de Armas de Fuego y Explosivos; Disposiciones de la Secretaria de la Defensa Nacional.
- <sup>111</sup> No separate fund is allocated; accounting is done at government level.
- <sup>112</sup> Funds are earmarked in the budgets of the competent authorities.
- <sup>113</sup> KNVO “Fort” Ministry of the Interior of Ukraine (town: Vinnitza).
- <sup>114</sup> Information withheld according to the law of the Republic of Uzbekistan “About State Secrets”.
- <sup>115</sup> Code 14 of 1999, which relates to weapons and ammunition.
- <sup>116</sup> Sections 45-58 of the Firearms Control Act, 2000.

- <sup>117</sup> Section 15 (1) of the Firearms Act, Ch. 16:01 forbids the manufacture of any firearm and ammunition in Trinidad and Tobago.
- <sup>118</sup> The Cabinet of Ministers Directive No. 236 of 28 June 2002 “About the measures for the realization of the Republic of Uzbekistan law ‘About licensing of certain types of activities’” requires licensing for production, repair and realization of battle, hunting and sport firearms and ammunition, as well as of side-arms (except national knives and knives for domestic use).
- <sup>119</sup> There is no private arms manufacture of small arms in Saudi Arabia.
- <sup>120</sup> There are no private manufacturers of SALW; there are no licences for manufacturing SALW.
- <sup>121</sup> There is no private arms manufacturing in Colombia; weapons production is a state monopoly.
- <sup>122</sup> Costa Rica does not manufacture or export armaments.
- <sup>123</sup> There is no arms manufacture in Mauritius.
- <sup>124</sup> There is no arms manufacture in Monaco.
- <sup>125</sup> There is no arms manufacture in Morocco and no export of firearms.
- <sup>126</sup> Regulated by the Georgian Law “On the Control of Export-Import of Armaments, Military Equipment and Goods of Dual-Purpose Use”.
- <sup>127</sup> It is illegal to export or transfer weapons at all times.
- <sup>128</sup> Act on the Export and Transit of Defense Materiel (242/1990, as amended).
- <sup>129</sup> Ley Federal de Armas de Fuego y Explosivos, arts. 55-59.
- <sup>130</sup> Bangladesh does not export weapons, except for United Nations Missions. Weapons are authorized by the Bangladeshi government to Bangladeshi government agencies for security purposes.
- <sup>131</sup> The EU Code of Conduct and United Nations Decision 1540 are taken in mind.
- <sup>132</sup> Bangladesh does not export weapons, except for United Nations Missions.
- <sup>133</sup> There is no extra budget for these assessments, but the necessary money is granted.
- <sup>134</sup> Transfers of SALW are made in accordance with strict national laws and under enforced supervision to prevent diversion.
- <sup>135</sup> Purchase (transfer) of arms for MVD (Ministry of the Interior of Ukraine) forces are conducted through a centralized system of DRO of the Ministry of the Interior of Ukraine. The units of the Ministry of the Interior, themselves, are forbidden from purchasing weapons.
- <sup>136</sup> Except for military arms.
- <sup>137</sup> SALW for military purpose may not be sold to private individuals or groups.
- <sup>138</sup> Act on Control of Firearms, Swords, Explosives, etc.
- <sup>139</sup> Sudan is not an exporter of armaments, but Sudanese law contains human rights requirements nevertheless. Sudan is a member of the Nairobi Protocol and has committed to all obligations in the Protocol.
- <sup>140</sup> Standard Operating Procedure 13 and Executive Order 256.

<sup>141</sup> Act of 29 November 2000 on Foreign Trade in Goods, Technologies and Services of Strategic Importance to the Security of the State and to Maintaining International Peace and Security.

<sup>142</sup> Government Ordinance 158/1999 on the Control Regime of the Exports, Imports and other Operations with Military Goods, as amended by Law 595/2004.

<sup>143</sup> There is no export from Saudi Arabia

<sup>144</sup> Firearms Control Act, 2000 and National Conventional Arms Control Act, 2002.

<sup>145</sup> A bill pending in the Senate as of May 2005 for a National Firearms Act would incorporate other issues related to the transfer of SALW.

<sup>146</sup> Act on Special Measures for the Defense Industry and Enforcement Decree.

<sup>147</sup> Article 248 of the Criminal Code of the Republic of Uzbekistan.

## Annex II

### Summary and analysis of responses received from United Nations Member States to the Special Rapporteur's questionnaire

Sub-Commission decision 2003/105 and Commission decision 2004/124 authorized transmittal of a questionnaire elaborated by the Special Rapporteur to Governments and other entities in order to solicit information in connection with her study. Surveys were sent by the Office of the High Commissioner to Governments. Full or partially completed surveys were received back from 38 States.<sup>51</sup> The Special Rapporteur would like to express her gratitude to the States that responded to the survey. A chart summarizing all State responses is attached as annex I to this report.

