

## HUMAN RIGHTS AND GUN CONFISCATION

By David B. Kopel\*, Paul Gallant\*\*, & Joanne D. Eisen\*\*\*

### INTRODUCTION

“Everyone has the right to life, liberty and security of person,” affirms Article 3 of the Universal Declaration of Human Rights.<sup>1</sup> It is

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The authors would like to dedicate this Article to the memory of Alan G. Eisen, a devoted husband who admired and supported Joanne’s scholarship, and whose love of freedom and truth continues to inspire us. We would like to thank Sherry Gallant for editing assistance.

1. Universal Declaration of Human Rights, G.A. Res. 217A, at art 3., U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948). The Universal Declaration of Human Rights is not a legally binding treaty, but rather an aspirational standard. The hopes of Article 3 are reflected in a variety of later, legally-binding treaties, by which almost every government in the world has legally agreed to respect the rights of life, liberty, and security. See International Covenant on Civil and Political Rights, art. 6, cl. 1, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16), U.N. Doc. A/6316, 999 U.N.T.S. 171, Mar. 23, 1976; (“Every human being has the inherent right to life.”); *id.* at art. 9, § 1 (“Everyone has the right to liberty and security of person.”); European Convention on Human Rights § I, art. 2(1) (1950), available at <http://www.hri.org/docs/ECHR50.html> (“Everyone’s right to life shall be protected by law.”); *id.* § I, art. 5(1) (“Everyone has the right to liberty and security of person.”); Convention for the Protection of Human Rights and Fundamental Freedoms § I art. 2(1), Sept. 3, 1953, as amended by Protocol No. 11, entered into force January 1, 1990, 213 U.N.T.S. 222, available at <http://www1.umn.edu/humanrts/instree/z17euroco.html> (“Everyone’s right to life shall be protected by law.”); *id.* § I, art. 5, 1 (“Everyone has the right to liberty and security of person.”); Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, July 18, 1978, available at [http://www.hrcr.org/docs/American\\_Convention/oashr.html](http://www.hrcr.org/docs/American_Convention/oashr.html); *id.* at ch. 2, art. 4(1) (“Every person has the right to have his life respected.”); *id.* at ch. 2, art. 7(1) (“Every person has the right to personal liberty and security.”); African Charter on Human and Peoples’ Rights, adopted June 27, 1981, entered into force Oct. 21, 1986, available at <http://www.hrcr.org/docs/Banjul/afhr.html>; *id.* at ch. 1, art. 4 (“Every human being shall be

well-documented that firearms in the hands of warlords, terrorists, and other rogues have been used to perpetrate human rights abuses. Accordingly, some persons argue that governments can implement the principles of the Universal Declaration by confiscating all firearms from citizens, or by very severely restricting the possession of firearms.<sup>2</sup> This

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entitled to respect for his life and the integrity of his person.”); *id.* at ch. 1, art. 6 (“Every individual shall have the right to liberty and to the security of his person.”).

2. See, e.g., Wendy Cukier, Antoine Chapdelaine & Cindy Collins, *Globalization and Firearms: A Public Health Perspective* 40-44 (Fall 2000), available at <http://dsp-psd.pwgsc.gc.ca/Collection/E2-372-2000E.pdf> (paper submitted to Canadian Centre for Foreign Policy and Development) (“The problem of firearms is a concern for a wide range of constituencies . . . . While they focus on different aspects of the problem and solutions appropriate to different contexts, the overarching goal many share is the prevention of firearms injury and death in the context of international humanitarian and human rights.”); Giles Hewitt, *U.N. Arms Control Meet Opens with Call for Global Treaty*, AGENCE FRANCE PRESSE, June 26, 2006 (According to Amnesty International Secretary General Irene Khan, “Arms proliferation has facilitated some of the worst human rights tragedies of our times, including massacres, mass displacement, torture and mistreatment.”); Thalif Deen, *Disarmament: Does the World Really Need 14 Billion Bullets a Year*, INTER PRESS SERVICE ENGLISH, June 15, 2006 (“The bullet trade is out of control,” says Oxfam, and “it is fueling conflict and human rights abuses worldwide.”); Environmentalists Against War, *Curb Trafficking of Small Arms and Light Weapons*, <http://www.envirosagainstarms.org/know/read.php?itemid=1666> (last visited Feb. 29, 2008) (“These weapons directly contribute to widespread human rights violations . . . .”); Human Rights Watch, *Small Arms and Human Rights: A Human Rights Watch Briefing Paper for the U.N. Biennial Meeting on Small Arms 3* (July 7, 2003), available at <http://hrw.org/backgrounders/arms/small-arms-full-070703.pdf> (“Small arms facilitate countless human rights abuses and violations of international humanitarian law around the globe.”); SMALL ARMS SURVEY, *SMALL ARMS SURVEY 2004: RIGHTS AT RISK 1* (2004), available at [http://www.smallarmssurvey.org/files/sas/publications/year\\_b\\_pdf/2004/2004SAS\\_intro\\_en.pdf](http://www.smallarmssurvey.org/files/sas/publications/year_b_pdf/2004/2004SAS_intro_en.pdf) (“The widespread proliferation and misuse of small arms threatens the realization of basic human rights and security in various ways.”); Int’l Action Network on Small Arms, 2006: *Bringing the Global Gun Crisis Under Control* 8, available at <http://www.iansa.org/members/IANSA-media-briefing-low-res.pdf> (last visited Oct. 7, 2007) (“More human rights abuses are committed with small arms than with any other weapon.”); Brian Wood, *A Dirty Trade in Arms*, LE MONDE DIPLOMATIQUE, June 2006, available at <http://mondediplo.com/2006/06/10dirtytrade> (“The proliferation of arms, especially small arms, has had a lasting [negative] impact on human rights.”); Press Release, Inter-Parliamentary Union, *Parliamentarians in Nairobi Urge all Parties to Ensure that Food Relief Should not be Used for Political Ends* (May 12, 2006), available at <http://www.ipu.org/press-e/nai9.htm> (“[Parliamentarians] urged parliaments to combat SALW proliferation and misuse as a key element in national strategies on conflict prevention, peace-building, sustainable development, [and] protection of human rights . . . .”); *Malawi Forms NGO to Control Firearms*, CHRONICLE (Lilongwe), Apr. 27, 2006, <http://allafrica.com/stories/200604270120.html> (subscription required) (Acting Inspector General of Malawi Police, Often Thyolani: “The availability and spread of these weapons [small arms] is one of the main factors undermining development and fuelling conflict, crime and human rights abuses.”).

Article addresses a human rights problem which has been generally ignored by the advocates of firearms confiscation: the human rights abuses stemming from the enforcement of confiscation or similar laws. This Article does *not* make any claim that there is an international human right to possess arms, or even a human right of self-defense; the authors also, for purposes of this Article, ignore the rights of self-defense and the rights to arms that are contained in various national constitutions.<sup>3</sup> Rather, this Article documents some of the human rights abuses that result from the types of gun control and gun prohibition programs supported by the United Nations and other international gun control advocates.

Part I conducts a case study of the U.N.-supported gun confiscation program in Uganda, a program that has directly caused massive and fatal violations of human rights. Among the rights violated have been those enumerated in Article 3 (“the right to life, liberty and security of person”<sup>4</sup>) and Article 5 (“[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”) of the Universal Declaration.<sup>5</sup>

Part II examines a similar gun confiscation program, with similar results, in Kenya.

Part III describes the recent government attempts to disarm South African citizens, and details how the implementation of antigun laws has caused extensive violations of civil and human rights, although not the government-perpetrated murder, torture, arson, and ethnic cleansing that have been endemic in Kenya and Uganda.

Part IV reports on survey data and other evidence from around the world which suggests one reason why gun confiscation programs can result in major human rights violations: most gun-owners possess their firearm for personal and family defense. Gun confiscation, therefore, must be enforced by extremely violent and intrusive measures. Gun possession imposes various costs and inconveniences on gun owners (for example, the cost of buying a gun, the trouble of carrying it, and so on); accordingly, it is likely that if public safety were well-protected, many people might choose to disarm. But civilians simply will not disarm when they cannot see concrete evidence of guaranteed personal safety.

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3. Such issues are addressed in David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Human Right of Self-Defense*, 22 *BYU J. PUB. L.* 43 (2008).

4. Universal Declaration of Human Rights, *supra* note 1, at art. 3.

5. *Id.* at art. 5.

This Article concludes by offering two caveats for disarmament programs. First, voluntary disarmament will generally be possible only after a government has proven that it will protect the security of the people to be disarmed. Second, coercive attempts to disarm people who still need guns to defend themselves—including for protection from predatory governments—are likely to lead to massive resistance, and to an escalating cycle of human rights abuses by government forces, and re-armament by the victim population.

## I. UGANDA

### A. *Background*

The borderlands of northeastern Uganda, northwestern Kenya, southeastern Sudan, and southwestern Ethiopia are occupied by the Karamojong people.<sup>6</sup> The cow lies at the heart of their culture of pastoralism, providing the major source of dietary protein through its milk, blood, and meat. The size of one's cattle herd determines one's wealth and local political power. For countless generations, cattle-rustling has been a traditional Karamojong pursuit.<sup>7</sup>

The availability of firearms has made cattle raiding a deadly activity. Property theft of any sort is a violation of the property owner's rights, but the traditional problem of cattle raiding has been dwarfed by the human rights violations resulting from the Ugandan military's disarmament campaigns.

The Karamoja region is subject to repeated droughts, and some experts say that those droughts are worsening over time. A leading Kenyan newspaper, *The Nation*, warned, "The region needs investment such as abattoirs and livestock markets and roads so that in times of drought, animals can be bought and sold easily."<sup>8</sup> Yet, government

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6. See *The Karamojong Cluster*, KARAMOJONG CLUSTER PEACE NEWSLETTER (Family Early Warning System Network, Africa), Sept. 2002, at 1, available at <http://v4.fews.net/docs/Publications/1000394.pdf> ("The term 'Karamoja Cluster' (KC) is in common use and has been employed for many years to describe the pastoral and agro-pastoral ethnic groups, most of whom share a common language, culture and land area . . ."); The total population of Karamoja has been estimated at approximately 385,000. See PHILIP M. PARKER, LINGUISTIC CULTURES OF THE WORLD: A STATISTICAL REFERENCE 17 (1997). "Karamojong" has several different accepted spellings.

7. See Anna Borzello, *Ridding the Karamojong of Guns*, BBC NEWS, Jan. 22, 2001, <http://news.bbc.co.uk/2/hi/africa/1130704.stm>.

8. *Drought in the North Likely to Get Worse, Say Researchers*, DAILY NATION (Nairobi), June 5, 2006, available at <http://www.propertykenya.com/news/005514-drought-in->

spending is prioritized for forcible disarmament. As the present drought was ending, Rev. Maritim arap Rirei, the Anglican Church's regional head of development programs, predicted that "the forcible disarmament was likely to frustrate post-drought recovery initiatives."<sup>9</sup>

With U.N. support,<sup>10</sup> the governments of Kenya and Uganda have been attempting to confiscate all civilian arms from the pastoral tribes of the Kenya-Uganda borderlands. Although the stated objective of the program was to increase human security and long-term development,<sup>11</sup> what actually occurred was the exact opposite. Because of the prior history of human rights abuses by the Ugandan government forces during previous disarmament programs, donor countries should have known that their financial assistance might be ill-used. The 2005-2006 "forcible disarmament" campaign featured extensive torture, arson, and murder,<sup>12</sup> and displaced tens of thousands of people, turning them into starving refugees.<sup>13</sup> When the United Nations Development Program

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the-north-likely-to-get-worse-say-researchers.php; see also *Kenya: Is Drought Killing Pastoralism?*, U.N. INTEGRATED REG'L INFO. NETWORKS (IRIN), Mar. 8, 2006, <http://www.irinnews.org/report.aspx?reportid=58356> ("With a slaughterhouse, reliable electricity to power a freezing plant, and roads that are passable year-round, there is no reason why pastoralists should not be able to earn well from national and even international markets."). "IRIN's principal role is to provide news and analysis about sub-Saharan Africa, the Middle East and parts of Asia for the humanitarian community. . . . IRIN (Integrated Regional Information Networks) is part of the U.N. Office for the Coordination of Humanitarian Affairs, but its services are editorially independent." U.N. Office for the Coordination of Humanitarian Affairs, About IRIN, <http://www.irinnews.org/about.aspx> (last visited Jan. 13, 2008).

9. *Army Joins Disarmament Operation*, THE STANDARD (Nairobi), May 1, 2006. The Standard is a Kenyan newspaper that was raided by the government because of its investigative journalism. *Kenya Admits Armed Raids on Paper*, BBC NEWS, Mar. 2, 2006, <http://news.bbc.co.uk/2/hi/africa/4765250.stm>.

10. See U.N. Development Programme (UNDP) and Government of Uganda and Kenya Joint Cross Border Mission (July 17 - Aug. 1, 2005), <http://www.ke.undp.org/Cross-border%20project.ppt>.

11. See U.N. Development Programme, UNDP in Uganda: Creating a Secure Environment for the Facilitation of Disarmament, Demobilization and Reintegration Initiatives in North and North Eastern Uganda (on file with author).

12. Matthew Russell Lee, *Strong Arm on Small Arms: Rift Within UN About Uganda's Involuntary Disarmament of Karamojong Villages*, INNER CITY PRESS, June 21, 2006, <http://www.innercitypress.com/unhq062106.html>; see also Kabona Esiara & Phoebe Mutetsi, *Govt. to Investigate Human Rights Abuse in Karamoja Region*, MONITOR (Kampala), July 31, 2006, available at 2006 WLNR 13220100 (noting that the government tortured, raped, and murdered citizens during the disarmament).

13. See Osindre Obare, *Disarmament Operation Displaced 10,000 People, Says Cleric*, E. AFRICAN STANDARD (Nairobi), June 1, 2006; see also Anderson Ojwang & Stephen Makabila, *18 Firearms Recovered in Gun Hunt*, E. AFRICAN STANDARD (Nairobi), May 10, 2006; Vincent Bartoo & Stephen Makabila, *Hunger, Despair Set in As Disarmament Operation Continues*, E. AFRICAN STANDARD (Nairobi), May 18, 2006; Osindre Obare,

(UNDP) finally withdrew funding for the 2006 Ugandan disarmament campaign, both the UNDP and the government of Uganda attempted to suppress details of the debacle.<sup>14</sup>

### B. *The Obote/Amin Era*

Apollo Milton Opete Obote was Uganda's first Prime Minister. He remained Prime Minister from the time of independence from Great Britain in 1962 until 1966, when he installed himself as dictator for life and suspended the constitution.<sup>15</sup> In 1969, Obote imposed a nationwide ban on the civilian possession of firearms and ammunition, using an unsuccessful attempt on his life as a pretext.<sup>16</sup>

Pastoralists in the borderlands of Sudan and Kenya had greater access to modern firearms than did those in Karamoja, which facilitated raids on the herds in Uganda.<sup>17</sup> Although Obote's armed police were ineffectual in protecting the pastoralists, they worked diligently to thwart the Ugandans' attempt to acquire firearms.<sup>18</sup>

A new Firearms Act replaced the colonial 1955 British Firearms Ordinance in 1970.<sup>19</sup> The law imposed extensive restrictions on civilian firearm possession, including national firearm registration and gun-

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*Disarmament: 15,000 Herders Flee to Uganda*, E. AFRICAN STANDARD (Nairobi), Apr. 30, 2006.

14. See Matthew Russell Lee, *UN Acknowledges Abuse in Uganda, But What Did Donors Know and When?*, INNER CITY PRESS, June 29, 2006, <http://www.innercitypress.com/unhq062906.html>; see also Richard Egadu, *Army Halts Forceful Disarmament in Karamoja Region*, MONITOR (Kampala), July 1, 2006, available at 2006 WLNR 11448356.

15. JAY SIMKIN, AARON S. ZELMAN, & ALAN M. RICE, *LETHAL LAWS* 274 (1994).

16. *Id.*

17. Michael D. Quam, *Creating Peace in an Armed Society: Karamoja, Uganda*, AFRICAN STUDIES QUARTERLY (1996), <http://www.africa.ufl.edu/asq/v1/1/3.htm>.

18. *Id.* ("In the decade of the 1960s, the Turkana from the west and the Toposa from the north, armed with modern firearms, especially high-powered rifles, began frequent incursions into Karamoja, raiding for cattle and whatever else they could take. The armed police of the Ugandan government who were stationed in Karamoja to maintain law and order seemed to be completely ineffectual in responding to these raids. Local informants claimed that the police would waste precious pursuit time by interviewing the victims of raids at great length, filling out long forms with useless information, and then asking the victims what the raiders' likely path of flight might be. Finally, they would drive off in their vehicles to pursue the raiders, leaving behind the local herdsmen who might have been able to follow the tracks of the stolen cattle. If the police did encounter the raiders, the Turkana or the Toposa, being well-armed and knowledgeable about how to fight in that terrain, could easily defeat the police militarily. Meanwhile, the police were strict about enforcing the law which forbade ownership of guns by the local people.")

19. SIMKIN, *supra* note 15, at 274.

owner licensing. The restrictions allowed the Obote regime to render firearm possession illegal, except for government officials and persons whom the government considered politically reliable.<sup>20</sup>

In 1971, Army Chief of Staff Idi Amin executed a military coup, and in 1979 began a genocide which slaughtered an estimated 300,000 Ugandans.<sup>21</sup> The Karamojong were particular targets.<sup>22</sup> The Amin regime also used the suppression of cattle raiding as an occasion to further victimize the Karamojong:

[T]he military coup d'état by General Idi Amin in 1971 brought a different armed force into the district. Amin's army took over the job of stopping the raiders, and, according to local informants, was much more brutally efficient. The army pursued the raiders with a vengeance, and recovered many of the stolen livestock, but rather than return these recaptured cattle to their rightful owners, the soldiers confiscated them and sold them to local cattle traders. Now the people of Karamoja were faced with both armed raiders and a thieving army.<sup>23</sup>

The Karamojong began using steel tubing from metal furniture to fabricate guns.<sup>24</sup> They then used these homemade guns to acquire better and more powerful ones by attacking isolated police barracks.<sup>25</sup> Amin invaded Tanzania in 1978, but was defeated by the Tanzanian army, which removed him from power.<sup>26</sup> Local tribesmen then found easy access to deserted government armories.<sup>27</sup>

Obote was restored to power, and he, unlike Amin, had the common sense not to invade neighboring countries. He instead unleashed the army and the secret police for a reign of terror on the Ugandan people, with mass murders, the destruction of entire villages, the displacement of hundreds of thousands of tribespeople, torture, looting, pillaging, and even a Nazi-style concentration/death camp at

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20. *Id.*

21. See Michael T. Kaufman, *Idi Amin, Murderous and Erratic Ruler of Uganda in the 70's, Dies in Exile*, N.Y. TIMES, Aug. 17, 2003, § 1, at 32.

