

DOMESTIC GUN CONTROL POLICY IN TEN SOUTHERN AFRICAN COUNTRIES

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ABSTRACT

The proliferation of small arms and light weapons in southern Africa is wide spread, yet under researched. This research report sets out current debates with regard to small arms and domestic gun control and analyses the global and regional context.

Debates about domestic gun control take place within both popular discourse and policy circles, and impact on one another. Internationally and in domestic contexts the debate spans polar view points which see either the right to own and bear firearms as fundamental, or the right to life, bodily integrity and protection from firearms as fundamental. Between these extremes fall most domestic gun control policies and laws.

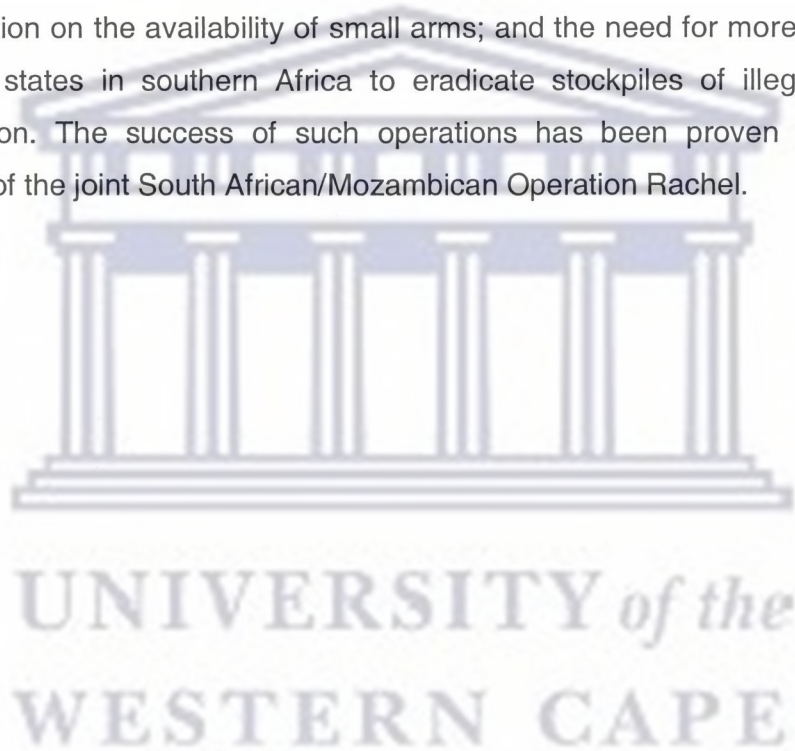
Although international law regulates the usage of chemical, biological and nuclear weapons, there is no international legal instrument regulating the use of small arms. At the same time small arms are responsible for fuelling the majority of the world's conflicts, with 47 of the 49 major conflicts in the 1990s waged with small arms as the weapons of choice. Small arms are also responsible for over half a million deaths per year. The closest the United Nations has come to regulating this area is its adoption in 2001 of the "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects". This Programme of Action, which also covers domestic firearm policy, is taken up by states on a voluntary basis only.

In southern Africa there is a growing awareness of the negative impact lax firearm controls have on regional security. Recent initiatives include the development by the Southern African Development Community (SADC) of a "Protocol on the Control of Firearms, Ammunition and Other Related Materials". This Protocol will enter into force once two-thirds of the SADC members have ratified it. At present it has been ratified by seven states, while nine countries are required to ratify it for it to come into force.

The varied approaches to domestic gun control policy and implementation are set out in a detailed account of gun control in 10 SADC states (Botswana, Namibia, Lesotho,

Malawi, Mozambique, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe). Policy, legislation and practice are analysed for each country and the relationship between gun crime, legislation and policy explored.

Recommendations for the improved management of firearms, both legal and illegal, are set out in conclusion. These include the need for deeper regional co-operation and integration to tackle the problem of small arms flows in the southern Africa; the need for greater harmony within the region's firearm laws in light of the impact policy in one state has on its neighbours; the need for a stronger role for legislatures particularly with regard to oversight; the need to monitor the impact of trade liberalisation on the availability of small arms; and the need for more joint operations between states in southern Africa to eradicate stockpiles of illegal firearms and ammunition. The success of such operations has been proven with the recent success of the joint South African/Mozambican Operation Rachel.



DECLARATION

I declare that *Domestic Gun Control Policy in Ten Southern African Countries* is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Katharine Mary McKenzie



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CHAPTER 1: INTRODUCTION

a) Background

This paper is primarily an overview of government policy with regard to firearms and light weapons¹ in ten countries in southern Africa. The research aims to sketch some of the features of small arms proliferation in the Southern African Development Community (SADC) region with an emphasis on domestic gun control measures.

The proliferation of small arms in southern Africa is considerable and under-researched. It is not known how many firearms are in circulation in the region – legally or illegally -- and co-ordinated efforts by governments in SADC to contain the problem are in their infancy. Yet small arms continue to exact a high price in the lives of the region's people. In a developing region that includes some of the world's poorest countries, the circulation of small arms exacerbates the insecurity associated with poverty, unemployment and underdevelopment. The easy availability of small arms is also directly linked to the increase in violent crime, domestic assaults, suicides, and unintentional shootings (SAPS 2003: x, 16).

That there are no internationally accepted norms and principles governing the transfer and use of small arms and light weapons impacts on developing countries far more than their first-world counterparts, as porous borders and weak state institutions facilitate their mobility. In southern Africa the ready supply of small arms is often complemented by considerable demand.

Demand stems from cultures that see guns as necessary commodities, militarisation resulting from long periods of conflict, and rising crime. Cock (1995:89-90) links the demand for small arms to the reliance of individuals on weapons as a form of subsistence and currency throughout the region. She also draws attention to gender and ethnicity as factors contributing to demand, with the development of a militarised masculinity that understands "weaponry as emblematic of manliness", as well as the

¹ Smith and Vines (1996:8) define light weapons as "weapons which do not require an organised infrastructure to remain operational and effective". Light weapons include small arms such as pistols, rifles, assault rifles and sub-machine guns; light and medium machine guns; certain types of heavy machine guns; anti-aircraft and anti-tank missiles, mortars, mines and grenades.

existence of strong ethnic and racial identities that define themselves antagonistically to others. The combination of attitudes like these, and easy access to weapons helps facilitate the establishment of 'gun cultures' that see gun ownership as an essential part of life. It is in this context that the issue of domestic gun control must be situated and its efficacy measured.

b) Objectives of the study

The purpose of the study was to:

- Better understand the challenges to the implementation of effective gun control policy in different parts of the southern African region;
- Understand the relationship between the social and economic characteristics of different SADC countries and the implementation of policy and legislation;
- Explore the relationship between legislation and policy and its implementation;
- Explore the relationship between gun crime and domestic gun control policy in SADC;
- Understand in which parts of the region domestic gun control policy is being well implemented, and in which areas there are weaknesses;
- Explore the possibility of greater regional co-operation in the tackling of gun crime;
- Understand the relationship between national identity and firearm cultures; and
- Identify areas which require further research.

c) Research problem

It is argued that countries in the southern African region with effective gun control policies and fewer firearms in circulation have less gun crime and are safer than countries with more permissive gun control policies and more firearms in circulation. Personal safety and security have been identified as key determinants in attracting foreign direct investment and developing the labour intensive tourist industry which has the potential to stimulate economic development.²

² See Business Against Crime. www.bac.co.za.

Regional co-operation in the area of small arms and light weapons management is a key area which could assist SADC countries in their efforts to build peace and contain crime. Exploring the domestic policy that exists in each country provides a detailed comparison between approaches, laying the basis for the development of a possible regional policy, the foundations of which may be contained in the SADC Protocol On The Control Of Firearms, Ammunition and Other Related Materials, (SAPS 2003: 19).

Understanding the policy which underpins domestic gun control in the majority of SADC countries gives scholars a better insight into some of the possible impediments to achieving greater regional integration, and meeting the development challenges that face the region. This takes place on a number of levels. Studying the existing (and frequently outdated) legislation, provides an insight into the efficacy of the legislative arms of governments. In many instances legislation, much of which was written by former colonisers is long out of date and needs to be updated or re-written. The implementation, or lack of implementation, provides an insight into the executive arms of governments, particularly the police services, as well as the judicial arm when it comes to the jurisprudence which has developed in this section of the law.

Effective control of small arms is vital to the future economic growth and development of the region and for the success of programmes such as the New Partnership for African Development (NEPAD) and the notion of an African Renaissance. Waning hostilities in the DRC and Angola provide SADC with a new opportunity to reduce conflict in the region and to push for regional peace. This should not only be at the level of the armed forces, but should also target a reduction in intrastate violence which is in part dependent on the policy and legislation of each sovereign state within the development community. This thesis aims to explore these issues and analyse the implications of ten different domestic policies for the region as a whole.

d) Assumptions and hypotheses

The research is based on the following assumptions and hypotheses:

- The proliferation of firearms contributes to high crime levels

- High crime is not necessarily related to poverty
- Traffic in legal and illegal firearms is closely related.
- High numbers of legal firearms contribute to the traffic in illegal firearms
- Domestic gun control policy and legislation contribute to the management of firearms and gun crime.

e) Methodology

This discussion of domestic gun control measures in ten SADC countries is drawn from an analysis of the existing legislation and literature and discussions with police, academics and representatives of non-governmental organisations (NGOs) in nine countries. Compiling a complete set of the region's legislation required travelling to the country in question in some instances and working in translation in Mozambique where legislation is published in Portuguese. At present there is not a single resource where complete sets of legislation for the SADC region can be located, a factor which hampers comparative regional research across a range of disciplines.

A total of 36 informants were interviewed in a field trip to Botswana, Lesotho, Malawi, Mozambique, Namibia, Tanzania, Zambia, and Zimbabwe in 1999. In Malawi information was gathered at a conference on community policing. Information on Swaziland was obtained from available literature and legislation. The aim was to interview a range of informants representing different sectors in each country. Three core sectors were identified namely police, academics and representatives of NGOs. Each of these groups, particularly academics and NGOs were diverse, representing different disciplines, in the case of academics and interest areas, from community crime prevention organisations to human rights groups to the religious community, in the case of the non-governmental sector.

Legislators were also identified as an important sector. Given the short time available to conduct the research and the timing of the study, which mostly took place in July, accessing this constituency proved difficult. Limitations included the traditional mid-year recess, which many Parliaments in the region close for, in the tradition of the Westminster parliament. In addition the Parliament of Tanzania is located some

distance away from the capital city Dar es Salaam, and limited resources and time prevented a trip to this centre, which is not accessible by air.

The research was conducted in a relatively short period of time, limiting the number of interviews conducted. Access to state and non-state actors was not even across the region, with police more accessible in some countries than others. In Zimbabwe for instance a representative of the Police Force would only consent to be interviewed as an anonymous informant. In addition interviews were conducted with members of the police service occupying very different positions within the organisational hierarchy. In Botswana, Namibia and Mozambique it was possible to interview senior members of the police, while in other countries interviews were conducted mostly with line functionaries directly responsible for implementing firearm legislation. In Botswana, with a long tradition of democracy and stability, accessing a wide range of interviewees proved relatively easy. In contrast Zimbabwean informants were difficult to access. In Tanzania non-state actors, particularly from civil society, were easy to gain access to, yet the police were very reluctant to participate in the study, particularly in the light of a pending policy shift, opposed by many civil society organisations, which would see access to firearms made easier through trade liberalisation.

The relationships in each country between civil society and the state also influenced access to informants. In open democracies, with a culture of dialogue and transparency, informants in the state or non-state sectors tended to be aware of one another and were able to suggest interviewees from outside of their sector.

Interviews were conducted in English, although in Mozambique discussion with some respondents took place through an interpreter.

The availability of accurate statistics is on the whole quite limited. For instance in South Africa statistics are compiled systematically but only reflect reported crimes thus limiting their accuracy. In addition, for periods of time crime statistics have not been publicly available. Inadequately resourced police services and poor relations between police and communities also impact on the accuracy of crime statistics

across the region. In many countries statistics are collated manually limiting access to the most basic information, including the number of licensed firearms in circulation.

The countries chosen for analysis aim to represent the majority of the 14 member SADC region. Angola and the DRC are excluded from this study as the research has coincided with conflict underway in those countries, limiting access to information and the possibility of field visits. Seychelles and Mauritius the two island states belonging to SADC have also been excluded as they remain virtually hermetically sealed from the cross border weapons flows that affect states on the African mainland. The domestic gun control policy of the ten remaining states has been studied in some detail.

f) Literature review

Literature consulted in the course of the research is drawn from a range of sources. In addition to written documents the study also relied on oral literature, or oral sources, obtained through a series of interviews, as set out in the methodology section above.