The regional affiliation of the States that responded to the survey is:

Africa: 5 States (9% of the 53 States in the region)

Asia: 12 States (23% of the 52 States in the region)

Eastern Europe: 6 States (29% of the 21 States in the region)

Latin America and Caribbean: 5 States (15% of the 33 States in the region)

Western Europe and Other: 10 States (37% of the 27 States in the region)<sup>52</sup>

Unless otherwise noted, percentages used in the summary below are based on the number of responses received from States to individual questions. The responses have not been weighted on the basis of regional representation, non-answers, or any other factors.

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<sup>51</sup> See footnote 2 for a listing of participating States. Representatives of two additional States - Venezuela and India - also responded; however, their response did not include answers to any of the survey questions.

<sup>52</sup> Responding States, broken down by regional grouping, are:

Africa - Mauritius, Morocco, Niger, South Africa, Sudan;

Asia - Bangladesh, Jordan, Kyrgyzstan, the Marshall Islands, Mongolia, Philippines, Qatar, Republic of Korea, Saudi Arabia, Syrian Arab Republic, the United Arab Emirates, Uzbekistan;

Eastern Europe - Czech Republic, Georgia, Poland, Romania, Slovakia, Ukraine;

Latin America and Caribbean - Chile, Colombia, Costa Rica, Mexico, Trinidad and Tobago;

Western Europe and Other - Austria, Cyprus, Finland, Germany, Greece, Monaco, Norway, Portugal, Spain, Turkey.

Regional groups are defined in "Member States of the General Assembly arranged in regional groups as of 31 May 2002", UNEP/POPS/COP.1/INF/16, 29 November 2004.

## **A. Part 1: Use of small arms and light weapons by law enforcement**

### **1. Summary of State responses**

Because the primary focus of human rights law is on State practice, the first set of questions in the Special Rapporteur's survey requested States to provide information related to the possession and use of small arms by State officials, including law enforcement officers. Responses indicated a high degree of consensus among responding States regarding laws and practices that govern the possession of small arms, investigations of misuse, and storage of firearms by law enforcement. There was less consensus regarding State policies on collection of firearms from officers who are off-duty or retired. The following is a summary of the State responses regarding small arms and law enforcement:

- All responding States (100%) regulate at least the distribution of small arms ("SA") to law enforcement officers; 30 of 38 States (79%) regulate the distribution of all SA, light weapons ("LW"), and ammunition.
- At least 27 of 38 (71%) States collect State-issued weapons when law enforcement officers retire.
- All States (100%) answering the survey questions on training of law enforcement officers<sup>53</sup> provide technical/mechanical training. All but one responding (the Republic of Korea) provide practical/tactical training. All but two (Mauritius and Mongolia) provide training in applied decision-making.
- All responding States (100%) have laws or regulations requiring investigation of allegations of misuse of firearms by law enforcement officials. Thirty of 36 States (83%) have independent investigations of alleged firearms misuse. The same percentage provide for judicial oversight of the investigative process. Twenty-three of 35 States (66%) make such investigative proceedings public. Based on the sample participating in the survey, there appears to be a higher degree of transparency in this regard by non-European States.
- Thirty-four of 35 responding States (97%) impose sanctions against State agents who misuse small arms. Thirty-two of 35 States (91%) impose sanctions against commanders/superior officers who authorize the misuse of small arms. (Bangladesh, Georgia and the Marshall Islands do not do so.)
- Only 1 of 34 responding States (3%) does not have a process in place to compensate civilians and/or families of civilians who have been injured or killed due to misuse of small arms by State forces.
- Thirty-five of 35 responding States (100%) have laws governing the storage of small arms by State agents. Six States do not reveal whether they impose sanctions against State agents for violations of laws on safe storage of firearms, but - of those responding to this question - all (100%) said that they did. Most responding States (85%) allocate funding in their budget for safe storage of small arms.

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<sup>53</sup> The Czech Republic and Qatar did not answer these questions.

- Nineteen of 34 responding States (56%) do not allow off-duty State agents to keep their government-issued small arms. (Conversely, 44% do allow off-duty law enforcement agents to keep their weapons.)
- Thirty of 33 responding States (91%) have laws requiring the collection and maintenance of data on the use of small arms by law enforcement officers. Twenty-three of 32 responding States (72%) allocate funding in their budgets to support this requirement. Eight of 30 States (27%) make this data public.

