

Human Rights and Gun Confiscation

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Introduction

“Everyone has the right to life, liberty and security of person,” affirms article 3 of the Universal Declaration of Human Rights.⁴ It is 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.⁵ In this Article, we address a human rights

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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.

⁴ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc A/810, art. 3. The Universal Declaration 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, adopted by General Assembly resolution 2200A (XXI) Dec. 16, 1966, entry into force Mar. 23, 1976, at art. 6, sec. 1 (“Every human being has the inherent right to life.”); art. 9, § 1 (“Everyone has the right to liberty and security of person.”), available at http://www.unhcr.ch/html/menu3/b/a_ccpr.htm (visited Aug. 30, 2007); European Convention on Human Rights, Nov. 4, 1950, available at <http://www.hri.org/docs/ECHR50.html> (visited Aug. 30, 2007) at § I, art. 2(1) (“Everyone’s right to life shall be protected by law.”), § I, art. 5(1) (“Everyone has the right to liberty and security of person.”); Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, originally entered into force Sept. 3, 1953, available at <http://www1.umn.edu/humanrts/instrree/z17euroco.html> (visited Aug. 30, 2007) at § I, art. 2(1) (“Everyone’s right to life shall be protected by law.”), § I, art. 5, 1 (“Everyone has the right to liberty and security of person.”); American Convention on Human Rights, signed Nov. 22, 1969, available at http://www.hrcr.org/docs/American_Convention/oashr.html (visited Aug. 30, 2007), ch. 2, art. 4(1) (“Every person has the right to have his life respected.”), 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 and entered into force Oct. 21, 1986, available at <http://www.hrcr.org/docs/Banjul/afhr.html> (visited Aug. 30, 2007) at part I, ch. 1, art. 4 (“Every human being shall be entitled to respect for his life and the integrity of his person.”), part I, ch. 1, art. 6 (“Every individual shall have the right to liberty and to the security of his person.”).

⁵ See, e.g.:

Scholars:

Derek Miller & Wendy Cukier, *Regulation of Civilian Possession of Small Arms and Light Weapons: Biting the Bullet*, Policy Briefing 16, at 5 (“the proliferation of weapons, and in particular the issue of civilian possession, is regarded as the leading threat to Human Security. Maintaining a focus on the reduction of small arms death and injury in the context of international Human Rights is widely seen as critical.”); Wendy Cukier, Antoine Chapdelaine & Cindy Collins, *Globalization and Firearms: A Public Health Perspective*, Fall 2000, at 11, <http://dsp-psd.pwgsc.gc.ca/Collection/E2-372-2000E.pdf> (visited Sept. 9, 2006) (“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.”); Carmen Rosa de León-Escribano, *Small Arms and Development in Post Conflict Societies*, IEPADES, July 2006 (citing an IANSA document: “There are clear signs which show that small firearms—as instruments of violence—contribute to human and social destruction, endangering human rights and the rule of law and undermining political stability and economic development.”).

Non-Governmental Organizations (NGOs):

Joint Letter on Small Arms, Quaker Council for European Affairs, (undated), <http://www.quaker.org/qcea/archive/smallarmsletter.htm> (visited Sept. 8, 2006) (“...the international NGO community has identified the proliferation and misuse of small arms as a serious humanitarian challenge with implications for development, human rights, peace and global justice.”); *UN 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?*, INTERPRESS SERVICE, June 15, 2006 (“The bullet trade is out of control,” says Oxfam, and “it is fueling conflict and human rights abuses worldwide.”); *Small Arms and Human Rights*, Small Arms Working Group, http://fas.org/asmp/campaigns/smallarms/sawg/2006factsheets/Small_Arms_and_Human_Rights.pdf (visited Sept. 8, 2006) (“Small arms are used to commit a wide variety of human rights abuses....”); *Shattered Lives: The Case for Tough International Arms Control*, (2003), at 24 (“...the easy availability of arms tends to increase the incidence of armed violence, prolong wars once they break out, and enable grave and widespread abuses of human rights.”); *What is the UN Programme of Action on Small Arms and Light Weapons?* Friends Committee on National Legislation, Aug. 7, 2006, http://www.fcnl.org/issues/item.php?item_id=1836&issue_id=46 (visited Sept. 8, 2006) (“The connection between the growing proliferation of SALW and the usage of these weapons to commit heinous crimes, violate human rights and threaten human security....”); *Curb Trafficking of Small Arms and Light Weapons*, Environmentalists Against War, <http://www.envirosagainstar.org/know/read.php?itemid=1666> (visited Sept. 8, 2006) (“These weapons directly contribute to widespread human rights violations....”); *Small Arms and Human Rights: A Human Rights Watch Briefing Paper for the U.N. Biennial Meeting on Small Arms*, Human Rights Watch, July 7, 2003, <http://hrw.org/backgrounder/arms/small-arms-070703.htm> (visited Sept. 8, 2006) (“Small arms facilitate countless human rights abuses and violations of international humanitarian law around the globe.”); SMALL ARMS SURVEY 2004: RIGHTS AT RISK, at 1 (“The widespread proliferation and misuse of small arms threatens the realization of basic human rights and security in various ways.”); *2006: Bringing the Global Gun Crisis Under Control* (IANSA), at 8, <http://www.iansa.org/members/IANSA-media-briefing-low-res.pdf> (visited Sept. 8, 2006) (“More human rights abuses are committed with small arms than with any other weapon.”); *UN: Oral Statement on Small Arms and Light Weapons*, Amnesty International, Aug. 15, 2002, www.web.amnesty.org/library/Index/ENGIOR400222002?open&of=ENG-325 (“A wide variety of cases of serious human rights abuse examined by Amnesty International involve the deliberate or reckless misuse of small arms and light weapons.”); *2006 Review Conference at risk of failure, Response from IANSA to the President’s Non-paper of 3 July 2006*, July 5, 2006, <http://www.iansa.org/un/review2006/documents/RevConNewsWednesday5july.pdf> (visited Sept. 9, 2006) (“Illicit trafficking and proliferation of small arms and light weapons fuels gross violations of international human rights law and serious breaches of international humanitarian law.”); *The Arms Trade Treaty: No More Arms for Atrocities*, The Arias Foundation for Peace and Human Progress, at III (“The proliferation and misuse of conventional arms—everything from tanks to grenade launchers to hand