In exploring the international context literature consulted was drawn largely from the Internet, as well as the publications of the non-governmental sector in South Africa and abroad. The main sources of information in the non-governmental and policy sectors internationally include Amnesty International, International Alert, Centre for Defence Studies (London), Crime Prevention Foundation of Zambia, International Action Network on Small Arms (IANSA), Lesotho Network for Conflict Management and The Crime Prevention Foundation of Zambia. The primary sources of information in the non-governmental and policy sectors locally include the Gun Control Alliance, Gun Free South Africa, the Centre for Conflict Resolution, Institute for Security Studies and the South African Institute for International Affairs.

Literature pertaining to Africa and Southern Africa is not as detailed or voluminous as the literature devoted to the developed world, and even other developing contexts. Core texts and books consulted include Omer-Cooper's History of Southern Africa, Small Arms Management and Peacekeeping in Southern Africa by Smith *et al*, The

Militarisation of South Africa edited by Cock and Nathan and Finnegan's The Harrowing of Mozambique.

In order to locate the context of domestic firearm policy and legislation a broad range of historical and sociological material was consulted for each of the countries studied in the review. Internet material regarding Southern Africa is limited and print material and oral sources were relied upon. Newspapers and periodicals published in the region were also an important source of information and contributed to an understanding of the contemporary policy context. These include Business Day, Cape Times, Engineering News, Mail and Guardian, Sunday Times, The East African, The Namibian, ThisDay and Times of Zambia.

Government documents were also an important source in the region and internationally. Core sources include the annual reports of the police services in southern Africa, UN publications available on the Internet and the website of the Southern African Development Community (www.sadc.int).

The literature pertaining to firearms in particular is scarce and scattered. Primary documentation included legislation and policy documents, and other literature, including newspapers and oral sources, helped contextualise the extent to which what is on the statute books is actually implemented.

The volume of material about South Africa remains far larger than that of fellow member states in the Southern African Development Community. This is in part a reflection of the location of the researcher in South Africa, but is primarily a reflection of the hegemonic position South Africa occupies in the region, and the large role it is currently playing in regional developments.

g) Significance of the study

The study comes at a significant time in the development of the southern African region. It is almost ten years since South Africa attained democracy and 15 years since Namibia's first democratic elections and Angola and the DRC are no longer the site of civil war. SADC is also a stronger organisation, and regional integration is proceeding, albeit slowly. At the same time changes in southern Africa are being

affected by the phenomena of globalisation, which in certain areas challenges the notion of the nation state and the primacy of borders.

In this context of flux, there are important opportunities for the people of southern Africa, many of whom have not yet experienced the peace dividend as violent crime, poverty and unemployment undermine their immediate security.

This study, which is part based on empirical data as contained in crime statistics, official government documents and legislation, attempts to explore regional security issues through the prism of domestic gun control.

Domestic gun control, and the direction it takes in the SADC of future, has the potential to impact powerfully on new democracies and nations that wish to enjoy the fruits of recent peace initiatives. The proliferation of firearms, both legal and illegal, has the potential to destroy the vision of a peaceful and prosperous southern Africa.

Increasingly this is being realised by the government and non-governmental sectors in southern Africa, as evidenced through the participation of SADC countries in international and UN for a examining the problem, as well as the development of a southern African position on small arms, light weapons and domestic firearms, encapsulated in a SADC protocol.

The study is significant in that it draws together all of these strands in a single document and analysis, which has the potential to inform regional and domestic policy making within SADC and its member states.

h) Structure of the report

In exploring these issues this report contains five chapters. Chapter 2 looks at features of the southern African region which create the context in which small arms proliferate, exploring the background and context. It also examines the international context, which in this era of global trade and interaction, impacts profoundly on events in southern Africa.

Chapter 3 analyses domestic gun control policy, crime and the proliferation of firearms in ten countries, presenting each as a case study. Chapter 4, the concluding chapter, contains a comparative analysis of firearm legislation in the southern African region, and makes a number of recommendations.



KEY WORDS

Crime

Gun control

Policy

Southern Africa

South African Development Community

Light weapons

Legislation

Development

Militarisation

Violence



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CHAPTER 2: BACKGROUND AND CONTEXT TO SMALL ARMS PROLIFERATION AND GUN CONTROL

Current debates

Debates about the proliferation of small arms and domestic gun control are numerous and span a spectrum of contexts from the philosophical to discussions of the reduced role of states in the new world order or globalisation.

The primary philosophical debate is captured in the extreme views held by countries like the United States on the one hand and the United Kingdom on the other. The United States has a libertarian approach to firearm ownership flowing from the country's constitution which entrenches, "the right of the people to keep and bear arms" (National Rifle Association, 2003). While different policies and practices have evolved in different states, there is for the most part a robust culture of gun ownership, with legal firearms and ammunition easy to acquire. In addition well - organised and resourced organisations of civil society, such as the National Rifle Association (NRA), form powerful lobbies intent on preventing the rolling back, in any way of the 'right' to bear arms. This lobby is mirrored in South and southern Africa, where vocal gun lobbies articulate similar positions to that of the NRA (SA Arms and Ammunition Dealers Association, the National Firearm Forum, Africa Christian Africa).³

The position of organisations like the American and South African gun lobby are often informed by an ideology that argues that the role of the state in the lives of citizens and individuals should be minimised.⁴ Hence citizens should have a right to defend themselves, even from the state if necessary. The example of Nazi Germany is frequently invoked, as an example of a government that disarmed its citizens, who were then subsequently unable to defend themselves.

³ See for instance the views of SA Arms and Ammunition Dealers Association, the National Firearm Forum, Africa Christian Africa in their submissions to South Africa's Parliament in 1999 in deliberations on new firearm legislation at www.pmg.org.za.

⁴ See, for example, the views of Charles W. Moore "Gun Registration Is About Ideology, Not Crime Prevention" which maintains that the, "campaign to force law-abiding citizens to register their hunting rifles and shotguns, (represents) an agenda that has little to do with promoting public safety or

Countries like the United Kingdom and Botswana have in contrast adopted very different positions, which could be seen as paying homage to the notion of an interventionist state which regulates the private lives of its citizens, or balances one set of rights against another. The policy positions adopted in the UK and Botswana could be interpreted as acknowledging that the right to life, and the right to bodily integrity trump the right to bear arms. This opens the way for governments to prevent the unbridled ownership and proliferation of firearms, as exists in parts of the USA.

In the United Kingdom civilian access to handguns was effectively banned in 1998. This followed what has come to be known as the 'Dunblane Massacre', in which Thomas Hamilton walked into a primary school in Dunblane, Scotland killing 16 school children, and their teacher, with a firearm (GCA). The banning of firearms was largely welcomed in Britain and, "many applauded this move, seeing it as conveying a message about the kind of society Britain wants to be, a message reflecting the belief that the widespread ownership of handguns is not compatible with a sane, civilized or safe society" (Ibid). In contrast similar incidents in the US, including the 1999 'Columbine Massacre' have elicited a much more muted response from the federal government. The events at Columbine High School saw two adolescent boys kill fellow pupils and teachers using semi-automatic weapons and ammunition purchased at K-Mart, a national department store. The killing spree ended when they finally turned the guns on themselves.

Another important facet of the current debate about civilian access to handguns is the relationship between legal and illegal firearms. The polar positions that exist within the debate about civilian access to guns plays out again in this arena. Thus proponents of firearm ownership argue that access to firearms is necessary in societies where crime is rife and criminals carry unlicensed guns. Opponents argue that all too often licensed firearms are stolen, and instead of contributing to the protection of their owners and their owners' family, become part of the large pool of illegal firearms contributing to national insecurity.

preventing crime, and a great deal to do with political correctness and social engineering".

Another aspect of the relationship between legal and illegal firearms is the situation in post-conflict societies, where small arms are easily accessible, and weak state institutions undermine their regulation.

Finally in countries with strong state institutions the parameters of firearm policy are being defined in two ways: legislatively and judicially. Thus in the US where, a constitutional amendment notwithstanding, a major policy shift seems unlikely, ordinary people as well as state and city governments have turned to the courts for protection. Thus New York City, under republican Mayor Rudy Giuliani, took 30 gun manufacturers to court, holding them responsible for much of the City's gun crime (McKenzie, 2003b). In 1999, the year of the Columbine Massacre, a federal jury in New York found several gun manufacturers liable for the death of two people, shot with illegally obtained weapons, and damages of nearly \$4-million were awarded to a 19-year old victim.

In South Africa two important judgments, one in the high court, have found in favour of plaintiffs arguing that the state acted negligently when granting firearm licences to individuals⁵. This opens the way for potentially expensive civil claims against the state.

The global context

The United Nations estimates that there are over 600 million small arms and light weapons in circulation worldwide (2003). Of 49 major conflicts in the 1990s, 47 were waged with small arms as the weapons of choice. Small arms are responsible for over half a million deaths per year, including 300 000 in armed conflict and 200 000 more from homicides and suicides (ibid).

Small arms, light weapons and handguns are approached differently by international law which regulates the use of nuclear, chemical and biological weapons through international treaties and other legal instruments (ibid). In contrast small arms remain largely unregulated in spite of the large number of deaths and casualties associated with their usage.

⁵ See *Hamilton vs Minister of Safety and Security* in the Supreme Court of Appeal.

Although there are no formally binding treaties on UN states a powerful lobby has emerged within civil society internationally calling for more stringent regulation of small arms and light weapons. Partly in response to this the United Nations held a Small Arms Conference in 2001 which culminated in the adoption of a 'Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects'. The Programme requires member nations, among other steps, to:

- Make illicit gun production/possession a criminal offence
- Establish a national coordination agency on small arms
- Identify and destroy stocks of surplus weapons
- Keep track of officially-held guns
- Issue end-user certificates for exports/transit
- Notify the original supplier nation of re-export
- Disarm, demobilise and re-integrate ex-combatants, including collection and destruction of their weapons
- Support regional agreements and encourage moratoria
- Mark guns at point of manufacture for identification and tracing
- Maintain records of gun manufacture
- Engage in more information exchange
- Ensure better enforcement of arms embargoes
- Include civil society organisations in efforts to prevent small arms proliferation (IANSA, 2003)

The Programme set the first global norms of good behaviour to reduce small arms proliferation. The International Action Network on Small Arms (IANSA), a non-governmental organisation, says that, "by agreeing to this document, all countries formally committed themselves to take action. However, the Programme of Action provides no international mechanism for monitoring compliance, and the UN's role has been limited to compiling information submitted by states on a voluntary basis. For that reason, much of the responsibility for reporting on states' actions or inaction has been taken up by civil society."

The UN has shown its commitment to the issue however by following up the adoption of the Programme with a biennial meeting of states, the first of which was held in July 2003 with approximately 80 governments submitting reports. Important developments at the UN Biennial Meeting also included a report by the UN Group of Experts on Marking and Tracing which indicated that it is feasible to have an international instrument on weapons tracing and a recommendation for such an instrument will be submitted to the General Assembly. This would facilitate the marking, record keeping and international cooperation required to reduce the destructive impact of small arms.

The European Union has also called for a registry of arms brokers, exchange of information between states and adequate sanctions to ensure effective enforcement of brokering controls (IANSA, 2003).

The regional context

The participation of Southern African countries in the 'Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects' is also notable. At the Biennial Meeting the DRC reported that it had adopted a national programme of action based on the UN Programme, but stressed the need for financial and technical assistance (Ibid).

In its report the South African mission to the UN reported on developments that had taken place in the SADC region with regard to firearms, ammunition and related material. These include the adoption by SADC of a "Protocol on the Control of Firearms, Ammunition and Other Related Materials". This Protocol will enter into force once two-thirds of the SADC members have ratified it. South Africa believes that this legal instrument, "which goes beyond that of a politically binding declaration, will provide the region with a legal basis upon which to deal with both the legal and illicit trade in firearms" (2003:2).