## **2. Analysis of responses with regard to the draft principles**

The responses of States with regard to the possession and use of small arms by law enforcement show significant convergence between the policies of States and those stated in the draft principles on the prevention of human rights violations committed with small arms (E/CN.4/Sub.2/2005/35), which the Sub-Commission considered at its fifty-sixth and fifty-seventh sessions. Though it would be premature to draw any normative conclusions from a 20% sampling of State responses, it is relevant to the Sub-Commission's further consideration of the draft principles to consider the views of the responding States.

Based on the responses received, in general, States' policies and practice tend to show support for the adoption and implementation of rules on force and small arms by law enforcement, (E/CN.4/Sub.2/2005/35, annex, draft principle 2, "Governments and State agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State officials, especially law enforcement officials.").

States' policies and practices indicate the existence of a chain of command and the imposition of sanctions against State officials who misuse small arms (E/CN.4/Sub.2/2005/35, annex, draft principle 3, "[I]n order to prevent the violation of human rights by small arms, Governments and State officials shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State official or person acting at the instigation of or with the consent or acquiescence of a public official, is punished as a criminal offence.").

All responding States have laws governing the safe storage of small arms including imposition of sanctions for violations of laws regarding safe storage. There is less clarity about the requirements regarding storage of ammunition. Inconsistent policies regarding the possession of small arms by off-duty and retired law enforcement raise a concern about the potential for misuse of such weapons (E/CN.4/Sub.2/2005/35, annex, draft principle 4, "[I]n order to further prevent the violation of human rights by small arms, Governments and State officials shall establish and maintain adequate and detailed procedures for the proper storage and management of small arms, particularly ammunition. Governments shall actively pursue the collection, safe storage, destruction and responsible disposal of surplus small arms.").

With regard to training, all responding States require at least technical training of law enforcement in the use of firearms, and all but two responding States require situational training (E/CN.4/Sub.2/2005/35, annex, draft principle 5, "Governments and State agencies shall ensure

that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training on the acceptable conditions for the use of force set out in these principles. Those State officials who are permitted to carry firearms shall be authorized to do so only upon completion of special training regarding the limitations on their use. The compliance of State officials with rules and regulations on the use of force and small arms shall be subject to regular review.”).

States’ replies, however, offer little insight into the nature of the situational and human rights training of officers with regard to the proper use of firearms, (E/CN.4/Sub.2/2005/35, annex, draft principles 6, 7, 8).<sup>54</sup> See annex III, however, for supplementary information provided by the Governments of Finland, Poland and Portugal that provide comparative models for domestic implementation of limitations on the use of force by law enforcement. The variety of State practice on the training and oversight of firearms use by law enforcement indicates that the international standards found in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter, “United Nations Basic Principles”) are not being implemented in a consistent manner designed to protect human rights.

All responding States require investigation of misuse of small arms by State officials, though only 83 per cent of responding States require investigations by independent entities or judicial oversight of such investigations. Responding States shared few details about the nature of the investigation required. (E/CN.4/Sub.2/2005/35, annex, draft principle 9, “Governments and State agencies shall establish effective reporting and investigative procedures to ensure that all incidents involving the misuse of small arms by State officials, including law enforcement and other security officials, are reviewed by independent and competent authorities. There shall

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<sup>54</sup> Draft principle 6: “In the training of State officials, especially law enforcement agents, Governments and State agencies shall give special attention to the promotion and protection of human rights as a primary duty of all State officials. Governments shall design training programmes to emphasize alternatives to the use of force and small arms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to demonstrate technical means, with a view to limiting the misuse of force and small arms.”

Draft principle 7: “For specific operations and tactical situations, Governments and State agencies shall require prior planning to include alternative means of settlement without recourse to force and small arms.”

Draft principle 8: “In honouring the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, the intentional lethal use of small arms may only be made when strictly unavoidable in order to protect life. State officials, including law enforcement and other security officials, shall not use small arms against persons 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.”



be thorough, prompt and impartial investigation of all cases of death, torture, other ill-treatment or injury involving small arms. In addition to determining the cause, manner and time of death, torture or injury, and the persons responsible, all investigations should identify the type of weapon(s) used in the incident.”)

## **B. Part 2: State regulation of civilian possession and use of small arms**

### **1. Summary of State responses**

The second part of the Special Rapporteur’s survey asked questions related to the responsibility of States to take positive steps to prevent human rights violations caused by armed individuals and groups. The Special Rapporteur’s questions sought information regarding State laws and practices concerning licensing of civilian possession of small arms as well as regulations concerning training, storage of firearms and data collection relevant to civilian possession. Responses are summarized below.