22. See Barbara Harff & Ted R. Gurr, *Toward an Empirical Theory of Genocides and Politicides: Identification and Measurement of Cases Since 1945*, 32 INT'L STUD. Q. 357, 364 (1988).

23. Quam, *supra* note 17.

24. *Id.*

25. *Id.*

26. SIMKIN, *supra* note 15, at 279-80.

27. Quam, *supra* note 17.

Kikyusa.<sup>28</sup> Obote also resumed his attempt to disarm the Karamojong, inflicting even more human rights abuses.<sup>29</sup> In Karamoja, his efforts were often forcefully repelled because, by then, the Karamojong had learned that cows and guns are equally indispensable: a gun needs to be immediately accessible in order to protect one's herd, and only the best-armed tribes prevailed.

### C. *The Museveni Era*

In 1985, one of Obote's fellow military coalition partners, Tito Okello, removed Obote in a coup d'état. Okello was overthrown half a year later, in 1986, by Yoweri Kaguta Museveni.<sup>30</sup> He installed his rebel forces as the new national army and proclaimed himself president.<sup>31</sup> Museveni continued the policy of his predecessors in attempting to subdue the Karamojong. One commentator observed, "the soldiers misbehaved, bullying people and looting stores, and generally convincing the Karimojong that their only protection from men with guns lay in keeping guns themselves."<sup>32</sup> The resistance to the Ugandan government's coercive disarmament was so great that Museveni abandoned his disarmament efforts in 1989.

On December 2, 2001, at the urging of the United Nations, Museveni began a government-sponsored voluntary disarmament program with the stated justification of reducing pastoralist violence.<sup>33</sup> The program expired on February 15, 2002, and only 7676 guns (out of a conservatively estimated 40,000) were collected.<sup>34</sup> President Museveni then escalated his tactics to disarm the Karamojong, and in the

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28. Daniel D. Nsereko, *Arbitrary Deprivations of Life: Controls on Permissible Deprivations*, in *THE RIGHT TO LIFE IN INTERNATIONAL LAW* 248, 251-52, 256, 271 (B.G. Ramcharan ed., 1985).

29. See Cyrus Ombati, *Military Employs New Disarmament Tactics*, *THE STANDARD ONLINE* (Nairobi), June 19, 2005, [http://www.eastandard.net/archives/cl/hm\\_news/news.php?articleid=23164&date=19/06/2005](http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=23164&date=19/06/2005) ("A similar exercise carried out in the 1980s ended tragically with some officers being killed amid protests from the locals that the military was abusing them.").

30. See *UGANDA: Profile of Yoweri Kaguta Museveni*, U.N. INTEGRATED REG'L INFO. NETWORKS, Feb. 16, 2008, <http://www.irinnews.org/report.aspx?reportid=58146>.

31. See *id.*

32. Quam, *supra* note 17.

33. *UGANDA: Focus on Karamoja Disarmament*, U.N. INTEGRATED REG'L INFO. NETWORKS, Jan. 10, 2002, <http://www.irinnews.org/report.aspx?reportid=29684>.

34. See *Army to Begin Forcible Disarmament of Karamojong*, U.N. INTEGRATED REG'L INFO. NETWORKS, Feb. 25, 2002, <http://allafrica.com/stories/200202250160.html> (subscription required) (on file with author).

process, converted his army from guardians of the people to outright terrorists. The army commenced a “forcible disarmament operation” in an attempt to obtain the remainder of the guns.<sup>35</sup> Yet many gun-owners refused to disarm.

The army, ironically named the “Uganda People’s Defence Forces” (UPDF), went on a rampage, raping and looting at will, and beating and torturing Ugandans.<sup>36</sup> It used the goal of firearm confiscation as justification for the violence. On March 21, 2002, after asking the army to be “less aggressive” in their disarmament tactics, Father Declan O’Toole, an Irish Priest and member of the Mill Hill Missionaries in Uganda, and his companions were murdered<sup>37</sup> by UPDF soldiers.<sup>38</sup> The murderers were apprehended and executed before they could reveal who had given them the order.<sup>39</sup> Only one week later, *New Vision* reported

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35. *See id.*

36. *See Focus on Small Arms in Africa*, FOCUS NEWSLETTER (Arms Mgmt. Programme, Inst. for Security Studies, Pretoria, S. Africa), No. 1, 2002, *available at* <http://www.issafrica.org/pubs/Newsletters/Focus/No2/No2.html> (“Following the amnesty, the Ugandan People’s Defence Force (UPDF) in February 2002 proceeded to launch a forcible disarmament operation in the Karamoja region. This disarmament operation involved police methods in identifying and searching target areas.”); *see also Disarmament Exercise Leads to Clashes in Karamoja*, U.N. INTEGRATED REG’L INFO. NETWORKS, May 21, 2002 (“Ugandan media reported on Friday that the Karamojong in Moroto had been demonstrating against soldiers, whom they accused of looting property, beating and molesting civilians and assaulting girls and women.”); *Karamoja Disarmament Worries Rights Officials*, NEW VISION (Kampala), May 24, 2002.

37. *See* Badru Mulumba, *UPDF Soldiers Executed for Killing Priest*, NATION (Nairobi), Mar. 26, 2002, *available at* <http://allafrica.com/stories/printable/200203260702.html> (subscription required) (on file with author); *see generally* Posting of Samuel Olara to Sub-Saharan African Roundtable, <http://ssaroundtable.wordpress.com/2006/11/28/northeastern-uganda-disarmament-claims-the-innocent/> (Nov. 28, 2006, 16:00 PST).

38. *See Uganda: Irish Aid to Continue Despite Concern at Executions*, U.N. INTEGRATED REG’L INFO. NETWORKS, Apr. 2, 2002, <http://www.irinnews.org/report.aspx?reportid=30955> (“Father Joseph Jones . . . told the BBC . . . that UPDF officers had assaulted O’Toole a fortnight ago, after he asked the army to be less aggressive in their campaign to disarm residents in his Panyangela parish . . . . A two-month period of voluntary disarmament expired on 15 February, after which the UPDF began a campaign to forcibly confiscate over 30,000 guns remaining in circulation at that time.”); *see also* Anne Mugisa, *Slain Priest Criticised UPDF*, NEW VISION (Kampala), Mar. 28, 2002, *available at* <http://allafrica.com/stories/printable/200203280617.html> (subscription required) (on file with author) (“Slain Mill Hill priest, the Rev. Fr. Declan O’Toole, had written a letter expressing fears of growing army brutality in the disarmament exercise in Karamoja.”); Richards Osinde & George Bitu, *Declan Struggled for Peace*, NEW VISION (Kampala), Apr. 4, 2002, *available at* <http://allafrica.com/stories/printable/200204040271.html> (subscription required) (on file with author).

39. *See* Mulumba, *supra* note 37.

the death of a pregnant woman who “died of injuries sustained when a soldier kicked her in the stomach during forceful disarmament.”<sup>40</sup>

Museveni reacted by blaming the Karamojong, stating, “the best way to stop such incidents in [the] future is for the Karimojong to hand in their guns to eliminate any justification for the UPDF operations in the villages.”<sup>41</sup>

By mid-2002, reports began to surface describing how the remaining armed Karamojong fiercely resisted the UPDF’s brutality despite Museveni’s attempts to suppress them.<sup>42</sup> For example, on May 16th, in the northern district of Kotido, the Ugandan army engaged armed civilians and captured about thirty rifles. Thirteen civilians and two soldiers died—one death for every two guns confiscated.<sup>43</sup> The Catholic Church charged that thousands of residents were displaced from Karamoja because their homes were torched by UPDF troops in the disarmament campaign. By mid-July of 2002, the total number of guns recovered by the government, from both the voluntary and forced gun surrender programs, had reached nearly 10,000—only about twenty-five percent of the estimated number in civilian hands.<sup>44</sup> Ben Knighton, a scholar of the Karamojong and East African culture, detailed the human rights abuses perpetrated by the UPDF, and noted: “Without guns any

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40. Nathan Etengu, *Museveni in Karamoja*, NEW VISION (Kampala), Mar. 29, 2002, available at <http://allafrica.com/stories/printable/200203290195.html> (subscription required) (on file with author) (“Complaints of torturing civilians by the UPDF, the killing of . . . an expectant mother in Kapedo sub-county . . . are also expected to be raised by local leaders here in the meeting with Museveni.”); see generally Olara, *supra* note 37. *New Vision*, one of the two leading Ugandan newspapers, has usually followed the government line, making its reporting on the disarmament campaign all the more notable.

41. Nathan Etengu, *Museveni Defends Executions*, NEW VISION (Kampala), Apr. 4, 2002, available at <http://allafrica.com/stories/printable/200204040283.html> (subscription required) (on file with author); see also Mulumba, *supra* note 37 (“Mill Hill missionaries said Fr. Declan had recently lodged a protest with the military commander . . . ‘he used the occasion to seek suitable outlets for his growing concern that the ongoing army brutality against local civilians, including women and children, should not go unnoticed,’ the missionaries said . . . . The priest had been opposed to the ongoing forceful disarmament.”); see generally, Olara, *supra* note 37.

42. See *Karimojong Kill 8 Soldiers*, NEW VISION (Kampala), May 17, 2002, available at <http://allafrica.com/stories/printable/200205170102.html> (subscription required) (on file with author).

43. *Uganda: Disarmament Exercise Leads to Clashes in Karamoja*, U.N. INTEGRATED REG’L INFO. NETWORKS, May 21, 2002, <http://www.irinnews.org/report.aspx?reportid=31979> (discussing tribesmen fleeing across the border to Kenya, and 80,000 people being internally displaced, due to the bombing of homes and destruction of crops).

44. See Will Ross, *Guns and Drought in Karamoja*, BBC NEWS, Feb. 18, 2003, <http://news.bbc.co.uk/2/hi/africa/2777059.stm>; see also *Focus on Small Arms in Africa*, *supra* note 36.

Karamojong is at the mercy of brutal soldiers . . . . The state is just another raider.”<sup>45</sup>

President Museveni had promised increased security measures to protect persons who surrendered their guns. However, he did not, or perhaps could not, keep his word. The disarmament of those who complied created a new group of victims who became the prey of those who still had weapons. Ugandans who had credulously surrendered their guns found themselves especially vulnerable. “Most of the people whose cows were taken” in a raid in the recently disarmed Bokora region, “had handed in their guns to the government in the on-going disarmament exercise.”<sup>46</sup>

The pattern has only continued. In June 2005, a joint Kenya-Uganda disarmament process was announced.<sup>47</sup> After the men of Kosui disarmed voluntarily, they were robbed of their cattle by Jie tribesmen who had not disarmed.<sup>48</sup> And during the summer of 2006, several dozen raids against disarmed pastoralists were reported in Moroto and Kotido districts.<sup>49</sup>

The violence was likely “due to an escalation in raiding directly stimulated by a disarmament programme.”<sup>50</sup> In Karamoja,

[w]ith 130 gunshot-wounds being treated a year in both the main hospitals (0.35 per thousand), it is small beer compared with 22,000 murders in South Africa in 2000 (0.51 per thousand). This analysis is directly counter to

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45. Ben Knighton, *Historical Ethnography and the Collapse of Karamojong Culture: Premature Reports of Trends 18* (2002) (unpublished paper presented under the title “Historical Ethnography and the Collapse of Karamojong Culture: Premature Reports of Trends” in the African Studies Seminar, St. Antony’s College, University of Oxford, June 13, 2002), available at [http://www.eldis.org/fulltext/knighton\\_karamoja.pdf](http://www.eldis.org/fulltext/knighton_karamoja.pdf) (describing that a witness reported to Knighton, “Sometimes the soldiers are not even interested in the livestock; they just shoot”). Dr. Knighton is a scholar at the Oxford Centre for Mission Studies.

46. Nathan Etengu, *Army Ordered to Recover Cattle*, NEW VISION (Kampala), Jan. 8, 2002, available at <http://allafrica.com/stories/printable/200201080070.html> (subscription required) (on file with author).

47. OFFICE OF THE PRESIDENT, PROVINCIAL ADMIN. & INTERNAL SEC., KENYA NATIONAL FOCAL POINT ON ILLICIT SMALL ARMS AND LIGHT WEAPONS, at 2.6.1 (June 26, 2006), available at <http://disarmament.un.org/cab/nationalreports/2006/kenya.pdf>.

48. See Daniel Wallis, *Karamojong Warriors Fear Disarmament in Uganda*, RED ORBIT NEWS, Sept. 21, 2005, <http://www.redorbit.com/modules/news/tools.php?tool=print&id=247119>.

49. See Lee, *supra* note 14.

50. Ben Knighton, IUAES XVth Congress: Florence, Comm’n on Nomadic Peoples Session 7th-8th July, Topic: Seniority among the Karamojong Cluster (Summary), <http://users.ox.ac.uk/~7Ecnpc/knighton.html> (last visited Jan. 14, 2008).

alarmist international aid views, namely that the source of modern violence in Karamoja is automatic weaponry.<sup>51</sup>

UPDF human rights abuses against Uganda's civilian population were repeated during the 2005 disarmament.<sup>52</sup> The army's cordon and search operations led to incinerated residences, rapes, and deaths.<sup>53</sup>

Despite all the suffering inflicted on the Karamojong in the name of gun confiscation, it appears that the disarmament program failed. In 2002, the *New Vision*, the government-dominated Ugandan newspaper, acknowledged that the Karamojong were now "purchasing more guns to replenish those either voluntarily handed [over to] or forcefully recovered by the Government under the on-going disarmament exercise."<sup>54</sup> In the summer of 2006, the army reported that rearmament of the population was proceeding, despite the goals stated in the Nairobi Protocol (an East African gun control treaty, to which Uganda and Kenya are parties),<sup>55</sup> and despite all local government, national government, and U.N. attempts to control the flow of weapons into the area.<sup>56</sup>

#### *D. Recent Developments*

By 2006, it had become impossible to conceal the human rights abuses perpetrated by the UPDF; it also became impossible to deny that

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51. Knighton, *supra* note 45, at 24 (internal quotations omitted).

52. See Kabona Esira & Phoebe Mutetsi, *UPDF Accused of Torturing Karimojong*, MONITOR (Kampala), Aug. 6, 2006, available at 2006 WL 13640261.

53. U.N. HIGH COMM'R FOR HUMAN RIGHTS, REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN UGANDA: SITUATION IN KOTIDO, KARAMOJA, FROM 29 OCTOBER TO 15 NOVEMBER 2006, ¶¶ 16, 17, 18 [hereinafter UNHCHR REPORT: 29 OCTOBER TO 15 NOVEMBER 2006]; see also Rodney Muhumuza, *Gov't Report Pins UPDF on Raping Karimojong*, MONITOR (Kampala), Oct. 22, 2006; *Army to Probe Human-Rights Abuses in Northeast*, U.N. INTEGRATED REG'L INFO. NETWORKS, Dec. 1, 2006.

54. Nathan Etengu, *UPDF Check K'Jong Gun Trade*, NEW VISION (Kampala), Oct. 2, 2002, available at <http://allafrica.com/stories/printable/200210020763.html> (subscription required) (on file with author).

55. 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, April 21, 2004, available at <http://www.smallarmsnet.org/docs/saaf12.pdf>.

56. See Charles Kazooba, *New Guns Smuggled Into Uganda From Europe Says Army*, NEW TIMES (Kigali), Aug. 17, 2006. According to Col. Phenehas Katirima, Chief of Personnel and Administration in the UPDF, "[b]rand new guns from western Europe, across the Mediterranean and the middle East have been seen in Karamoja. I am very sure they are not from Africa." *Id.*

the disarmament program had failed.<sup>57</sup> The United Nations Development Programme temporarily suspended its funding of Ugandan development and disarmament programs.<sup>58</sup> Yet, the cut-off of foreign assistance did not end the Ugandan government's program. An August 21, 2006 story in the *New Vision* urged civilians to "respect and obey the ongoing disarmament programme."<sup>59</sup> On October 29, 2006, the UPDF attempted to disarm the village of Lolachat, but was repulsed after an eight-hour battle with armed Karamojong.<sup>60</sup> Army spokesman Major Felix Kulaije stated that, in the course of retrieving firearms, "we went there peacefully in a cordon and search operation."<sup>61</sup>

The villagers, however, told a more harrowing story. The army surrounded the village and began to question and sexually torture young men by pricking their testicles.<sup>62</sup> It was reported that "[t]wo Catholic priests said the army conducted itself as though it was dealing with beasts[,]” and added that the army had subsequently dissolved the unit

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57. See Lee, *supra* note 14; see also Nick Wadhams, *UNDP Halts Uganda Disarmament Program*, ASSOC. PRESS, June 28, 2006 ("The U.N. Development Program has halted a voluntary disarmament program in Uganda's troubled northeast amid new reports of rights abuses by government troops in the region . . ."); Kabona Esiara & Phoebe Mutetsi, *Govt to Investigate Human Rights Abuse in Karamoja Region*, MONITOR (Kampala), July 31, 2006.

58. See MARIE OKABE, DEPUTY SPOKESMAN FOR THE SECRETARY-GENERAL OF THE UNITED NATIONS, HIGHLIGHTS OF THE NOON BRIEFING (June 29, 2006), available at [http://www.un.org/News/press/docs/2006/hilites/hilites\\_arch\\_view.asp?HighID=604](http://www.un.org/News/press/docs/2006/hilites/hilites_arch_view.asp?HighID=604) ("Asked about the U.N. Development Programme's (UNDP) halting of its voluntary disarmament programme in eastern Uganda, the Spokeswoman said the action was taken because UNDP field officers found that Government troops were abusing the rights of civilians in the region targeted by the project."); see also Lee, *supra* note 14 ("A UNDP statement issued in Kampala on Thursday, three paragraphs in length, waited until its last terse sentence to disclose that 'pending clarification from the Government of Uganda on the current disarmament approach in Karamoja, UNDP Uganda has suspended its support to activities related to the KIDDP.' This last stands for the Karamoja Integrated Disarmament and Development Plan . . ."); Wadhams, *supra* note 57.

The UNDP was never funding the Ugandan army per se, although the UNDP's support for other aspects of the disarmament campaign provided ideological legitimacy for supposed urgency of disarmament, and army participation therein.

59. Nicholas Kajoba, *'Respect and Obey Disarmament Plan'*, NEW VISION (Kampala), Aug. 21, 2006, available at <http://allafrica.com/stories/printable/200608220491.html> (subscription required) (on file with author).

60. *Uganda Army Resumes Karimojong Disarmament*, XINHUA NEWS AGENCY, Nov. 4, 2006, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/SODA-6VA4XF?OpenDocument&RSS20=02-P>.

61. *Uganda: Gov't Urged to Probe Reported Abuses During Disarmament*, U.N. INTEGRATED REG'L INFO. NETWORKS, Nov. 13, 2006, <http://www.irinnews.org/Report.aspx?ReportId=61547>.