Although the Protocol has not yet been ratified, it gives new impetus to the management of small arms and light weapons in southern Africa, including the management of legally owned firearms.⁶

The proliferation of small arms in southern Africa takes place in a region where civil war is a recent memory for many of the region's citizens. Wars in Mozambique and Namibia and more recently in Angola and the Democratic Republic of Congo (DRC) have contributed to regional instability, with the spillage of weapons into neighbouring states and the displacement of large numbers of people. In addition small arms and light weapons are the primary source of death and injury in civil wars like these.⁷

Four countries in the region – Angola, Namibia, Mozambique and South Africa -- have only recently emerged from conflict and the aftermath in the form of surplus firearms and cultures of violence has not yet been eradicated. In the eastern part of the region Tanzania is the host country for refugees from wars in Rwanda, Burundi and the DRC. One of the poorest countries in the region, the vision of its first post-independence President, Julius Nyerere, for a united Africa free from colonially imposed borders, saw refugees welcomed as fellow citizens rather than outsiders, a tradition which remains with over 500 000 refugees presently residing there.⁸

Besides exhibiting the characteristics of a conflict and post-conflict region, the SADC region includes some of the poorest countries in the world with GNP per capita in Malawi, Mozambique and Tanzania under \$229 per annum. The uneven regional economy in which the balance of trade between wealthy South Africa and the rest of

⁶ The Protocol on the Control of Firearms, Ammunition and Other Related Materials has been signed by all member states but Angola. It has not yet entered into force as only seven countries have so far ratified it. These are Botswana, Lesotho, Mauritius, Malawi, Mozambique, Namibia and Tanzania. Those who have not ratified are the DRC, Seychelles, South Africa, Swaziland, Zambia, Zimbabwe and Angola. Ratification of two-third (or nine member states) is needed for a SADC legal instrument to enter into force (Correspondence with Dr Mohammed Omar Maundi, Senior Officer, Political and Diplomatic Affairs SADC Secretariat, 5 November 2003).

⁷ Green, Owen (1998). "Responding to the challenge of light weapon proliferation: frameworks for possible action" in Light weapons and peace building in Central and East Africa, International Alert p10.

⁸ UNHCR Milestone, vol 3, issue 1.

the region is highly unequal is unlikely to change in the near future.⁹ Unemployment in the SADC region continues to rise with economic instability a defining feature of several countries. For instance in Zimbabwe, the region's second largest economy after South Africa, inflation stood at 55% in 1999, and has continued to rise exponentially.¹⁰ In Lesotho unemployment figures spiral as more Basotho face retrenchment from the shrinking South African mining industry, in a country whose economy has always been dependent on migrant labour. Despite diligently sticking to its macro-economic structural adjustment programme Zambia remains exceedingly poor and underdeveloped, an indicator being the very high incidence of HIV/Aids with infection rates in 1999 estimated at 20% of the adult population.¹¹

With states in the region being relatively new historical entities their institutions are often weak. Rising crime and illegal weapons proliferation must also be seen against the fact that some states do not have the capacity to carry out adequate policing. In Malawi, Zambia and Lesotho a lack of fuel and vehicles are often cited as reasons why police cannot carry out the functions that are expected of them.

It is this context of poverty, underdevelopment and insecurity which circumscribes effective domestic gun control measures and sometimes facilitates and creates the conditions for the proliferation of small arms in the SADC region.

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⁹ South Africa's exports to the SADC region nearly tripled in the period 1992 to 1996. According to the Department of Trade and Industry they increased from four to thirteen billion Rand in this period while imports from SADC to South Africa amounted to two billion Rand. See Davies, Robert (1997). "South Africa and Southern Africa" paper presented to the South African Institute of International Affairs Conference on South and Southern Africa: Lessons for emerging markets. 16-7 July 1997.

¹⁰ Business Day, 29 June 1999.

¹¹ Sunday Times, 1 August 1999.

CHAPTER 3: COUNTRY CASE STUDIES

Gun control legislation in the region, with the exception of Namibia, Botswana and Tanzania is several decades old. Zimbabwe's legislation was drafted in 1957, some time before the war of independence even began, while the legislation in Lesotho, Swaziland and Malawi dates back to the 1960s. Some of the legislation was written to provide for the needs of the white colonisers, and regulated their access to firearms and ammunition.

With independence the legislation was periodically adapted to suit the changing needs of different countries. A shared characteristic of much of the legislation is that it is difficult to read and is peppered with dated colonial-era discourse. It seems fair to assume that some of those required to read, understand and implement it would be hampered by its inaccessibility. Much of the legislation is also striking in its similarity of phrase and structure suggesting that it may have been adapted from one law originally enacted by British colonisers.

BOTSWANA

Unlike other states in the SADC region violent conflict is not a feature of Botswana's immediate past. Although conflict between indigenous people and the Boers and British was extensive in the late nineteenth century before the process of state creation which established the Bechuanaland Protectorate, Botswana has enjoyed a century of relative peace and thus provides an interesting counter point to developments in other states in the region.¹²

In particular it provides a striking comparison with Namibia. These neighbouring countries are both members of the Southern African Customs Union (SACU) and wealthy relative to some of their neighbours. They both have small, dispersed populations of about the same size (Botswana 1,6 million, Namibia 1,62 million).

¹² See Ramsay J. (1998). "The establishment and consolidation of the Bechuanaland Protectorate" in Botswana Politics and Society (Eds W A Edge and M H Lekorwe) Pretoria, J L van Schaik.

Post-conflict Namibia allows up to four firearm licences per applicant while Botswana has a total ban on the issuing of handgun licences.

Domestic gun control policy

Botswana's domestic gun control policy is set out in the Arms and Ammunition Act of 1981. The Act provides for the import and export of arms and ammunition, restrictions on the possession of arms and provides for the sale and transfer of arms and ammunition. The Commissioner of Police, Norman Moleboge, is responsible for the administration of the Act and together with other presidential appointees forms the Arms and Ammunitions Quota Board. The Commissioner formulates and implements gun control policy and is accountable to the President. Although between five and six thousand applications for firearm licences are received annually, there is a total prohibition on the issuing of handgun licences to individuals, making Botswana one of the most 'unarmed' of the ten countries surveyed.

Botswana's Police Commissioner says the only people who can possess and carry firearms are serving members of the police and defence force. And even this is restricted – ordinary police personnel do not carry firearms except for special operations, and there is only a limited issue of firearms to other members of the public service in the prisons service and wildlife and national parks department.¹³

Hunters are also subject to strict control with a limited quantity of 400 licences issued annually - 200 for shotguns and 200 for rifles. These are allocated randomly through a rather unusual mechanism -- an annual raffle of the approved applications. Exception is made for the safari industry and some cattle owners if they can prove they are troubled by predators. Commissioner Moleboge says that while there is a large demand for firearm licences government is concerned at the cumulative effect should many licences be granted. He says, "in the past it was easier to get a licence but the police found that weapons changed hands frequently and there was little control."

¹³ Interview with Commissioner N Moleboge, Botswana Police, 9 July 1999, Gaborone.

Crime

Crime in Botswana is slowly increasing sometimes involving illegal firearms. Commissioner Moleboge says that Botswana has recently experienced a spate of armed robberies – “rightly or wrongly we believe these weapons come across the border from South Africa. I personally believe they have very liberal laws in South Africa which are not as stringent as ours. We collect a lot of firearms at the South Africa-Botswana border. It doesn’t occur to some visitors to leave their gun behind when they visit our country. They don’t understand how you can live without carrying a firearm”.

Crime statistics compiled manually by the police indicate an increase in crime from 1966, falling a little in 1995 and increasing again in 1997.¹⁴ Police statistics are not disaggregated into crimes involving firearms and the police maintain that most crimes do not involve firearms but sticks, stones and other weapons. Some reported crimes are:

Offence	1995	1996	1997
Rape	1 056	1 107	1 183
Murder	242	207	217
H/breaking & theft	3 934	4 383	4 530
Stock theft	1 958	1 726	2 036
Assault common	6 839	6 191	7 836

Source: Annual report of the Commissioner of the Botswana Police for the year 1997, p2.

Statistics provided by the police indicate that armed robbery in 1998 was exceedingly low with only 11 reported. Of these eight involved the use of pistols, two shotguns and one rifle.¹⁵

¹⁴ It should be noted that long-term increases in crime are considered “normal” when set against population increases, as there are more people to commit crimes.

¹⁵ These statistics provided by the Botswana Police were unpublished and in the process of being compiled in the Commissioner’s annual report.

Although he is current chairperson of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO), Commissioner Moleboge does not see Botswana liberalising its gun laws to harmonise them with those of its neighbours. One of SARPCCO's current goals is to develop a regional convention on the control of firearms and harmonise and co-ordinate policy and legislation across the region. As yet this goal is far from being achieved.

Proliferation of firearms

Police statistics for registered firearms are as follows:

	1995	1996	1997
Firearms registered during the year	319	362	306
Firearms forfeited and surrendered	344	324	394
Total firearms registered in the country (excluding security services)	28 507	28 806	29 095

Source: Annual report of the Commissioner of the Botswana Police for the year 1997, p26.

Oosthuysen (1996:85) maintains that in 1995 all registered firearms in Botswana were in the hands of between 10 000 and 15 000 people, with exact figures not readily accessible due to the manual nature of the police filing system.

NAMIBIA

German occupation of what is now called Namibia saw the death of thousands of Hereros and Namas in early wars of resistance.¹⁶ This was followed by South Africa's occupation of Namibia and the formation of the South West African People's Organisation (Swapo) which waged a political, diplomatic and military struggle against the South African regime for almost three decades. In 1988, as part of the Angolan peace settlement, South Africa agreed to withdraw from South West African paving the way for Namibian independence in 1990.¹⁷

¹⁶ Weaver, Tony (1989). "The South African Defence Force in Namibia" in *War and Society: The Militarisation of South Africa* (Eds Jacklyn Cock and Laurie Nathan) Cape Town, David Philip.

¹⁷ Lamb, Guy (1999). "Civil supremacy in Namibia: A Retrospective Case Study" Centre for Conflict Resolution.

Domestic gun control policy

Namibia's domestic gun control policy is set out in the Arms and Ammunition Act (no 7 of 1996) which came into effect on 1 April 1998.

The legislation aims to exercise control over the licensing of domestic firearms and regulate other related matters. Officials maintain that the promulgation of a new law was necessary to harmonise different policies governing the licensing of firearms and establish a coherent record of licenses issued. Different policies originated in the 1950s when magistrates were responsible for the issuing of licences. Responsibility then passed to the South African Police who registered Namibian firearms in South Africa until 1980. From 1980 the South West African Police took on this responsibility and with independence in 1990 the Namibian Police took over this function, necessitating new legislation to bring administrative control to the chaotic records.¹⁸

The new legislation empowers the Inspector-General of Police to issue gun licences to any person over the age of 18, unless they have been 'disqualified'. Individuals may be disqualified if they are deemed unfit to possess arms on the basis of having, "expressed the intention to kill or injure himself or herself or any other person", are substance abusers, are mentally unstable, handle firearms in a reckless manner or have been convicted of a crime involving the use of a firearm.

The Act entitles people to acquire licenses for up to four firearms. The Namibian Police's Legal Officer W Brisley attributes this to the fact that, "Namibians and South Africans are hunting people," who need four firearms: "one to hunt big game, one to hunt small game, a shotgun for birds and a hand weapon for protection".¹⁹

The new law requires all gun-owners to re-register their firearms and apply, once off, for a new licence. Fingerprints are taken and a new licence booklet with photograph is issued. A call for re-registration was made through print, radio and television media

¹⁸ Interview with Chief Inspector P Kotze and District Commissioner G #Nwaseb, Namibian Police, 6 July 1999, Windhoek.

¹⁹ Interview with W Brisley, Legal Officer, Namibian Police, 7 July 1999, Windhoek.

and through organised sectors particularly farming associations. Police maintain that public response to the call to re-register firearms has been positive although there are insufficient personnel to process all the applications. In spite of this Brisley maintains there are far fewer legal weapons in circulation than was previously assumed. In 1995, 2957 firearm licences were issued.²⁰

The law allows licence-holders to lend their weapons to others providing permission is given in writing by the licence-holder. Written permission is not required however if the person loaning the firearm is in the immediate vicinity of the licence-holder or is on land owned or fully occupied by the licence-holder.

The legislation also makes provision for administering the domestic manufacture of weapons even though there is no arms industry in Namibia at present. Brisley maintains that there is a desire by government to keep the number of gun licences issued to a minimum. At the same time he claims there is pressure from gun shops to issue licences speedily, and that the policy discretion which the Inspector-General of Police can exercise in denying an individual a licence is circumscribed by the Act.