- All responding States (100%) require licensing of private ownership of small arms and ammunition, and all require screening and/or background investigation of individuals seeking licences.
- All responding States (100%) vet applicants on the basis of a minimum age requirement and criminal record; 84% require consideration of psychological profile, and 73% examine instances of domestic violence.
- Nineteen of 33 responding States (58%) require training in (or demonstration of) safe use and handling of small arms and/or ammunition.
- Twenty-nine of 35 responding States (83%) limit the type and quantity of weapons individuals can hold. Four of 5 Latin American States (80%) and 8 of 10 Western European and Other States (80%) do so.
- All responding States (100%) maintain a database of licensed small arms owners. Twenty-five of 34 responding States (73%) allocate funding in their budget to maintain this database. Only 7 of 32 States (22%) responding to this question make this data public. (These States are Bangladesh, Georgia, the Marshall Islands, Mexico, Norway, Philippines, and the Syrian Arab Republic.)
- Fourteen of 34 responding States (41%) have periodic amnesties for individuals who want to turn in illegally held small arms and/or ammunition. (These States are Chile, Colombia, Costa Rica, Finland, the Marshall Islands, Mongolia, Norway, Philippines, Republic of Korea, Saudi Arabia, South Africa, Sudan, Syrian Arab Republic and the United Arab Emirates.)

### **2. Analysis of responses with regard to the draft principles**

All responding States have licensing requirements for civilian possession of small arms. (E/CN.4/Sub.2/2005/35, annex, draft principle 10, “In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall incorporate into their national laws licensing requirements to prevent possession of arms by persons who are at

risk of misusing them. Possession of small arms shall be authorized for specific purposes only; small arms shall be used strictly for the purpose for which they are authorized ...”). Among those States, however, the factors considered as a basis for licensing to civilians vary to some degree and responding States provided few details about what evidence would disqualify an individual from being licensed to own a firearm. While all regulating States consider criminal record and age before approving a licence for civilian possession of a firearm, slightly fewer consider the psychological profile (84%) or domestic abuse record (73%) of the applicant. A majority of States (58%) require a demonstration of technical capability as part of the licensing process. (E/CN.4/Sub.2/2005/35, annex, draft principle 10, ... “[B]efore issuing a licence Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record, and prior acts of domestic violence. Governments shall require periodic renewal of licences.”)

### **C. Part 3: Manufacture and transfer of small arms, light weapons and ammunition**

#### **1. Summary of State responses**

The third part of the Special Rapporteur’s questionnaire requested information related to States’ laws and policies with regard to the manufacture and transfer of small arms. There was less consensus among responding States on specific regulation of the manufacture and transfer of small arms; however, the variance appears to be related largely to the fact that many States report having (or allowing) no small arms production or trade. The responses are summarized as follows:

- Fourteen of 35 responding States (40%) have State owned or operated manufacturers of small arms; 12 of 35 responding States (34%) have privately owned manufacturers of small arms.
- Thirty of 34 responding States (88%) regulate the private manufacture of small arms; all States (100%) that report having private manufacturers respond that they regulate those entities.
- Twenty-six of 28 responding States (93%) regulate manufacturing by requiring that manufacturers be licensed by the State. Ten States either did not answer this question or indicated that it was not applicable to them, since they do not permit private manufacture of small arms. Nineteen of 26 responding States (73%) require licences to be renewed periodically.
- Twenty-six of 28 responding States (93%) have procedures in place for investigating violations of laws by manufacturers. Ten States either did not answer this question or indicated that it was not applicable to them, since they do not permit private manufacture of small arms.
- All 34 States responding to the question have enforceable policies or laws regulating the sale of small arms within the State. All but 2 of 32 responding States (94%) have laws containing procedures for investigating and verifying the end user of these small arms.

- Twenty-nine of 31 responding States (93%) have enforceable policies or laws regulating the sale of small arms outside the States; 26 of 28 responding States' laws contain procedures for investigating and verifying the end user of these small arms.
- Eighteen of 28 States (64%) responding to this question have laws requiring verification of the human rights situation in States or regions to which they are allowing sales of small arms. Ten participants in the survey did not respond to this question.
- Twenty of 38 States participating in the overall survey (53%) affirm that prior to transferring small arms they assess whether there is a risk the small arms may be used in internal repression. However, several States do not manufacture or export small arms, and so they marked these questions as not applicable to them. Of those that responded "yes" or "no" to this question, 95% assesses the risk that small arms may be used in repression. The same percentage (95%) assess the risk of small arms being used in armed conflict, acts of terrorism or organized crime, or acts of aggression or force on neighbouring countries.
- Only 13 responding States allocate funding in their budgets to support the consideration of the above factors in relation to export decisions.

