

THE NAIROBI PROTOCOL FOR THE PREVENTION, CONTROL AND REDUCTION OF SMALL ARMS AND LIGHT WEAPONS IN THE GREAT LAKES REGION AND THE HORN OF AFRICA

Preamble

We, the Ministers of Foreign Affairs and other plenipotentiaries of

Republic of Burundi
Democratic Republic of Congo
Republic of Djibouti
Federal Democratic Republic of Ethiopia
State of Eritrea
Republic of Kenya
Republic of Rwanda
Republic of Seychelles
Republic of the Sudan
United Republic of Tanzania
Republic of Uganda
(Hereafter referred to as the States Parties);

REAFFIRMING the inherent right of states to individual or collective self-defence as recognized in Article 51 of the United Nations Charter;

GRAVELY CONCERNED with the problem of the proliferation of illicit small arms and light weapons in the Great Lakes Region and the Horn of Africa and the devastating consequences they have had in sustaining armed conflict and armed crime, degrading the environment, fuelling the illegal exploitation of natural resources and abetting terrorism and other serious crimes in the region;

CONCERNED about the supply of small arms and light weapons into the region and conscious of the need for effective controls of arms transfers by suppliers and brokers outside the region (including measures against transfer of surplus arms) to prevent the problem of illicit small arms and light weapons;

AWARE of the urgent need to prevent, combat and eradicate the illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, illicit possession and use of small arms and light weapons, ammunition, and other related materials, owing to the harmful effects of those activities on the security of each state and the sub-region and the danger they pose to the well-being of the population in the sub-region, their social and economic development and their right to live in peace;

ACKNOWLEDGING that the problem of proliferation of illicit small arms and light weapons in the region has been exacerbated by internal political strife, terrorist activities and extreme poverty, and that a comprehensive strategy to arrest and deal with the problem must include putting in place structures and processes to promote democracy, the observance of human rights, the rule of law and good governance, as well as economic recovery and growth;

RECOGNISING also that the inadequate capacity of states in the region to effectively control and monitor their borders, poor and sometimes open immigration and customs controls, as well as movement of armed refugees across national borders in certain countries, have greatly contributed to the proliferation of illicit small arms and light weapons;

RECOMMENDING that States Parties should consider becoming parties to international instruments relating to the prevention, combating and eradication of illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, illicit possession and use of small arms and light weapons and to implement such instruments within their jurisdiction;

ACKNOWLEDGING the work of the United Nations, the African Union, the European Union, the Organisation of American States, as well as the efforts in Africa to address problems associated with illicit small arms and light weapons;

AGREEING that they shall fulfil their obligations and exercise their rights under this Protocol in a manner consistent with the principles of sovereign equality, territorial integrity of States and non-intervention in the domestic affairs of States Parties;

With the purpose of reaffirming the goals of, and implementing, the Nairobi Declaration and the Coordinating Agenda for Action,

HEREBY AGREE as follows:

Article 1

Definitions

In this Protocol, unless the context otherwise indicates:

“broker” is a person who acts:

- (a) for a commission, advantage or cause, whether pecuniary or otherwise;
- (b) to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons; or
- (c) as an intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.

“brokering” means acting:

- (a) for a commission, advantage or cause, whether pecuniary or otherwise;
- (b) to facilitate the transfer, documentation and/or payment in respect of any transaction relating to the buying or selling of small arms and light weapons; or

(c) thereby acting as intermediary between any manufacturer, or supplier of, or dealer in small arms and light weapons and any buyer or recipient thereof.

“illicit manufacturing” shall mean the manufacturing or assembly of small arms and light weapons:

(a) from parts and components illicitly trafficked;

(b) without a licence or authorisation from a competent authority of the State Party where the manufacture or assembly takes place; or

(c) without marking the small arms and light weapons at the time of manufacture, in accordance with Article 7 of this Protocol.