62. Nathan Etengu, *Kotido Recalls Horror*, NEW VISION (Kampala), Nov. 11, 2006, available at 2006 WLNR 19715545.

which had committed the atrocities.<sup>63</sup> In the ensuing defense of the village, Jie men killed thirty UPDF soldiers; forty-eight civilians also died, including thirteen women and nine children.<sup>64</sup>

The UPDF launched retaliatory raids on the Karamojong using a helicopter to drop bombs,<sup>65</sup> but quickly found out that they no longer had complete control of their airspace. Some of the new weapons the Karamojong had acquired were capable of hitting aircraft.<sup>66</sup>

Not-so-peaceful cordon and search operations have continued.<sup>67</sup> On November 10, 2006, the UPDF targeted the village of Kadokini. “UPDF tanks then drove through the village crushing and damaging properties, including huts and granaries.”<sup>68</sup> This resulted in three deaths,

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63. *Id.*; see also UNHCHR REPORT: 29 OCTOBER TO 15 NOVEMBER 2006, *supra* note 53, ¶¶ 6, 7, & 10 (“The soldiers reportedly surrounded a group of villagers who were celebrating a customary festival called *adowa*, with the view to disarming them . . . . The soldiers allegedly set fire to 23 manyattas [villages], affecting at least 166 households . . . . As a result, a recorded 1133 people including women and children were made homeless . . . . UPDF soldiers also reportedly arrested 54 villagers . . . . There were allegations of torture and/or ill-treatment of some of those in detention . . . . The mission was also informed of extortion of money by UPDF soldiers . . . .”).

64. *Id.* at 2; Etengu, *supra* note 62.

65. See *Four Are Hurt in Bomb Attack*, NATION, Dec. 1, 2006, available at <http://allafrica.com/stories/200612011081.html> (subscription required) (on file with author) (“Four herdsmen were seriously injured by a bomb believed to have been dropped from a Ugandan helicopter. The incident occurred at Nakwage area on the Kenya-Uganda border. At least 60 pastoralists were killed early last month in a similar bombing on the Ugandan side of the border.”); see also Peter Ng’etich, *Bomb Raid Leaves 50 Herdsmen Dead*, NATION (Kenya), Nov. 15, 2006, available at <http://allafrica.com/stories/200611150051.html> (subscription required) (on file with author) (“More than 50 Turkana herdsmen are feared dead after a bombing by a Uganda Peoples’ Defence Forces (UPDF) helicopter. . . . Also killed in the bombing were 1,050 sheep and goats, 150 camels, 924 cows and 64 donkeys. . . . [T]he families were attacked while milking their cows in the morning . . .”).

66. See Kakaire A. Kirunda & Emmanuel Gyezaho, *Karimojong Warriors Hit UPDF Chopper*, MONITOR (Uganda), Nov. 5, 2006, available at [allafrica.com/stories/200611060864.html](http://allafrica.com/stories/200611060864.html) (subscription required) (on file with author) UPDF 3rd Division Spokesman, Lt. Henry Obbo, remarked, “So with time you will know the number of deaths and I am sure we shall also recover guns . . . .” *Id.* Army spokesman Maj. Felix Kulayigye added: “Ours is a continued disarmament process that is double pronged; peaceful and voluntary for the law abiding to surrender their guns and then an offensive against the hardcore criminals.” *Id.* In other words, anyone who does not surrender her family’s defensive firearm is a “hardcore criminal.”). See also Milton Olupot, *Kiyonga Rules out Karamoja Cover Up*, NEW VISION (Uganda), Nov. 27, 2006, available at <http://allafrica.com/stories/200611280489.html> (subscription required) (on file with author) (“The Defence Minister said he was concerned about two new developments in Karamoja: the fact that the warriors now had arms capable of shooting at aircrafts, and that they were moving in big numbers – between 500 and 800 men.”).

67. UNHCHR REPORT: 29 OCTOBER TO 15 NOVEMBER 2006, *supra* note 53, at 2.

68. *Id.*

seven acts of torture, and five guns recovered by the army.<sup>69</sup> On November 14, 2006, the village of Kanawat suffered the deaths of three adults and a young girl during another cordon and search.<sup>70</sup> Relating to one such operation which took place in July 2007,

[a] female eye-witness recounted: “I had slept there [in the *kraal*], shooting started and I thought it was raiders. About 10 animals were killed and others more injured. One [named] *kraal* leader was also beaten, yet he is an old man and helpless. Some people were taken to the army detach for interrogation. Two people – a father and son were shot dead. One [named] boy was shot on the right hand and was taken to the army detach”.<sup>71</sup>

According to the U.N.’s Acting Humanitarian Coordinator in Uganda, Theophane Nikyema, “[t]he United Nations also appeals to Karamojong communities to refrain from violent responses to law and order efforts.”<sup>72</sup> However, with reports of Karamojong gathering into tactical units of between 500-800 men,<sup>73</sup> it does not appear that they are willing to disarm, but are instead preparing for violent resistance.<sup>74</sup>

69. *Id.*

70. *Id.*

71. U.N. HIGH COMM’R FOR HUMAN RIGHTS, REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS ON THE SITUATION OF HUMAN RIGHTS IN UGANDA: UPDATE REPORT ON THE SITUATION OF HUMAN RIGHTS IN KARAMOJA, FROM 1 APRIL TO 12 AUGUST 2007, ¶ 56, available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/12A0E3B20E66A64AC125735B002D98C0/\\$file/Ugandareportfinal.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/12A0E3B20E66A64AC125735B002D98C0/$file/Ugandareportfinal.pdf) [hereinafter UNHCHR REPORT: 1 APRIL TO 12 AUGUST 2007].

72. Press Release, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), Statement Attributable to the Acting Humanitarian Coordinator in Uganda, Mr. Theophane Nikyema (Nov. 10, 2006), available at <http://www.reliefweb.int/rw/RWB.NSF/db900SID/LSGZ-6VEKKH?OpenDocument>.

73. Olupot, *supra* note 66.

74. In 2005, rumors leaked to the press about the government’s intent to “degazette” (prohibit civilian use of) pastures supporting up to 200,000 head of cattle. The Daily Monitor reported that David Pulkol, former Director of External Security Organisation, stated, “the government’s proposal to degazette the game preserve in Karamoja will lead to another conflict in Uganda.” Jane Nafula, *Pian Upe Reserve Investor Non-Existent*, DAILY MONITOR (Kampala), Feb. 22, 2005. Pulkol additionally stated, “I assure you this proposal will result into a serious conflict. I see it because you are dealing with people who have already suffered enough.” *Id.* The Daily Monitor further noted, “Pulkol said the Karimojong had suffered for so long and would not watch their land grabbed by an investor. He said the disarmament process in the area had paved the way for people to rob Karamoja of its resources.” *Id.* The Ugandan government’s plan to transfer 200,000 acres of grazing land to investors could only escalate Karamojong mistrust of their government.

Alliances are forming among the tribes in order to defeat their common enemy—their government.<sup>75</sup>

In the spring of 2007, the U.N. frankly admitted failure: “Intermittent efforts to disarm, sometimes forcibly, up to 20 million pastoralists in the Horn of Africa, who are believed to possess five million firearms have failed . . . and forcible disarmament has not worked.”<sup>76</sup> (This is not to say that voluntary disarmament has much chance of success under current conditions; another U.N. Report stated, “The UPDF reiterates that the forced or involuntary disarmament options have produced more results than any voluntary means.”<sup>77</sup>) What the attempted disarmament has accomplished is to strengthen the black market, and to increase the cost of an AK-47 from 200,000 Ugandan shillings to 800,000 to one million on the black market.<sup>78</sup>

Nevertheless, the UPDF continues to search for weapons. By the summer of 2007, the disarmament had degenerated into a low-grade cross-border series of skirmishes between the UPDF and the pastoralist tribes.<sup>79</sup> Rape and other atrocities perpetrated against the populace by UPDF soldiers continue.<sup>80</sup> The U.N. reported, in the context of forced disarmament, “UPDF members continued to commit acts which resulted in human rights violations, including killings, acts of cruel, inhuman, and degrading treatment or punishment, as well as the use of excessive force leading to the destruction of property and livelihoods.”<sup>81</sup> The U.N. praises the UPDF for taking people’s guns, but, very belatedly, criticizes the UPDF’s methods for doing so. The U.N. seems unable to decide what is more important: collecting guns or respecting human rights.<sup>82</sup>

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75. See *Angry in Karamoja*, NEW VISION (Uganda), Nov. 10, 2006, available at 2006 WLNR 19715519.

76. *Horn of Africa: ‘Improved Approach Needed Towards Disarmament’*, U.N. INTEGRATED REG’L INFO. NETWORKS, May 30, 2007, <http://www.irinnews.org/Report.aspx?ReportId=72455>.

77. UNHCHR REPORT: 1 APRIL TO 12 AUGUST 2007, *supra* note 71, ¶ 7.

78. See Frank Nyakairu, *Prices for Illegal Guns Up*, MONITOR (Uganda), June 4, 2007, available at 2007 WLNR 10411845.

79. See Osinde Obare, *UPDF Releases Hostages*, E. AFRICAN STANDARD (Nairobi), Aug. 6, 2007.

80. See Barnabas Bii & Edward Koech, *Pokot Herders Escape Police Crackdown*, NATION (Kenya), July 5, 2007, available at <http://www.propertykenya.com/news/480019-pokot-herders-escape-police-crackdown>.

81. UNHCHR REPORT: 1 APRIL TO 12 AUGUST 2007, *supra* note 71, ¶ 12.

82. The *New Vision* reported, “the Office of the United Nations High Commissioner for Human Rights said that the UPDF had made important advances between April and August in reducing the number of guns and ammunition circulating in the long-unstable Karamoja region.” *U.N. Praises UPDF on Karamoja*, NEW VISION (Kampala), Sept. 3, 2007, available at <http://www.newvision.co.ug/D/8/12/584794>. The *New Vision* added, “In April [2007], the

The Ugandan government, though, has no doubt about its priorities. According to Commander of Defence Forces Gen. Aronda Nyakairima and Defence Minister Crispus Kiyonga, the UPDF is ready to use “any available means”<sup>83</sup> to acquire civilian guns. Yet, as the UPDF perpetrates even more human rights abuses, civilian resolve against disarmament only stiffens. Quite clearly, the principal human rights problem in Karamoja today is the military’s gun confiscation program.

## II. KENYA

When Kenya attained independence from Great Britain in 1963, it was a land rich in natural resources. From the outset, its first president, Jomo Kenyatta, ruled in a brutal and repressive manner. He abused the power of his office, rewarded his political and ethnic cronies, and eliminated political rivals.<sup>84</sup> Although central state planning was implemented under a pretext of fairness and efficiency, it became the mechanism for kleptocracy. A similar pattern of corruption and ethnic rivalry persists today.<sup>85</sup>

Some disarmament activists contend that cultural deficiencies of the pastoralist lifestyle, coupled with the presence of modern weapons,

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UN High Commissioner for Human Rights, Louise Arbour, accused the UPDF of using indiscriminate and excessive force when fighting the bandits, causing civilian deaths,” in its cordon and search operations since the beginning of the year. *Id.*

83. Emmanuel Mulondo & Wossita Samuel, *UPDF Will Not Succumb to Karimojong Pressure*, MONITOR (Kampala), Nov. 28, 2006, available at [allafrica.com/stories/200611280096.html](http://allafrica.com/stories/200611280096.html) (subscription required) (on file with author); see also *Angry in Karamoja*, NEW VISION (Kampala), Nov. 10, 2006, available at 2006 WLNR 19715519 (“[In order to recover 4,500 guns in 2006,] the UPDF resorted to forceful means, which has paid off, albeit with lives of women, children, old people and soldiers.”).

84. Gray Phombeah, *Little to Celebrate as Kenya Turns 40*, BBC NEWS, Dec. 11, 2003, <http://news.bbc.co.uk/2/hi/africa/3311505.stm>.

85. See Binaifer Nowrojee, Project Syndicate: Kenya’s Democratic Hope (2005), [http://www.project-syndicate.org/print\\_commentary/nowrojee1/English](http://www.project-syndicate.org/print_commentary/nowrojee1/English) (last visited Jan. 14, 2008) (“The Kibaki administration used this year to entrench power in the hands of a small ethnic Kikuyu clique. Reformers within the government not only capitulated to the backsliding, but actively contributed to it.”). See also *KENYA: Spreading the Word of Hate*, U.N. INTEGRATED REG’L INFO. NETWORKS, Jan. 22, 2008; *Kenya Corruption Review ‘Blocked,’* BBC NEWS, July 22, 2005; Koigi Wa Wamwere, *Kibaki’s War On Corruption Never Began*, THE NATION (Nairobi), Aug. 24, 2005; Jeffrey Gettleman, *Signs Emerge that Planning went into Kenyan Violence*, INT’L HERALD TRIB., Jan. 22, 2008 (“As soon as the election results were announced, handing a suspiciously thin margin of victory to Kenya’s president, Mwai Kibaki—whose policies of favoring his own ethnic group have marginalized about half the country—all the elements aligned for an explosion of violence. . . . Before the election, it was easy to forget that even Kenya, with its reputation as an African success story and land of tolerance, is split along ethnic lines that are ripe for political manipulation.”).

cause poverty and violence in Kenya.<sup>86</sup> However, Kifemarian Gebre-Wold, former director of a German-sponsored disarmament program in East Africa, acknowledged that “though many pastoralist households have small arms, the rate of crime and violent incidents is not high in their community. . . . [T]he density of weapons does not mean automatically the rise of gun-related violence.”<sup>87</sup> The Kenyan government has promoted violence by denying access to land and water.<sup>88</sup> It is no secret that tribalism lies at the heart of Kenyan politics, with devastating effects on the disfavored tribes.<sup>89</sup>

In 2005, the governments of Kenya and Uganda began a coordinated campaign to prevent their shared border from becoming a haven of safety for civilians with weapons.<sup>90</sup> Estimates of the civilian gun stock, as of August 2005, ranged from a very conservative 50,000<sup>91</sup>

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86. See TAYA WEISS, GUNS IN THE BORDERLANDS 15 (2004), available at [http://www.iss.co.za/index.php?link\\_id=3&slink\\_id=391&link\\_type=12&slink\\_type=12&tmpl\\_id=3](http://www.iss.co.za/index.php?link_id=3&slink_id=391&link_type=12&slink_type=12&tmpl_id=3) (“While not every organization identifies small arms as a specific area of work, all acknowledge that the presence of illegal weapons is crucial to a cycle of violence that sustains meso-level conflict in both urban and rural borderlands.”); E. HOGENDOORN ET AL., HUMAN RIGHTS WATCH, PLAYING WITH FIRE: WEAPONS PROLIFERATION, POLITICAL VIOLENCE, AND HUMAN RIGHTS IN KENYA 8 (May 2002), available at <http://www.hrw.org/reports/2002/kenya/Kenya0502.pdf> (“In Kenya and other countries not at war, the ready availability of these weapons undermines security (including with relation to crime), erodes prospects for development, contributes to social disintegration, and makes the resort to violence more likely—and more deadly.”).

87. Kifemariam Gebre-Wold, Bonn International Centre for Conversion (BICC), Exploring the Relationship Between Human Security, Demand for Arms, and Disarmament in the Horn of Africa 4 (Sept. 28, 2001) (unpublished paper presented at International Physicians for the Preservation of Nuclear War (IPPNW) Conference in Helsinki, Finland), available at <http://ippnw.org/ResourceLibrary/Hels/GebreWold.pdf>.

88. See Mugumo Munene, *Water the Only Key to Peace, Says Official*, NATION (Nairobi), July 16, 2005, available at <http://allafrica.com/stories/printable/200507170006.html> (subscription required) (on file with author) (“Large areas of pasture were later alienated as parks and wildlife reserves. Tourist lodges straddle strategic water sources, leaving the pastoralists with their thousands of livestock to compete for the little that remained, often with fatal results.”).

89. See *Minister Blames Political Leaders for Ethnic Clashes*, NATION (Nairobi), Apr. 22, 2006.

90. See Kabona Esiara, *Kenya Joins Cattle Raid Fight*, MONITOR (Kampala), July 3, 2005, available at 2005 WLNR 10496483.

91. Patrick Beja & Cyrus Ombati, *State Still Has Long Way to Go in Disarmament*, E. AFRICAN STANDARD (Nairobi), Aug. 29, 2005, available at <http://allafrica.com/stories/printable/200508290876.html> (subscription required) (on file with author).

up to 200,000 in Kenya.<sup>92</sup> On the other side of the border, in Uganda, estimates ranged from 50,000 to 150,000.<sup>93</sup>

The populace is aware that government does not honor its promises of security in exchange for voluntary disarmament. As in Uganda, new classes of disarmed victims were created—not just victims of those who remained armed,<sup>94</sup> but also victims of complicit government agents colluding in crimes against people who had been disarmed.<sup>95</sup>

The populace is further aware that government has not kept its promises to develop the area, or even to provide basic goods and services. At the present time, with government corruption out of control,<sup>96</sup> and the recent downward slide in Kenya's economy,<sup>97</sup> it is

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92. Karamoja Disarmament Gets Underway Amid Uncertainty, Practical Action-EA Peace Bulletin, Jan. 2005, [http://www.itdg.org/?id=peace6\\_karamoja](http://www.itdg.org/?id=peace6_karamoja).

93. *Id.* There are also reports of the complicity of government agents in gun-trafficking in these areas. See ACTION FOR DEV. OF LOCAL CITIES. & SEC. RESEARCH & INFO. CTR. ET AL., REPORT: INTERNATIONAL CONFERENCE ON SMALL ARMS TRAFFICKING IN THE BORDER REGIONS OF SUDAN, UGANDA AND KENYA 41-42 (Nov. 9-13, 2001) (“The group criticised the Kenyan government for being lenient to the gun traffickers. . . . There is urgent need to raise awareness amongst the police, custom officials and immigration officers against accepting bribes from small arms traders.”).

94. See John Oroni & Cyrus Ombati, *3,000 Cattle Stolen in Daylight Attack*, E. AFRICAN STANDARD (Nairobi), June 6, 2005, available at <http://allafrica.com/stories/printable/200506061162.html> (subscription required) (on file with author) (“It is suspected that the attackers took advantage of the arms mop up in the area to stage the raids.”); *1,588 Guns Recovered as Exercise Enters Second Month*, E. AFRICAN STANDARD (Nairobi), June 29, 2005, available at <http://allafrica.com/stories/printable/200506290229.html> (subscription required) (on file with author) (“Some communities are likely to attack others after seeing who has handed in more guns.”); see also Moses Mwathi, *Politicians Fuelling the Conflict by Arming and Inciting Their People*, DAILY NATION (Kenya), May 22, 2006, (“Last month, the constituency [of the northern district of Samburu] was attacked as its enemies knew it had surrendered its guns to the authorities . . .”).

95. Oroni & Ombati, *supra* note 94. Area MP Samuel Moroto stated: “We suspect that the raiders colluded with the security forces to carry out the raid . . . . We have lost lives and livestock in the last two weeks and we are not going to accept the disarmament if our security is not guaranteed.” *Id.*

96. See Gitau Wa Njenga, *Justice Up for Sale in Kenya, Says Githongo*, E. AFRICAN STANDARD (Nairobi), June 9, 2005, available at <http://allafrica.com/stories/printable/200506090142.html>, (subscription required) (on file with author) (discussing how, according to former Kenyan Ethics and Governance Permanent Secretary John Githongo, “Corruption in Kenya starts at a personal level mainly with politicians and they bribe their way all through to the corridors of power”).