## **2. Analysis of responses with regard to the draft principles**

All responding States that report having private small arms manufacturers purport to regulate those entities. As indicated by the responses, State practice tends toward regulation of private manufacture, but many of the answers to questions in this section are too diffuse to show particular trends regarding how such regulation is carried out on the ground.

Almost all responding States (93%) require that small arms manufacturers be licensed, (E/CN.4/Sub.2/2005/35, annex, draft principle 11, "Governments shall incorporate into their national laws measures ensuring that proper controls are exercised over the manufacturing of small arms. For the purpose of identifying and tracing small arms, Governments shall require that at the time of manufacture, each small arm has a unique permanent mark providing, at a minimum, the name of the manufacturer, the country of manufacture and the serial number").<sup>55</sup>

Almost all responding States (93%) have a process for investigating licence violations though the sanctions for these violations were not explained in detail, (E/CN.4/Sub.2/2005/35, annex, draft principle 12, "Governments shall incorporate into their national laws measures ensuring the investigation and prosecution of persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms. Governments shall enact serious penalties for

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<sup>55</sup> The Special Rapporteur's questionnaire did not request information relevant to draft principle 11 with regard to States' marking and tracing procedures, though those questions, which have profound implications for preventing human rights abuses, have been addressed as part of the process of drafting an international instrument. See report of the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (A/60/88, 27 June 2005).

crimes involving the misuse of small arms, especially to commit domestic violence, and for the unlawful possession of small arms.”).

The questionnaire did not elicit information on States’ involvement in international disarmament, demobilization and reintegration programmes. Regarding domestic reduction of the supply of small arms, relatively few reporting States (41%) have periodic domestic amnesties for individuals who want to turn in illegally held small arms and/or ammunition, (E/CN.4/Sub.2/2005/35, annex, draft principle 4).

The survey posed a series of questions in Part 3 regarding the investigation and verification of the human rights and security situation in the States where small arms were being transferred. (E/CN.4/Sub.2/2005/35, annex, draft principle 14). The answers given by States to those questions indicate an awareness of the need to assess the impact of the transfers being considered including the potential effect on the human rights situation and the risk that the small arms will be used in repression. Still, only 13 of the responding States allocate funding to assess the implications of small arms transfers, indicating that the practices are not being implemented as effectively as possible given the gravity of the potential consequences.

### **Annex III**

#### **Excerpts of United Nations Member States' laws and regulations concerning possession and use of small arms and light weapons**

The questionnaire sent by the Special Rapporteur requested States to provide copies of relevant laws, executive orders and/or implementing regulations relating to the licensing, use and export of small arms and light weapons. Several participating States did so. This annex briefly sets forth examples of these States' procedures in three discrete areas:

- Use of deadly force by law enforcement officers and allegations of misuse of small arms and light weapons;
- Licensing criteria for civilian possession of firearms; and
- Small arms export decision-making process in relation to the human rights record of the recipient State.

This annex provides a view of selected States' practices in light of standards being developed by the international community with response to availability, use and transfer of small arms and light weapons. The standards against which national laws and policies are being compared are:

- Articles 4 to 11 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter "United Nations Basic Principles");
- Draft principle 10 of the draft principles on the prevention of human rights violations committed with small arms; and
- Section II, paragraph 11 of the United Nations Programme of Action on the Illicit Traffic in Small Arms and Light Weapons in All Its Aspects.

#### **A. Use and misuse of small arms by law enforcement**

Articles 4 to 11 of the United Nations Basic Principles state that:

*4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.*

*5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:*

*(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*

*(b) Minimize damage and injury, and respect and preserve human life;*

(c) *Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;*

(d) *Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.*

6. *Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.*

7. *Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.*

8. *Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.*

### ***Special provisions***

9. *Law enforcement officials shall not use firearms against persons 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. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.*

10. *In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.*

11. *Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:*

(a) *Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;*

(b) *Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;*

(c) *Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;*

(d) *Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;*

(e) *Provide for warnings to be given, if appropriate, when firearms are to be discharged;*

(f) *Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.*

According to the State responses and the accompanying summary analysis:

- All States (100%) answering the survey questions on training of law enforcement officers provide technical/mechanical training. All but one responding (the Republic of Korea) provide practical/tactical training. All but two (Mauritius and Mongolia) provide training in applied decision-making.
- All responding States (100%) have laws or regulations requiring investigation of allegations of misuse of firearms by law enforcement officials. Thirty of 36 responding States (83%) have independent investigations of alleged firearms misuse. The same percentage provide for judicial oversight of the investigative process. Twenty-three of 35 responding States (66%) make such investigative proceedings public. Based on the sample participating in the survey, there appears to be a higher degree of transparency in this regard by non-European States.
- Thirty-four of 35 responding States (97%) impose sanctions against State agents who misuse small arms. Thirty-two of 35 States (91%) impose sanctions against commanders/superior officers who authorize the misuse of small arms. (Bangladesh, Georgia and the Marshall Islands do not do so.)
- And only one of 34 responding States (3%) does not have a process in place to compensate civilians and/or families of civilians who have been injured or killed due to misuse of small arms by State forces.