“illicit trafficking” means the import, export, acquisition, sale, delivery, movement or transfer of small arms and light weapons from or across the territory of one State Party to that of another State Party if any one of the State Parties concerned does not authorise it in accordance with the terms of this Protocol or if the small arms and light weapons are not marked in accordance with Article 7 of this Protocol;

“light weapons” shall include the following portable weapons designed for use by several persons serving as a crew: heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder-fired rockets, anti-aircraft weapons and launchers, and air defence weapons;

“small arms” are weapons designed for personal use and shall include: light machine guns, sub-machine guns, including machine pistols, fully automatic rifles and assault rifles, and semi-automatic rifles.

“small arms” shall also include:

“firearms”, meaning:

(a) any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;

(b) any other weapon or destructive device such as an explosive bomb, incendiary bomb or gas bomb, grenade, rocket launcher, missile, missile system or mine

“ammunition”, meaning the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a small arm or light weapon, provided that those components are themselves subject to authorisation in the respective State Party;

and “**other related materials**”, meaning any components, parts or replacement parts of a small arm or light weapon, that are essential to its operation.

“**tracing**” shall mean the systematic tracking of small arms and light weapons from manufacturer to purchaser for the purpose of assisting the competent authorities of States Parties in detecting, investigating and analyzing illicit manufacturing and illicit trafficking.

Article 2

Objectives

The objectives of this Protocol are to –

- (a) prevent, combat and eradicate the illicit manufacturing of, trafficking in, possession and use of small arms and light weapons in the sub-region.
- (b) prevent the excessive and destabilising accumulation of small arms and light weapons in the sub-region.
- (c) promote and facilitate information sharing and cooperation between the governments in the sub-region, as well as between governments, inter-governmental organisations and civil society, in all matters relating to the illicit trafficking and proliferation of small arms and light weapons.
- (d) promote cooperation at the sub-regional level as well as in international fora to effectively combat the small arms and light weapons problem, in collaboration with relevant partners.
- (e) encourage accountability, law enforcement and efficient control and management of small arms and light weapons held by States Parties and civilians.

Article 3

Legislative Measures

(a) Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its national law the following conduct, when committed intentionally:

- (i) Illicit trafficking in small arms and light weapons.
- (ii) Illicit manufacturing of small arms and light weapons.
- (iii) Illicit possession and misuse of small arms and light weapons.
- (iv) Falsifying or illicitly obliterating, removing or altering the markings on small arms and light weapons as required by this Protocol.

(b) States Parties that have not yet done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their national

law the violation of arms embargoes mandated by the Security Council of the United Nations and/or regional organisations.

(c) States Parties undertake to incorporate in their national laws:

- (i) the prohibition of unrestricted civilian possession of small arms;
- (ii) the total prohibition of the civilian possession and use of all light weapons and automatic and semi-automatic rifles and machine guns;
- (iii) the regulation and centralised registration of all civilian-owned small arms in their territories (without prejudice to Article 3 c (ii));
- (iv) measures ensuring that proper controls be exercised over the manufacturing of small arms and light weapons;
- (v) provisions promoting legal uniformity and minimum standards regarding the manufacture, control, possession, import, export, re-export, transit, transport and transfer of small arms and light weapons;
- (vi) provisions ensuring the standardised marking and identification of small arms and light weapons;
- (vii) provisions that adequately provide for the seizure, confiscation, and forfeiture to the State of all small arms and light weapons manufactured or conveyed in transit without or in contravention of licenses, permits, or written authority;
- (viii) provisions for effective control of small arms and light weapons including the storage and usage thereof, competency testing of prospective small arms owners and restriction on owners' rights to relinquish control, use, and possession of small arms;
- (ix) the monitoring and auditing of licenses held in a person's possession, and the restriction on the number of small arms that may be owned;
- (x) provisions prohibiting the pawning and pledging of small arms and light weapons;
- (xi) provisions prohibiting the misrepresentation or withholding of any information given with a view to obtain any license or permit;
- (xii) provisions regulating brokering in the individual State Parties; and
- (xiii) provisions promoting legal uniformity in the sphere of sentencing.