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; we also, for purposes of this Article, ignore the right of self-defense and the right to arms which are contained in various national constitutions.⁶ Rather, we document some of the human rights abuses that are resulting 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 which has directly caused massive, and fatal, violations of human rights. Among the rights violated have been those enumerated in Article 3 (“the right to

pistols—fuels poverty, conflict and human rights violations around our world.”); *Targeting the Weapons: Reducing the Human Cost of Unregulated Arms Availability*, International Committee of the Red Cross, June 2005 (“Inadequate controls on arms transfers, combined with the frequent use of weapons in violation of international humanitarian law and human rights, contribute to undermining respect for the law.”); World Council of Churches Executive Committee Statement on the Control of Small Arms and Light Weapons, Sept. 16, 2005 (“Their presence [small arms and light weapons] fuels conflict, exacerbates abuses of human rights....”); South Asian Movement Against Small Arms, Issue 1, Aug. 2005 (“[T]he proliferation of small arms and light weapons...also gives rise to abuse of human rights, strengthens the criminals and instills fear among the innocent.”).

Media:

UN World Conference on Small Arms Collapses Without Agreement, AFRICA NEWS, July 7, 2006 (“The Control Arms Campaign has called on governments to establish such a treaty and to agree global guidelines for small arms sales to stop weapons fuelling human rights abuses and poverty around the world.”); *Empty Rhetoric on Gun Control Means Little to Those in Conflict*, THE IRISH NEWS LTD., June 19, 2006 (“...irresponsible arms sales continue to fuel conflicts, undermine development and contribute to countless human rights abuses.”); Brian Wood, *A Dirty Trade in Arms*, LE MONDE DIPLOMATIQUE, June 2006, <http://mondediplo.com/2006/06/10dirtytrade> (visited Sept. 8, 2006)(“The proliferation of arms, especially small arms, has had a lasting [negative] impact on human rights.”).

UN:

Existing Commitments Related to Human Rights and Humanitarian Law—Select Government Documents on Arms Transfers, *International Documents*, United Nations Security Council Resolution 1467 (March 18, 2003), <http://hrw.org/backgrounder/arms/small-arms-annex-070703.pdf> (visited Sept. 8, 2006)(“The Security Council expresses its profound concern at the impact of the proliferation of small arms and light weapons...These contribute to serious violations of human rights and international humanitarian law, which the Council condemns.”); *Disarmament Forum: Taking Action on Small Arms*, United Nations Institute for Disarmament Research, Feb. 2006, at 3 (“...small arms play a huge role in crime, sexual violence, domestic violence, suicide and human rights abuses such as torture.”).

Governments:

Parliamentarians In Nairobi Urge All Parties To Ensure That Food Relief Should Not Be Used For Political Ends, Inter-Parliamentary Union Press Release, No.9, May 12, 2006, <http://www.ipu.org/press-e/nai9.htm> (visited Sept. 8, 2006)(...they urged parliaments to combat SALW proliferation and misuse as a key element in national strategies on conflict prevention, peace-building, sustainable development, protection of human rights....”); *Malawi Forms NGO to Control Firearms*, AFRICA NEWS, Apr. 27, 2006 (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.”).

⁶ Such issues are addressed in David B. Kopel, Paul Gallant & Joanne D. Eisen, *The Human Right of Self-Defense*, 22 BYU J. PUB. L., (forthcoming).

life, liberty and security of person”⁷) and Article 5 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”) of the Universal Declaration.⁸

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 suggest one reason why gun confiscation programs can result in major human rights violations: most gun-owners possess their firearm for personal and family defense. Therefore, gun confiscation must be enforced by extremely violent and intrusive measures. Gun possession imposes various costs and inconveniences on gun owners (e.g., 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 guarantees for personal safety.

We conclude by offering two caveats for disarmament programs. First, that voluntary disarmament will generally be possible only after a government has proven that it will protect the security of the people who would be disarmed. Second, that 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.⁹ The cow lies at the heart of their culture of pastoralism, providing the major source of dietary protein through its milk, blood, and meat. Wealth and local political power are based on the size of one’s cattle herd. For countless generations, cattle-rustling has been a traditional Karamojong pursuit.¹⁰

⁷ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc A/810, art. 3.

⁸ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc A/810, art. 5.

⁹ See *Karamojong Cluster Peace Newsletter*, (vol. 1, Issue 2, Sept. 2002), <http://www.fews.net/resources/gcontent/pdf/1000394.pdf> (visited May 28, 2006) (“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....”). See also *The Karamojong: The Ethnic Groups*, <http://www.littlestar.com/karamojong/karmjong/ethnic1.htm> (visited May 28, 2006) (“The Karamojong *in toto* number somewhere in the range of a few to several hundred thousand, while the exact number is quite unknown.”). “Karamojong” has several different accepted spellings.

¹⁰ See Anna Borzello, *Ridding the Karamojong of Guns*, BBC NEWS, Jan. 22, 2001.

The availability of firearms has made cattle raiding deadlier, and 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*, warns: "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."¹¹ Yet, government 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."¹²

With UN support,¹³ 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 is increasing human security and long-term development,¹⁴ 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 has featured extensive torture, arson, and murder,¹⁵ and has displaced tens of thousands of people, turning them into starving refugees. When funding for the 2006 Ugandan disarmament campaign was finally withdrawn by the United Nations Development Program (UNDP), both the UNDP and the government of Uganda attempted to suppress details of the debacle.¹⁶

¹¹ See *Drought in the North Likely to Get Worse, Say Researchers*, THE NATION (Nairobi), June 5, 2006. See also *Kenya: is Drought Killing Pastoralism?*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Mar. 8, 2006 ("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.").

¹² See *Army Joins Disarmament Operation*, THE EAST AFRICAN STANDARD (Nairobi), May 1, 2006. The *East African Standard* is another Kenyan newspaper, which has been 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>.