Crime

Perceptions across a spectrum of people agree that gun crime is increasing in Namibia.²¹ The Namibian Police say that gun crime is increasing particularly in Windhoek and northern parts of the country, with a concentration of robberies in the urban areas. They maintain however that there is not a 'worst' area of crime and note that the police have considerable success rates in apprehending armed criminals, particularly in small towns where new people are particularly conspicuous.²²

In 1995 the following incidents of gun crime were reported:

²⁰ Oosthuysen, Glen (1996). Small Arms Proliferation and Control in Southern Africa Johannesburg, South African Institute of International Affairs, p80.

²¹ Interviews with Fox, University of Namibia, Kotze and #Nwaseb, Namibian Police, Petrus Festus, National Society for Human Rights, 5-6 July 1999.

²² Interview with Kotze and #Nwaseb

Crime reported	Number of incidents
Illegal possession	232
Theft of firearms	204
Murder	82
Attempted murder	264
Armed crime	212
Suicide	607

Source: Oosthuysen Glen (1996). Small Arms Proliferation and Control in Southern Africa Johannesburg, South African Institute of International Affairs.

Proliferation of firearms

Rising gun crime has been linked to large numbers of illegal weapons in circulation, poverty, unemployment and militarisation. Poverty and unemployment particularly in the northern part of Namibia have led to increased internal migration and urbanisation, with Windhoek now growing at 10% per annum. Tom Fox, a sociologist at the University of Namibia, estimates that 60% of the population is presently unemployed or under-employed.

It is thought there are still illegal weapons in circulation left over from the pre-Independence civil war.²³ Petrus Festus of Namibia's National Society of Human Rights says there are still a number of buried weapons caches which have yet to be retrieved and destroyed.²⁴ Batchelor (1996:86) attributes increased crime in Namibia from the early 1990s to the large number of weapons which remained outside the United Nations Transition Assistance Group (UNTAG) disarmament process. Although an amnesty period for the surrender of illegal and unlicensed weapons was initiated, it expired with very few weapons being collected.²⁵ Even so, the UN-led process of disarmament in Namibia was far more effective than those that took place in Mozambique and Angola.

²³ Interview with Tom Fox, University of Namibia, 5 July 1999, Windhoek.

²⁴ Interview with Petrus Festus, National Society for Human Rights, 6 July 1999, Windhoek

²⁵ Batchelor, Peter (1996). "Disarmament, Small Arms, and Intra-State Conflict: The Case of Southern Africa:" in Small Arms Management and Peacekeeping in Southern Africa by C Smith, P Batchelor and J Potgieter New York and Geneva, United Nations.p 86.

The porous northern border Namibia shares with Angola was historically Unita-controlled territory and it is widely held that poor Angolan people barter weapons for food and clothing in this drought-ridden part of the country.²⁶

LESOTHO

Lesotho's recent past is characterised by violent conflict beginning with a coup in 1970 by former Prime Minister Leabua Jonathan following his defeat at the polls. This prompted the establishment of the Lesotho Liberation Army by the Basutoland Congress Party to fight Jonathan's regime.²⁷ Varying degrees of violent conflict has continued to characterise political life in Lesotho, culminating in 1998 in a military intervention by South Africa and Botswana on behalf of SADC following violent protests against the 1998 election results.

Domestic gun control policy

Lesotho's domestic gun control policy is contained in the Internal Security (Arms and Ammunition) Act of 1966. The Act was amended in 1970 and 1971 and more recently in 1999. The Act provides for the issuing of firearm certificates to individuals via application to the police at the district level. Applications must be accompanied by a letter of recommendation from the local chief. The District Commander makes a recommendation to the Commissioner of Police who decides whether a certificate should be granted. Firearm certificates must be renewed on an annual basis and the law provides that the Commissioner may refuse to grant a certificate to individuals possessed of "intemperate habits" or "unsound mind". Should a firearm licence not be granted individuals may appeal to the Minister of Home Affairs whose decision is final. Firearms dealers must apply annually for registration as a dealer, which may be refused by the Commissioner of Police.

Firearms dealers must record all transactions within 24 hours in a register, and must allow senior officers of the police to inspect stock in hand and the register. Section (23) of the Act states that individuals sentenced for any crime which involves violence

²⁶ Interviews with Fox and Festus, op cit.

²⁷ Omer-Cooper, JD (1987). History of Southern Africa London, James Currey Ltd.

may not be issued a firearm certificate for five years after their release from custody. But Lt Col Barotho Matsoso of the Lesotho Mounted Police's Criminal Investigation Division says that the Police Commissioner does not issue licences to any person with a criminal record, even if the crime they committed did not involve the use of a firearm.²⁸ Matsoso also maintains that certificates are not issued to individuals whimsically and that not every person would be granted a firearm certificate because they say they require one for their personal safety, but individuals living on farms would probably be granted a licence with ease.

The Act also makes a number of special provisions which enables the Minister to publish an order in the Gazette directing people in a specified area to deposit all arms and ammunition at a specified place. The 1999 amendment to the Act has increased the penalties for the illegal possession of a firearm to a minimum fine of ZAR 500, a minimum period of four months in prison or both. Individuals who fail to renew their firearm certificates are liable to a ZAR 10 fine for each month that the offence continues.

The 1999 amendment also provides for the banning of rifles (sometimes called long guns in Lesotho) and says that individuals in possession of rifles must surrender them within six months from 28 June 1999. Failure to do so will result in a minimum ZAR 5000 fine or not less than two years in prison. The police are presently in the process of publicising this new requirement, brought about because of the common usage of rifles in crime and an inability on the part of the police and public to distinguish legal from illegal weapons.

Due to the manual nature of the firearm certification system, the police do not know how many certificated firearm holders there are. While the police say it takes six to 12 months to get a firearm certificate, others say that it in fact takes much longer. No firearms are manufactured in Lesotho -- they are all imported, mostly from South Africa.

²⁸ Interview with Lt Col Barotho Matsoso. Criminal Investigation Division, Royal Lesotho Mounted Police, 30 July 1999.

Crime

Crime in Lesotho is high in both urban and rural areas with stock theft being identified as a considerable problem in the latter. Crime statistics provided by the police indicate an increase in gun crime since 1990. In 1990, 127 crimes categorised as "arms and ammunition" were reported. By 1997 this category, which includes abuse of firearms, increased to 477. In 1995 a new category of armed robbery was introduced into police statistics, and preliminary statistics for 1997 indicate that 124 armed robberies were reported that year.²⁹ Statistics for murder are not disaggregated into crimes committed with firearms and other weapons. In 1996/7 reported murders totalled 325.³⁰ In the same period 101 firearms were reported lost or stolen.

Proliferation of firearms

Lesotho's NGO sector is concerned that the conditions exist for a culture of violence to entrench itself in this country in transition.³¹ Features of this include Lesotho's embattled economy, with a 48% decline in employment in South Africa's mining industry between 1987 and 1994, and a very weak democracy whose future is tenuous. Lesotho's economy has been almost solely dependent on South African requirements for labour on its mines. These conditions impact significantly on gun control. Guns have always been associated with migrant labourers who earned the wrath of the Cape colonial government in the late 1800s when they used their wages to purchase guns. Basotho migrants resisted the imposition of the Cape's Disarmament Act in 1873, thus beginning a culture of gun ownership which Caleb Sello of Lesotho's Ministry of Defence says is strong to this day, with guns being seen as a symbol of resistance against foreign power.³²

More than a century later, as the South African mining sector contracts, poverty and unemployment are increasing in the mountain kingdom, impacting on crime levels.

²⁹ Royal Lesotho Mounted Police Annual Reports 1990 – 1997.

³⁰ Royal Lesotho Mounted Police Annual Report 1996/7.

³¹ Interview with Carlo Urner, Transformation Resource Centre, Maseru, 29 July 1999.

³² Interview with Caleb Sello, Ministry of Defence, 30 July 1999, Maseru, Lesotho.

Kynoch and Ulicki (1999:5) say one of the consequences is a sharp increase in stock theft, with frequent raids conducted by citizens on either side of the border. Kynoch and Ulicki maintain that the "recent history of political conflict in the former Transkei region has resulted in the ready availability of arms and disgruntled former guerrillas from the Lesotho Liberation Army are rumoured to be key players in cross border raids and the criminal trade which involves stock theft, arms trafficking and drug smuggling". Cross border raids frequently involve the use of guns – "while the use of guns by thieves is widespread, informants report South African raiders rely on force of arms and resort to violence more readily than Basotho thieves" (1999:14). This sentiment is echoed in the words of one of Kynoch and Ulicki's informants who maintains, "guns in South Africa are just like pens to pupils" and attributes the large number of lives lost in cross border stock theft raids to this.

Seeisa Mokitimi, a development officer for the Christian Council of Lesotho, also links the proliferation of illegal firearms in Lesotho to illicit cross border trade where guns are exchanged for dagga (marijuana). He says that many poor households in the mountain areas grow dagga, which is sold or bartered in the Eastern Cape and KwaZulu-Natal. He has noticed increased gun ownership in rural areas – "herd boys don't use sticks anymore, now they have AKs" and he attributes this to the cross-border trafficking. He also points out that the 2000-strong Lesotho police service, "is unable to tackle the problem - it is small, under resourced and immobile in most instances".³³

Another source of illegal weapons in Lesotho resulted from theft from the state armouries after the election results of the 23 May 1998 election were contested. Mokitimi says that certain sections of the security services stole arms and distributed them to protestors. "For a while," he says, "our country was ruled by unruly youths with big guns. Following the SADC intervention government said people should surrender unlawfully held guns to the police but this call has been unsuccessful."

³³ Interview with Seeisa Mokitimi, Christian Council of Lesotho, Maseru, 30 July 1999.

MALAWI

Independence in Malawi saw the ascent to power in 1964 of Life President Dr Hastings Kamuzu Banda, a populist dictator, who retained the Presidency until elections were held in 1994. Banda's dictatorship was bolstered by a paramilitary group called the Young Pioneers. Now disbanded, their legacy lives on in the deep distrust which characterises relations between the civilian population and the police.

Domestic gun control policy

Malawi's domestic gun control policy is set out in the Firearms Act of 1967. It was amended in 1968, 1971 and 1974. It appears to be based closely on the colonial law as it includes fines to be levied in kwacha in some sections of the Act but refers to the colonial currency, pounds, in other sections.³⁴ Amnesty International reported in 1997 that the existing police standing orders are also outdated and refer to the country as Nyasaland, indicating that colonial-era orders are still in place.³⁵ Malawi's Law Commission is said to be looking into amending or redrafting the legislation in the near future,³⁶ but Wood and Sunde (1999) in a report on the small arms problem in the region suggest that given its current workload, amending the Firearms Act will not be a priority.

At present the law makes provision for the issuing of annual firearm licences, which must be applied for within 30 days of acquiring a firearm. Application is made to the senior police officer of the district in which the applicant resides. The application is then referred to the district commissioner who refers it to the Registrar of Firearms. With the approval of the Minister of Home Affairs the Registrar may grant a firearm licence. The law also provides that the Minister may delegate the power to issue licences to district commissioners.

³⁴ Laws of Malawi : Firearms Act of 1967 see sections 5, 12 and 13.

³⁵ Amnesty International (April 1997). Southern Africa Policing and Human Rights in the Southern African Development Community.

³⁶ Conversation with Dr Vera Chirwa, Director, Centre for Advice, Research and Education on Rights, 14 July 1999, Lilongwe.

Section 9 of the legislation enables the Minister to exercise discretion in deciding whether to grant a firearm licence. The Act stipulates that licences may not be issued to, "a person of intemperate habits or unsound mind" or, "a person for any reason unfitted to be entrusted with such firearm and ammunition". The law does not prohibit any person with a criminal record from acquiring a firearm licence, but says that the Minister, "may decide to grant or refuse to grant any such approval, and his decision thereon shall be final and shall not be subject to appeal, or question by any court of law, and the Minister shall not be required to assign any reason for such decision". Section 12(g) of the Act allows a "night watchman" to carry a weapon which has been licenced to the property owner. The legislation makes the carrying of an illegal firearm subject to a 14 year sentence.

Dealers licences are issued annually and dealers are required to deliver a return every six months to the Registrar indicating all transactions which have occurred in that period.