97. See Eric Shimoli, *Kenya Getting Poorer, Says New U.N. Report*, NATION (Nairobi), Sept. 8, 2005, available at <http://allafrica.com/stories/printable/200509070872.html> (subscription required) (on file with author); see also David B. Kopel, Paul Gallant & Joanne D. Eisen, *Does the Right to Arms Impede or Promote Economic Development?*, 6 ENGAGE 85, 91 (2005), available at <http://www.davekopel.com/2a/Foreign/Development.pdf>.

unlikely that the promises could be kept, even if the political will to do so were present.

Once the Kenyan pastoralists are disarmed and their herds stolen, and their own bodies physically injured, the pastoralists, who were already living at a subsistence level (with survival dependent on the next water hole), become destitute. No rational person, having seen her neighbors in such dire circumstances, would gamble her family's survival on empty government promises. Although, as the disarmament community recognizes, women are often interested in peace through disarmament, they are not willing to remain passive while their families suffer and die. Thus, "[t]here are anecdotal reports of women defending themselves with guns . . . . Women often request ownership of their man's gun if he is killed . . . ." <sup>98</sup>

The Kenyan government will resort to any means to collect firearms. According to West Pokot District Commissioner Stephen Ikua, "[w]e shall use force to get them."<sup>99</sup> In March 2006, Internal Security minister John Michuki issued a shoot-to-kill directive for the entire country of Kenya, giving the police free rein against the populace.<sup>100</sup>

The existence of a gun licensing program creates the legal fiction that ordinary citizens can possess a firearm,<sup>101</sup> a fiction which bolsters the claim that the government will follow the proper legal procedures.

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98. Margie Buchanan-Smith & Jeremy Lind, Ctr. for Int'l Cooperation & Sec. at Bradford Univ., *Armed Violence and Poverty in Northern Kenya* 11 (Mar. 2005), [http://www.brad.ac.uk/acad/cics/publications/AVPI/poverty/AVPI\\_Northern\\_Kenya.pdf](http://www.brad.ac.uk/acad/cics/publications/AVPI/poverty/AVPI_Northern_Kenya.pdf).

99. John Oroni & Beatrice Obwocha, *Residents Unwilling to Surrender Guns*, E. AFRICAN STANDARD (Nairobi), July 2, 2005, available at <http://allafrica.com/stories/printable/200507010846.html> (subscription required) (on file with author). See also *Operation to Disarm North Rift Residents Starts Today*, E. AFRICAN STANDARD (Nairobi), May 30, 2005, available at <http://allafrica.com/stories/printable/200505310537.html> (subscription required) (on file with author) ("Yesterday, Internal Security minister Mirugi Kariuki said the Government would stop at nothing to recover the arms.").

100. See Fred Mukinda & Mwaura Kimani, *Protests at 'Shoot to Kill' Order*, NATION (Nairobi), Mar. 23, 2005, available at <http://allafrica.com/stories/printable/200503220789.html>, (subscription required) (on file with author) ("The Kenya National Commission on Human Rights cautioned Kenyans to brace themselves for a killing field if police officers were to effect the order.").

101. See generally CATHERINE FLEW & ANGUS URQUHART, *STRENGTHENING SMALL ARMS CONTROLS: AN AUDIT OF SMALL ARMS CONTROL LEGISLATION IN THE GREAT LAKES REGION AND THE HORN OF AFRICA* (February, 2004), <http://www.saferworld.org.uk/images/pubdocs/Horn%20Kenya.pdf> (describing how licensing officers must be satisfied that there is a good reason for acquiring a firearm, and must also be satisfied that the applicant can show he or she can safely secure the weapon).

Yet according to Peter Mwaura of the United Nations Environmental Programme, “[i]n practice, however, only the rich and the socially or politically correct or well connected manage to obtain firearms certificates and keep them . . . . Thus the gun law can be pretty arbitrary and subjective in its application.”<sup>102</sup> Likewise, Taya Weiss of South Africa’s pro-disarmament Institute for Security Studies stated, “[v]ery few Kenyan citizens, especially those living in remote areas, meet the criteria for a gun license and can afford to pay the associated fees.”<sup>103</sup>

Ordinary Kenyans are not even allowed to possess bows and arrows,<sup>104</sup> and the bow laws, too, are applied discriminately.<sup>105</sup> Government security agents can therefore safely assume that every ordinary person with a bow or gun lacks a license, and thus the police can shoot to kill with impunity.<sup>106</sup>

If the Kenyan government had paid some attention to the needs of the people, rather than discriminating against selected tribes,<sup>107</sup> conditions might not have degenerated to the point where factional fighting has become the last survival mechanism available to many pastoralists.<sup>108</sup> If government would first attend to the basic life necessities of northern Kenya, survival would not necessitate weapons possession. Yet, some non-governmental organizations (NGOs) share

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102. Peter Mwaura, *Owning a Gun Sign of Power and Success*, DAILY NATION (Kenya), Feb. 25, 2006, available at [allafrica.com/stories/200602270103.html](http://allafrica.com/stories/200602270103.html) (subscription required) (on file with author).

103. WEISS, *supra* note 86, at 20.

104. See Samuel Mburu, *Repeal Laws Barring Kenyans from Keeping Arrows*, *Urges Kaguthi*, E. AFRICAN STANDARD (Nairobi), Dec. 8, 2004.

105. See *id.*

106. See Mukinda & Kimani, *supra* note 100; see also *Law Society Condemns Shoot-to-Kill Order*, E. AFRICAN STANDARD (Nairobi), Mar. 22, 2005 (“The Law Society of Kenya (LSK), doctors, human rights groups and churches yesterday criticized National Security minister John Michuki’s shoot-to-kill order on those found with illegal firearms. . . . Speaking in Nakuru, Ojienda [newly elected LSK chairman, Tom Ojienda] urged Michuki to revoke the order, which, he said, would give the police the leeway to kill innocent Kenyans in the guise of fighting crime. The LSK boss said the Constitution is clear that a suspect is presumed innocent until proven guilty.”).

107. Gettleman, *supra* note 85 (“As soon as the election results were announced, handing a suspiciously thin margin of victory to Kenya’s president, Mwai Kibaki—whose policies of favoring his own ethnic group have marginalized about half the country—all the elements aligned for an explosion of violence.”).

108. See Halakhe D. Waqo, *Peacebuilding and Small Arms: Experiences from Northern Kenya* 1 (unpublished manuscript), available at [http://www.iansa.org/un/notes/peacebuilding\\_and\\_small\\_arms.doc](http://www.iansa.org/un/notes/peacebuilding_and_small_arms.doc) (last visited January 14, 2008) (“The region is highly marginalised and underdeveloped as essential infrastructure such as water, livestock market, health, roads and education facilities are either too scarce or totally absent to be relied on.”).

the Kenyan government's fixation with arms confiscation above all else. For example, Oxfam (which is a major supporter of two international gun confiscation NGOs—ControlArms, and the International Action Network on Small Arms) declares that what Kenya really needs is "community arms collection and voluntary arms surrender activities."<sup>109</sup>

The pastoralists of Kenya, however, have remained armed,<sup>110</sup> despite almost-continuous disarmament programs for over a century.<sup>111</sup> Some of the disarmament programs were accompanied by a great deal of brutality, a fact remembered by many tribal leaders. One operation conducted by the military in 1950 caused the deaths of fifty people. In addition, the government confiscated 10,000 head of cattle.<sup>112</sup>

In 1961, then-Lieutenant Colonel Idi Amin of the Uganda's King's African Rifles<sup>113</sup> crossed the border into Kenya and tortured and terrorized civilians who refused to give up their weapons.<sup>114</sup> Although at least 127 men were castrated and left to die, the operation failed to disarm the Turkana people of northwest Kenya.<sup>115</sup>

The unsuccessful 1984 "Operation NYUNDO" (Operation Hammer)<sup>116</sup> was a brutal example of the difficulty of disarming civilians who would rather die than disarm. "Operation NYUNDO" was a collaborative effort of the Kenyan and Ugandan armies, similar to the

109. *Id.*

110. Mwathi, *supra* note 94. The Member of Parliament for Laikipia West, G.G. Kariuki, stated: "Pokots, Samburus and Turkanas are re-arming themselves to the teeth. What they are returning to the authorities are malfunctioning rifles." *Id.*

111. See Okech Kendo, *Genesis of the Pokot's Love for the Gun and the Bullet*, THE STANDARD (Nairobi), Apr. 27, 2006, available at <http://www.eastandard.net/archives/cl/print/news.php?articleid=1143951650>. It would appear from Kendo's information that there were fifty disarmament attempts in the last 100 years, and that disarmament has been almost a constant process in the Borderlands. *Id.* See also Gakuu Mathenge, *War-Like Activities and the Question of Disarmament*, DAILY NATION (Kenya), May 7, 2006. Political activist Krop Muroto said: "In his 24-year rule, President Moi ordered 20 military disarmament operations on the Pokot. President Kibaki's government is on the third, and biggest operation so far." *Id.*

112. See Gakuu Mathenge, *War-Like Activities and the Question of Disarmament*, DAILY NATION (Kenya), May 7, 2006.

113. This was the name of the Ugandan army before Uganda received independence.

114. See Vukoni Lupa Lasaga, *Fiasco Looming With Disarming of Warriors*, MONITOR (Kampala), May 1, 2006, available at <http://allafrica.com/stories/200605011153.html> (subscription required) (on file with author).

115. See Mumia G. Osajji, *Why Banditry is Here to Stay*, E. AFRICAN STANDARD (Nairobi), May 7, 2006; see also Lasaga, *supra* note 114.

116. See Masinde Kusimba & John Oroni, *Over 1,000 Illegal Firearms Recovered*, E. AFRICAN STANDARD (Nairobi), June 8, 2005, available at [http://www.eastandard.net/archives/cl/hm\\_news/news.php?articleid=22313&date=8/6/2005](http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=22313&date=8/6/2005).

joint campaign against civilian gun owners that began in 2005.<sup>117</sup> Krop Muroto, a political activist, recalled:

No one knows to date how many people were killed in that operation that lasted three months. The community was further devastated by mass killing of their cattle. 20,000 head of cattle were confiscated, rounded up in sheds and starved to death. Among other atrocities, . . . the army used helicopter gunships, killed people and destroyed a lot of property.<sup>118</sup>

Reuters reported:

Lopokoy Kolimuk, an elder in the dusty and dry village of Kanyarkwat in the West Pokot district, said the soldiers who carried out that mission were wild, beyond humanity. He said many shot Pokots [a people of western Kenya and eastern Uganda] on sight, or forced men to lie on the ground in a line as they ran across their backs. Other men had their testicles tied together and were then made to run away from each other, he said. Women were raped in front of their husbands, sometimes with empty beer bottles.<sup>119</sup>

In April 2006, Security Minister John Michuki told Parliament, “[t]he Government has decided to disarm the Pokot by force. If they want an experience of 1984 when the Government used force to disarm them, then this is precisely what is going to happen . . . .”<sup>120</sup>

Tapangole Lokeno, another elder, stated: “It is so fresh in our minds, so when Michuki says this operation will be worse, we just wish this world would bring us down first.”<sup>121</sup> Stephen Ikua, a government spokesman, said that threats were necessary in order to get civilians to peacefully surrender their firearms. He said, “As a government, you should talk from a position of strength. You cannot come in saying you are going to respect human rights.”<sup>122</sup>

In early May 2006, the BBC described the latest military operation in Kenya, code-named “Okota” [Collect],<sup>123</sup> utilizing tanks, trucks, and

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117. See C. Bryson Hull, *Kenya's Pokot Haunted by Past as Soldiers Hunt Guns*, REUTERS, May 11, 2006.

118. Mathenge, *supra* note 112 (internal quotation marks omitted).

119. Hull, *supra* note 117 (internal quotation marks omitted).

120. *Army Joins Disarmament Operation*, E. AFRICAN STANDARD (Nairobi), May 1, 2006, available at [http://www.eastandard.net/archives/cl/hm\\_news/news.php?articleid=1143951829](http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=1143951829).

121. Hull, *supra* note 117.

122. *Id.*

123. See Karen Allen, *Kenya Firearms Hunt Stokes Mistrust*, BBC NEWS, May 04, 2006, <http://news.bbc.co.uk/2/hi/africa/4974802.stm>; see also SMALL ARMS SURVEY, RESPONSES TO PASTORAL WARS: SUDAN ISSUE BRIEF 5 (Number 8, September 2007).

helicopters, and taking over a local school building as a barracks for the army. In the village of about 2000 people, eight weapons were recovered.<sup>124</sup> Fearing a repeat of the 1984 atrocities, 15,000 panicked people fled to Uganda with their cattle and their guns, leaving behind the aged, the infirm, and the children. In West Pokot alone, 120,000 people needed food aid, but only 68,000 received rations. Schooling was disrupted, and farmsteads were neglected.<sup>125</sup>

Five weeks after the forced disarmament began, only seventy illegally possessed firearms had been recovered.<sup>126</sup> Collecting a few dozen firearms seems to be reason enough for the Kenyan government to go to war against its own citizens. Apparently, confiscating a few dozen firearms is, and for decades has been, a government priority that eclipses the digging of wells, the construction of more schools, or the establishment of medical clinics. And many Kenyans seem to have the same sentiment as Charlton Heston, the former President of the National Rifle Association, who declared that the only way anyone would ever get his guns was to take them “from my cold, dead hands.”<sup>127</sup>

At about the same time in mid-2006 that the United Nations Development Programme withdrew its support for the Ugandan side of the joint disarmament, the Kenyan government backed away from its own forcible disarmament program, Operation Okota. While the

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124. Allen, *supra* note 123 (“We are only intimidating villagers by our presence . . . we’re telling them ‘please hand over your weapons . . . you don’t need them,’” said Hassan Noor, the senior government official in charge.)

125. Anderson Ojwang & Stephen Makabila, *18 Firearms Recovered in Gun Hunt*, E. AFRICAN STANDARD, May 10, 2006, available at [http://www.eastandard.net/archives/cl/hm\\_news/news.php?articleid=1143952293&date=10/5/2006](http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=1143952293&date=10/5/2006); see also Vincent Bartoo & Stephen Makabila, *Hunger, Despair Set in as Disarmament Operation Continues*, E. AFRICAN STANDARD (Nairobi), May 18, 2006, available at [allafrica.com/stories/200605170859.html](http://allafrica.com/stories/200605170859.html) (subscription required) (on file with author) (“Starvation and anguish are now stalking West Pokot residents, since the Government launched a forcible disarmament exercise a month ago. . . . The residents now say they have resigned themselves to fate and have become refugees in their own country. . . . A recent visit by The Standard revealed the sense of hopelessness and vulnerability that the disarmament has brought, forcing majority residents to relocate to Uganda. Schools have also become ghost institutions, with very few pupils. . . . Although the Government says the operation has not disrupted the villagers’ normal life, a spot-check reveals otherwise.”)

126. Peter Mutai, *70 Guns Recovered in Disarmament Exercise*, E. AFRICAN STANDARD (Nairobi), May 25, 2006, available at [http://www.eastandard.net/archives/cl/hm\\_news/news.php?articleid=1143953017&date=25/5/2006](http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=1143953017&date=25/5/2006).

127. *Heston Guns for Fourth NRA Term*, BBC NEWS, May 20, 2001, <http://news.bbc.co.uk/2/hi/entertainment/1341315.stm>.

government is still intent on disarming civilians in the region,<sup>128</sup> there have not been reports of additional violence perpetrated by the government.

Instead, Internal Security Minister John Michuki launched Kenya's Action Plan for Arms Control and Management (KNAP) on July 14, 2006, giving civil society and local NGOs, in lieu of government forces, greater responsibility for further disarmament.<sup>129</sup> Rather than repeating his previous violent threats (which turned out to be accurate), Michuki merely stated, "[t]he Government remains steadfast in its war against illicit small arms."<sup>130</sup> Although the government of Kenya has discontinued the joint forcible disarmament exercise with Uganda, the government of Uganda continues to send its own soldiers into Kenya, where they pillage and steal cattle, while recovering small quantities of weapons.<sup>131</sup>

### III. SOUTH AFRICA

South Africa manifests less extreme human rights violations than Uganda and Kenya. Accepting the conventional wisdom of the United Nations (that severe firearm regulations will reduce civilian possession and thereby reduce violent crime), in 2003 the government of South Africa's president Thabo Mbeki enacted very restrictive amendments to the South African firearms law. The amendments imposed a dysfunctional licensing system, which served the intended purpose of

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128. See Maj. Gen. Mohammed H. Ali., Comm'r of Police, Message from the Commissioner of Police, <http://www.kenyapolice.go.ke/speech.asp> (last visited Jan. 14, 2008).

129. See Ochieng' Oreyo, *Call for Unity in Arms War*, THE STANDARD (Nairobi), July 15, 2006, available at [http://www.eastandard.net/archives/cl/hm\\_news/news.php?articleid=1143955342](http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=1143955342); see also KENYA NAT'L FOCAL POINT ON SMALL ARMS AND LIGHT WEAPONS, KENYA NATIONAL ACTION PLAN FOR ARMS CONTROL AND MANAGEMENT, at viii (2006), available at <http://www.iansa.org/regions/cafrica/documents/Kenya-National-Action-Plan-2006.pdf>, at viii [hereinafter KENYA NAT'L ACTION PLAN]. The plan was approved in June 2004 by the Permanent Secretary Provincial Administration and Internal Security. *Id.* at 2.