¹³ *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> (visited Sept. 6, 2006).

¹⁴ See United Nations Development Programme, *UNDP in Uganda: Creating a secure environment for the facilitation of disarmament, demobilization and reintegration initiatives in North and North Eastern Uganda*, <http://www.undp.or.ug/hsp.htm> (visited Sept. 3, 2006).

¹⁵ See Matthew Russell Lee, *Strong Arm on Small Arms: Rift Within UN About Uganda's Involuntary Disarmament of Karamojong Villages*, INNER CITY PRESS—INVESTIGATIVE JOURNALISM FROM THE UNITED NATIONS, June 21, 2006, <http://www.innercitypress.com/unhq062106.html> (visited Aug. 16, 2006). See also Kabona Esiara and Phoebe Mutetsi, *Govt to Investigate Human Rights Abuse in Karamoja Region*, THE MONITOR (Kampala), July 31, 2006.

¹⁶ See Matthew Russell Lee, *UN Acknowledges Abuse in Uganda, But What Did Donors Know and When?* INNER CITY PRESS—INVESTIGATIVE JOURNALISM FROM THE UNITED NATIONS, June 29, 2006, <http://www.innercitypress.com/unhq062906.html> (visited Sept. 6, 2006). See also Richard Egadu, *Army Halts Forceful Disarmament in Karamoja Region*, THE MONITOR (Kampala), July 1, 2006.

B. The Obote/Amin Era

Apollo Milton Opete Obote was Uganda's first 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.¹⁷ Obote imposed a nationwide ban on the civilian possession of firearms and ammunition in 1969, using an unsuccessful attempt on his life as a pretext.¹⁸

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.¹⁹ While Obote's armed police were ineffectual in protecting the pastoralists, they worked diligently to thwart the Ugandans' attempt to acquire firearms.²⁰

The colonial 1955 British Firearms Ordinance was replaced by a new Firearms Act in 1970.²¹ The law imposed extensive restrictions on civilians, including national firearm registration and gun-owner licensing. The restrictions allowed the Obote regime to render firearm possession illegal, except to government officials and persons who were considered politically reliable.²²

In 1971, Army Chief of Staff Idi Amin executed a military coup, and in 1979 began a genocide, slaughtering an estimated total of 300,000 Ugandans.²³ The genocide affected the Karamojong disproportionately, killing approximately 30,000 tribespeople.²⁴

Michael Quam explained how 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

¹⁷ JAY SIMKIN, AARON S. ZELMAN, & ALAN M. RICE, *LETHAL LAWS* 274 (1994).

¹⁸ *Id.*

¹⁹ Michael D. Quam, *Creating Peace in an Armed Society: Karamoja, Uganda*, 1 AFRICAN STUDIES QUARTERLY (1996), <http://web.africa.ufl.edu/asq/v1/1/3.htm> (visited Aug. 31, 2007).

²⁰ *Id.* Quam noted:

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 herdsman 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.

²¹ SIMKIN, *supra* note ___, at 274.

²² *Id.*

²³ 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, at 32.

²⁴ *A Timeline of the Karamojong People: The Land, The People, Their Great Need*, <http://www.karamoja.org/karmjong/timeline.htm> (visited Apr. 5, 2002).

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.²⁵

The Karamojong began using steel tubing from metal furniture to fabricate their own guns.²⁶ These homemade guns were then used to acquire better and more powerful ones by attacking isolated police barracks.²⁷

Amin invaded Tanzania in 1978, but was defeated by the Tanzanian army, which removed him from power.²⁸ Local tribesmen then found easy access to deserted government armories.²⁹

Obote was restored to power, and he—unlike Amin—had the common sense not to invade neighboring countries; instead, he 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 Kikyusa.³⁰ Obote also resumed his attempt to disarm the Karamojong, inflicting even more human rights abuses.³¹ 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. The best-armed tribes prevailed.

C. The Museveni Era

In 1986, Yoweri Kaguta Museveni defeated Obote's army, and seized power. He installed his rebel forces as the new national army, and proclaimed himself President. Museveni continued the policy of his predecessors in attempting to subdue the Karamojong. Quam observed that "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."³² The resistance to the Ugandan government's coercive disarmament was so great that Museveni abandoned his disarmament efforts in 1989.

At the urging of the United Nations, Museveni began a voluntary gun surrender program, on December 2, 2001,³³ with the stated justification of reducing pastoralist violence. The program expired on February 15, 2002, and only 7,676 guns (out of a

²⁵ Quam, *supra* note __.

²⁶ *Id.*

²⁷ *Id.*

²⁸ SIMKIN, *supra* note __, at 279-80.

²⁹ Quam, *supra* note __.

³⁰ Daniel D. Nsereko, *Arbitrary Deprivations of Life: Controls on Permissible Deprivations*, in *THE RIGHT TO LIFE IN INTERNATIONAL LAW* 251-52, 256, 271 (B.G. Ramcharan ed., 1985).

³¹ See Cyrus Ombati, *Military Employs New Disarmament Tactics*, *THE STANDARD ONLINE* (Nairobi), June 19, 2005, http://www.eastandard.net/hm_news/news.php?articleid=23164 (visited July 31, 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.").

³² Quam, *supra* note __.

³³ U.N. Office for the Coordination of Humanitarian Affairs, *UGANDA: Focus on Karamoja Disarmament//Yearend*, IRINNEWS (Jan. 10, 2002), <http://www.irinnews.org/report.asp?ReportID=18776>.

conservatively estimated 40,000) were collected. President Museveni then escalated his tactics to disarm the Karamojong, and in the process, converted his army from guardians of the people to outright terrorists. The army commenced a “forcible disarmament operation”³⁴ to get the remainder of the guns.³⁵ 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. Firearm confiscation was used as the justification for the violence. On March 21, 2002, after asking the army to be “less aggressive” in their disarmament tactics, Father Declan O’Toole, a member of the Mill Hill Missionaries in Uganda, and his companions were murdered³⁶ by the UPDF soldiers.³⁷ The murderers were apprehended and were executed before they could reveal who had given them the order. Only one week later, *New Vision* reported the death of a pregnant woman who “died of injuries sustained when a soldier kicked her in the stomach during forceful disarmament.”³⁸

Museveni’s reaction was to blame the Karamojong, stating that “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.”³⁹

Reports of fierce resistance⁴⁰ to the UPDF’s brutality from the remaining armed Karamojong began to trickle out by mid-2002, despite Museveni’s attempts to suppress

³⁴ See *Army to Begin Forcible Disarmament of Karamojong*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Feb. 25, 2002, <http://allafrica.com/stories/200202250160.html> (visited Feb. 26, 2002) (“the forcible disarmament operation will involve the use of ‘police methods’ . . .”).