While this is the existing legislation, enquiries directed to the Office of the Inspector General of Police indicate that Malawi has no domestic gun control policy, suggesting that the existing legislation may be obsolete. Instead there is a focus on the possession of illegal firearms and the development of measures to manage this problem, including the establishment in 1996 of a reward fund for information leading to the arrest of offenders or the recovery of illegal firearms, increased road blocks and stepped up border patrol.³⁷ Wood and Sunde report that the Director of Public Prosecutions has written to all magistrates and police to encourage them to use the Preservation of Public Order Regulations that prohibit the possession of unlicensed firearms and also provide for a maximum sentence of 14 years for illegal possession of a firearm.

Crime and the proliferation of firearms

Although official statistics are not collated, an analysis of media reports in Malawi in the eight month period to May 1999 documents 90 incidents of armed robbery, the

³⁷Correspondence between the Office of the Inspector General of the Malawi Police and the Secretary for Home Affairs and Internal Security of Malawi, 9 July 1999.

majority of which involved the use of AK-47s.³⁸ According to Wood and Sunde police and government officials agree that illegal firearms, particularly AK-47s result from cross border trafficking, mainly from Mozambique, but also Zambia and South Africa.³⁹ Alarmist media reports describe Malawi as “a dumping ground for weapons” left over from the Mozambican civil war.⁴⁰ But Mozambican commentators are quick to point out that Banda’s diplomacy leant active support to Renamo during the 1980’s⁴¹ and South Africa facilitated Renamo’s access to Malawi for use as a staging ground for a northern front.⁴² The war in Mozambique also saw Malawi flooded with refugees, many of whom speak Chichewa like their counterparts over the border in Mozambique. Trade routes established then may still facilitate weapons smuggling.

The study undertaken by Wood and Sunde on behalf of the Norwegian Initiative on Small Arms Transfers (Nisat) has identified small arms proliferation as a considerable problem in Malawi, which is not being addressed and in their view is becoming a matter of urgency.⁴³ They link the proliferation of small arms to the increase in violent crime. Like most other countries in the region crime statistics are collated manually and official statistics are not available. But Wood and Sunde maintain that crime by gangs operating in both urban and rural areas is of particular concern. Police attempts to contain gun crime are hampered by a lack of basic resources. They cite by example the Ndirande township, an area spanning 16 kilometres with 400 000 residents, but with only one police station and a total of 28 officers. On the day they visited the police station its only telephone line was out of order. In the Mchinje

³⁸ Mwakasungura, Undule. “Media reports on gun violence and security in Malawi”. Paper presented at the Roundtable meeting on Community Support to Help Police to Stop firearms Proliferation in Malawi”, 13-14 July 1999, Lilongwe.

³⁹ Accurate statistics are not available, however police records show that of illegal firearms recovered in the period 1997 - 1999, the vast majority are manufactured in South Africa. See Phiri, Robert M. National Crime Statistics and the proliferation of small arms in Malawi: A Preliminary Study. Paper presented at the Roundtable meeting on Community Support to Help Police to Stop firearms Proliferation in Malawi”, 13-14 July 1999, Lilongwe.

⁴⁰ Mponda, Felix. “Malawi battles gun proliferation threatening investment”, 15 July 1999.

⁴¹ Interview with Brig P Macaringue, Ministry of Defence, Maputo, 20 July 1999.

⁴² Finnegan, (1992). The Harrowing of Mozambique Berkley, University of California Press, p141.

⁴³ Wood, Brian and Ole Petter Sunde “Malawi: support for community-police measures to tackle small arms. Report of the Norwegian Initiative on Small Arms of a consultation visit to Malawi” 7 – 14 February 1999.

district 50 police are responsible for 60 villages and other settlements but the police had access to only one working vehicle. Senior police in Malawi say that their force cannot adequately patrol, investigate and apprehend offenders, and officials representing donor agencies estimate, by way of comparison, that Zimbabwe has five to six times more police for a similar size population.

Malawi's Centre for Human Rights and Rehabilitation maintains that the problem is compounded by a lack of trust between civilians and the police stemming from the use by Malawi's previous President, Hastings Banda, of a para-military force called the Malawi Young Pioneers. Now disbanded, the Young Pioneers were a political force which abused their powers, however their abolition is said to have ended an "artificial sense of security that was being sustained through terror".⁴⁴ Undule Mwakasungura of the Centre for Human Rights and Rehabilitation says that the disbanding of this institution has created a vacuum which the security services have not yet filled.⁴⁵ One response has been the establishment of community police forums in 16 of the 32 police districts as well as crime prevention committees at grassroots level. This is seen as a way of countering crime and helping to establish relations of trust between communities and the police.

MOZAMBIQUE

War in Mozambique began in 1976 after Portugal granted a hasty independence to Mozambique and Angola in 1975. Intensifying rapidly after 1981, what has been described as the 'harrowing' of Mozambique (Finnegan 1992), saw the destruction of the country's economy, most of the transportation and communication systems and much of rural society. In 1989 the United Nations estimated that 900 000 Mozambicans had died as a result of the war⁴⁶ between Mozambique's Frelimo government and the Mozambique National Resistance (Renamo), an anti-Frelimo

⁴⁴Mwakasungura, Undule. Firearms proliferation and violent crime in Malawi. Paper presented at the Roundtable meeting on Community Support to Help Police to Stop firearms Proliferation in Malawi", 13-14 July 1999, Lilongwe.

⁴⁵ Interview with Undule Mwakasungura. Centre for Human Rights and Rehabilitation, 13 July 1999, Lilongwe.

⁴⁶United Nations Economic Commission for Africa (1989). South African Destabilization: The Economic Cost of Frontline Resistance to Apartheid New York, cited in William Finnegan, op cit.

guerrilla organisation which initially drew support from the Rhodesian Intelligence Service and then from South Africa (Omer-Cooper 1987:234). It is not known how many weapons were in circulation during the war or its aftermath, but all indications are that numbers were considerable. Chauchiua (1999:21) maintains that in 1995 there were an estimated six million AK47s in circulation and 1,5 million assault rifles had been distributed to the civilian population. In Sofala province an estimated 40 percent of the adult population were armed and in Beira there were 30 000 armed militia. Thus, while the country has a fairly strict domestic gun control policy there are still vast quantities of illegal firearms in circulation.

Domestic gun control policy

Mozambique's domestic gun control policy is contained in the *Regulamento de Armas e Municoes* of 1973. Passed before independence, the law was previously applicable to whites and "assimilados", says the *Policia da Republica de Mocambique* (PRM) Senior Assistant Commissioner Miguel dos Santos. The law requires that all gun owners apply for licences to the Minister of the Interior. Applications are processed by the Assistant Commissioner, but are individually confirmed by the Minister, who may not delegate his power to an official. Applications must be accompanied by a letter explaining why a gun is needed and another from the employer of the applicant as proof of employment. Unemployed people are not eligible for gun licences. Applications are only considered for Mozambican residents and a finger print scan ensures that no person with a criminal record is granted a licence. Licences are only granted for up to three hunting rifles and one handgun with a calibre of 6.67mm or less per person. Noting that licences for 9mm guns are easily obtainable in South Africa, dos Santos said that Mozambique would not do the same. Of the proliferation of 9mm firearms he says, "that would be like war". In Mozambique only members of the security services may carry 9mm calibre firearms.

On being granted a firearm licence individuals may import a firearm, as firearms are not manufactured or sold in Mozambique as all gun shops were closed during the war. dos Santos says on receipt of a licence most individuals purchase their firearm in South Africa. On acquiring their firearm the particulars of the firearm purchased are registered with the police. Licences are only valid for a period of two years – "it can't be more" says dos Santos, "people can turn into criminals in two years".

dos Santos says there are no more than 3 000 legal firearms in Mozambique. He attributes the low number to the fact that there was strict control over handguns during the war with government closing all gun shops. He acknowledges that gun shops may reopen in the future.

Mozambican law also places a limit of 100 bullets on the amount of ammunition an individual may purchase and police are entitled to enquire as to how the bullets were used.

Crime

High crime levels in Mozambique have been attributed to, "the failure to implement an effective and well-funded demobilisation and reintegration policy, particularly in the light of Mozambique's high levels of poverty and underdevelopment" (Batchelor 1996:91). However more recently crime levels appear to be decreasing. Nataniel Macamo, Public Relations head of the Mozambique police, says crime levels are coming down and he attributes the decrease in urban crime since 1996 to civic education, a closer working relationship between police and citizens and better crime prevention on the part of the police.

While crime statistics are increasingly becoming available in Mozambique they do not disaggregate gun crime, and as they have only recently become available are not comparable with past statistics. Even so perceptions across a range of people and institutions concur that crime is decreasing.⁴⁷ Historian Joao Paulo Coelho, says that rural crime is contained by the security of land tenure most rural people enjoy, particularly since most Portuguese colonials left Mozambique after independence in 1975. He sees the security provided by land tenure as an important pre-requisite for peace in rural areas.⁴⁸

⁴⁷ Interviews with Miguel dos Santos, Assistant Commissioner, *Policia da Republica de Mocambique*; Brig Paulino Macaringue, Ministry of Defence; Joao Paulo Coelho, Department of History, Eduardo Mondlane University; Rev Amosse, Christian Council of Mozambique, 20-21 July 1999, Maputo.

⁴⁸ Interview with Joao Paulo Coelho, Centre for Contemporary History, Eduardo Mondlane University, 20 July 1999, Maputo.

Private security firms are a new phenomena in Mozambique, first emerging in 1990. dos Santos attributes their creation to Mozambique's new market economy – previously the state protected all its assets, but now the private sector must protect its own interests. Private security firms are regulated by the Minister of the Interior and there are only 22 in Mozambique. As regards firearms, the private security industry is subject to the same regulations as other civilians, including the calibre of firearm they may license and use.

Proliferation of firearms

Mozambique is frequently pointed to as the source of large numbers of illegal weapons which find their way to South Africa, Malawi and Zimbabwe. Scholars frequently cite the failure of the United Nations Operation in Mozambique (UNOMOZ) to effectively disarm the formerly warring parties after the peace agreement signed in October 1992, as the main reason for the large numbers of weapons that are still available in Mozambique.⁴⁹ While it is not known how many weapons remain, there has been a concerted attempt to eradicate weapons caches in the southern provinces close to South Africa. A series of joint South African/Mozambican police operations, called Operation Rachel, have since their introduction in 1995 destroyed thousands of firearms, antipersonnel mines, mortars, projectiles, rounds of ammunition and other materiel predominantly in the provinces of Maputo, Gaza and Inhambane in the south and Sofala and Manica in the centre of the country.⁵⁰ Martinho Chachua (1999:30) maintains that the success of the joint operations lay in the fact that each police task force team saw the results contributing to the solution of their separate national security problems in each country – “the only way that this could possibly be achieved, was to concentrate on the immediate borders of both countries”.

This narrow concern with national interest on the part of South Africa has meant that although much of Mozambique is thought to contain arms caches, these are regarded as being beyond the reach of any joint operation because, “the further north the cache is found, the weaker the argument that one can attach weapons recovery

⁴⁹ Smith, Chris and Alex Vines (1997). Light weapons proliferation in Southern Africa London, Centre for Defence Studies, p19.

to South African security concerns".⁵¹ This approach privileges national security and national interest above any common regional security concerns and interests, and also serves to ignore the role South Africa played in arming Mozambique in the first place.

South Africa's support for Renamo after Mozambican independence is widely documented. Created by the Rhodesian intelligence services in 1974, Renamo was bequeathed to the South African Defence Force (SADF) with Zimbabwean independence in 1980. Davies (1989:104) maintains that this saw Renamo action escalate rapidly in 1982 and 1983 continuing in spite of the signing of the Nkomati Accord in 1984. Documentary evidence shows that South Africa supplied arms, communications equipment and medical supplies to Renamo for much of the 1980s.⁵² Smith and Vines (1997:18) maintain that the South African government provided large amounts of weapons of Chinese origin to Renamo and suggest that private sales by South African contractors may have been extensive. In 1993 Major General Chris Thirion, former South African Deputy Chief of Military Intelligence, admitted to supplying weapons to Renamo and Unita saying, "figures for the amounts (sic) are on record somewhere in Pretoria".⁵³ This hitherto neglected aspect of southern African history suggests that a more appropriate way of viewing the continuing existence of arms caches in northern and central Mozambique would be as a regional security problem, in a region where borders were not viewed as an impediment to South Africa pursuing its 'national' interest in the past.

Operation Rachel has not been the only attempt to manage small arms proliferation in Mozambique. A number of programmes have also been initiated by civil society organisations. Most notable is the Christian Council of Mozambique's Tools for Arms Project (TAE). TAE is a form of buy back programme in which firearms are exchanged for tools, sewing machines, agricultural implements or food. Rev Amosse,

⁵⁰ See South African Police Service Annual Report 2002/03, Pretoria, Government Printer.

