

## **ANNEX II: FINAL REPORT OF THE SPECIAL RAPPORTEUR**

### **Summary and Analysis of Responses Received from U.N. Member States to 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>1</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 & Caribbean: 5 States (15% of the 33 States in the region)  
West European and Other: 10 States (37% of the 27 States in the region)<sup>2</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.

#### **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; thirty 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>3</sup> 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 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 Marshall Islands do not do so.)
  - 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.
  - 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.
  - 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 (CN.4/Sub.2/2005/35) which the Sub-Commission considered at its 56<sup>th</sup> and 57<sup>th</sup> 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, (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, (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, (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 (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, (CN.4/Sub.2/2005/35, Annex, Draft Principles 6, 7, 8).<sup>4</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 U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter, "U.N. 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% 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. (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 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 five Latin American States (80%) and eight of ten West European and Other States (80%) do so.
- All responding States (100%) maintain a database of licenced small arms owners. Twenty-five of 34 responding States (73%) allocate funding in their budget to maintain this database. Only seven of 32 States (22%) responding to this question make this data public. (These States are Bangladesh, Georgia, Marshall Islands, Mexico, Norway, Philippines, and Syria).
- 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, Marshall Islands, Mongolia, Norway, Philippines, Saudi Arabia, South Africa, South Korea, Sudan, Syria, and UAE.)

### **2. Analysis of Responses with regard to the Draft Principles**

All responding States have licensing requirements for civilian possession of small arms. (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 licenced 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. (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; twelve 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 licenced 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 two 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 neighboring 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 licenced, (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>5</sup>

Almost all responding States (93%) have a process for investigating licence violations though the sanctions for these violations were not explained in detail, (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 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, (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. (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.

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<sup>1</sup> See FN 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>2</sup> Responding States, broken down by regional grouping, are:  
Africa—Mauritius, Morocco, Niger, South Africa, Sudan  
Asia—Bangladesh, Jordan, Kyrgyzstan, Marshall Islands, Mongolia, Philippines, Qatar, Saudi Arabia, South Korea, Syria, United Arab Emirates, Uzbekistan  
Eastern Europe—Czech Republic, Georgia, Poland, Romania, Slovakia, Ukraine  
Latin America & Caribbean—Chile, Colombia, Costa Rica, Mexico, Trinidad & Tobago  
West Europe & Other—Austria, Cyprus, Finland, Germany, Greece, Monaco, Norway, Portugal, Spain, Turkey  
Regional groups are defined in 'Member States of the United Nations General Assembly arranged in regional groups as of 31 May 2002', UNEP/POPS/COP.1/INF/16, 29 November 2004.

<sup>3</sup> The Czech Republic and Qatar did not answer these questions.

<sup>4</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.*

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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.*

<sup>5</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. 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.