130. KENYA NAT'L ACTION PLAN, *supra* note 129, at viii.

131. See Osinde Obare, *Turkana Herders Flee Kenya-Uganda Border*, E. AFRICAN STANDARD (Nairobi), Aug. 18, 2007, available at [http://www.eastandard.net/archives/cl/hm\\_news/news.php?articleid=1143973051&date=18/8/2007](http://www.eastandard.net/archives/cl/hm_news/news.php?articleid=1143973051&date=18/8/2007); see generally Osinde Obare, *UPDF Releases Hostages*, STANDARD (Nairobi), Aug. 6, 2007, available at [http://www.eastandard.net/hm\\_news/news.php?articleid=1143972435](http://www.eastandard.net/hm_news/news.php?articleid=1143972435).

many of its supporters to drastically reduce the legal possession of firearms.<sup>132</sup>

The South African Constitution has strong human rights guarantees.<sup>133</sup> However, the nation's problems with multiple languages, literacy, and poverty have created felons out of people who want to comply with the firearm law. Contrary to constitutional guarantees, lawfully owned property has been confiscated with no compensation.<sup>134</sup> Moreover, the "firearm-free zones" portion of the Firearms Control Act<sup>135</sup> sets the stage for massive rights violations throughout the nation, including warrantless searches of any persons present in such a zone.<sup>136</sup>

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132. See e.g., B. L. Fanaroff, *Foreword to FIREARM USE AND DISTRIBUTION IN SOUTH AFRICA* (Robert Chetty ed., 2000) ("There is no doubt that the easy availability of firearms contributes to the high level of violence and violent crime. The Government has decided therefore to reduce the proliferation of firearms."); ADELE KIRSTEN, *A NATION WITHOUT GUNS? THE STORY OF GUN FREE SOUTH AFRICA* (2008) ("Adèle Kirsten's book describes the hard work that built an organization, a culture and an Alliance that continue to push a post-conflict violent country towards a gun-free future." Paul Graham, *Foreword to KIRSTEN, supra*); Sarah Meek, *Legal Firearms in South Africa: A Part of the Problem?*, in *SOCIETY UNDER SIEGE VOL III: MANAGING ARMS IN SOUTH AFRICA* 33, 54 (Virginia Gamba & Clare Hansmann, eds., 2000) (acknowledging the South African government's "goal of reducing the number of weapons in society"); Anthony Minnaar, *The Struggle to Legislate for Stricter Gun Control Measures and the South African Firearms Control Act 60 of 2000*, 10 *ACTA CRIMINOLOGICA* 42 (No. 1, 2006). Gun Free South Africa, a lobbying group which greatly contributed to the creation of the new Firearms Control Act, states that its primary goal is "reducing the number of guns/firearms in circulation." Gun Free South Africa, <http://www.gca.org.za/> (last visited Jan. 14, 2007).

133. See S. AFR. CONST., ch. 2, Bill of Rights, *available at* <http://www.info.gov.za/documents/constitution/1996/96cons2.htm> (last visited Feb. 17, 2008).

134. E-mail from Alex Holmes, Spokesman, S. Africa Arms and Ammunition Dealers Assoc., to Paul Gallant (May 4, 2007, 2:07:07 EST) (on file with author).

135. Firearms Control Act 60 of 2000 (South Africa), *amended by* Firearms Control Amendment Act 43 of 2003, ¶ 140, *available at* <http://www.dti.gov.za/nonproliferation/non/Act60of2000FirearmsControl.pdf>.

136. *Id.* ¶ 140, (3)(b) ("A police official may, without warrant . . . search any person present in a firearm-free zone . . ."). Because of the difficulties in implementing the law, these zones have not been widely defined. Alex Holmes, spokesman for South Africa's Arms and Ammunition Dealers Association stated:

Initially they were very keen on implementing these sections, with the minister declaring he was going to declare entire suburbs as firearm-free. The enthusiasm for this diminished when we started challenging aspects of this. State owned buildings are already effectively gun free zones by virtue of other legislation. I still expect hospitals, universities, schools and possibly bars to be declared as firearm free zones but the authorities seem to have given this low priority to avoid problems.

E-mail from Alex Holmes, *supra* note 134.

### A. *The Literacy Roadblock*

The first major roadblock in South Africa's unnavigable licensing system is the need to pass a test based on knowledge of the recent law.<sup>137</sup> In the abstract, the test appears to be a useful criterion for firearm possession, especially since lack of knowledge of the law is no excuse for violation.<sup>138</sup> In practice, however, the South African firearms test functions much like literacy tests once did for voters in the American South; it too prevents, rather than improves, the exercise of the right.<sup>139</sup>

Approximately eighteen percent of the South African population is illiterate,<sup>140</sup> with many more people only semi-literate. Furthermore, the South African constitution recognizes eleven official languages.<sup>141</sup> If the government intended to apply the firearms test fairly, it would make examinations available in all eleven of the official languages, in written and in oral formats. The government has not done so.

According to Richard Wesson of Gun Owners of South Africa:

Some of the security companies run their own courses, and I'm sure that they are taught in Tswana, Basotho, Zulu and Xhosa, as well as Afrikaans & English. . . . The problem does not lie with their [the students'] understanding

137. See Firearms Control Act 60 of 2000, ¶ 9.2.q ("Where a person has not previously obtained a competency certificate, a competency certificate may only be issued to such person if he or she . . . has successfully completed the prescribed test on knowledge of this Act . . . ."); South African Qualifications Authority, Registered Unit Standard, <http://regqs.saqa.org.za/showUnitStandard.php?id=117705> (last visited Jan. 14, 2008) ("This unit standard is for persons who need to demonstrate knowledge of the Firearms Control Act 2000 (Act No. 60 of 2000), herein after the Act that is applicable to legally possess a firearm. Persons credited with this unit standard are able to . . . demonstrate understanding of the statutory duties and obligations of firearm ownership as contained in the Act . . . .").

138. See Meek, *supra* note 132, at 54 ("The best way to diminish the cases of misuse and negligence among firearm owners is to ensure that they are aware of the law and know the ways in which they must abide by the law.").

139. See, e.g., Chandler Davidson & Bernard Grofman, *Introduction* to QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990, at 3 (Chandler Davidson & Bernard Grofman eds., 1994).

140. Literacy Exchange: World Resources on Literacy, South Africa (Sept. 06, 2005), <http://www1.uni-hamburg.de/UNESCO-UIE/literacyexchange/southafrica/southafricastat.htm> (last visited May 19, 2007). See also UNICEF - South Africa - Statistics, [http://www.unicef.org/infobycountry/southafrica\\_statistics.html](http://www.unicef.org/infobycountry/southafrica_statistics.html) (last visited Feb. 25, 2008) (reporting an 82% adult literacy rate).

141. S. AFR. CONST., ch. 1, § 6(1), available at <http://www.constitutionalcourt.org.za/site/theconstitution/english.pdf> ("The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.").

[of the law], but with their ability to understand and answer the examination questions. . . . Not easy for people who have had a limited education.<sup>142</sup>

Abios Khoele, Chairman of the Black Gun Owners' Association, summarized: "They know they won't pass."<sup>143</sup> It would be reasonable for the South African government to deny licenses to citizens who do not understand the law. However, it is a human rights violation for the government to deny licenses to people who *do* understand the law, but who are forced to take a written test in a language they can barely write—in flagrant violation of the South African Constitution's recognition of eleven official languages.<sup>144</sup>

Moreover, the test administration is structured to make it extremely difficult to access for nearly half of South Africa's population. "The one trick with the test is that it can only be done at an approved testing center. The major population centers are well covered but there are only a few hundred testing centers for the whole country, meaning many rural areas are not well covered."<sup>145</sup> The issue is not just that a rural person might have to spend time traveling to a test center. Approximately forty-six percent of the population<sup>146</sup> is located in rural areas, where travel is dangerous, slow, and costly; it is not fair that a person be forced to risk his own life in order to travel to take a government-mandated test.

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142. E-mail from Richard Wesson, Gun Owners of South Africa, to Paul Gallant (May 11, 2007, 6:36:44 EST) (on file with author).

143. Interview by Edwin Herrendorfer with Abios Khoele, Black Gun Owners' Association, 4 FIREARM NEWS (2004), available at [http://www.christianaction.org.za/firearmnews/2004-04\\_BlackGunOwnersAssociation.htm](http://www.christianaction.org.za/firearmnews/2004-04_BlackGunOwnersAssociation.htm).

144. See African Charter on Human and Peoples' Rights, *supra* note 1, pmbl. ("[C]ivil and political rights cannot be dissociated from economic, social and cultural rights[,] . . . particularly those based on race, ethnic group, color, sex, language, religion or political opinions . . ."); International Covenant on Civil and Political Rights, *supra* note 1, pmbl. ("Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . .").

145. E-mail from Alex Holmes, Spokesman, S. Africa Arms and Ammunition Dealers Assoc., to Paul Gallant (May 7, 2007, 15:07:54 EST) (on file with author).

146. See South Africa, Students Partnership Worldwide, [http://www.spw.org/about\\_southafrica.php](http://www.spw.org/about_southafrica.php) (last visited Feb. 18, 2008); see also Population, Health, and Human Well-Being – South Africa, at 1, [http://earthtrends.wri.org/pdf\\_library/country\\_profiles/pop\\_cou\\_710.pdf](http://earthtrends.wri.org/pdf_library/country_profiles/pop_cou_710.pdf) (last visited Feb 18, 2008).

### *B. Standardless Licensing*

The Firearms Control Act lists a variety of reasons for which a gun license “may” be issued, such as hunting, target shooting, collecting, or self-defense; colloquially, the reasons are referred to as “good motivation.”<sup>147</sup> In practice, the licensing authorities often refuse to issue licenses to a person who fits one of the statutory categories; the rejection is based on the claim that the applicant lacks sufficiently “good motivation.”<sup>148</sup> Yet, the authorities refuse to specify what (above and beyond fulfilling the statutory requirements) constitutes “good motivation.” Essentially, the licensing authorities exercise unbounded, unreviewable discretion, with no requirement that the discretion be applied in any consistent way. The standards-free system is itself a human rights violation.<sup>149</sup> Moreover, to the extent that the available evidence reveals any patterns in the use of discretion, the discretion is exercised on the basis of race and sex, against people who, in fact, have the greatest need for a firearm. The abuse of discretion is a violation of the South African Constitution’s requirement of equal treatment before the law.<sup>150</sup>

The wealthy in South Africa often desire firearms for sporting purposes, while the impoverished overwhelmingly require firearms for self-protection. Abios Khoele, the founder of the Black Gun Owners’ Association, stated:

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147. Firearms Control Act 60 of 2000, ¶¶ 13-20.

148. E-mail from Alex Holmes, *supra* note 134.

149. The standards-free system is particularly open to bias in a multi-cultural society. Standards-free is also open to corruption in a society where police are not sufficiently remunerated and, therefore, are susceptible to bribery. *See* International Covenant on Civil and Political Rights, *supra* note 1, art. 26 (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); African Charter on Human and Peoples’ Rights, *supra* note 1, pt. I, ch. I, art. 3, 1 (“Every individual shall be equal before the law.”).

150. *See* S. AFR. CONST., ch. 2, § 9.3 (“The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”); *Id.* § 9.4 (“No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.”).

White people want more firearms for sport, and black people only want one gun for self-defence. . . . In our townships, it is not safe at all, especially for people who are taking early transport to work, when it's still dark and they're walking a long distance . . . . Those people are sick and tired of crime, and they have no other way of dealing with the situation.<sup>151</sup>

As Anthony Minnaar, a law professor at the University of South Africa, acknowledged, in high-crime areas, “[t]he police themselves, in fact, are afraid to go in.”<sup>152</sup> One young businessman, Vuyani Dingiswayo, who runs his family’s business, routinely carries thousands of dollars to a bank in George, South Africa, and is “afraid to drive alone with that kind of money.” However, Mr. Dingiswayo’s firearms license was denied because, he was told, he “didn’t have a good reason.”<sup>153</sup>

A rumor began circulating that the police were imposing a quota system to turn down eighty percent of license applicants. Although the South African Police Service (SAPS) denied allegations of a quota, SAPS spokesperson Selby Bokaba did admit that “it was important for the SAPS to tighten the issuing of firearms.”<sup>154</sup>

Noel Stott, a small-arms specialist at the Institute for Security Studies in Pretoria, stated, “[t]he police aren’t saying what a good motivation is, because that would come to be like a template . . . . The gun shops would just assist people, and it would become a pro forma type of thing. So they’re being very subjective.”<sup>155</sup> The police theory is plainly wrong; a “good motivation” can be defined by objective criteria: Can the person prove that he must carry a certain sum of cash for business on a daily basis? Can the person prove (via verified court documents) that she is the victim of a stalker who is at large? Can the person prove that he hunts a particular type of game frequently?

One can argue for or against various factors to consider in determining an applicant’s “good motivation.” What is inarguable—and a violation of all standards of equality before the law and due process—is that in South Africa, a “good motivation” amounts to nothing more than the whim of a particular licensing official on a particular day. It is

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151. *Gun Crime Continues to Devastate Lives*, U.N. INTEGRATED REG’L INFO. NETWORKS, May 26, 2006, <http://www.irinnews.org/PrintReport.aspx?ReportId=59075>.

152. *South Africa Vigilante Numbers Rise, Transcript of Interview with Reporter Sally Sara*, May 30, 2003, ABC ONLINE, <http://www.abc.net.au/am/content/2003/s868126.htm>.

153. Michael Wines, *In South Africa, Licensing Law Poses Hurdles for Gun Buyers*, N.Y. TIMES, Jan. 3, 2005, at 7.

154. *Cops Deny Gun Quota Rumours*, NEWS24.COM, Feb. 9, 2003, [http://www.news24.com/News24/South\\_Africa/News/0,,2-7-1442\\_1410747,00.html](http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_1410747,00.html).

155. Wines, *supra* note 153.

no wonder that a poor person would quickly become discouraged about pursuing the lawful means of firearm possession. First, the person must lay out money for license fees, competency certificates, training sessions, and the purchase of a standardized gun safe; then, a person must submit an application which has every chance of being rejected simply because the licensing official wants to reject applications.<sup>156</sup>

*C. Protection against Rape is not a "Good Motivation"*

POWA (People Opposing Women Abuse), a South African self-help group for women, states, "1 in 2 women have a chance of being raped in their lifetime."<sup>157</sup> Our examination of data suggests, however, that the figure unfortunately may be a low estimate. Between April 2004 and March 2005, the total number of reported rapes in South Africa was 55,114.<sup>158</sup> The One in Nine organization, a South African victim advocacy group, estimates that fewer than one in nine rapes are reported to the authorities,<sup>159</sup> so that the total number of rapes could be approximately a half-million per year. (To be conservative, we use the one-in-nine figure, although other sources suggest that the true figure may be one-in-twenty or one-in-thirty-three.<sup>160</sup>) The population of South Africa in 2005 was 47,432,000, and the female life expectancy was 52 years.<sup>161</sup>

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156. See Jim Harris, The Free Market Foundation of Southern Africa, News Article (Nov. 29, 2005),

<http://www.freemarketfoundation.com/ShowArticle.asp?ArticleType=Regulation&ArticleId=1148> ("First you buy the firearm for R4000-5000. [The Rand is the South African currency.] Then you need a safe which costs about R250 and revenue stamps which you buy for about R140. Then you have to pay about R750 for training. After you've met all the Act's requirements they turn down your application for 'lack of motivation . . .').

157. People Opposing Women Abuse (POWA), Statistics, <http://www.powa.co.za/Display.asp?ID=2> (last visited Jan. 14, 2008).

158. Antony Albeker, *Positive Trends: The 2004/05 Crime Statistics*, SA CRIME QUARTERLY, No. 14, Dec. 2005, at 1, 2, 6, available at <http://www.iss.co.za/pubs/CrimeQ/No.14/Altbeker.pdf>.

159. See One in Nine: Solidarity with Women Who Speak Out, <http://www.oneinnine.org.za/default.asp> (last visited Jan. 14, 2008).

160. USAID in Africa suggests that "more than 95 percent of rural cases [are] unreported." USAID from the American People, Progress Profile: Confronting the Scourge of Domestic Violence and Rape, <http://www.usaid.gov/sa/success1.10.html> (last visited Jan. 14, 2008). The South African Police Service (SAPS) estimates that only about 3% of rapes are reported. See SHEILA COXFORD, A CRITICAL ANALYSIS OF FIREARM CONTROL IN POST-APARTHEID SOUTH AFRICA 27 (2002).

161. World Health Organization (WHO), WHO: South Africa, <http://www.who.int/countries/zaf/en/> (last visited Jan. 14, 2008).

Because of the high rate of child rape in South Africa, we chose the age of nine years<sup>162</sup> as the age at which a girl or a woman would be at significant risk of rape. Since witch doctors have told AIDS sufferers that sex with a virgin will cure their disease,<sup>163</sup> the incidence of child rape has increased substantially and it is now a significant risk factor for contracting AIDS and for early death.<sup>164</sup> With approximately 24 million women who have about a 40-year span of significant risk of rape, and with at least 500,000 women being raped in any given year, the implications are staggering: a woman has approximately an eighty percent chance of being raped in her lifetime, and even has a significant chance of multiple rape. Because of the huge number of HIV/AIDS positive males in South Africa,<sup>165</sup> rapes often become death sentences.<sup>166</sup>

The police likely will not consider possibility of rape a sufficient “motivation” to obtain a firearm license: “This is not ensconced in the legislation, of course, but is entirely due to the attitudes of the police who have the discretion to make these decisions. Those decisions can be contested on an individual basis but there is no mechanism to fight this as a general issue.”<sup>167</sup> Although women comprise over half of the Black Gun Owners’ Association, they are told, “[y]our husband will provide your security.”<sup>168</sup> The statement is absurd on its face, since wives will

162. See Rachel Jewkes & Naeema Abrahams, *The Epidemiology of Rape and Sexual Coercion in South Africa: An Overview*, 55 SOC. SCI. & MED. 1231, 1234 (2002) (“A detailed breakdown by age is not available, but it is likely . . . that most of the rapes are of girls over the age of 9.”).

163. See HUMAN RIGHTS WATCH, SCARED AT SCHOOL: SEXUAL VIOLENCE AGAINST GIRLS IN SOUTH AFRICAN SCHOOLS, at ch. 4, n.38 (2001), available at <http://www.hrw.org/reports/2001/safrica/>.

164. See *id.* at ch. 4. Using South African Police Service statistics, Human Rights Watch reported, “The age category of zero to eleven years of age reflected a ratio of 130.1 rapes per 100,000 of the female population.” HUMAN RIGHTS WATCH, *supra* note 163, at ch. 4. See also Carolyn Dempster, *Rape – Silent War on SA Women*, BBC NEWS, Apr. 9, 2002, <http://news.bbc.co.uk/2/hi/africa/1909220.stm> (“[I]t is a fact that a woman born in South Africa has a greater chance of being raped, than learning how to read. One in four girls faces the prospect of being raped before the age of 16 . . . .”); Gavin du Venage, *Rape of Children Surges in South Africa: Minors Account for About 40% of Attack Victims*, S.F. CHRON., Feb. 12, 2002 (“[M]ore than 52,000 rape cases were reported in 2000, and about 40 percent of the victims were under 18 . . . .”).

165. See HUMAN RIGHTS WATCH, *supra* note 163, at ch. 4.

166. In 1999, Lloyd’s of London underwrote rape insurance policies to provide anti-retroviral drugs to rape victims in order to help prevent acquiring HIV/AIDS. See Kelly St. John, *Where HIV Skyrockets, a Market for Rape Insurance Emerges: South Africa 2000*, ADAPTING TO CHANGE, <http://journalism.berkeley.edu/projects/safrica/adapting/rape.html>.