⁵¹ Ibid, p41.

⁵² Davies, Robert (1989). "The SADF's covert war against Mozambique" in Cock and Nathan, op cit, p104.

⁵³ Cited in Mills, Greg (1994) "Small Arms control some early thoughts" African Defence Review, no 15, p44.

the General Secretary of the Christian Council, sees this as a means to create a culture of peace. They have resisted exchanging cash for arms as they maintain this emulates the weapons trade. In contrast Operation Rachel offered informers who pointed out weapons caches a cash reward, with the exact amount determined on the basis of the quantity and quality of the weapons found.⁵⁴ Batchelor (1996:75) notes that, "While the effectiveness of weapons buy-back programs is disputed, because they can stimulate new, and illegal markets in weapons, it is generally accepted that buy-back programs which provide food and/or agricultural implements are more appropriate than programs which offer cash for weapons".

Amosse maintains that 30 000 weapons have been destroyed since the programme's inception, and churches have monitored the destruction of the firearms to ensure that they do not form part of the state's armoury. The programme has had considerable impact in the southern provinces of Maputo, Gaza and Inhambane and is starting to make inroads in Zambezia. But Amosse maintains that the destruction of weapons caches in Mozambique, including those destroyed in the joint SAPS/Mozambican police operations, so far represent a "drop in the ocean" relative to the problem as it still exists. Amosse is particularly concerned with the situation in the Manica, Sofala (where Renamo's headquarters were located) and Tete provinces.

SOUTH AFRICA

Conflict in South Africa has taken various forms in a militarised society where in the past white men were conscripted into the SADF and the African National Congress waged an armed struggle against the apartheid regime. A civil war in KwaZulu-Natal, supported by the police and military, severely disrupted life for ordinary people in South Africa's most populous province in the 1980s and 1990s. Decades of militarisation have bred a culture of aggression and intolerance, making South Africa one of the most violent post-conflict societies in the SADC region.

⁵⁴ Chachiuva, Martinho "Arms Management Programme: Operations Rachel 1996-1999" ISS Monograph series, no 38 June 1999, p27.

Domestic gun control policy

South Africa's domestic gun control policy is contained in the Firearms Control Act 60 of 2000, a new law which replaces the Arms and Ammunition Act of 1969 which had been amended a number of times by South Africa's post-apartheid Parliament. Not all aspects of the new legislation have yet been promulgated, with the regulations in particular still outstanding.⁵⁵ A matter which has been of some concern to the country's legislators.⁵⁶

The development of the legislation was characterised by a vigorous public debate with a clear pro-gun lobby emerging in opposition to a civil society coalition which actively (and quite successfully) campaigned for stricter gun control measures

The new law, which has been described as a "pragmatic response (by government) to a complex situation"⁵⁷ hails a much stricter gun control regimen than its predecessor. Key changes include:

- That a competency certificate be obtained before a person can qualify for a firearm licence;
- Limitations placed on who qualifies for a competency certificate with section 9(2)(d) stating that competency certificates may only be issued to a person if she or he is, "of stable mental condition and not inclined to violence";
- Limitations on individuals who have been convicted of physical or sexual abuse within a domestic relationship;
- Separate licences being issued for each firearm;
- Renewal of firearm licences every four years whereas in the past licences were granted for an indefinite period of time;

⁵⁵ Cape Times, 5 September 2002, SAPS Annual Report 2002/3: 19.

⁵⁶ McKenzie (2003)

⁵⁷ Meek (2002: 1)

- A requirement that firearm owners notify the Registrar of Firearms (the Commissioner of Police) within 30 days of moving or of their circumstances changing. (This is key as the record of legal firearm owners is presently exceedingly poor);
- That a central firearms database be established by the Registrar of Firearms;
- That the Registrar can declare an individual unfit on the basis of a sworn affidavit testifying that an individual has a final protection order issued against them in terms of the Domestic Violence Act, that the person has failed to take the necessary steps in terms of the safekeeping of a firearm, or that the person has threatened someone with violence;
- Provision for the Minister to declare an amnesty from prosecution if this will encourage illegal firearm owners to hand over their firearms; and
- Provision for the Minister to declare certain areas firearm free zones if this is in the public interest.

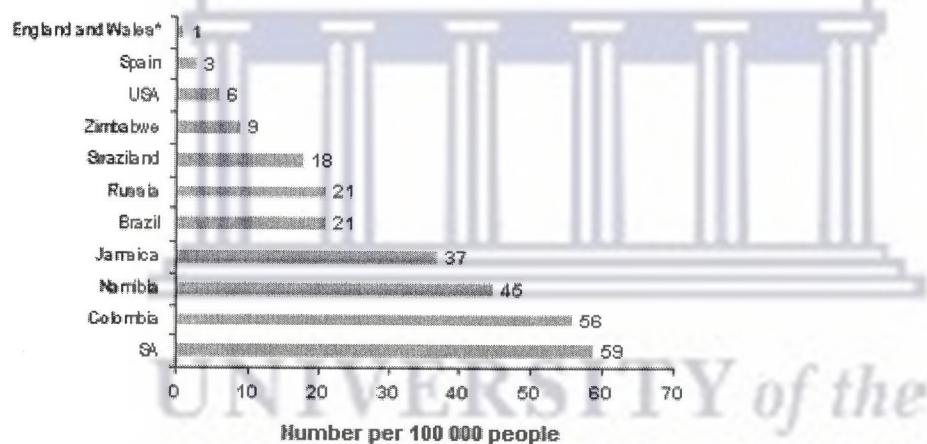
The law has also changed the age at which a person can obtain a firearm licence, in the past this was 16, now it is 21. Perhaps of most importance is the limit on the number of firearms that can be legally owned by an individual. In the past this was unlimited, but now follows the Namibian approach of four firearms per person, of which only one can be a handgun. Individuals with more firearms have five years from the promulgation of the law to dispose of their excess guns.

Statistics show that the new law has had a powerful impact on firearm ownership with applications for firearm licences dropping from 248 000 in 1998 to 151 000 in 2001. The firearms register hearings to establish whether a person should be declared fit to own a firearm also increased from 551 in 2000 to 572 in 2001, but by July 2002 already stood at 453. A possible decrease in demand for legal firearms can also be

noted with registered firearms dealers dropping from 644 in 2000 to 565 in July 2002, while 24 gunsmiths were no longer registered.

Crime

Crime including gun crime in South Africa is very high and contrasts sharply with other countries in the region. Statistics compiled by the Crime Information Analysis Centre show that in 1998, 69 501 cases of robbery with a firearm were reported. And in 1998 an average of over 33 murders were committed daily with a firearm. While South Africa's murder rate is presently decreasing, murder with a firearm is actually increasing. International murder rates in 1998 place South Africa well ahead of other of developing countries notorious for violence such as, Russia and Brazil. In 1998 the murder rate in South Africa stood at 59 per 100 000 people significantly higher than fellow SADC states Namibia, Swaziland and Zimbabwe, as illustrated below.



Source: Institute for Security Studies, 1999.

In 1997, 11 215 people were murdered with a firearm and in 1998 this jumped to 12 267 – 49% of all murders committed. By the year 2 000 fatal firearm injuries reached 18 876 as recorded by the National Injury Mortality Surveillance System⁵⁸. South Africa also has a very high number of law enforcement officers killed -- 212 per annum as compared to the international mean of 17. In many cases police are targeted so that their guns can be stolen, and in 1998 1 775 guns were stolen from policemen. The Institute for Security Studies estimates that 8 500 weapons are

⁵⁸ Cited by Meek, 2002.

stolen from the police and defence force each year and that most of these end up in criminal hands.⁵⁹

In 1998, 29 694 guns were reported lost or stolen, while in the same period only 1 764 were recovered. The South African Police Service (SAPS) holds the view that legally held firearms are a significant source for the illegal weapons market. An official SAPS document says that, "the main internal sources of illegal firearms remain the theft, robbery or loss of firearms in legal possession".⁶⁰ This analysis has led to the launch of Operation Sethunya which has seen a sharp increase in the recovery rate of firearms. The SAPS 2002/3 Annual Report states that in 2002 21 027 firearms were recovered as against 22 120 that were stolen (2003:18). The report acknowledges that many of those recovered may have been stolen in previous years. Nevertheless, the statistic indicates that firearm recovery has become a priority for the SAPS.

Proliferation of firearms

Smith and Vines (1997:26) point out that following a successful transition to democracy, "South Africa had, in theory, an opportunity to ring-fence itself as a relatively gun-free society. This has not happened. Efforts to control the spread of legal and illegal firearms are failing with a rapidity that may yet have profound implications for the future stability of the Republic".

At present there are 4,5 million legally owned⁶¹, licenced firearms and five million belonging to the security services with applications for licenced firearms continuing to grow.⁶² A dramatic increase in firearm sales began in 1976 and continued as resistance to apartheid mounted, peaking with South Africa's transition to democracy.⁶³ The vast majority of licenced gun owners in South Africa are white and

⁵⁹ See Gamba, Virginia and Martinho Chachua "Small arms proliferation in Southern Africa: An overview" *ISS Monograph series*, no 34 Jan 1999 p7.

⁶⁰ Cited in Oosthuysen, op cit, p20.

⁶¹ Meek 2002.

⁶² Gun Free South Africa "Statistics sheet", 7 April 1999.

⁶³ See J Cock, op cit, p96.

since the start of the transition many cite security as their reason for owning a firearm. According to Cock (1995:96) white South Africans rate among the most heavily armed groups in the world.

It is not known how many illegally held firearms are in circulation. Estimates vary from one to four million, but cannot be substantiated. Writing in 1997, Smith and Vines saw the main sources of illegal weapons as Mozambique and Angola as well as thefts from state armouries. Firearms cross the porous border directly from Mozambique to South Africa and sometimes through Swaziland, while arms from Angola are thought to transit through Namibia. The successful joint Mozambican-South African police Operation Rachel is believed to have considerably reduced the numbers of illegal firearms reaching South Africa from Mozambique.

If this is the case there is a need to re-examine where illegal weapons come from. Surplus weapons from the DRC and Angola will be cause for concern for South Africa, which, as the wealthiest country in the region with a robust gun culture and tradition of violent crime, is a market for illegal weapons. The excessive gun crime which still takes place in South Africa suggests that the pool of illegal weapons may now be drawn from firearms which were originally owned legally. These may now be the largest source of illegal weapons since Mozambique's weapons caches have been considerably reduced.

South Africa's Defence Industry

South Africa has a well established defence industry, which burgeoned in the apartheid era, partly as a result of sanctions, which forced the South African government to invest in indigenous technology to supply the SADF and the SAP with a range of weaponry and ordnance. Today the industry, which is partially state owned, continues to grow in spite of government oversight and control over the marketing of South African defence industry products and which countries and groupings may buy weapons from South Africa. This oversight is conducted by a Cabinet Committee: the National Conventional Arms Control Committee.

In 2002 arms exports totaled R2,6 billion, an increase of 47% on 2001's sales of R1,7 billion. Exports include large-calibre arms, missiles, bombs, heavy arms, light weaponry and min-clearing equipment (*ThisDay* 16 October 2003).

SWAZILAND

Swaziland is one of the few countries in southern Africa whose borders are based on the core area of a pre-colonial African kingdom. Swaziland gained independence in 1968 and adopted a constitution which, "simply clothed the absolute authority of the king in modern form" (Omer-Cooper, 1987: 247). By 1976 Swaziland shared borders with radical Mozambique and after the 1976 uprising in Soweto became a destination for refugees from South Africa but in 1982 Swaziland signed a secret non-aggression pact with South Africa and began a clampdown on the African National Congress.⁶⁴ While Swaziland has no immediate legacy of conflict its shared borders with Mozambique and South Africa have made it a transit country through which illegal weapons flow.

Domestic gun control policy

Swaziland's gun control policy is contained in the Arms and Ammunition Act no 24 of 1964. The Act provides for the establishment of a board to advise the licensing officer on the issuing of licences to import, purchase or acquire firearms. Meek (1999:54) says that the licencing system is "based on a tribal system, according to which an applicant must obtain a licence application from the police station but ask the permission of the village elders to validate the licence". The Act provides that firearms and ammunition may only be purchased by people in possession of a licence and licences must be renewed annually. But Meek says a lack of personnel and automation makes this difficult to enforce, as Swaziland does not have a computerised licensing system.