³⁵ U.N. Office for the Coordination of Humanitarian Affairs, *Army to Begin Forcible Disarmament of Karamojong*, IRINNEWS (Feb. 22, 2002), at <http://www.irinnews.org/report.asp?ReportID=22557>.

³⁶ See Badru Mulumba, *UPDF Soldiers Executed for Killing Priest*, THE NATION (Nairobi), Mar. 26, 2002, <http://allafrica.com/stories/printable/200203260702.html> (visited Mar. 27, 2002).

³⁷ See *Irish Aid to Continue Despite Concern at Executions*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, Apr. 2, 2002, <http://allafrica.com/stories/printable/200204020598.html> (visited Apr. 2, 2002) (“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, <http://allafrica.com/stories/printable/200203280617.html> (visited Apr. 1, 2002) (“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, <http://allafrica.com/stories/printable/200204040271.html> (visited Apr. 4, 2002).

³⁸ See Nathan Etengu, *Museveni in Karamoja*, NEW VISION (Kampala), Mar. 29, 2002, <http://allafrica.com/stories/printable/200203290195.html> (visited Apr. 1, 2002) (“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.”). *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.

³⁹ See Nathan Etengu, *Museveni Defends Executions*, NEW VISION (Kampala), Apr. 4, 2002, <http://allafrica.com/stories/printable/200204040283.html> (visited Dec. 9, 2002). See also Badru Mulumba, *UPDF Soldiers Executed for Killing Priest*, THE NATION (Nairobi) Mar. 27, 2002, <http://allafrica.com/stories/printable/200203260702.html> (visited Mar. 27, 2002) (“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.”).

them. For example, in the northern district of Kotido, on May 16, the Ugandan army engaged armed civilians and captured about thirty rifles. Thirteen civilians and two soldiers died—one death for every two guns confiscated.⁴¹ 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.

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 Karamojong is at the mercy of brutal soldiers....The state is just another raider.”⁴² However, UPDF forces were not the only human rights violator.

President Museveni had promised increased security measures to protect persons who surrendered their guns. But he did not, or perhaps could not, keep his word. The disarmament of those who complied created a new group of victims, who were preyed upon by those who still had weapons. Ugandans who had credulously surrendered their guns found themselves especially vulnerable. As *New Vision* had earlier reported, “Most of the people whose cows were taken” in a raid in recently disarmed Bokora, “had handed in their guns to the government in the on-going disarmament exercise.”⁴³

The pattern has continued. In June 2005, a joint Kenya-Uganda disarmament process was announced.⁴⁴ After the men of Kosui disarmed voluntarily, they were robbed of their cattle by Jie tribesmen who had not disarmed.⁴⁵ And during the summer of 2006, several dozen raids against disarmed pastoralists were reported in Moroto and Kotido districts.⁴⁶

⁴⁰ See *Karimojong Kill 8 Soldiers*, NEW VISION (Kampala), May 17, 2002, <http://allafrica.com/stories/printable/200205170102.html> (visited May 17, 2002).

⁴¹ *Uganda: Disarmament Exercise Leads to Clashes in Karamoja*, IRIN NEWS, May 21, 2002. After many homes were bombed and crops were destroyed, tribesmen fled across the border to Kenya. About 80,000 people were internally displaced.

⁴² See Ben Knighton, *Historical Ethnography and the Collapse of Karamojong Culture: Premature Reports of Trends*, African Studies Seminar June 13, 2002, http://www.eldis.org/fulltext/knighton_karamoja.pdf (visited Sept. 9, 2005) (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.

⁴³ See Nathan Etengu, *Army Ordered to Recover Cattle*, NEW VISION (Kampala), Jan. 8, 2002, <http://allafrica.com/stories/printable/200201080070.html> (visited Apr. 19, 2003).

⁴⁴ See *Communique of the Ministerial Consultative Meeting Between the Governments of Uganda and Kenya on the Joint Disarmament*, Ministry of Defense of the Republic of Uganda, June 20, 2005, <http://www.defenceuganda.mil.ug/news.detail.php?newsId=272&category=News%20Release> (visited Sept. 6, 2005).

⁴⁵ See Daniel Wallis, *Karamojong Warriors Fear Disarmament in Uganda*, RED ORBIT NEWS (Reuters), Sept. 21, 2005, <http://www.redorbit.com/modules/news/tools.php?tool=print&id=247119> (visited Sept. 6, 2006).

⁴⁶ See Matthew Russell Lee, *Strong Arm on Small Arms: Rift Within UN About Uganda's Involuntary Disarmament of Karamojong Villages*, INNER CITY PRESS—INVESTIGATIVE JOURNALISM FROM THE UNITED NATIONS, June 21, 2006, <http://www.innercitypress.com/unhq062106.html> (visited Aug. 16, 2006).