167. E-mail from Alex Holmes, *supra* note 134.

168. Telephone interview by Joanne D. Eisen with Abios Khoele, Chairman of the Black Gun Owners’ Association, (Apr. 24, 2007).

not be with their husbands every minute of the day, unless neither one has a job outside the house, and, even then, only if the woman leaves the house only when escorted by her husband. Moreover, the requirement that women rely solely on males for protection, rather than possessing the ability to protect themselves, is a violation of international human rights treaties on the equality of the sexes.<sup>169</sup> Should a South African woman who is denied a gun permit decide to carry a gun for protection against rapists anyway, she is liable to imprisonment for up to twenty-five years.<sup>170</sup>

#### *D. Taking of Property without Compensation*

The South African Constitution protects one from being deprived of one's property without compensation.<sup>171</sup> The new gun law has a specific provision for compensation,<sup>172</sup> yet gun owners, including those whose business has been destroyed, have not received compensation.<sup>173</sup> The members of the Black Gun Owners' Association get nothing, so they prefer to take their guns home, hide them, and declare them missing, rather than surrender them.<sup>174</sup> Black gun owners have "been very

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169. See International Covenant on Civil and Political Rights, *supra* note 1, at art. 3 ("The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."); see also *id.* at arts. 2, 26; African Charter on Human and Peoples' Rights, *supra* note 1, at pt. I, ch. 1, arts. 18, 3 ("The State shall ensure the elimination of every discrimination against women . . ."); *id.* at ch. I, art. 24 ("All peoples shall have the right to a general satisfactory environment favorable to their development."); Convention for the Elimination of All forms of Discrimination Against Women, at pt. I, arts. 2d and 2e (Dec. 18, 1979), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> ("States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake . . . (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise . . ."). South Africa acceded to the Convention on October 18, 2005. See U.N. Div. for the Advancement of Women, Signatures and Accessions/Ratifications to the Optional Protocol, <http://www.un.org/womenwatch/daw/cedaw/protocol/sigop.htm> (last visited Feb. 18, 2008).

170. Firearms Control Act §§ 120(1)(b) (Schedule 4) ("A person is guilty of an offence if he or she contravenes or fails to comply with any . . . condition of a license, permit or authorisation issued or granted by or under this Act . . ."); see also Edwin Tshivhidzo, *Hand it Over, Or Face 25 Years in Jail*, BUANEWS (Tshwane), June 24, 2005, available at <http://www.buanews.gov.za/view.php?ID=05062411451002&coll=buanew05>.

171. S. AFR. CONST. § 25.

172. Firearms Control Act 60 of 2000 § 137.

173. E-mail from Alex Holmes, *supra* note 134.

174. Telephone interview by Joanne D. Eisen, *supra* note 168.

adamant that they will not renew their licenses [issued under the pre-2003 law]. Nor will they hand their firearms in. Many have stated that they will head for the rural areas, dig holes, and bury their firearms. They will then report them stolen in Johannesburg.”<sup>175</sup>

One of the stated goals of advocates of the new firearm legislation was to reduce slippage of lawfully-owned firearms into the status of illegal ownership. However, because the licensing system has been deliberately made so arbitrary and impenetrable, the new law actually promotes the mass conversion of guns from legal, registered status, to unlawful, uncontrolled status.

Many gun dealers have had their livelihoods destroyed unfairly. Ninety percent of them have been driven out of business—not because they were in violation of any law, but because the abuses of the licensing system, including interminable delays in police actions on license applications, had destroyed their customer base.<sup>176</sup>

One former store owner explained:

In the UK and in Australia, dealers as well as private individuals were compensated for either their business, or for their firearms [when destroyed by new anti-gun laws]. Not so here—I tried to apply for compensation of 6 million rand for my business, by completing the prescribed application form for compensation via my local police station, who informed me that the application form was only for private individuals (of whom none had applied—as they were not aware of the existence of the application), and that my application would be tossed in the dustbin, so it was no use applying!! Where to go from here—I made a good living out of my business, which I intended selling upon retirement, and living on the proceeds to the end of my days. Not so now—I have two children to support, with no income, and will have to grovel to the state in 10 years’ time for a lowly pension of R820-00 per month [about US \$117].<sup>177</sup>

Many other South African working people have had their livelihoods harmed. The South African game hunting industry employs nearly 100,000 people, generating revenue of over three billion Rand per

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175. Interview by Edwin Herrendorfer, *supra* note 143.

176. See Wyndham Hartley, *Gun Dealers ‘Driven Out of Business’*, BUSINESS DAY, Aug. 17, 2006, at 4, available at <http://www.businessday.co.za/articles/national.aspx?ID=BD4A251728> (“Ninety percent of SA’s gun dealers have been driven out of business and lost their livelihoods . . . . It was common cause that the South African Police Service (SAPS) was not coping with the relicensing process as prescribed by the law.”).

177. E-mail from a former gun store owner in South Africa to Paul Gallant (May 7, 2007, 03:04:34 EST) (on file with author). The sender’s name is omitted because of the sender’s fear of government retaliation.

year.<sup>178</sup> However, the *Financial Mail* reported that there recently was a “drop in overseas trophy hunters from about 9000 to about 6000 . . . . There were instances of people spending four or five hours at airports getting their guns registered . . . .”<sup>179</sup> Foreign hunters were avoiding such inconveniences by switching their destination to Namibia. Under the International Covenant on Economic, Social and Cultural Rights, a person has a right to earn a living.<sup>180</sup> At the least, the spirit of the Covenant would suggest that a government should pay compensation to a person whose lawful business is destroyed by a government’s own abuses—especially when such abuses are violations of explicit human rights treaties to which that same government is a party, and violations of the government’s own laws.

Meanwhile, the South African violent crime rate has soared. Observers recognized the problem in the late 1990s,<sup>181</sup> but the South African authorities refused to release accurate crime figures. They finally did so in the summer of 2007.

The statistics will also come as a shock to the public, which in the past few years has been told by the government that crime was steadily declining. The public might also doubt the ability of law enforcement authorities to combat crime . . . [and] the statistics confirmed the public’s view that crime was out of control and that the types of crimes on the increase made people unsafe in their homes.<sup>182</sup>

According to the United Nations, small arms and light weapons may be used defensively only in the most extreme circumstances, where the right to life is already threatened or unjustifiably impinged. Persons have no human right to defensive firearms—and indeed, no right of self-defense at all—no matter how badly the government fails (or refuses) to

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178. See Sherry Shannon, *Hunting Industry: A Shot in the Arm*, FIN. MAIL (South Africa), Aug. 10, 2007, at 64.

179. Sherry Shannon, *Challenges: It’s Not a Game*, FIN. MAIL (South Africa), Aug. 10, 2007, at 64.

180. International Covenant on Economic, Social and Cultural Rights, GAOR Res. 2200A (XXI), *entered into force* Jan. 3, 1976, art. 6(1), *available at* <http://www1.umn.edu/humanrts/instree/b2esc.htm> (“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”).

181. See Fanaroff, *supra* note 132 (“The issue of firearm proliferation is of great concern to South Africa with its burgeoning rate of violent crime accompanied by a compelling need for economic and social stability.”).

182. Ernest Mabuza, *Figures Confirm Violent Crime is on the Rise*, BUS. DAY (Johannesburg), July 4, 2007, at 1, *available at* 2007 WLNR 13074033.

protect them from rape, homicide, home invasion, and other violent crimes.<sup>183</sup> Even so, it is undeniable that South Africa's 2003 gun licensing system is implemented by committing pervasive violations of human rights, including discrimination against women, against the poor, and against non-English speakers, and capricious violations of the rule of law itself.

#### IV. THE SURVIVAL INSTINCT: AN UNAVOIDABLE REALITY

##### A. *The Survival Instinct*

Even in the United States—a wealthy nation with very sophisticated communication and travel networks—it is unlikely that an emergency phone call reporting a violent crime in progress will result in the police arriving soon enough to stop the crime.<sup>184</sup> Indeed, when the police are alerted during a violent crime in progress, American police apprehend the criminal only about 1/3 of the time.<sup>185</sup> But apprehending the criminal is a far cry from preventing harm to the victim. Statistics on how often calls to 911 lead to the prevention of harm to the victim are not kept in the United States or in Canada.

Given that the police are unlikely to arrive in time, what course should the victim of a violent crime in progress take? Because of the widely varying circumstances of violent crimes, no single answer can be correct in all cases. Overall, however, “victim resistance appears to be generally a wise course of action.”<sup>186</sup> In general, the more forceful the resistance, including resistance with a gun, the less injury suffered by the victim.<sup>187</sup>

In underdeveloped countries, the practical incentive for owning a firearm for family protection is strong. Waiting for police arrival is often fruitless. According to Kampala (Uganda) Police Spokesman Assuman Mugenyi, the number of police is inadequate to protect the

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183. See U.N. Human Rights Council: Sub-Comm. on the Promotion and Prot. of Human Rights, *Prevention of Human Rights Violations Committed with Small Arms and Light Weapons* 10, U.N. Doc. A/HRC/Sub.1/58/27 (July 27, 2006) (prepared by Barbara Frey), available at <http://www.geneva-forum.org/Reports/20060823.pdf>.

184. See WILLIAM SPELMAN & DALE K. BROWN, *CALLING THE POLICE: CITIZEN REPORTING OF SERIOUS CRIME*, at xxi-xxii (1981).

185. See *id.* at xxiii.

186. Jongyeon Tark & Gary Kleck, *Resisting Crime: The Effects of Victim Action on the Outcomes of Crimes*, 42 *CRIMINOLOGY* 861, 861 (2004). This is based on data from the National Crime Victimization Survey.

187. *Id.*

populace. Mugenyi stated: “The public needs to appreciate the efforts of the 14,000 police personnel who are supposed to protect 28 million people.”<sup>188</sup> Moreover, in many parts of the world (including, obviously, much of Uganda, Kenya, and South Africa), there are substantial risks of lethal attacks by animals; these attacks sometimes take place even in urban areas.<sup>189</sup>

In support of civilian self-disarmament, the U.N. has directed much effort and resources to finding ways to overcome the human survival instinct, even in notoriously dangerous areas. “Disarming civilians in Albania, Kosovo and Macedonia means making them see guns are a threat to security . . . . The real challenge is to *convince* people that giving them up is a good idea.”<sup>190</sup>

One U.N. strategy involved “[a] combination of confidence building measures and application of pressure . . . in promoting and enforcing weapon collection activities.”<sup>191</sup> Tactics range from “[c]ontinuation of sensitization activities [about the dangers of weapons possession] and application of pressure from the traditional leaders” to “[g]overnment promises to provide adequate security to the communities.”<sup>192</sup>

The hope of the disarmament community is that when citizens unilaterally disarm, peaceful societies spontaneously form.<sup>193</sup> In a 1995

188. Ibrahim Kasita, *Armed Robbers Resume Terror Attacks in the City*, MONITOR (Kampala), June 7, 2005, available at 2005 WLNR 9024875.

189. See ROBERT FRUMP, *THE MAN-EATERS OF EDEN: LIFE AND DEATH IN KRUGER NATIONAL PARK* (2006) (discussing lion predation on Mozambican refugees in South Africa); *Sri Lanka: Data on Past Disasters to Help Forecast Cyclical Trends*, U.N. INTEGRATED REG'L INFO. NETWORKS, July 6, 2007, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/LRON-74UJE4?OpenDocument> (In Sri Lanka, the national Disaster Management Centre reports that “the seven disasters that have affected the country most are epidemics, animal attacks, floods, fire, droughts, landslides and cyclones.”).

190. David Quin, Vladimir Jovanovski & Ana Petrusseva, *Albania, Kosovo and Macedonia: Armed to the Teeth*, Institute for War and Peace Reporting (Nov. 27, 2003) (emphasis added), <http://www.reliefweb.int/rw/rwb.nsf/A11DocsByUNID/16b39ed35e51c2f2c1256dec004dd120>.

191. GEOFFREY MUGUMYA, U.N. INST. FOR DISARMAMENT RESEARCH, *EXCHANGING WEAPONS FOR DEVELOPMENT IN MALI* 80 (2004), available at <http://www.oecd.org/dataoecd/49/28/35113370.pdf>.

192. *Id.*

193. However, as disarmament researcher William Godnick admitted, “The jury is still out as to whether or not weapons collection programs in any context contribute to tangible, measurable reductions in the illegal proliferation and misuse of small arms.” William Godnick, *The Organization of American States and the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* 15 (Jan. 2002), available at [http://www.ploughshares.ca/libraries/Control/wpapers-illicit\\_trading.pdf](http://www.ploughshares.ca/libraries/Control/wpapers-illicit_trading.pdf).

report, then-U.N. Secretary-General Boutros Boutros-Ghali coined the term “micro-disarmament,” explaining, “[b]y this I mean practical disarmament in the context of the conflicts the United Nations is actually dealing with and of the weapons, most of them light weapons, that are killing people in the hundreds of thousands.”<sup>194</sup> However, while massive awareness campaigns that proclaim the dangers about firearms may change some minds,<sup>195</sup> the U.N. itself is aware that micro-disarmament is not an easily achievable goal.

In truth, reduced violence does not necessarily follow micro-disarmament attempts.<sup>196</sup> Because disarming civilians can potentially create a new class of victims, disarmament advocates face the difficult task of convincing the public that the government will protect them after they give up the means of protecting themselves.<sup>197</sup> Because the survival instinct is so strong, even a psychologist from the United

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194. *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations* ¶ 60, U.N. SCOR, 50th Sess., Supp. No. 60, U.N. Doc. A/50/60-S/1995/1, (1995), available at <http://www.un.org/Docs/SG/agsupp.html#DISARM> (using “Micro-disarmament” and “practical disarmament” interchangeably).

195. See U.N. Development Programme, *Small Arms and Light Weapons Control Project, Small Arms and Light Weapons Control-Monthly Report*, § 1.3, ALB/01/003 (March 2004) (“The key component of the strategy [of weapons collection] was the design and delivery of a massive public awareness and information campaign to convince the population to give up the illegally held weapons in order to safeguard their families, to render the country safe in order to attract investment in development and ultimately to make life better and more prosperous for the entire population of Albania.”). See also S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS (SEESAC), SOUTH EASTERN EUROPE SALW MONITOR 2005, at 78 (2005), available at <http://www.seesac.org/index.php?content=53&section=3> (“3.6 SALW Awareness Activities. Substantial awareness raising and public information activities accompanied the Croatian Government’s more recent amnesty and collection efforts up until 2002. In early 2001, the Government launched the ‘Zbogom Oruzje’ (‘Farewell to Arms’) collection initiative, which officials describe as ‘an excellent example of cooperation between relevant ministries, NGOs and the media. Cooperation with the Ministry of Education allowed the MoI to bring police into the schools to teach firearms safety and promote weapons surrender.’”).

196. See David B. Kopel, Paul Gallant & Joanne Eisen, *Micro-Disarmament: The Consequences for Public Safety and Human Rights*, 73 UMKC L. REV. 969 (2005) (detailing the experiences of Cambodia, Bougainville, and Albania); see also Centre for Humanitarian Dialogue, *Putting People First: Human Security Perspectives on Small Arms Availability and Misuse* 45 (2003) (acknowledging, in a rare admission from the disarmament community, “we know that fewer weapons do not always result in safer people”).

197. Some researchers are beginning to acknowledge that, because of the difficulty in carrying out disarmament programs, demand-side aspects need to be examined. See, e.g., Jurgen Brauer & Robert Muggah, *Completing the Circle: Building a Theory of Small Arms Demand*, 27 CONTEMP. SECURITY POL’Y 138 (2006) (“[T]he promotion of security, conflict prevention and resolution, crime prevention, and the promotion of health and development can reduce people’s desire to acquire (and ultimately use) small arms.”).

Nations Development Programme (which is heavily involved in gun confiscation) acknowledged: “As long as people feel unsafe there will always be a tendency for them to carry weapons.”<sup>198</sup>

*B. Recent Data about Global Attitudes towards Firearms and Self-Defense*

Among international gun prohibition activists, there is sometimes a tendency to claim that the United States is unique in its attitude toward armed self-defense. Nevertheless, an increasingly large body of international data shows that, while ordinary people in other nations do not necessarily think just like Americans, they very strongly do not agree with the international gun prohibition elites who claim that citizens should surrender their defensive arms even when the government has not yet established solid conditions of personal security. International data likely *understate* the prevalence of defensive gun ownership.<sup>199</sup> Firearm ownership and gun-owner attitudes clearly fit the category of “socially sensitive” topics. Hence, there are likely to be problems of underreporting of the possession of firearms for self-defense.<sup>200</sup> Emile

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198. David Quin et al., Inst. for War and Peace Reporting, Albania, Kosovo and Macedonia: Armed to the Teeth, at 16.6.7 (Nov. 27, 2003), <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/16b39ed35e51c2f2c1256dec004dd120>; S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, PUBLIC PERCEPTIONS OF SMALL ARMS AND SECURITY IN SOUTH SERBIA 17 (2004), *available at* [http://www.smallarmssurvey.org/files/portal/spotlight/country/eu\\_pdf/europe-serbia-2004.pdf](http://www.smallarmssurvey.org/files/portal/spotlight/country/eu_pdf/europe-serbia-2004.pdf) (“As long as there are rumors that there will be war, people will keep weapons.”).

199. Firearms surrender/confiscation programs almost always are implemented in conjunction with public relations “awareness programs” which emphasize the costs, harms, and dangers of civilian firearm possession, and which attempt to stigmatize firearms possession and family defense. The propaganda insists that families have no need to protect themselves. Raymond Lee, a research methodologist and professor at the Royal Holloway University of London, explained that “socially sensitive research” includes research in which there are “potential consequences . . . for the participant,” such as legal repercussions. Such research is particularly vulnerable to problems of data quality assurance. RAYMOND M. LEE, DOING RESEARCH ON SENSITIVE TOPICS 2-4 (1993). Even in the United States, a very gun-friendly jurisdiction compared to most other nations, survey estimates of household gun ownership probably underestimate gun prevalence by 10-15% of households because of false denials of gun ownership. *See* GARY KLECK, TARGETING GUNS: FIREARMS AND THEIR CONTROL 64-68 (1997).

200. *See* U.N. DEV. PROGRAMME, LIVING WITH THE LEGACY – SALW SURVEY REPUBLIC OF SERBIA 2 (2005), *available at* [http://www.smallarmssurvey.org/files/portal/spotlight/country/eu\\_pdf/europe-serbia-2006.pdf](http://www.smallarmssurvey.org/files/portal/spotlight/country/eu_pdf/europe-serbia-2006.pdf) (“For example, a significant proportion of the public (34%) believe that people do not register their weapons because they do not wish to be recorded as firearms owners.”); *see also id.* at 15 (“This can be explained by the fact that survey questions probing sensitive issues such as firearms possession often lead respondents to answer in a way they perceive to be more

LeBrun and Robert Muggah reported that in their research in Papua New Guinea, guns were “a taboo topic,” and that there was “a high level of resistance” during discussions of weapons.<sup>201</sup> Even in the United States, there appear to be millions of gun owners who refuse to admit to telephone pollsters that they own a gun.<sup>202</sup>

### 1. Albania

Albania was the site of one of the most dramatic illicit gun transfers in recent history because of political unrest in that country during March 1997.<sup>203</sup> During a temporary collapse of civil government, civilians looted 1300 armories,<sup>204</sup> stealing more than a half million weapons.<sup>205</sup> While the Albanian government rapidly retrieved approximately 75,000 weapons,<sup>206</sup> and many more were smuggled out of the country, it is estimated that about 200,000 weapons remained in civilian hands.<sup>207</sup> Between 1997 and the spring of 2003, approximately 25,000 weapons were recovered with help from U.N. weapons collection programs.<sup>208</sup> More recently, about 1000 weapons per month were being recovered.<sup>209</sup>

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socially acceptable . . . . It is far more likely that those with registered firearms would answer such questions truthfully than those with unregistered firearms.”). The Serbian poll asked if the respondents owned weapons, and if they did, how many they owned. Only 20% admitted to owning a weapon. Those 20% claimed that they owned an average of 1.5 firearms each. If extrapolated to the entire population, Serbians owned only 750,000 weapons. But that figure is lower than the number of lawfully registered guns (1,056,314), and much lower than the total estimate of two million. *Id.*

201. Small Arms Survey, *Silencing Guns: Local Perspectives on Small Arms and Armed Violence in Rural Pacific Islands Communities* 18 (Emile LeBrun & Robert Muggah, eds.) (Small Arms Survey Occasional Paper 15, disseminated at the U.N. Second Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York City in July, 2005).