Only the holder of a licence may purchase ammunition for the firearm under licence. Illegal possession of firearms without a licence carries the penalty of a R1 000 fine or two years imprisonment, while illegal possession of arms of war can result in a R5

⁶⁴ Omer-Cooper, op cit, p247-255.

000 fine, and/or ten years imprisonment. Meek notes however that Swazi officials have suggested that a review of the penalties for possessing an unlicensed firearm could be undertaken to determine whether penalties are stringent enough. There is a desire to improve training and education among gun owners on the safe use and storage of firearms (1999:57).

Crime and proliferation of firearms

In 1997 there were 11 099 registered firearms, in this country with a population of 970 000 (Meek 1999:54). In addition to quite high numbers of legal firearms, Swaziland is seen as a transit country for firearms from Mozambique destined for South Africa. Meek suggests that the weapons smuggling happens along routes originally established by the African National Congress's armed wing *Umkhonto we Sizwe*.

In 1996, Swaziland, South Africa and Mozambique signed a cooperation agreement to enable information sharing about illegal weapons flow (Meek, 1999). In addition the police services and defence forces of Swaziland and South Africa co-operate on an *ad hoc* basis, but Swaziland is hampered by a lack of resources and infrastructure (Meek 1999:56).

Crime levels in Swaziland are seen as low with a murder rate of 18 per 100 000 people while in South Africa the ratio is 59 per 100 000 people. Statistics are not available but Meek maintains that, "traditionally few of these murders have been committed with firearms".

TANZANIA

Attaining independence in 1961, Tanganyika merged with Zanzibar to form Tanzania in 1963. Tanzania, unlike many of its neighbours, is a peaceful and united country unblemished by civil war, with Tanzania's only notable military incursion being a war with Uganda which aimed to stem Idi Amin's reign of terror.

Domestic gun control policy

Tanzania's domestic gun control policy is contained in the Armaments Control Act of 1991 and the Arms and Ammunition Act of 1991. The Armaments Control Act says

that the President will facilitate and ensure the formulation of an armaments control policy which facilitates, "a world free from the scourge of war and the dangers and burdens of armaments". This utopian sentiment has underpinned much of Tanzania's approach to firearms in the past but some sectors of civil society fear that this is now being eroded.

While the gun control law has remained the same, government has indicated its intention to privatise the selling of firearms, which was formerly undertaken by a parastatal company, the Agricultural and Industrial Supplies Company (AISCO). Government's intention was announced in the press by way of a government notice and was a decision taken by the executive, seemingly without the involvement of parliament.⁶⁵

The decision invoked considerable debate in Tanzania where Catholic and protestant church groups, legal, human rights and environmental organisations opposed the move. These groups were joined by the newly formed Hunters and Gun Owners' Association of Tanzania who are concerned that unscrupulous dealers will now be able to sell firearms.⁶⁶

Following public outcry government was quick to defend the move and point out that the process for getting a handgun licence will remain the same, and continue to be fairly strict. Government has said that dealers will be limited to a few authorised dealers and agents who will sell firearms and ammunition in the regions. Only authorised dealers will be entitled to import firearms and ammunition and the Inspector General of Police will determine a shortlist of dealers to be approved by the Minister of Trade and Industry. Government has defended the new proposal saying that there will be strict control, that imports can only take place through Dar es Salaam and that there will be very few licensed dealers. The Catholic Church, which has been monitoring the process, says that to their knowledge there are only two

⁶⁵ The new policy is set out in a government statement placed in the press by the Ministry of Home Affairs on 26 October 1998. Information contained here is based on a translation from the original in Swahili.

⁶⁶ Mail & Guardian, 4 June 1999.

outlets at present, one in Moshi and one in Morogoro. As yet there is no outlet in Dar es Salaam.⁶⁷

The response of the churches to government's statements has been dismissive. The Bishops of the Tanzania Episcopal Conference say that government has not been able to exercise strict control over the import and export of other goods, in the wake of trade liberalisation, and therefore presumes that government will fail to be able to control the import of arms and ammunition. The Bishops Conference also points out that individual traders will be guided by the profit motive at the expense of the security of individuals. The Conference has urged government to continue with the existing government controlled process of firearm sales and remain directly involved in the control and importation of the firearms.⁶⁸ Rev Method Kilaini, Secretary General of the Episcopal Conference thinks that civil society has been effective in lobbying government to retain very strict gun control.

To attain a handgun licence applicants must follow a fairly lengthy process, which can take up to seven months before a licence is issued. Prospective gun owners must begin at local level with applications made to the chairpersons of villages or streets, who will make a recommendation regarding the suitability of the applicant to possess a gun in terms of qualifications and conduct. Applications are then forwarded to the district level where they are discussed by the district Defence and Security Committee. If approved they are forwarded to the regional Defence and Security Committee for approval. From there they are forwarded to the national Director of Criminal Investigation who has the final say with regard to the granting of a licence.

Licences will be issued for a length of time determined by the Arms Authority, but the Act does not stipulate how long this shall be. Arms licences issued in mainland Tanzania are not valid in Zanzibar and vice versa. Zanzibar, which is semi-

⁶⁷ Interview with Rev Fr Method Kilaini, Secretary General of the Tanzania Episcopal Conference Catholic Secretariat, 12 August 1999, Dar es Salaam.

⁶⁸ Press release issued by the Tanzania Episcopal Conference, 11 November 1998.

autonomous, has announced its intention not to liberalise gun sales like its mainland counterpart.⁶⁹

While the licensing process has a number of checks and balances built into it, the legislation is silent on a number of matters. There is no penalty stipulated for possession of an illegal firearm, there is no licence renewal period and there is no indication that a criminal record or any other factor would disqualify a prospective licence holder. The Act also makes no mention of the number of firearms an individual may acquire legally.

Crime and proliferation of firearms

There are no available crime statistics, although the Tanzanian police are in the process of computerising their records. Like other countries in the region, there are perceptions that crime is increasing. With the liberalisation of firearm sales many commentators have invoked the spectre of crime reaching the same heights as it has in South Africa. A letter signed by a group of human rights organisations to the Minister of Home Affairs protesting against liberalisation says, "what culture do we want to promote to our young generation? Kill and shoot like in the streets of Los Angeles (and) in the suburbs of Johannesburg".⁷⁰

This said, gun crime seems to be low in this country of 32 million (the third biggest population in the SADC region after the DRC and SA). Without crime statistics it is only possible to speculate on the reasons for this. They may include the fact that Tanzania did not have to fight a war to achieve independence, consequently there was no arms build-up associated with that period in history. Tanzania is not a militarised society, with conscription long gone. The country does however share borders with several countries which are presently at war, or have been at war recently. Hundreds of thousands of refugees from Rwanda, Burundi and the DRC

⁶⁹ Mail & Guardian, op cit.

⁷⁰ Ibid.

now live in Tanzania, and the porous borders and large flows of people have been associated with illegal weapons entering the country.⁷¹

It is alleged that some of the gun crimes committed have been done so with firearms issued to serving personnel in the police. Advocate Evod Mmanda of the Legal and Human Rights Centre says that the number of firearms owned by civilians is minimal – “people are scared of the responsibilities attached to gun ownership so there is no culture of owning hand guns, although this is different in the rural areas where guns are used for hunting”. He is concerned however at reports of corruption in the security services -- “often weapons that have been used in crime belong to members of the army and police and we have received reports that members of the security forces sometimes hire out their firearms – corruption has affected the security services a lot”.

Police however point fingers at private security firms for their role in increased crime, and have compelled Tanzania’s more than 100 registered private security firms to submit fingerprints of all security guards to the police for screening. Senior Assistant Commissioner of Police, Aden Mwamunyange says, “security companies are frustrating the government’s efforts to help the police to fight crime. We plan to put a stop to criminal activity by private guards before people lose confidence in the police force”.⁷²

ZAMBIA

Zambian independence was attained in 1964 after a low-key struggle forged by nationalist movements against the British colonial power. Zambia is one of the few states in the region which has not been embroiled in a full-scale war, but situated centrally in the region, it is the only country which shares borders with both the region’s most militarised nations – the DRC and Angola, as well as post-conflict Mozambique and Zimbabwe. Zambia has long been a transit route and base for liberation movements in the region and recent reports indicate an increase in illegal

⁷¹ Interview with Thomas Mubondo, Refugees and Emergency Services Department, Christian Council of Tanzania, 12 August 1999, Dar es Salaam.

⁷² The East African 9 – 15 August 1999.

weapons found in the Kalabo region close to Angola, where AK-47 rifles and other firearms are reportedly exchanged for food and cattle.⁷³

Domestic gun control policy

Zambia's domestic gun control policy is set out in the Firearms Act of 1969. George Kunda, Chair of the Law Association of Zambia believes that, "on the face of it, there are stringent provisions under the Act and regulations by which firearms and ammunition are regulated and controlled".⁷⁴ The Act provides that firearm owners acquire a certificate and licence to possess and use a firearm. Licences must be renewed every three years and firearms are registered with the local police station and the Registrar of Firearms. In issuing certificates and licences police assess the fitness and competence of the applicant to handle a firearm. Applicants may not be under 21 and dealers are required to keep a register of firearms and ammunitions transactions. Firearms may only be manufactured on behalf of government or with the consent of the Minister and firearms may only be lent to individuals in possession of a licence. The Act also specifies the quantity of ammunition which a licensed individual may have in their possession and may acquire on an annual basis. The Act empowers the President to control stocks of firearms and ammunition in the interest of public order, safety and peace.

Kunda is of the view that under Zambia's strict legal gun control regime, "there is no reason why they (the police) cannot perform better in relation to firearms. The heavy regulations and controls are desirable and necessary, if we are to curb armed robberies and loss of life through unauthorised use of firearms". In this regard the Act provides for a maximum sentence of 15 years for the possession of a firearm without a licence.

Crime

Kunda says that there is a strong relationship between the "deplorable social conditions" and crime rates, which are perceived to have reached an all-time high in

⁷³ Times of Zambia, 25 August 1999.

⁷⁴ Kunda, George. "Firearms control and regulation in Zambia are there adequate controls?" Paper presented at the Crime Prevention Foundation of Zambia Conference on Curbing of Armed Robberies, 7 - 8 November 1998.

Zambia. Hard data in this regard is difficult to come by. Statistics provided by the Crime Prevention Foundation of Zambia and drawn from the police annual crime returns cite 3 896 reported armed robberies in 1996 and 1 347 murders in the same year. While these figures are very low, Alfred Zulu, President of the Zambia Independent Monitoring Team says, "crime is increasing exponentially with lax control over illegal firearms, rampant corruption in the security services and a desire by members of the public to arm themselves as the police are perceived as being unreliable".⁷⁵

This is echoed in the local media with the Times of Zambia, which stating that "the Zambia Police Service is facing one of the worst crises in its history". The newspaper cites corruption, low morale, inadequate logistical support including a lack of vehicles and fuel to visit crime scenes as well as very low remuneration as some of the problems experienced, adding "there are presently very few policemen of integrity who can resist the temptation of a bribe because of their scandalously low salaries".⁷⁶ Human rights organisations have identified other problems present in the police service with allegations of extra-judicial killings and torture carried out by police.⁷⁷

In spite of these problems and their potential to worsen, there is evidence to suggest that crime in Zambia has not taken on the same brutal characteristics as other countries in the region. In spite of poverty and unemployment, Zambia's murder ratio is just over 13 per 100 000 of the population, this in contrast to South Africa's 59 per 100 000 (Louw and Shaw 1998:2). One of government's responses to the problem was to introduce an amnesty, which is presently in place, to collect illegal weapons.⁷⁸

⁷⁵ Interview with Alfred Zulu, President, Zambia Independent Monitoring Team, 15 July 1999, Lusaka.

⁷⁶ Times of Zambia, 15 July 1999.

⁷⁷ Rinus Simbulo alleges police shot and killed eight people suspected of killing former finance minister Ronald Penza in Southern African Human Rights Review, April 1999.

⁷⁸ Times of Zambia, 15 July 1999.