Supplementary information provided by representatives of the Governments of Finland, Poland and Portugal provide different models for legal specification of limitations on the use of force.

Of the three, the case of Finland provides the most flexible interpretation of the necessity and proportionality requirements under the United Nations Basic Principles. The Police Act (493/1995; amendments up to 315/2001 included) Section 27 - Use of forcible means specifies only that,

*When carrying out official duties, police officers have the right to use necessary forms of force that can be considered justifiable to overcome opposition, remove a person from the scene, carry out an apprehension, prevent the escape of a person who has lost his or her liberty, eliminate an obstacle or avert immediate threat of a crime or other dangerous act or event. When judging the justifiability of forcible means, the importance and urgency of the duty, the danger posed by the opposition, the available resources and other factors affecting the overall assessment of the situation shall be taken into consideration.*

Moreover,

*Persons temporarily assisting police officers at their request or with their consent in a situation in which it is vital to enlist the forcible aid of bystanders in carrying out an extremely important and urgent official police duty have the right, under a police officer's guidance, to exercise any essential forcible means authorized by a police officer acting within his or her powers.*

(Provisions on self-defence and emergency are laid down in the Penal Code, which was not provided.)

Based on the information provided, Polish legislation and regulations appear to spell out the limits of necessity and proportionality more strictly, especially regarding the requirement of law enforcement officers to use armed force as a last resort. On the matter of misuse of weapons, there are legal regulations concerning distributing arms and ammunition among State agents. According to article 17 of 6 April 1990 - the Act on Police (Journal of Laws No. 7 of 2002, item 58 with subsequent amendments), “a police officer has the right to use arms if measures of direct coercion proved insufficient or if using such measures is impossible because of the circumstances of the given incident”. Moreover, article 17 states in which situations a police officer has the right to use arms. According to excerpt 3 of this article, “usage of arms should cause as little harm to the person against whom it is used as possible”.

Similarly, article 24 of the Polish Act of 12 October 1990 on Border Guards states that “arms cannot be used to take somebody's life, the usage of arms should cause as little harm to the person against whom it is used as possible, and it cannot endanger other people's lives or health”. And article 15 of the Act of 16 March 2001 on the Government Protection Office states “the usage of arms should cause as little harm to the person against whom it is used as possible and may not lead to taking his/her life or endangering other people's lives or health”.

The following regulations are also applicable:

- Regulation of the Minister of the Interior and Administration of 15 November 2000 on Police armament governs which items constitute police armament.
- Regulation of the Council of Ministers of 21 May 1996 details the conditions and police conduct when using firearms.
- The Police, Border Guards and the Government Security Office carry out complex training courses related to operating weapons - technical and mechanical skills (e.g., cleaning and maintenance of the weapons); practical and tactical skills (e.g., target shooting) and binding relevant law, including human rights. “Every functionary has the duty to observe the binding law (not only during the performance of their business duties), including human rights.”
- Improper use of weapons, depending on the effects, can result in disciplinary, penal or civil liability, as laid out in chapter 10 of the Police Statute (Disciplinary and Penal Liability of Police Officers), chapter 14 of the Border Guard Statute (Disciplinary and Penal Liability of Functionaries of the Border Guards) and chapter 9 of the Government Security Office Statute (Disciplinary Liability of the Functionaries).



The alleged misuse of arms by Polish military also constitutes a crime, prosecutable under the Law of 6 June 1997 - Criminal Procedure Code (Journal of Laws No. 89 pos. 555), the Penal Code (Journal of Laws No. 88 item 553 with subsequent amendments), and Law of 24 August 2001 on Military Police and Order-maintaining Organs (Journal of Laws No. 123 pos. 135). Investigations of alleged incidents involving misuse of small arms are conducted by the Military Police and/or by the Military Prosecutor's Office - bodies directly subordinate to the Minister of Defence. If found guilty of misuse of small arms, soldiers in active service may be subject to imprisonment, demotion, dismissal from active service, and/or a fine.