Knighton charged that the violence was “due to an escalation in raiding directly stimulated by a disarmament programme.”⁴⁷ He also noted that, in Karamoja, “With 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 alarmist international aid views, namely that ‘the source of modern violence in Karamoja is automatic weaponry’.”⁴⁸

UPDF human rights abuses against Uganda’s civilian population were repeated during the 2005 disarmament. The army’s cordon and search operations led to incinerated residences, rapes and deaths.⁴⁹

Despite all the suffering inflicted on the Karamojong in the name of gun confiscation, it appears that the disarmament program failed. In 2002, the government-dominated Ugandan newspaper *New Vision* acknowledged that the Karamojong were now “purchasing more guns to replenish those either voluntarily handed [over] or forcefully recovered by the Government.”⁵⁰ 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),⁵¹ and despite all local, national government and UN attempts to control the flow of weapons into the area.⁵²

D. Recent Developments

By 2006, it had become impossible to conceal the human rights abuses perpetrated by the UPDF, and also impossible to deny that the disarmament program had failed.⁵³ The United Nations Development Programme temporarily suspended its funding of Ugandan development and disarmament programs.⁵⁴

⁴⁷ See Ben Knighton, IUAES XVth Congress, Florence, Commission on Nomadic Peoples Session 7th-8th July, Topic: Seniority among the Karamojong Cluster, <http://users.ox.ac.uk/~7Ecnpc/knighton.html> (visited Sept. 14, 2005).

⁴⁸ See Ben Knighton, *Historical Ethnography and the Collapse of Karamojong Culture: Premature Reports of Trends*, African Studies Seminar June 13, 2002, http://www.eldis.org/fulltext/knighton_karamoja.pdf (visited Sept. 9, 2005).

⁴⁹ See Kabona Esira and Phoebe Mutetsi, *UPDF Accused of Torturing Karimojong*, THE MONITOR (Kampala), Aug. 6, 2006.

⁵⁰ See Nathan Etengu, *UPDF Check K’Jong Gun Trade*, NEW VISION (Kampala) Oct. 2, 2002, <http://allafrica.com/stories/printable/200210020763.html> (visited Oct. 3, 2002). See also Report on Arms Trafficking in the Border Regions of Sudan, Uganda and Kenya, Action for Development of Local Communities (ADOL), April-June 2001, http://www.passievoorvrede.nl/upload/afuganda/010606_Uganda_report_ADOL.pdf (visited May 31, 2006).

⁵¹ 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, signed in Nairobi on April 21, 2004, <http://www.smallarmsnet.org/docs/saaf12.pdf#search=%22%22Nairobi%20Protocol%22%22> (visited Sept. 12, 2006).

⁵² See Charles Kazooba, *New Guns Smuggled Into Uganda From Europe Says Army*, THE NEW TIMES (Kigali), Aug. 17, 2006 (According to Col. Phenehas Katirima, Chief of Personnel and Administration in the UPDF, “Brand 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.”).

⁵³ See e.g. Matthew Russell Lee, *Strong Arm on Small Arms: Rift Within UN About Uganda’s Involuntary Disarmament of Karamojong Villages*, INNER CITY PRESS—INVESTIGATIVE JOURNALISM FROM THE UNITED NATIONS, June 21, 2006, <http://www.innercitypress.com/unhq062106.html> (visited Aug. 16, 2006). See also Nick Wadhams, *UNDP halts Uganda disarmament program*, THESTATE.COM (South Carolina),

Yet the cut-off of foreign assistance did not end the Ugandan government's program. An August 21, 2006 story in the pro-government *New Vision* newspaper urged civilians to "respect and obey the ongoing disarmament programme."⁵⁵ On October 29, 2006, the UPDF attempted to disarm the village of Lopuyo, but was repulsed after an 8-hour battle with armed Karamojong.⁵⁶ Army spokesman Major Felix Kulaije stated that, in the course of retrieving firearms, "we went there peacefully in a cordon and search operation."⁵⁷

However, the villagers told a more harrowing story. The army surrounded the village and began to question, and sexually torture, young men by pricking their testicles. *New Vision* reported that "Two Catholic priests said the army conducted itself as though it was dealing with beasts", and added that the army had subsequently dissolved the unit which had committed the atrocities.⁵⁸

<http://www.thestate.com/mld/thestate/news/nation/14925361.htm> (visited Sept. 6, 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 and Phoebe Mutetsi, *Govt to Investigate Human Rights Abuse in Karamoja Region*, THE MONITOR (Kampala), July 31, 2006.

⁵⁴ See e.g. Marie Okabe, Deputy Spokesman for the Secretary-General, Highlights of the Noon Briefing, June 29, 2006, *U.N.D.P. Halts Disarmament Program in Uganda Following Army Abuses*, <http://www.un.org/News/press/docs/2006/20060606.un.org.news.060606.htm> (visited Sept. 6, 2006) ("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 Matthew Russell Lee, *UN Acknowledges Abuse in Uganda, But What Did Donors Know and When?*, INNER CITY PRESS—INVESTIGATIVE JOURNALISM FROM THE UNITED NATIONS, June 29, 2006, <http://www.innercitypress.com/unhq062906.html> (visited Sept. 6, 2006) ("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....'"); Richard Egadu, *Army Halts Forceful Disarmament in Karamoja Region*, THE MONITOR (Kampala), July 1, 2006; Nick Wadhams, *UNDP halts Uganda disarmament program*, THE STATE.COM (South Carolina), June 28, 2006, <http://www.thestate.com/mld/thestate/news/nation/14925361.htm> (visited Aug. 16, 2006); Nick Wadhams, *UNDP halts Uganda disarmament program*, SEATTLE POST-INTELLIGENCER, June 28, 2006.

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

⁵⁵ See Nicholas Kajoba, *'Respect and Obey Disarmament Plan'*, NEW VISION (Kampala), Aug. 21, 2006, <http://allafrica.com/stories/printable/200608220491.html> (visited Sept. 6, 2006).

⁵⁶ *Uganda Army Resumes Karimojong Disarmament*, XINHUA NEWS AGENCY, Nov. 4, 2006.

⁵⁷ *Uganda: Gov't Urged to Probe Reported Abuses During Disarmament*, IRINNEWS.ORG, Nov. 13, 2006.

⁵⁸ See Nathan Etengu, *Kotido Recalls Horror*, NEW VISION, Nov. 13, 2006. See also *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*, at ¶¶ 6,7, & 10, <http://www.ohchr.org/english/countries/ug/docs/ugandarep11-06.pdf> (visited Dec. 4, 2006), ("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....").