Article 4

Operational Capacity

States Parties shall:

(a) strengthen sub-regional co-operation among police, intelligence, customs and border control officials in combating the illicit circulation and trafficking in small arms and light weapons and suppressing criminal activities relating to the use of these weapons;

(b) enhance the capacity of national law enforcement and security agencies, including appropriate training on investigative procedures, border control and law enforcement techniques, and upgrading of equipment and resources;

(c) establish and improve national databases, communication systems and acquire equipment for monitoring and controlling small arms and light weapons movements across borders;

(d) establish or enhance inter-agency groups, involving police, military, customs, home affairs and other relevant bodies, to improve policy co-ordination, information sharing and analysis at national level;

(e) develop or improve national training programmes to enhance the capacity of law enforcement agencies to fulfil their roles in the implementation of the agenda for action.

Article 5

Control of Civilian Possession of Small Arms and Light Weapons

(a) States Parties undertake to consider a co-ordinated review of national procedures and criteria for issuing and withdrawing of small arms and light weapons licenses, and establishing and maintaining national databases of licensed small arms and light weapons, small arms and light weapons owners, and commercial small arms and light weapons traders within their territories.

(b) State Parties undertake to :

(i) introduce harmonised, heavy minimum sentences for small arms and light weapons crimes and the carrying of unlicensed small arms and light weapons;

(ii) register and ensure strict accountability and effective control of all small arms and light weapons owned by private security companies;

(iii) prohibit the civilian possession of semi-automatic and automatic rifles and machine guns and all light weapons.

Article 6

Control and Accountability of State-owned Small Arms and Light Weapons

States Parties undertake to:

(a) establish and maintain complete national inventories of small arms and light weapons held by security forces and other state bodies, to enhance their capacity to manage and maintain secure storage of state-owned small arms and light weapons;

(b) ensure strict national accountability and the effective tracing of all small arms and light weapons owned and distributed by the state.

Article 7

Marking and Tracing of Small Arms and Light Weapons and Record-keeping

States Parties undertake to:

(a) mark each small arm or light weapon at the time of manufacture, with a unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number. The marking should be on the barrel, frame and, where applicable, the slide.

(b) mark each small arm or light weapon at the time of import, with a simple marking permitting identification of the country of import and the year of import, and an individual serial number if the small arm or light weapon does not bear one at the time of import so that the source of the small arm or light weapon can be traced.

(c) ensure that all small arms and light weapons in the possession of the state are marked with a unique mark.

(d) ensure the maintenance, for not less than ten years, of information in relation to small arms and light weapons that is necessary to trace and identify those small arms and light weapons which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:

(i) the appropriate markings required by this Article;

(ii) in cases involving international transactions in small arms and light weapons, the issuance and expiration dates of the appropriate licenses or authorisations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Article 8

Disposal of State-owned Small Arms and Light Weapons

States Parties undertake to identify and adopt effective programmes for the collection, safe-storage, destruction and responsible disposal of small arms and light weapons rendered surplus, redundant or obsolete, in accordance with domestic laws, through, inter alia, peace agreements, demobilisation or (re-)integration of ex-combatants, or re-equipment of armed forces or other armed state bodies. States Parties shall accordingly:

(a) develop and implement, where they do not exist, national programmes for the identification of surplus, obsolete and seized stocks of small arms and light weapons in possession of the state;

(b) ensure that small arms and light weapons rendered surplus, redundant or obsolete through the implementation of a peace process, the re-equipment or re-organisation of armed forces and/ or other state bodies are securely stored, destroyed or disposed of in a way that prevents them from entering the illicit market or flowing into regions in conflict or any other destination that is not fully consistent with agreed criteria for restraint.

Article 9

Disposal of Confiscated or Unlicensed Small Arms and Light Weapons

States Parties undertake to:

(a) adopt within their domestic legal systems, such measures as may be necessary to enable confiscation of small arms and light weapons that have been illicitly manufactured or trafficked;

(b) maintain and further develop joint and combined operations across the borders of States Parties to locate, seize and destroy caches of small arms and light weapons left over after conflicts and civil wars;

(c) encourage law enforcement agencies to work with communities to identify small arms and light weapons caches and remove them from society;

(d) establish an effective mechanism for storing impounded, recovered or unlicensed illicit small arms and light weapons pending the investigations that will release them for destruction.