202. KLECK, *supra* note 198, at 65-68.

203. The situation in Albania is detailed in Kopel, Gallant & Eisen, *Micro-Disarmament*, *supra* note 196.

204. *See id.* at 986 n.79 (citing Support to Security Sector Reform (SSSR)—The United Nations Development Programme (UNDP), Albania, Background, § 1).

205. Other estimates are closer to 1 million or 1.5 million. *Id.* at 986-87.

206. E-mail from Lawrence Doczy, Programme Manager, Support to Security Sector Reform, U.N. Development Programme, to Paul Gallant (July 24, 2003, 10:41:20 EST) (on file with author).

207. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 20.

208. E-Mail from Lawrence Doczy, Manager, Support to Security Sector Reform, U.N. Development Programme, to Paul Gallant (July 15, 2003, 4:10:30 EST) (on file with author).

209. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 26.

In a survey conducted between April and September 2005 by researchers affiliated with Saferworld (a disarmament NGO), it was reported that 43.7% of Albanian households answered affirmatively that they had at one time possessed a weapon.<sup>210</sup> Civilians legally possessed 65,747 weapons, and illegally possessed an estimated 200,000 weapons.<sup>211</sup> It was further reported that only 11.2% of households admitted to current possession of a weapon, but the pollsters dismissed the low figure as obviously “incompatible” with known existing gun stocks.<sup>212</sup>

A 2002 United Nations Development Programme poll of Albanians revealed that 73.7% of respondents reported that protection of self and family was the main reason for owning a firearm.<sup>213</sup> The great majority—78.6%—claimed that they would prefer to see everyone disarmed, but “many of them would like to keep one weapon (with the reason to protect himself and his family and business) as the others [still] have . . . weapons.”<sup>214</sup> As Lawrence Doczy, who was in charge of the U.N.’s Small Arms Control Programme in Albania in 2003, noted: “You can imagine yourself as a villager, isolated in the mountains, out of sight of the nearest house . . . . If you’re in trouble, threatened, and the police can’t come to help you because they don’t have a vehicle, then you can’t really be blamed for wanting to hang on to a weapon for your own protection.”<sup>215</sup>

## 2. *Bosnia and Herzegovina*

In a 2004 poll conducted in Bosnia and Herzegovina, 34.2% of respondents stated they would choose to own a firearm legally, given the opportunity, and of males who responded, 46.8% would so choose.<sup>216</sup>

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210. PAUL HOLTOM ET AL., CENTER FOR PEACE AND DISARMAMENT EDUCATION & SAFERWORLD, TURNING THE PAGE: SMALL ARMS AND LIGHT WEAPONS, at 50, tbl.19 (Dec. 2005), available at <http://www.saferworld.org.uk/images/pubdocs/Albania%20ENG%20report.pdf>.

211. *Id.*

212. *Id.* at 50.

213. SALWC Project, Centre for Rural Studies, Socio-Economic Analysis and Impact Assessment 26 (2002), <http://undp.org.al/salwc/?reports> (follow “SALWC Socio-Economic Impact Survey” hyperlink) (last visited Feb. 25, 2008).

214. *Id.*

215. Paul Henly, *Albania’s Gun Culture Proves Hard to Shift*, BBC NEWS, Jan. 15, 2003, available at <http://news.bbc.co.uk/2/hi/europe/2660853.stm>.

216. WOLF-CHRISTIAN PAES ET AL., BONN INTERNATIONAL CENTER FOR CONVERSION, SMALL ARMS AND LIGHT WEAPONS SURVEY (SAS) BOSNIA AND HERZEGOVINA 43-44 (July 2004), available at

Most (67.1%) named the primary reason as protection of self, family, and property.<sup>217</sup> As of 2003, there were 144,469 legally possessed weapons, with an estimated 432,000 weapons illegally possessed.<sup>218</sup> Authorities conducted a weapons collection program dubbed “Operation Harvest” from 1998 to 2004, and obtained 40,651 weapons.<sup>219</sup> Tactics included search and seizure efforts by NATO’s<sup>220</sup> SFOR (Stabilization Force in Bosnia and Herzegovina) troops, in addition to public awareness campaigns of the dangers to families of weapons ownership, and voluntary surrender.<sup>221</sup>

### 3. *Brazil*

In a 1999 victimization survey taken in Brazil, self-protection was the prime reason for carrying a weapon for 34% of persons surveyed.<sup>222</sup> A study in the major city of São Paulo by the Latin-American Institute of the United Nations estimated that 58% of firearm owners possessed guns for “personal protection.”<sup>223</sup>

In 2001, there were approximately seven million lawfully owned firearms in Brazil, distributed among just 4.35% of the population, as a result of an extremely severe gun licensing statute. Authorities estimate, however, that there are as many as 11.5 million illegally owned firearms.<sup>224</sup> According to fifty-year-old taxi driver Luiz Marcelo, “[a]ll you see around us in the streets is crime, and the best they can think of is to disarm honest citizens like me and you . . . I have a gun at home and another one in this car and I’m not giving them up.”<sup>225</sup>

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[http://www.smallarmssurvey.org/files/portal/spotlight/country/eu\\_pdf/europe-boshrg-2004.pdf](http://www.smallarmssurvey.org/files/portal/spotlight/country/eu_pdf/europe-boshrg-2004.pdf). However, 44.4% of respondents said that their household would not acquire a firearm if given the opportunity to do so legally.

217. *Id.* at 44.

218. *Id.* at 19, 23.

219. *Id.* at 25.

220. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 37-38, 46-47.

221. See PAES ET AL., *supra* note 216, at 25.

222. See MARIA FERNANDA TOURINHO PERES, CENTER FOR THE STUDY OF VIOLENCE, UNIVERSITY OF SÃO PAULO, FIREARM-RELATED VIOLENCE IN BRAZIL 32 tbl. 6 (2004), available at [http://www.smallarmssurvey.org/files/sas/publications/co\\_publi\\_pdf/2004/2004-brasil-full\\_text\\_eng.pdf](http://www.smallarmssurvey.org/files/sas/publications/co_publi_pdf/2004/2004-brasil-full_text_eng.pdf).

223. Small Arms/Firearms Educ. & Research Network (SAFER-Net), Brazil: Overview, [http://ryerson.ca/SAFER-Net/regions/Americas/Bra\\_FY03.html](http://ryerson.ca/SAFER-Net/regions/Americas/Bra_FY03.html) (last visited Feb. 25, 2008).

224. *Id.* (“Approximately 4.35% of the population possess a registered firearm. It is estimated, however, that the actual percentage of firearm ownership is much higher.”).

225. Andrei Khalip, *Crime-hit Brazil Split Over Possible Gun Sales Ban*, RED ORBIT, July 20, 2005,

Brazil has recently been the target of several disarmament campaigns, collection programs (including “buy-backs”), and sensitization campaigns.<sup>226</sup> A referendum pushed by the Lula da Silva government would have banned almost all citizen firearm ownership.<sup>227</sup> In the October 23, 2005 vote, however, 64% of those who voted rejected the ban.<sup>228</sup>

According to Human Rights Watch:

unofficial estimates have placed the total number of police killings in Brazil at around 3000 annually. Indeed, the death toll may be even higher as many states do not record such figures correctly and some do not record them at all. Complaints of police abuse tend to cite brutality, murder, corruption, and a lack of interest in maintaining order in certain areas.<sup>229</sup>

In 2004, the BBC reported that in Rio de Janeiro alone, police killed more than one thousand people. The BBC noted: “Often they have been accused of shooting first and asking questions later.”<sup>230</sup> “In Brazil, police in many areas have been linked to ‘death squads’ responsible for hundreds of killings, including those of children, which have long gone unpunished.”<sup>231</sup> Disarmament groups, such as Oxfam, were obviously not unaware of the extensive abuses perpetrated by Brazil’s police.

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[http://www.redorbit.com/news/health/180797/crimehit\\_brazil\\_split\\_over\\_possible\\_gun\\_sales\\_ban/](http://www.redorbit.com/news/health/180797/crimehit_brazil_split_over_possible_gun_sales_ban/).

226. See Bonn Int’l Ctr. for Conversion (BICC), Help Desk for Practical Disarmament: Brazil, <http://www.bicc.de/helpdesk/stories/brazil.html> (last visited Feb. 17, 2008); Sam Logan, Ctr. for Int’l Policy, Brazil’s Gun Buy-Back Program, Will it Work?, Oct. 15, 2004, <http://americas.irc-online.org/am/1035>.

227. See Int’l Action on Small Arms 2005, *Examining Implementation of the U.N. Programme of Action*, BITING THE BULLET, 2005, at 73-74 (on file with author) (“Perhaps the most controversial article of the National Disarmament Statute is No. 35 which prohibits the sale of firearms in all of Brazilian territory except for use by the police, military, private security companies and several exceptions . . . This controversial article of the law would give Brazil one of the most restrictive laws in the world.”).

228. *Brazilians Reject Gun Sales Ban*, BBC NEWS, Oct. 24, 2005, <http://news.bbc.co.uk/2/hi/americas/4368598.stm>.

229. HUMAN RIGHTS WATCH, WORLD REPORT 2005: EVENTS OF 2004 192-93 (2005).

230. See Steve Kingstone, *Controversial Rio Raids Under Way*, BBC NEWS, Mar. 9, 2004, <http://news.bbc.co.uk/2/hi/americas/3545137.stm>; see also Martha K. Huggins & Jessica MacTurk, Resource Ctr. of the Americas, *Armed and Dangerous: Where the Military and Police Can’t Keep Order Private Security Takes Over*, Fall 2000 (noting that a study of Rio de Janeiro police shootings found that approximately sixty-five percent of police extrajudicial killings were committed from behind the victim).

231. DEBBIE HILLIER & BRIAN WOOD, SHATTERED LIVES: THE CASE FOR TOUGH INTERNATIONAL ARMS CONTROL 25 (2003).

Even IANSA (the world's leading gun prohibition organization) noted that "one of the major obstacles" to voluntary weapons collection was the "fear many people have of entering a police delegation with an illegal firearm."<sup>232</sup> Nor could any international disarmament activist who had spent a few days in-country have been unaware of the absence of effective police protection, especially for poor people, from the rampant violent crime in Brazil's urban areas. In retrospect, it was unrealistic for promoters of the gun ban referendum to expect that people who had no reason to trust the government for protection would voluntarily surrender the right to protect themselves.<sup>233</sup>

#### 4. *Bulgaria*

Researchers from the South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) asked Bulgarians for the three primary reasons why one might want to legally own a firearm; protection of self and family was one of the top three reasons for 86.6% of those surveyed, and protection of property and business was one of the top three reasons for 64.2%. "Twenty-six percent of HHS [household survey] respondents stated that if they or another member of their household could own a firearm legally, they would choose to do so . . . ."<sup>234</sup> One respondent was quoted as saying: "Who would convince me that if I handed in my gun, my neighbour would also hand in his? Nobody could convince me of that."<sup>235</sup> The researchers

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232. Int'l Action on Small Arms 2005, *supra* note 227, at 75.

233. See Assoc. Press, *Brazilians Block Gun Ban*, FOX NEWS, Oct. 23, 2005, <http://www.foxnews.com/story/0,2933,173154,00.html> (describing how University of Brasilia political scientist David Fleisher explained how anti-ban campaigners relied on public skepticism towards the police: "They ask the question: 'Do you feel protected and do you think the government is protecting you?' and the answer is a violent no"); see also Telma Moratto, *Brazilians May Reject Proposal to Ban Selling Guns, Ammunition*, BLOOMBERG.COM, Oct. 23, 2005, [http://www.bloomberg.com/apps/news?pid=10000086&sid=a\\_rQwuCFXiOo#](http://www.bloomberg.com/apps/news?pid=10000086&sid=a_rQwuCFXiOo#) ("'If it's rejected it will show once again that the government isn't walking in the same direction as the population,' said Bene Barbosa, president of Viva Brasil, a civic group seeking to defeat the proposed ban. 'It's also a vote against the government.' . . . Denis Mizne, executive director of Sou da Paz institute, 'A victory of the ban would be helpful to accelerate a world agenda on disarmament.'").

234. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, TAMING THE ARSENAL – SMALL ARMS AND LIGHT WEAPONS IN BULGARIA 61-62 (2005), available at [http://www.smallarmssurvey.org/files/portal/spotlight/country/eu\\_pdf/europe-bulgaria-2005.pdf](http://www.smallarmssurvey.org/files/portal/spotlight/country/eu_pdf/europe-bulgaria-2005.pdf).

235. *Id.* at 72.

also surmised that any weapons collection program attempted in Bulgaria might not succeed because of public mistrust of the authorities.<sup>236</sup>

### 5. Canada

In Canada, only around one to five percent of persons report self-defense as the reason for owning a gun.<sup>237</sup> The reason for the low figure may be that “[t]he prevailing attitude is that there is no need for self defense in Canada as superior social systems have eliminated these problems [of violent crime].”<sup>238</sup> Although “self-protection has been demonized,”<sup>239</sup> a surprising fact emerges from a 1997 survey which found that out of 1505 Canadians over the age of eighteen, 67% of gun-owners, and even 59% of non-gun-owners, stated they would use a gun to defend themselves.<sup>240</sup> Furthermore, the researchers reported that “a majority (54%) of those who wanted to confiscate the self-defense handguns of other people would use a gun for self-defense if they themselves were threatened.”<sup>241</sup> According to various surveys,

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236. *Id.* at 99. In 2007, Bulgaria had a population of 7,322,858 in about 2,921,887 households. See CENTRAL INTELLIGENCE AGENCY, THE 2008 WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/bu.html> (population data as of July 2007); National Statistical Institute (Bulgaria), *Домакинства И Семейства (Household and Family)* (2004), <http://www.nsi.bg/Census/DomSemTable.htm>. (last visited Feb. 29, 2008). If we combine the number of legally registered guns with estimates of the number of illegally possessed guns, we arrive at a total of between 393,000 and 559,000 civilian guns in Bulgaria. If we assume one gun per gun-owner, then between thirteen percent and nineteen percent of Bulgarian households contain a gun. If we use the Serbian survey figure of 1.5 guns per gun-owner, then the figure would be nine to thirteen percent of households.

237. Gary A. Mauser, *National Experiences with Firearms Regulation: Evaluating the Implications for Public Safety 19* (Simon Fraser Univ. Working Paper Series 2003-1 (2003)) (citing GPC Research, “Fall 2001 Estimate of Firearms in Canada, Report on Findings,” Submitted to the Canadian Firearm Centre, 2001.); *but cf.* Thomas Gabor, *Firearms and Self-Defence: A Comparison of Canada and the United States 5* (July 1997) (unpublished manuscript), available at [http://www.cfc-cafc.gc.ca/pol-leg/res-eval/publications/1997/pdfs/selfdef\\_en.pdf](http://www.cfc-cafc.gc.ca/pol-leg/res-eval/publications/1997/pdfs/selfdef_en.pdf) (reporting a figure of one to five percent).

238. Gary A. Mauser & H. Taylor Buckner, *Canadian Attitudes Toward Gun Control: The Real Story 50* (Jan. 1997) (A Mackenzie Institute Occasional Paper), available at <http://teapot.usask.ca/cdn-firearms/Mauser/gunstory.html>.

239. E-Mail from Dr. Gary Mauser to Paul Gallant (Aug. 22, 2005, 9:55:34 EST) (on file with author).

240. Mauser & Buckner, *supra* note 238, at 51.

241. *Id.* at 52. (“Perhaps those who say they would personally use guns they favour confiscating from everyone else have not worked through the logic of their position. These inconsistencies do, however, provide an interesting insight into the depth of thought that goes into much of the gun control rhetoric.”).

approximately 18% to 26% of Canadians own at least one firearm.<sup>242</sup> Estimates place the number of lawful gun owners at 2.3 to 4.5 million, and suggest that there are “between 7.9 and 15 million firearms in Canada.”<sup>243</sup>

Canada has always had much greater gun control than the United States, and greater public acceptance of such controls. Public tolerance for controls is not unlimited; there has been substantial resistance of a new system of registration for sporting long guns, because enormous cost over-runs and corruption have plagued the registration system.<sup>244</sup> Even so, it is clear that the issue of public resistance to gun control in Canada is very different from that issue in other nations. In countries such as Uganda, Kenya, South Africa, or Albania, citizens may reasonably fear that if they give up their guns, they will be at a very high risk of being killed, or made destitute. Such fears are much less prevalent in Canada.

#### 6. Croatia

In Croatia, the stated purpose of 47% of registered firearms owners was “self-defence.”<sup>245</sup> Approximately 376,000 firearms were registered as of early 2005, according to the Ministry of the Interior, for a total of approximately 20% of Croatian households,<sup>246</sup> but there are no estimates of illegally possessed weapons.

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242. Small Arms/Firearms Educ. & Research Network (SAFER-Net), Canada: Overview, [http://ryerson.ca/SAFER-Net/regions/Americas/Can\\_JY04.html](http://ryerson.ca/SAFER-Net/regions/Americas/Can_JY04.html) (last visited Feb. 25, 2008) (“Roughly 14% of households in Ontario own firearms compared to 76% in the Yukon.”).

243. Gary A. Mauser, *The Failed Experiment: Gun Control and Public Safety in Canada, Australia, England and Wales*, 71 PUB. POL’Y SOURCES 1, 9 (2003).

244. For example, the program was promised to cost two million Canadian dollars, and has already cost over two billion. A key reason for the fall of the Liberal government in 2006 was a scandal involving the diversion of gun registration funds into the pockets of Liberal insiders. See Doug Beazley, *Gun Registry Cost May Soar Past \$2B*, CANOE NETWORK, Mar. 2, 2006, available at <http://calsun.canoe.ca/News/Alberta/2006/03/02/pf-1469251.html>; see also Press Release, Garry Breitkreuz, Member, Canadian Parliament, CBC’s \$2 Billion Dollar Cost Estimate for the Gun Registry was Low (Mar. 3, 2004); Gary Mauser, Federal Gun Registry has not Improved Public Safety Despite Costing Taxpayers More than \$2 Billion, <http://www.garymauser.net/media.html>.

245. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 68.

246. See *id.*

### 7. *El Salvador*

When Salvadorans were asked about reasons for having and wanting a firearm, the total combined responses indicating security, protection, and to combat crime were 86.4%.<sup>247</sup> As of 2002, there were an estimated 400,000 firearms in El Salvador, of which 250,000 were estimated to be illegal.<sup>248</sup> Approximately 30% of El Salvadoran households possessed a firearm.<sup>249</sup>

### 8. *Mali*

In Mali, scholars from the Small Arms Survey (a research organization at the Graduate Institute of International Studies in Geneva, Switzerland) reported that “[a]necdotal evidence suggests that every family in the region owns at least one weapon, with some families and community leaders reportedly stockpiling several dozens of arms.”<sup>250</sup> Among the reasons given for arms proliferation, “personal security” topped the list. According to a UNDP expert:

Armed burglary had become a daily activity, particularly in urban centres. This led people targeted by armed robbery to acquire guns as well, in order to protect their lives and property. At the same time, communities located in the

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247. Weapons . . . not even as toys!: An Initiative for Small Arms Control in El Salvador, UNDP (2003), at 19 (Distributed at the First Biennial Meeting of States on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, New York City, July 2003).

248. See Small Arms/Firearms Educ. & Research Network (SAFER-Net), *El Salvador: Overview*, [http://www.ryerson.ca/SAFER-Net/regions/Americas/EIS\\_MY03.html](http://www.ryerson.ca/SAFER-Net/regions/Americas/EIS_MY03.html) (last visited Feb. 25, 2008).

249. *Id.* (“A study carried out in 1999 among 13 to 19 year olds indicated that 7 percent admitted carrying firearms into their schools . . . . A United Nations report released in 1995 [after a weapons collection program] . . . revealed that only 100 weapons had been collected.”).

250. Nicolas Florquin & Stéphanie Pézard, *Insurgency, Disarmament, and Insecurity in Northern Mali, 1990-2004*, in ARMED AND AIMLESS: ARMED GROUPS, GUNS, AND HUMAN SECURITY IN THE ECOWAS REGION 47, 60 (Nicolas Florquin & Eric G. Berman eds., 2005), available at

[http://www.smallarmssurvey.org/files/sas/publications/b\\_series\\_pdf/AA/Part%20I%2002%20Mali.pdf](http://www.smallarmssurvey.org/files/sas/publications/b_series_pdf/AA/Part%20I%2002%20Mali.pdf).

interior of the country were forced to acquire weapons because of the failure of the government to provide them adequate security.<sup>251</sup>

### 9. Montenegro

In a 2003 poll, 37.2% of respondents reported keeping a firearm for “personal security.”<sup>252</sup> There were 86,000 weapons registered to civilians in 2004, and an estimate of between 40,000 to 89,000 unregistered illegally possessed weapons.<sup>253</sup> In 2003, the government’s “Farewell to Arms” program, lasting two months, collected 1600 firearms.<sup>254</sup>

### 10. Papua New Guinea

In a 2004 survey about motivation for firearm ownership in the Southern Highlands of Papua New Guinea, 75% of the sample polled stated that self-protection was their primary motive for owning a gun.<sup>255</sup> In the Southern Highlands, there may be only five factory-made firearms per thousand people, while the huge number of home-made firearms may approach one weapon per male.<sup>256</sup> Firearm amnesties in Papua

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251. U.N. INST. FOR DISARMAMENT RESEARCH, EXCHANGING WEAPONS FOR DEVELOPMENT IN MALI: WEAPON COLLECTION PROGRAMMES ASSESSED BY LOCAL PEOPLE, at 34 (prepared by Geoffrey Mugumya), U.N. Sales No. GV.E.04.0.14. (2004).

252. Center for Democracy and Human Rights, *Respect Life: Return the Weapons: Results of a Public Opinion Poll 6* (Mar. 2003), available at [http://www.smallarmssurvey.org/files/portal/spotlight/country/eu\\_pdf/europe-montenegro-2003.pdf](http://www.smallarmssurvey.org/files/portal/spotlight/country/eu_pdf/europe-montenegro-2003.pdf).

253. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 142.

254. *Id.* at 157, 159; *see also* S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, A HOUSE ISN’T A HOME WITHOUT A GUN”: SALW SURVEY REPUBLIC OF MONTENEGRO 25 (2004), available at [http://www.smallarmssurvey.org/files/sas/publications/co\\_publi\\_pdf/2004/2004-montenegro-eng.pdf](http://www.smallarmssurvey.org/files/sas/publications/co_publi_pdf/2004/2004-montenegro-eng.pdf) (“In a number of casual conversations with Montenegrin citizens, most indicate mistrust of the police. . . . Some of the views of the participants are that the police are biased, behave rudely and unprofessionally, frequently use policies of nepotism, and are often used as a ‘repressive instrument of the state’ that strictly follow the politics of the party in power.”).

255. PHILIP ALPERS, SMALL ARMS SURVEY, GUN-RUNNING IN PAPUA NEW GUINEA 117-18 (2005), available at [http://www.smallarmssurvey.org/files/sas/publications/spe\\_reports\\_pdf/2005-sr5-papuanewguinea.pdf](http://www.smallarmssurvey.org/files/sas/publications/spe_reports_pdf/2005-sr5-papuanewguinea.pdf).

256. *Id.* at 44-45.

New Guinea have not progressed well, as few firearms have been surrendered to authorities.<sup>257</sup>

### 11. Serbia

In Serbia, in 2005, there were 1,056,314 registered firearms (including 543,070 handguns) in about 40% of households,<sup>258</sup> and an estimated 944,000 illegally possessed firearms.<sup>259</sup> Between 2001 and 2003, about 10,000 to 15,000 weapons had been voluntarily collected from the populace.<sup>260</sup> In the weeks that followed Serbian Prime Minister Djindjic's murder on March 12, 2003, confiscations by government authorities removed about 50,000 weapons.<sup>261</sup>

In a 2004 poll conducted in the South Serbian municipalities, self-protection was cited by 61% of Serbian household heads and 70% of Albanian household heads as a reason for owning a weapon; property protection was cited by 37% of Serbian household heads and 24% of Albanian household heads; and community protection was cited by 8% of Serbian household heads and 4% of Albanian household heads.<sup>262</sup>

A separate Serbian household survey "confirmed that lack of trust in the police . . . prevented people [from] handing in weapons" during a 2003 amnesty program organized as part of a state of emergency.<sup>263</sup> Because of the desire to possess weapons for self-defense and the lack of

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257. *Id.* at 115 ("When guns are surrendered to the police, the gesture is largely symbolic, with tribal groups surrendering only a portion of their armoury and typically only those weapons that are not powerful." (internal quotation marks and citation omitted)). *See also* Nicole Haley & Robert Muggah, *Jumping the Gun? Reflections on Armed Violence in Papua New Guinea*, AFRICAN SECURITY REVIEW, No. 15.2, 2006, at 38, 53-54 ("Certainly past initiatives have either failed or have tended to yield mainly homemade weapons.").

258. U.N. DEV. PROGRAMME, *supra* note 200, at 10-11.

259. *Id.* at 10.

260. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 156.

261. *See id.*

262. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, PUBLIC PERCEPTIONS OF SMALL ARMS AND SECURITY IN SOUTH SERBIA 17 (2004), available at <http://www.seesac.org/reports/Public%20Perceptions%20Final.pdf>. Other reasons were also cited, such as hunting, sporting purposes, work and tradition. In this area, both ethnic Albanians and ethnic Serbians lived together.

263. U.N. DEV. PROGRAMME, *supra* note 200, at 13, 63 ("The effect corruption has on the state's capacity to implement the rule of law is without doubt significant."). *See also* S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 234, at 99 ("A final consideration is whether the general public would have sufficient trust and confidence in institutions tasked with collecting weapons and delivering any incentives. NHHS [nationwide household surveys] and FGD [focus group discussions] results showed that public trust in state institutions, including the police, is lacking.").

trust in the authorities, one can assume that significant further disarmament will likely prove unsuccessful.<sup>264</sup>

### 12. *United States*

One study estimated the civilian gun stock at nearly 200 million in 1997, distributed among 35% of American households.<sup>265</sup> In the United States, two of the authors of this Article (Gallant & Eisen) performed a survey of average gun owners: 81.3% listed self-defense as the most important reason for owning a gun. Furthermore, 60.5% of respondents stated they had carried a handgun for personal protection in jurisdictions where it was illegal to do so, and 72.9% stated they would do so in the future if the need became apparent.<sup>266</sup>

### 13. *Macedonia*

Although we do not have household survey evidence about the reason for gun ownership in Macedonia, it appears that security concerns

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264. "Permits to possess a firearm cost 1,350 Dinars (€17) and permits to carry a firearm cost 6,750 Dinars (€83). The state raises approximately €9 million annually from licensing." S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 149. "Almost all permits are issued for the 'possession-only' category of firearm license, while [only] 1,557 people are permitted to carry their firearm in public." *Id.*

265. Philip J. Cook & Jens Ludwig, *Guns in America: National Survey of Private Ownership and Use of Firearms*, NATIONAL INSTITUTE OF JUSTICE, May 1997, available at National Criminal Justice Reference Service 165476. In the United States, unlike in most of the other nations discussed in Part IV, there are numerous surveys of the motivations for gun ownership. See, e.g., KLECK, *supra* note 198, at 74-85 (citing most of the many studies published before 1997).

266. *Guns & Ammo's Anonymous Gun-Owners Survey*, GUNS & AMMO MAGAZINE, Dec. 2000, at 30-32 (discussing poll of 6856 American citizens 18 years of age and older who lawfully owned firearms). Instructions for participation in the survey were noted on the form: "In order to participate in this survey, you must be (1) an American citizen, 18 years of age, or older, and (2) the lawful owner of a firearm (long gun or handgun) where you reside." The 33-question survey was presented in multiple-choice format (with the exception of answers to state of residence and age). See *id.* The Gallant/Eisen survey is the only anonymous poll of all those discussed herein. Respondents likely had no fear of self-incrimination from their answers. *Id.* One of the questions asked in the G&A survey was: "If asked by a pollster whether I owned firearms, I would be truthful." Of respondents, 29.5% stated they would not divulge gun ownership to a pollster. Non-anonymous polls conducted by agents of government or the U.N. may intimidate the respondent and may therefore tend to underestimate civilian attitudes about self-defense with a firearm. The total number of respondents tabulated was 6,856, and responses came from all 50 states. Readers of *Guns & Ammo* "are quite similar to typical gun owners." Mark Duggan, More Guns, More Crime 5 (Nat'l Bureau of Econ. Research, Working Paper No. 7967, 2000), available at <http://ssrn.com/abstract=245849>.

are a key motivation for firearms possession there. The nation currently has an estimated 100,000 to 450,000 firearms possessed illegally.<sup>267</sup> Although the government has strengthened restrictive laws and attempted to control civilian firearm possession, “reports note that until trust in the police has been developed further, Macedonians are likely to own guns in an attempt to guarantee their own security.”<sup>268</sup>

Not only do Macedonians believe their police to be inept, but according to Human Rights Watch, “[l]ocal nongovernmental organizations also reported widespread impunity for police abuses, with the judiciary often responding ineffectively and slowly to complaints of ill-treatment.”<sup>269</sup>

#### 14. *Tajikistan*

A similar story appears to be true in Tajikistan, for which we also lack household survey data. In the central-Asian nation, civilians historically had not been well-armed.<sup>270</sup> In 1992, internal disputes caused the state of civilian armament to change. The authorities attempted to disarm the civilian population, but failed, and found that extensive weapons trafficking virtually guaranteed the further arming of the country’s population.<sup>271</sup> Police there do not have a good track record of serving the populace.<sup>272</sup>

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267. S.E. EUR. CLEARINGHOUSE FOR THE CONTROL OF SMALL ARMS AND LIGHT WEAPONS, *supra* note 195, at 87.

268. *Id.* at 87-88.

269. HUMAN RIGHTS WATCH, *supra* note 229, at 343.

270. See Burkhard Conrad, *The Problem of Small Arms and Light Weapons in Tajikistan*, STRATEGIC ANALYSIS: A MONTHLY JOURNAL OF THE IDSA, Nov. 2000, available at [http://www.ciaonet.org/olj/sa/sa\\_nov00cob01.html](http://www.ciaonet.org/olj/sa/sa_nov00cob01.html). (“[A]t this point the spread of small arms and light weapons began. By the end of the ‘official’ war in the summer of 1997, Tajikistan was full of weapons.”).

271. See *id.* It is evident that the population carries arms and that the government cannot stop them. See BOBI PIRSEYEDI, U.N. INST. FOR DISARMAMENT RESEARCH (UNIDIR), THE SMALL ARMS PROBLEM IN CENTRAL ASIA: FEATURES AND IMPLICATIONS 69 (2000) (“Although the Tajik Government has forbidden its citizens to carry arms in public places and issued a decree ordering them to hand over their weapons to the Ministry of Interior, small arms such as pistols, Kalashnikovs and hand grenades are routinely confiscated by the police.”).

272. See Bureau of International Information Programs: U.S. Dept. of State, Statement of Ms. Ruth Wedgewood, U.S. Delegate, OSCE Human Dimension Implementation Meeting in Warsaw, Oct. 9, 2003 (transcript), available at <http://belgrade.usembassy.gov/policy/regional/031015b.html> (“In Tajikistan, police often beat and force confessions from detainees.”).

## CONCLUSION

The widespread proliferation and misuse of small arms threatens the realization of basic human rights and security in various ways. In the hands of repressive forces, small arms can serve to intimidate, threaten, and coerce whole communities, limit free movement, and prevent access to basic entitlements and services. Small arms are also routinely used to facilitate or commit human rights abuses, such as extrajudicial executions and torture.<sup>273</sup>

The Small Arms Survey also emphasizes “the legal duty of all states to uphold the human rights of their citizens in situations involving the use of potentially lethal force by state agents.”<sup>274</sup> Unfortunately, the Small Arms Survey, like many of the NGOs which promote global prohibitions, has failed to examine the role of gun confiscation, or other forms of gun control, in causing human rights violations.

In this Article, we have not argued for or against the theory that there is a human right of self-defense, or a right to possess defensive arms. But even assuming *arguendo* that no such rights exist, the relationship between gun control and human rights is much more complex than prohibition advocates have acknowledged.

Quite obviously, taking weapons away from terrorist groups such as the Taliban or Hezbollah will improve human rights. It is not so clear that human rights are improved by disarming groups such as the Karamojong tribes, or black women in South Africa who are not highly literate in English or Afrikaans. Moreover, even if there were, in the abstract, potential human rights gains from disarming the latter groups, the disarmament itself may be perpetrated by means which make the human rights situation much, much worse.

We do not suggest that gun confiscation programs (or quasi-confiscatory licensing schemes, such as South Africa’s) *necessarily* must lead to human rights violations (again, putting aside the question of whether there is any right to self-defense itself). But we do suggest that in places where the government has done little or nothing to effectively protect the citizenry, firearms confiscation will be widely resisted, and

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273. SMALL ARMS SURVEY, SMALL ARMS SURVEY 2004: RIGHTS AT RISK 1 (2004).

274. *Id.*; see also U.N. Comm’n on Human Rights, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (Apr. 19, 2005), available at <http://www1.umn.edu/humanrts/instree/res2005-35.html>. The U.N. is seeking to create a global norm so that compensation, rehabilitation, and guarantees of non-repetition would be assured following human rights abuses by states or by non-state actors.

there is a grave risk that these governments will escalate their tactics and perpetrate widespread abuses of human rights.

Even if there is no right to self-defense, people who want to possess licensed arms still have the same rights as do persons seeking to own a car or to open a small business; that is, they have a right to be treated fairly in the license application process. They should not be subjected to discrimination because they speak a only one of the many official languages of their country. They should not be subject to arbitrary and capricious decision-making. They should not be discriminated against on the basis of race, sex, or political beliefs. They should not be denied a license on the basis of palpably false and sexist claims, for example, that women can always rely on their husbands to take care of their essential survival needs.

In some government and NGO offices, there are people who are obsessed with guns. They appear to have no concern about the murder, torture, rape, and ethnic cleansing that result from abusive enforcement of anti-gun laws. The victims are treated like some eggs that must be broken in order to make the omelet of a society where no one except government employees has firearms.<sup>275</sup> However, many other people who favor a disarmed society in theory are, like all decent people, troubled by human rights violations perpetrated in the name of gun control. This Article does not attempt to resolve the gun debate. Instead, we offer several proposals that can be supported, and easily implemented, regardless of one's views on the merits of the gun issue itself.

First, where new anti-gun laws—especially confiscatory or quasi-confiscatory laws—are being imposed, human rights supporters, international organizations, NGOs, and the media should be particularly vigilant in monitoring government adherence to human rights standards. Second, programs to disarm civil society as a whole should be implemented (if ever) only *after* the government has provided effective, credible security to the public, so that the vast majority of families who possess firearms can be confident that they will not endanger themselves by surrendering their means of self-protection.<sup>276</sup> Such security includes

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275. “You can’t make an omelet without breaking eggs,” was a cliché used by Walter Duranty, a *New York Times* reporter who was an infamous apologist for Stalin’s genocide in the Ukraine and elsewhere in the Soviet Union. Askold Krushelnycky, *Ukrainians Want Pro-Stalin Writer Stripped of Pulitzer*, THE OBSERVER, May 4, 2003.

276. Again, we are not arguing for or against such disarmament. We recognize that the confidence that any particular government will provide effective security against crime is, at best, a prediction that can only be made with reasonable accuracy a few years into the future.

not only protection from criminals and from criminal governments, but also, in some areas, protection from predatory animals. To implement disarmament programs before security is credibly guaranteed is to greatly increase the risk that extensive human rights violations will be necessary in order to confiscate even a small fraction of the guns.

Third, in any particular nation, disarmament advocates can improve their long-run chances of success in voluntarily disarming civilians by focusing, as a first step, on greatly reducing or nearly eliminating police and military abuses of the civilian population, and on working to reform governments so that they become protectors and helpers of the people, rather than predators. Conversely, to force disarmament on citizens who are justifiably terrified of the police and the military, and who are given little if any government protection from non-government criminals, is to further victimize the victims.

Conscientious human rights advocates should fight to reduce the human rights abuses which are perpetrated with guns (including abuses perpetrated by governments), *and* fight to reduce the human rights abuses perpetrated by governments under the pretext of gun control laws.

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We also recognize that because even democratic, civilized governments (for example, Germany in 1900) can unexpectedly turn tyrannical a few decades later, some prudent people might always choose to own a firearm as a defense against tyranny. In this Article, we have avoided the gun control debate *per se*, and instead are focused on human rights concerns which ought to be shared by everyone, including by persons with very diverse stands on gun control.