In the ensuing defense of the village, Jie men killed thirty UPDF soldiers; forty-eight civilians also died, including thirteen women and nine children.⁵⁹

The UPDF launched retaliatory raids on the Karamojong using a gunship helicopter to drop bombs,⁶⁰ 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.⁶¹

Not-so-peaceful cordon and search operations have continued.⁶² On November 10, 2006, the village of Kadokini was targeted. “UPDF tanks then drove through the village crushing and damaging properties, including huts and granaries.” This resulted in three deaths, seven acts of torture, and five guns recovered by the army. On November 14, 2006, the village of Kanawat suffered the deaths of three adults and a young girl during another cordon and search.⁶³ In Akorikeya Village...on January 31, 2007, four individuals “were shot at with the intention to disarm them.” All four were wounded, two of them mortally.⁶⁴

According to the UN’s Acting Humanitarian Coordinator in Uganda, Mr. Theophane Nikyema, “The United Nations...appeals to Karamojong communities to refrain from violent responses to law and order efforts.”⁶⁵ However, with reports of Karamojong gathering into tactical units of between 500-800 men,⁶⁶ it does not appear

⁵⁹ *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*, at 2.

⁶⁰ *See Four Are Hurt in Bomb Attack*, THE NATION, Dec. 1, 2006 (“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 Mg’etich, *Bomb Raid Leaves 50 Herdsmen Dead*, THE NATION, Nov. 15, 2006 (“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.... the families were attacked while milking their cows in the morning....”).

The UPDF 3rd Division Spokesman Lt. Henry Obbo callously remarked, “So with time you will know the number of deaths and I am sure we shall also recover guns....” *Id.*

“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”, army spokesman Maj. Felix Kulayigye added. *Id.* In other words, anyone who does not surrender her family’s defensive firearm is a “hardcore criminal.”

⁶¹ *See* Kakaire A. Kirunda & Emmanuel Gyezhaho, *Karimojong Warriors Hit UPDF Chopper*, THE MONITOR, Nov. 6, 2006. *See also* Milton Olupot, *Kiyonga Rules out Karamoja Coverup*, NEW VISION, Nov. 27, 2006.

⁶² United Nations High Commissioner 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*, at 2.

⁶³ *Id.*

⁶⁴ United Nations High Commissioner 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 16 November 2006 to 31 March 2007*, at ¶ 27, available at <http://www.ohchr.org/english/docs/OHCHR.Karamoja.March2007.rev4.1.doc> (visited Sept. 4, 2007).

⁶⁵ *See* United Nations Office for the Coordination of Humanitarian Affairs, *Statement attributable to the Acting Humanitarian Coordinator in Uganda, Mr. Theophane Nikyema*, Nov. 10, 2006, <http://www.reliefweb.int/rw/RWB.NSF/db900SID/LSGZ-6VEKKH?OpenDocument> (visited Dec. 4, 2006).

⁶⁶ *See* Milton Olupot, *Kiyonga Rules out Karamoja Coverup*, NEW VISION, Nov. 27, 2006.

that they are willing to disarm, but are instead preparing for violent resistance.⁶⁷ Alliances are forming among the tribes in order to defeat their common enemy—their government.⁶⁸

In the spring of 2007, the UN 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.”⁶⁹ (Which is not to say that voluntary disarmament has much chance of success under current conditions; another UN Report showed that between May and December, 2006, 1,207 weapons were taken with force, compared to 127 that were voluntarily surrendered.⁷⁰) 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 800,000.⁷¹

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.⁷² Rape and other atrocities perpetrated against the populace by UPDF soldiers continue.⁷³ The UN reported that, in the context of forced disarmament, “the UPDF continues to engage in acts which ultimately result in human rights violations, including killings, injuries, torture, damages and destruction of property and livelihoods.”⁷⁴

The UN praises the UPDF for taking people’s guns, but, very belatedly, criticizes the UPDF’s methods for doing so. The UN seems unable to decide which is more important: collecting guns or respecting human rights.⁷⁵

⁶⁷ In 2005, rumors leaked into the press about the government’s intent to “degazette” (prohibit civilian use of) pasture 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.” 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.” 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.” See Jane Nafula, *Plan Upe Reserve Investor Non-Existent*, DAILY MONITOR (Kampala), Feb. 22, 2005. The Ugandan government’s plan to transfer 200,000 acres of grazing land to investors could only escalate mistrust of their government by the Karimojong.

⁶⁸ See *Angry in Karamoja*, NEW VISION, Nov. 10, 2006.

⁶⁹ *Improved Approach Needed Towards Disarmament*, UN INTEGRATED REGIONAL INFORMATION NETWORKS, May 30, 2007.

⁷⁰ *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 16 November 2006 to 31 March 2007*, 21.

⁷¹ See Frank Nyakairu, *Prices for Illegal Guns Up*, THE MONITOR, June 4, 2007.

⁷² See Osinde Obare, *UPDF Releases Hostages*, EAST AFRICAN STANDARD (Nairobi), Aug. 6, 2007.

⁷³ See Barnabas Bii and Edward Koech, *Pokot Herders Escape Police Crackdown*, THE NATION, July 6, 2007.

⁷⁴ See *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 16 November 2006 to 31 March 2007*, *supra* note __, at ¶ 51.

⁷⁵ *New Vision* reported that “the Office of the United Nations High Commissioner for Human Rights said “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.” *New Vision* added that, “In April [2007], the UN High Commissioner for Human Rights, Louise Arbour, accused the UPDF of using indiscriminate

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”⁷⁶ to get 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, the 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.⁷⁷ 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.⁷⁸

Some disarmament activists contend that cultural deficiencies of the pastoralist lifestyle, coupled with the presence of modern weapons, cause poverty and violence in Kenya.⁷⁹ However, Kilfemarian Gebre-Wold, former Director of a German-sponsored disarmament program in East Africa,⁸⁰ acknowledged that “though many pastoralist households have small arms, the rate of crime and violent incidents is not high in their

and excessive force when fighting the bandits, causing civilian deaths,” in its cordon and search operations since the beginning of the year. *See UN Praises UPDF on Karamoja*, NEW VISION (Kampala), Sept. 3, 2007.