ZIMBABWE

Zimbabwe had a full-scale war of liberation which ended with the negotiation of a political settlement at Lancaster House in 1979. Elections in 1980 saw the achievement of independence after a civil war that had brought about massive casualties for both sides. Post-independence Zimbabwe is experiencing an economic and political crisis, with rocketing inflation and the government's land reform programme. With government reported to have spent 400 million Zimbabwean dollars on new riot control equipment, some sectors of civil society are bracing themselves for confrontation in the future.⁷⁹

Domestic gun control policy

Zimbabwe's domestic gun control legislation is set out in the Firearms Act, which commenced on 1 January 1957. It has been amended several times with the most recent revision enacted in 1996. The Act stipulates that no person may acquire a firearm or any ammunition without a firearm certificate issued by the government Controller of Firearms. The Controller has fairly wide discretion to grant a certificate provided the applicant is not, "of intemperate habits or unsound mind or to be for any reason unfitted to be entrusted with such firearm".⁸⁰

The Act does not mention prohibition on the basis of any kind of criminal record and requires that the certificate be renewed every three years. The law provides that security guards and hunting safari tour operators may be exempt from holding a certificate provided that one has been issued to their employer. Similarly, state employees obliged to carry firearms are exempt from the requirement necessitating a certificate. Visitors to Zimbabwe may obtain permission to import a firearm for a period not exceeding three months. The Act also includes provision for the registration of firearm dealers who are required to keep an up to date register of all transactions. No person under the age of 16 is allowed to purchase or hire any firearm or ammunition.

⁷⁹ Interview with John Stewart. Co-ordinator of Non-violent Action and Strategies for Social Change, 11 July 1999, Harare.

⁸⁰ Section 5(2) of Firearms Act, Revised Edition 1996, Government Printer, Harare.

Commentators estimate that the number of licences issued has increased markedly in the past decade. The office of the registrar is said to be low key, under staffed and under-resourced and without a rigorous set of records. In spite of this John Stewart, Co-ordinator of Non-violent Action and Strategies for Social Change, says that licenses issued are estimated to have increased from 1 000 in 1989/90 to 5 000 in 1996/7.

Licence holders are the only consumers who are allowed to buy ammunition. Most members of the police service do not carry handguns, this is limited to members of the officer corps, the VIP protection unit and the Special Tactics Team which reacts to armed incidents.⁸¹

Crime and proliferation of firearms

Historically Zimbabwe has had quite low levels of crime and violence. In part this is attributed to the successful disarmament, demobilisation and integration of members of ZANLA and ZIPRA, the armies of the liberation movements, and the Rhodesian Special Forces following independence in 1980.⁸²

In the early 1990s violent crime increased and this was followed by a real improvement in the quality of policing. Stewart maintains that this appears to be falling at present and crime increasing. Anecdotal evidence suggests that gun crime is increasing – armed robberies have increased markedly and there is a perception that domestic disputes increasingly involve firearm use.

Many illegal firearms in Zimbabwe are said to originate in Mozambique. Police say that an AK-47 can be acquired in exchange for a 20kg bag of mealie meal in areas adjacent to the Mozambican border.⁸³ It is also thought that some illegal weapons in circulation have their origin in the Matebeleland rebellion of 1985.⁸⁴ A report compiled

⁸¹ Interview with a member of the Zimbabwean police, 12 July 1999.

⁸² Smith and Vines, op cit, p24.

⁸³ Interview with member of the Zimbabwe police service, 12 July 1999, Harare.

⁸⁴ Interview with Knox Chitiyo, Centre for Defence Studies, University of Zimbabwe, 12 July 1999, Harare.

by Zimbabwe's Catholic Commission for Justice and Peace maintains that a number of ZIPRA combatants did not remain in the Zimbabwe Defence Force but continued fighting after the defeat of Joshua Nkomo's party at the polls (Amnesty International, 1997). At the same time the South African regime was conducting a destabilising campaign with members of the former Rhodesian security services by recruiting 'dissident' forces and training, arming and infiltrating them back into Matabeleland. Joshua Nkomo claimed that 20 000 people died in conflict with government forces in Matabeleland. The conflict ended with the implementation of an amnesty process.

The Zimbabwe Defence Industries

Zimbabwe is the third country in southern Africa, which, together with South Africa and Namibia, has an indigenous arms industry. Zimbabwe Defence Industries (ZDI) is a wholly government owned enterprise which produces small arms ammunition (7.6mm ammunition for sale in the United States of America and other countries in Africa) and mortar supplies. In addition, ZDI is involved in defence industry acquisitions and sales on behalf of the Zimbabwean government and other governments in the region.⁸⁵ John Stewart, maintains that ZDI handles Zimbabwe's acquisitions from both Pakistan and India and has assisted the Angolan government in making contact with the Brazilian arms industry. ZDI also has close links with Egypt and Indonesia and historical ties to Romania and Bulgaria. It has been linked to increased defence expenditure associated with Zimbabwe's involvement in the Democratic Republic of the Congo. Nkiwane (1999:7) says, "although traditionally ZDI has not been considered a security risk with respect to small arms flows destabilising the region, the more recent sale of military equipment to the DRC ... has become an issue of ever increasing concern".

⁸⁵ Nkiwane, Tandeka C (1999). "Small arms flows in Zimbabwe" in ISS Monograph series no 34, Jan 1999, p 7.

CHAPTER 4

CONCLUSION

Comparing firearm legislation in the SADC region

Domestic gun control legislation in the region spans a continuum of control. Botswana at one end of the spectrum has a prohibitive gun control policy, while South Africa, until recently was located right at the other end of the spectrum with a gun control policy which facilitated gun ownership. In between these two extremes there are significant differences in the sovereign laws of each country.

In Botswana, government assertively determines policy changes in a dispensation which clearly sees handgun ownership as a privilege which the state regulates strictly and grants to very few citizens. Even the hunting community is not exempt, with a miniscule quota of licences issued to hunters on an annual basis. In Mozambique the onus is on the prospective firearm owner to prove their credibility and demonstrate concretely why they need a firearm. The Minister of Home Affairs weighs up the evidence presented and decides whether granting a firearm licence is appropriate, unemployed individuals are automatically excluded, and the calibre of firearm allowed is strictly regulated.

In Lesotho the broad category of 'self-defence' is not reason enough for the granting of a firearm licence and individuals are required to provide a more detailed explanation for why they require a firearm. Both Lesotho and Swaziland rely on forms of traditional authority to participate in the process of deciding whether an individual should be granted a firearm licence. In Tanzania applicants are vetted by a series of committees starting at street level. In contrast, in South Africa 86% of applicants are granted a firearm licence and Oosthuysen (1996:19) has suggested that, "far from discouraging firearm ownership the (previous) law is actually designed and applied to facilitate private firearm proliferation". SA's new law is still to be tested and it remains to be seen whether private firearm proliferation will be substantially curbed.

In most countries licences are not granted to individuals with criminal records. Namibia and Mozambique run fingerprint scans to ensure that no one with a prior conviction is eligible for a gun licence, while in Lesotho individuals sentenced for any violent crime may not be issued a firearm certificate for five years after their release from custody. In South Africa fingerprint scans have recently become a mandatory requirement in the licensing process.

Control over legal firearms in circulation is also exercised by issuing licences for stipulated periods of time. In Lesotho, Swaziland and Malawi firearm licences must be renewed annually. In Mozambique licences must be renewed every two years and in Zambia and Zimbabwe every three years. In South Africa licences are issued for five years.

Age limitations for eligibility to apply for a firearm licence differ across the region. In South Africa, Lesotho and Zambia the age limit is 21, in Namibia it is 18, and in Swaziland and Zimbabwe it is 16. Between January 1995 and August 1998, 2 723 16 year-olds were granted firearm licences in South Africa, a situation which has been curbed by the adoption of the new law.

In many countries there are stiff penalties for the possession of an unlicensed firearm. In Malawi and Zambia offenders face a 14-year prison sentence, in Namibia the mandatory 10 year minimum sentence is presently under review by the Constitutional Court and in Zimbabwe offenders can receive a 15-year sentence for possession of an illegal firearm. It is not known how many people in South Africa have received the 25-year maximum sentence for possession of certain types of illegal firearms.

At a diplomatic level, the adoption of the SADC protocol on firearms, ammunition and related materials in 2001, is illustrative of a desire by countries in the region to work for greater harmony in approaches as well as co-operation. The Protocol will enter into force once two-thirds of the SADC members have ratified it. Once ratified the Protocol will be an important legal instrument, going beyond a politically binding declaration. As such it will provide the region with a legal basis upon which to deal with both the legal and illicit trade in firearms. As of late 2003 the Protocol has been

ratified by seven member countries, with nine required to ratify it before it comes into force. All member states barring Angola, have indicated that they support the Protocol, by signing it, and ratification should occur in 2004.

Crime and the proliferation of firearms in southern Africa

Strict domestic gun control measures are only one of the factors which assist in keeping down crime levels, including the level of gun crime. While it is difficult to attribute low crime to strict gun control measures alone, they are certainly a contributing factor. Thus, in Botswana the number of murders per 100 000 people is less than 15, while in South Africa it is 59 per 100 000 people, nearly four times that of Botswana.⁸⁶

But rising gun crime is also associated with rising unemployment and levels of poverty. Many of the people interviewed for this research cited these factors as well as structural adjustment and rapid urbanisation as features contributing to increasing crime. At the same time countries like Tanzania, which is one of the world's poorest countries, does not have a culture of violence like that in South Africa. The history of prior conflict and the militarisation which accompanies it, is also a factor in understanding why gun crime is prevalent or not. The convergence of poverty, unemployment, a gun culture and the availability of firearms is a lethal combination which results in high levels of gun crime.

Recommendations

a) Managing the proliferation of firearms in southern Africa -- the case for regional co-operation

It is increasingly being argued that reducing poverty and unemployment lies in regional rather than national solutions. The phenomena of weak states in the region, which are unable to protect and look after their citizens is unlikely to change outside of regional development and integration. Some states in the region will arguably never have the economic resources and government spending power to adequately

⁸⁶ Louw and Shaw, op cit.

equip their police to deal with crime and tighten their borders to stem the proliferation of small arms.

This makes the development of a regional approach to both legal and illegal firearms more important. It has been argued that when a country regards access to guns as a basic right of its citizens, this makes it hard for neighbouring societies to introduce or enforce strict controls on such weapons.⁸⁷ This may place a responsibility on South Africa, the strongest state in the SADC region -- sometimes described as the regional hegemon -- to consider the impact of its considerable legal firearm proliferation on its neighbours. Already there is substantial evidence that firearms leave South Africa for neighbouring countries. South Africa is a major supplier of legal weapons to individuals in Lesotho and Mozambique, many of whom travel to South Africa to buy a firearm. Botswana's Police Commissioner is of the view that the increase in armed robberies in Gaborone can be linked to the flow of firearms from South Africa. And in Malawi, many weapons confiscated by the police are manufactured in South Africa.

b) Harmonising firearm legislation

The Southern African Regional Police Chiefs Co-operation Organisation has expressed its intention to harmonise the region's firearms' laws. SADC should give added impetus to this initiative to ensure that the number of firearms in the region is managed and contained. The effective management of legal weapons will complement an approach to the illegal trade, particularly as the distinctions have tended to blur with weapons theft on the scale it is presently in South Africa and other countries in the region.

The adoption of the SADC protocol on firearms goes some way to addressing this, but as it has not yet been ratified, its full implementation is yet some way off. In addition not all states may have the resources to implement the protocol in its entirety.

c) Strengthening the role of legislatures

⁸⁷ Green, op cit, p12.

SADC could also play a role in encouraging a greater role for legislatures in determining and overseeing domestic gun control policies. At present legislative oversight is negligible with the executive arm of government dominating the policy process. In addition, many legislatures play no oversight role, with police chiefs reporting directly to the Minister of Home Affairs or the President in most countries, and having no reporting obligations to parliaments.

d) Monitoring the impact of trade liberalisation

As the SADC Trade Protocol comes into its own, it will be important to ensure that trade liberalisation does not facilitate the flow of small arms, both legally and illegally, acting in contradiction to the firearm protocol. At the same time SADC should endeavor to ensure that greater regional integration assists in the strengthening of weak state institutions where they exist and facilitates a process of dialogue and unity in managing the threat small arms and light weapons pose to the region.

e) Joint regional operations

The ongoing success of Operation Rachel, conducted jointly by the South African and Mozambican police, continues to draw accolades. By June 2003 18 operations had been conducted and 21 600 firearms, 1 610 anti-personnel mines and 5,1 million rounds of ammunition destroyed.

The stabilisation of the DRC and Angola will also require joint operations such as this one to destroy small arms that threaten, not only individual nation states, but the region as a whole. Joint Lesotho/SA operations have also taken place, with South Africa assisting Lesotho in the destruction of surplus and obsolete firearms.



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