Article 10

Import, Export, Transfer and Transit of Small Arms and Light Weapons

(a) Each State Party shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons.

(b) Before issuing export licences or authorisations for shipments of small arms and light weapons, each State Party shall verify:

(i) that the importing States have issued import licences or authorisations; and

(ii) that, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.

(c) The export and import licence or authorisation and accompanying documentation together shall contain information that, at a minimum, shall include the place and the

date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the small arms and light weapons and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

(d) The importing State Party shall inform the exporting State Party of the receipt of the dispatched shipment of small arms and light weapons.

(e) Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorisation procedures are secure and that the authenticity of licensing or authorisation documents can be verified or validated.

(f) States Parties may adopt simplified procedures for the temporary import and export and the transit of small arms and light weapons for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

Article 11

Dealers, Brokers and Brokering

State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include:

(i) regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing;

(ii) registering all brokers operating within their territory;

(iii) ensuring that all registered brokers seek and obtain authorisation for each individual transaction taking place;

(iv) ensuring that all brokering transactions provide full disclosure on import and export licenses or authorisation and accompanying documents of the names and locations of all brokers involved in the transaction; and

(v) licensing, registering and checking regularly and randomly all independent manufacturers, dealers, traders and brokers.

Article 12

Voluntary Surrender

States Parties shall introduce programmes to encourage :

(a) small arms and light weapons in lawful civilian possession may be voluntarily surrender their small arms and light weapons for destruction/disposal by the State in accordance with its domestic laws;

(b) illegal small arms and light weapons holders shall surrender their small arms and light weapons for destruction. In such cases, the State may consider granting immunity from prosecution.

Article 13

Public/Community Education and Awareness Programmes

States Parties undertake to develop local, national and regional public/community education and awareness programmes to enhance the involvement of the public and communities and support for efforts to tackle the proliferation and illicit trafficking of small arms and light weapons, and to encourage responsible ownership and management of small arms and light weapons. These programmes shall:

- (a) Promote a culture of peace;
- (b) Involve, and cooperate with, all sectors of society.

Article 14

Mutual Legal Assistance

(a) States Parties shall engage in the creation of a mutual legal assistance system in order to cooperate with each other to afford mutual legal assistance in a concerted effort to eradicate the illicit manufacturing and trafficking of, and control the possession and use of, small arms and light weapons. Mutual legal assistance shall, inter alia, include the following:

- (i) investigation and detection of offences;
- (ii) obtaining evidence and/or statements;
- (iii) execution of searches and seizures;
- (iv) communication of information and transfer of exhibits;
- (v) inspection of sites or examination of objects and/or documents;
- (vi) request for judicial documents;
- (vii) service of judicial documents;
- (viii) communication of relevant documents and records;
- (ix) identification or tracing of suspects or proceeds of crime; and
- (x) application of special investigative techniques, such as forensics, ballistics and fingerprinting.

(b) States Parties may further agree upon any other form of mutual assistance consistent with their national laws.

(c) States Parties shall designate a competent authority which shall have the responsibility and power to execute and monitor requests for mutual legal assistance.

(d) Requests for mutual legal assistance shall be made in writing to the competent authority and shall contain :

- (i) the identity of the authority making the request;
- (ii) the subject matter and nature of the investigation or prosecution to which the request relates;
- (iii) the description of the assistance sought;
- (iv) the purpose for which the evidence, information or action is sought; and
- (v) all relevant information available to the requesting State Party and which may be of use to the requested State Party.

(e) A State Party may seek any such additional information, which might be necessary for the execution of the request in accordance with its national laws.