⁷⁶ See Emmanuel Mulondo & Wossita Samuel, ‘UPDF Will Not Succumb to Karimojong Pressure’, *THE MONITOR*, Nov. 28, 2006. *See also Angry in Karamoja*, NEW VISION, Nov. 10, 2006. 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.”

⁷⁷ Gray Phombeah, *Little to Celebrate as Kenya Turns 40*, BBC NEWS, Dec. 11, 2003.

⁷⁸ See Binaifer Nowrojee, Kenya’s Democratic Hope, Project Syndicate, May 28, 2006, http://www.project-syndicate.org/print_commentary/nowrojee1/English (“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.”).

⁷⁹ See Taya Weiss, *Guns in the Borderlands, Reducing The Demand For Small Arms*, <http://www.iss.co.za/pubs/Monographs/No95/Contents.html> (visited Sept. 11, 2005), at Introduction, 15 (Research for the Institute for Security Studies, in South Africa: “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.”); Human Rights Watch, *Playing with Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya* (2002), <http://www.hrw.org/reports/2002/kenya/Kenya0502.pdf> (visited Sept. 11, 2005), at 1 (“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.”)(parenthetical in the original).

⁸⁰ SALIGAD was a project of The Bonn International Center for Conversion, a German NGO. It is an acronym for “Small Arms and Light Weapons in the IGAD Countries.” The IGAD (Inter-Governmental Authority for Development) countries were Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan, and Uganda. The program ended in 2003. *See* <http://ippnw.org/ResourceLibrary/Hels/GebreWold.pdf> (visited Aug. 30, 2007); *see also* <http://www.saligad.org/team.html> (visited Aug. 30, 2007).

community....the density of weapons does not mean automatically the rise of gun-related violence.”⁸¹

The Kenyan government has promoted violence by denying access to land and water.⁸² It is no secret that tribalism lies at the heart of Kenyan politics, with devastating effects on the disfavored tribes.⁸³

In 2005, the governments of Kenya and Uganda began a coordinated campaign so that the border would not become a haven of safety for civilians with weapons.⁸⁴ Estimates of the civilian gun stock, as of August 2005, ranged from a very conservative 50,000⁸⁵ up to 200,000 in Kenya.⁸⁶ On the other side of the border, in Uganda, estimates ranged from 50,000 to 150,000.⁸⁷

The populace is aware that government promises of security in exchange for voluntary disarmament are not honored. As in Uganda, a new class of disarmed victims was created—victims of those who remained armed⁸⁸—but also victims of complicit government agents colluding in crimes against people who had been disarmed.⁸⁹

⁸¹ See Kiflemariam Gebre-Wold, *Aiming for Prevention: International Medical Conference on Small Arms, Gun Violence, and Injury*, Plenary Contribution to IPPNW (International Physicians for the Prevention of Nuclear War) Conference, Helsinki, Finland, 28-30 September 2001, <http://www.ipnw.org/HelsinkiMeddings2.pdf> (visited Sept. 11, 2005).

⁸² See Mugumo Munene, *Water the Only Key to Peace, Says Official*, THE NATION (Nairobi), July 16, 2005, <http://allafrica.com/stories/printable/200507170006.html> (visited Aug. 6, 2005) (“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.”).

⁸³ See *Minister Blames Political Leaders for Ethnic Clashes*, THE NATION (Nairobi), Apr. 22, 2006.

⁸⁴ See Kabona Esiara, *Kenya Joins Cattle Raid Fight*, THE MONITOR (Kampala) July 3, 2005, <http://allafrica.com/stories/printable/200507040076.html> (visited July 4, 2005). See also *Communique of the Ministerial Consultative Meeting Between the Governments of Uganda and Kenya on the Joint Disarmament*, Ministry of Defense of the Republic of Uganda, June 20, 2005, <http://www.defenceuganda.mil.ug/news.detail.php?newsId=272&category=News%20Release> (visited Sept. 6, 2005).

⁸⁵ See Patrick Beja & Cyrus Ombati, *State Still Has Long Way to Go in Disarmament*, THE EAST AFRICAN STANDARD (Nairobi) Aug. 29, 2005, <http://allafrica.com/stories/printable/200508290876.html> (visited Aug. 29, 2005).

⁸⁶ See *Karamoja Disarmament Gets Underway Amid Uncertainty*, ITDG-EA Peace Bulletin, Jan. 2005, http://www.itdg.org/?id=peace6_karamoja (visited Aug. 5, 2005).

⁸⁷ See *Karamoja Disarmament Gets Underway Amid Uncertainty*, ITDG-EA Peace Bulletin, Jan. 2005, http://www.itdg.org/?id=peace6_karamoja (visited Aug. 5, 2005). There are also reports of the complicity of government agents in gun-trafficking in these areas. See *International Conference of Small Arms Trafficking in the Border Regions of Sudan, Uganda and Kenya: Determining the Issues and Setting the Strategies*, Action for Development of Local Communities and Security Research and Information Centre, Nov. 9-13, 2001, http://www.passievoorvrede.nl/upload/afrika/011109_report_conference_Jinja.pdf (visited Sept. 9, 2005) (“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.”).

⁸⁸ See *The Disarmament Process in Karamoja*, <http://www.karamojadata.org/disarmament.htm> (visited Sept. 11, 2005) (“An abrupt halt on the disarmament program sparks up sporadic raids against the disarmed.”). See also John Oroni & Cyrus Ombati, *3,000 Cattle Stolen in Daylight Attack*, THE EAST AFRICAN STANDARD (Nairobi), June 6, 2005, <http://allafrica.com/stories/printable/200506061162.html> (visited June 9, 2005) (“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*, THE EAST AFRICAN STANDARD (Nairobi), June 29, 2005, <http://allafrica.com/stories/printable/200506290229.html> (visited June 29, 2005) (“Some communities are likely to attack others after seeing who has handed in more guns,” stated Assistant

The populace is further aware that government promises to develop the area, or even to provide basic goods and services, have not been kept.⁹⁰ At the present time, with government corruption out of control,⁹¹ and the recent downward slide in Kenya's economy,⁹² it is not likely 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, "There are anecdotal reports of women defending themselves with guns...women often request ownership of their man's gun if he is killed..."⁹³

The Kenyan government will resort to any means to collect firearms. According to West Pokot District Commissioner Stephen Ikua, "We shall use force to get them."⁹⁴ In March 2006, a shoot-to-kill directive for the entire country of Kenya was issued by

Police Commissioner Andrew Kimetto.). *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....").

