

ANNEX III: FINAL REPORT OF THE SPECIAL RAPPORTEUR

Excerpts of U.N. 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 "U.N. 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 U.N. Programme of Action (PoA) 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 U.N. 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 (South 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 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 U.N. 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 defense 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 (eg, cleaning and maintenance of the weapons); practical and tactical skills

- (eg, 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 June 6, 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 Defense. 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), s/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, honor, 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 license, 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 licenses.

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 licenses.
- All States (100%) vet applicants on the basis of attainment of a minimum age requirement and criminal record; 84% require consideration of psychological profile, and 73% 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"> • is a resident in the territory of the Czech Republic • has reached required age (21 for self defense, collectors or professional use; 18 for hunting and sporting purposes, with licenses available at 15 for sporting and 16 for hunting under certain circumstances) • is fully capable of legal actions • is medically fit and capable • is professionally competent and capable • has full integrity (regarding criminal background) • is reliable (regarding criminal background, alcohol or drug abuse, and treasonous behavior) • is a holder of a valid hunting license (if obtaining a hunting firearm permit)
Finland	Firearms Act (1/1998; amendments up to 804/2003 included) Sections 27-9	‘A firearm license 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 behavior, is deemed suitable for handling firearms, firearm components, cartridges and specially dangerous projectiles. ... A firearm license is granted for a maximum of five years at a time.’ The license may be revoked if the license is holder of an offence indicating violent behavior, including a firearms violation.

Mauritius	Firearms Act (RL 2/751—12 June 1982, as amended)	<p>Applicant has to provide all info required by local Superintendent of Police in district where s/he resides.</p> <p>The Superintendent must be satisfied that applicant has a good reason for possessing the firearm(s).</p> <p>Superintendent does not find applicant to be a person ‘of intemperate habits or unsound mind’.</p> <p>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 5 years from the date of release.</p> <p>No person subject to the supervision of the Police, on license under Part XIII of the Criminal Procedure Act, ‘has been bound over to keep the peace and be of good behavior’; or is subject to a recognizance of good behavior barring possession or use of a firearm.</p>
Philippines	Special Operating Procedure Nr 13 (19 Sept 1991)	<p>Applicant must:</p> <ul style="list-style-type: none"> • be at least 21 years of age; • receive neuro psychiatric clearance (from the PNP), any government hospital or government accredited psychiatrist. • provide certificate of good conduct from city/municipality where applicant lives; • obtain clearance from intelligence agency; • provide proof of income
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 license) include being:</p> <ul style="list-style-type: none"> • 21 years or older on the day the application is received by the designated Firearms Officer; • a South African citizen or a holder of a permanent South African residence permit; • of stable mental condition and not inclined to violence; • free from dependency on any substance which has an intoxicating or narcotic effect; • 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; • 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 without the option of a fine;

		<ul style="list-style-type: none"> • free from conviction for other crimes— including fraud, drug trafficking, negligent handling of a firearm, sabotage, terrorism, public violence, arson, intimidation, rape and kidnapping. <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 authorisations 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 UN 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; twelve 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% 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 neighboring 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 license from the Ministry of Defence (MOD) for exports and brokerage of arms. It refers to the General Guidelines for the Export and Transit of Defence Materiel. These guidelines bind the MOD to make export licence decisions based on UN, OSCE and EU 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 license 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 freedoms....*
- *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.