Article 15

Law Enforcement

(a) States Parties shall establish appropriate mechanisms for cooperation among law enforcement agencies to promote effective law enforcement including :

- (i) strengthening regional and continental cooperation among police, customs and border control services to address the illicit proliferation, circulation and trafficking of small arms and light weapons. These efforts should include, but not be limited to, training, the exchange of information to support common action to contain and reduce illicit small arms and light weapons trafficking across borders, and the conclusion of necessary agreements in this regard;
- (ii) establishing direct communication systems to facilitate free and fast flow of information among the law enforcement agencies in the sub-region;
- (iii) establishing multi-disciplinary/specialized law enforcement units for combating the illicit manufacturing of and trafficking in, possession and use of small arms and light weapons;
- (iv) promoting cooperation with international organisations such as the International Criminal Police Organisation (INTERPOL) and the World Customs Organisation (WCO) and to utilise existing data bases such as the Interpol Weapons and Explosives Tracing System (IWETS);
- (v) introducing effective extradition arrangements.

Article 16

Transparency, Information Exchange and Harmonisation

States Parties undertake to :

- (a) establish National Focal Points to, inter alia, facilitate the rapid information exchange to combat cross-border small arms and light weapons trafficking;
- (b) develop and improve transparency in small arms and light weapons accumulations, flows and policies relating to civilian-owned small arms and light weapons, including serious consideration to the development of a sub-regional small arms and light weapons register on civilian possession;
- (c) encourage the exchange of information among law enforcement agencies on criminal groups and their associates, types of small arms and light weapons, sources, supply routes, destinations, methods of transportation and financial support of these groups;
- (d) establish national small arms and light weapons databases so as to facilitate the exchange of information on small arms and light weapons imports, exports and transfers;
- (e) establish systems to verify the validity of documents issued by licensing authorities in the sub-region;
- (f) establish a sub-regional system to facilitate intelligence exchange on small arms and light weapons violations and trafficking;
- (g) establish a sub-regional system to harmonise relevant import, export and transfer documents and end-user certificates.

Article 17

Corruption

States Parties shall institute appropriate and effective measures for cooperation between law enforcement agencies to curb corruption associated with the illicit manufacturing of, trafficking in, illicit possession and use of small arms and light weapons.

Article 18

Institutional Arrangement

- (a) States Parties mandate the Nairobi Secretariat to oversee the implementation of this Protocol.
- (b) In this regard the Nairobi Secretariat shall be responsible for :

(i) development and issuance of guidelines and instructions for the implementation of, monitoring the implementation of, the execution of, and the evaluation of this Protocol, in liaison with law enforcement agencies, and ensuring adherence to the standards set out therein informing Ministers on a regular basis of progress thereof;

(ii) attending to the difficulties experienced in the application of this Protocol.

Article 19

Settlement of Disputes

Disputes arising out of the interpretation or application of this Protocol, which are not settled amicably, shall be settled in accordance with the principles of public international law.

Article 20

Amendments

An amendment to this Protocol shall be adopted by a decision of three quarters of the members of the States Parties.

Article 21

Signature

This Protocol shall be signed by duly authorised representatives of Member States.

Article 22

Ratification

This Protocol shall be ratified by the Signatory States in accordance with their constitutional procedures.

Article 23

Entry Into Force

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States.

Article 24

Accession

This Protocol shall remain open for accession by any Member State.

Article 25

Depositary and Languages

(a) The original text of this Protocol will be in English, French and Arabic; the three texts being equally authentic

(b) Instruments of ratification and accession shall be deposited with the Nairobi Secretariat, who shall transmit certified copies to all Member States.

IN WITNESSES WHEREOF, WE, the Ministers of Foreign Affairs and other plenipotentiaries of the States Parties have signed this Protocol.

Done at Nairobi this 21st day of April 2004.

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For the Government of
Republic of Burundi

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For the Government of
Democratic Republic of Congo

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For the Government of
Republic of Djibouti

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For the Government of
Federal Democratic Republic of
Ethiopia

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For the Government of
State of Eritrea

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For the Government of
Republic of Kenya

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For the Government of
Republic of Rwanda

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For the Government of
Republic of Seychelles

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For the Government of
Republic of the Sudan

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For the Government of
the Republic of Uganda

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For the Government of
United Republic of Tanzania