Portuguese law and regulations appear to stipulate even stricter rules and preconditions for the use of small arms by law enforcement officers. According to the legislation provided, an officer should only point a gun at someone in extreme circumstances, namely in self-defence, when other people's safety is at stake or to prevent a crime from taking place. Police must always warn the person before discharging a firearm. Portuguese domestic law also stipulates that officers should try to use a gun in the least damaging way possible. And whenever a police officer uses a firearm (even when used according to the law), she/he must report the use to his/her commanding officer in writing. The excessive use of a gun by a police officer is a crime under the Portuguese Criminal Code, punishable by imprisonment.

Also of note, Council of Ministers resolution No. 37/2002 established a code of conduct and ethics for Portuguese public security forces. This code includes general rules on human rights, respect, honour, dignity, impartiality, solidarity and objectivity, as well as a specific requirement for the inclusion of a course in ethics in the police training course.

### **B. Licensing criteria for civilian possession of firearms**

Draft principle 10 of the draft principles on the prevention of human rights violations committed with small arms states that:

*10. In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall incorporate into their national laws licensing requirements to prevent possession of arms by persons who are at risk of misusing them. Possession of small arms shall be authorized for specific purposes only, and small arms shall be used strictly for the purpose for which they are authorized. Before issuing a licence, Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record, and prior acts of domestic violence. Governments shall require periodic renewal of licences.*

According to the State responses, and the accompanying summary analysis:

- All responding States (100%) require licensing of private ownership of small arms and ammunition, and all require screening and/or background investigation of individuals seeking licences.
- All States (100%) vet applicants on the basis of attainment of a minimum age requirement and criminal record; 84 per cent require consideration of psychological profile, and 73 per cent examine instances of domestic violence.

The following table outlines the licensing practices of five states in some detail, based on information they provided.

Country	Legal Framework	Specifics
Czech Republic	Act dated 8 March 2002 on firearms and ammunition, and changing and amending Act No. 156/200 coll., on certification of firearms, ammunition and pyrotechnic items  Licensing criteria, Section 18	The police directorate of jurisdiction shall issue a firearms permit only to a natural person who meets the following requirements: <ul style="list-style-type: none"> <li>• Is a resident in the territory of the Czech Republic;</li> <li>• Has reached required age (21 for self-defence, collectors or professional use; 18 for hunting and sporting purposes, with licences available at 15 for sporting and 16 for hunting under certain circumstances);</li> <li>• Is fully capable of legal actions;</li> <li>• Is medically fit and capable;</li> <li>• Is professionally competent and capable;</li> <li>• Has full integrity (regarding criminal background);</li> <li>• Is reliable (regarding criminal background, alcohol or drug abuse, and treasonous behaviour);</li> <li>• Is a holder of a valid hunting licence (if obtaining a hunting firearm permit).</li> </ul>
Finland	Firearms Act (1/1998; amendments up to 804/2003 included) Sections 27-9	“A firearm licence may be granted to a person who has reached the age of 18 and who, on the basis of his or her state of health and behaviour, is deemed suitable for handling firearms, firearm components, cartridges and specially dangerous projectiles. ... A firearm licence is granted for a maximum of five years at a time. ...”  The licence may be revoked if the licence is holder of an offence indicating violent behaviour, including a firearms violation.
Mauritius	Firearms Act (RL 2/751 - 12 June 1982, as amended)	Applicant has to provide all information required by the local Superintendent of Police in the district where she/he resides.  The Superintendent must be satisfied that the applicant has a good reason for possessing the firearm(s).

		<p>The Superintendent does not find the applicant to be a person “of intemperate habits or unsound mind”. Anyone sentenced to penal servitude or imprisonment for a term of three months or more for any crime is barred from having a gun or ammo for five years from the date of release.</p> <p>No person subject to the supervision of the Police, on licence under Part XIII of the Criminal Procedure Act, “has been bound over to keep the peace and be of good behaviour”; or is subject to a recognizance of good behaviour barring possession or use of a firearm.</p>
Philippines	Special Operating Procedure No. 13 (19 Sept 1991)	<p>Applicant must:</p> <ul style="list-style-type: none"> <li>• Be at least 21 years of age;</li> <li>• Receive neuropsychiatric clearance (from the PNP), any government hospital or government accredited psychiatrist;</li> <li>• Provide certificate of good conduct from city/municipality where applicant lives;</li> <li>• Obtain clearance from intelligence agency;</li> <li>• Provide proof of income.</li> </ul>
South Africa	Firearms Control Act, 2000 Section 9	<p>The requirements for a person to obtain a firearms competency certificate (necessary in order to obtain a firearms licence) include being:</p> <ul style="list-style-type: none"> <li>• 21 years or older on the day the application is received by the designated firearms officer;</li> <li>• A South African citizen or a holder of a permanent South African residence permit;</li> <li>• Of stable mental condition and not inclined to violence;</li> <li>• Free from dependency on any substance which has an intoxicating or narcotic effect;</li> <li>• Free from conviction, whether in or outside South Africa, of an offence involving the unlawful use or handling of a firearm by him or her or another participant to the offence, whether committed in or outside South Africa;</li> <li>• Free from conviction, whether in or outside South Africa, of an offence involving domestic violence or sexual abuse and sentenced to a period of imprisonment</li> </ul>

		<p>without the option of a fine;</p> <ul style="list-style-type: none"><li>• Free from conviction for other crimes - including fraud, drug trafficking, negligent handling of a firearm, sabotage, terrorism, public violence, arson, intimidation, rape and kidnapping.</li></ul> <p>An applicant for a competency certificate must also successfully complete tests demonstrating knowledge of the contents of the Firearms Act and on the safe handling of a firearm.</p>
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### C. Small arms export criteria

Section II, paragraph 11 of the Programme of Action (PoA) on the Illicit Traffic in Small Arms and Light Weapons in All Its Aspects commits States politically to exercise strict control over the international transfer of small arms, including:

*To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. (Emphasis added.)*

Existing international law obligations would include, inter alia:

- Obligations under the Charter of the United Nations - including binding resolutions of the Security Council, such as those imposing arms embargoes; the prohibition on the use or threat of force; and the prohibition on intervention in the internal affairs of another State;
- Any other treaty or decision by which that State is bound, including prohibitions on arms transfers that arise in particular treaties, such as the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and its protocols, and the 1997 Anti-personnel Mine Ban Convention;
- The responsibility of States not to authorize international transfers of small arms and light weapons where they will be used or are likely to be used for gross violations of international human rights law, serious violations of international humanitarian law, or crimes against humanity and genocide.
- Respondents to the survey indicated a lower degree of consensus on issues related to regulation of the manufacture and transfer of small arms than to the previous areas; however, the variance appears to be related largely to the fact that many States report having (or allowing) no small arms production or trade.

- Fourteen of 35 responding States (40%) have State owned or operated manufacturers of small arms; 12 of 35 responding States (34%) have privately owned manufacturers of small arms.
- Twenty-nine of 31 responding States (93%) have enforceable policies or laws regulating the sale of small arms outside the States; 26 of 28 responding States' laws contain procedures for investigating and verifying the end user of these small arms.
- Eighteen of 28 States (64%) responding to this question have laws requiring verification of the human rights situation in States or regions to which they are allowing sales of small arms. Ten participants in the survey did not respond to this question.
- Twenty of 38 States participating in the overall survey (53%) affirm that prior to transferring small arms they assess whether there is a risk the small arms may be used in internal repression. However, several States do not manufacture or export small arms, and so they marked these questions as not applicable to them. Of those that responded "yes" or "no" to this question, 95 per cent assesses the risk that small arms may be used in repression. The same percentage (95%) assesses the risk of small arms being used in armed conflict, acts of terrorism or organized crime, or acts of aggression or force on neighbouring countries.
- Only 13 States allocate funding in their budgets to support the consideration of the above factors in relation to export decisions.

In Finland, small arms export decision-making is proscribed by the Act on the Export and Transit of Defence Materiel (242/1990; amendments up to 900/2002 included). This law lays out the requirement for an export licence from the Ministry of Defence for exports and brokerage of arms. It refers to the General Guidelines for the Export and Transit of Defence Materiel. These guidelines bind the Ministry to make export licence decisions based on United Nations, Organization for Security and Cooperation in Europe and European Union embargoes, the guidelines of the EU Common Criteria, the OSCE guidelines and factors relating to the internal situation of the recipient State, including human rights:

*3.2.1. In assessing licence applications in general terms the following factors will also be taken into account:*

- Foreign and security policy aspects, including the possible grounds for denial listed under chapters 2.1. or 2.2;
- Analysis of the situation prevailing in the recipient country, especially with regard to human rights, including attitudes of other States vis-à-vis the recipient country;
- Characteristics, intended use and military significance of the item to be exported ...

Section 15 of South Africa's National Conventional Arms Control Act of 2002 sets forth the guiding criteria and principles for the National Conventional Arms Control committee to consider when assessing an application for a permit to export any arms. These criteria and principles include:

- *Avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms;*
- *Avoid transfers of conventional arms to Governments that systematically violate human rights or suppress fundamental freedom ...;*
- *Avoid contributing to terrorism and crime.*

Section 16 of the same Act provides for accountability under the law, including a requirement that all export applications include an end-user certificate and that the recipient supply a delivery verification certificate.

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