⁸⁹ *See* John Oroni & Cyrus Ombati, *3,000 Cattle Stolen in Daylight Attack*, THE EAST AFRICAN STANDARD (Nairobi), June 6, 2005, <http://allafrica.com/stories/printable/200506061162.html> (visited June 9, 2005) (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.").

⁹⁰ *See The Disarmament Process in Karamoja*, <http://www.karamojadata.org/disarmament.htm> (visited Sept. 11, 2005) ("Because of corruption, iron sheets distributed ended up with people who never disarmed, for example in Panyangara and Nakepelimoru sub-counties in Kotido district. Many were relatives, friends and campaign managers of local politicians.").

⁹¹ *See* Gitau Wa Njenga, *Justice Up for Sale in Kenya, Says Githongo*, THE EAST AFRICAN STANDARD (Nairobi), June 9, 2005, <http://allafrica.com/stories/printable/200506090142.html> (visited June 9, 2005) (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.").

⁹² *See* Eric Shimoli, *Kenya Getting Poorer, Says New UN Report*, THE NATION (Nairobi), Sept. 8, 2005, <http://allafrica.com/stories/printable/200509070872.html> (visited Sept. 8, 2005). *See also* David B. Kopel, Paul Gallant and Joanne D. Eisen, *Does the Right to Arms Impede or Promote Economic Development?*, 6 ENGAGE 85, 91 (2005).

⁹³ *See* Margie Buchanan-Smith & Jeremy Lind, *Armed Violence and Poverty in Northern Kenya: A Case Study for the Armed Violence and Poverty Initiative*, Department of Peace Studies, Centre for International Cooperation and Security at Bradford University, Mar. 2005, http://www.brad.ac.uk/acad/cics/publications/avpi/AVPI_Northern_Kenya.pdf (visited Sept. 3, 2005), at 11.

⁹⁴ *See* John Oroni & Beatrice Obwocha, *Residents Unwilling to Surrender Guns*, THE EAST AFRICAN STANDARD (Nairobi), July 2, 2005, <http://allafrica.com/stories/printable/200507010846.html> (visited July 3, 2005). *See also* *Operation to Disarm North Rift Residents Starts Today*, THE STANDARD, May 30, 2005, http://www.eastandard.net/hm_news/news.php?articleid=21654 (visited July 31, 2005) ("Yesterday, Internal Security minister Mirugi Kariuki said the Government would stop at nothing to recover the arms.").

Internal Security minister John Michuki, giving the police free rein against the populace.⁹⁵

The existence of a gun licensing program creates the legal fiction that ordinary citizens can possess a firearm,⁹⁶ a fiction which bolsters the claim that the government will follow the proper legal procedures. Yet according to Peter Mwaura, of the United Nations Environmental Programme, “In 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.”⁹⁷ Likewise, Taya Weiss, of South Africa’s pro-disarmament Institute for Security Studies, accurately stated, “Very few Kenyan citizens, especially those living in remote areas, meet the criteria for a gun license and can afford to pay the associated fees.”⁹⁸

Ordinary Kenyans are not even allowed to possess bows and arrows,⁹⁹ and the bow laws, too, are applied discriminately.¹⁰⁰ Government security agents can therefore safely assume that every ordinary person with a bow or gun does not have a license, and thus the police can shoot to kill with impunity.¹⁰¹

If the Kenyan government had paid some attention to the needs of the people, rather than discriminating against selected tribes,¹⁰² conditions might not have degenerated to the point where factional fighting has become the last survival mechanism available to many pastoralists.¹⁰³ If government would first attend to the basic life necessities of northern Kenya, survival would not necessitate weapons possession. Yet some NGOs share 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

⁹⁵ See Fred Mukinda & Mwaura Kimani, *Protests at ‘Shoot to Kill’ Order*, THE NATION (Nairobi), Mar. 22, 2005, <http://allafrica.com/stories/printable/200503220789.html> (visited Mar. 23, 2005). (“The Kenya National Commission on Human Rights cautioned Kenyans to brace themselves for a killing field if police officers were to effect the order.”).

⁹⁶ See 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: Kenya* (2004), <http://www.saferworld.org.uk/images/pubdocs/Horn%20Kenya.pdf>. The licensing officer 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.

⁹⁷ See Peter Mwaura, *Owning a Gun Sign of Power and Success*, DAILY NATION (Kenya), Feb. 25, 2006.

⁹⁸ See Taya Weiss, *Guns in the Borderlands, Reducing The Demand For Small Arms*, <http://www.iss.co.za/pubs/Monographs/No95/Contents.html> (visited Sept. 11, 2005), at Cap. 2, 20.

⁹⁹ See Samuel Mburu, *Repeal Laws Barring Kenyans from Keeping Arrows, Urges Kaguthi*, THE EAST AFRICAN STANDARD (Nairobi), Dec. 8, 2004.

¹⁰⁰ See *id.*

¹⁰¹ See Taya Weiss, *Guns in the Borderlands, Reducing The Demand For Small Arms*, <http://www.iss.co.za/pubs/Monographs/No95/Contents.html> (visited Sept. 11, 2005), at 28 (“The continued proliferation of small arms in areas targeted for government disarmament, such as the Turkana district, have indicated that until the root causes of gun ownership are addressed, forceful removal of weapons from communities that fear for their security does not prevent the black market from providing replacements.”).

¹⁰² See Nathan Etengu, *Karamojong Fund Diverted*, NEW VISION (Kampala) July 1, 2002, <http://allafrica.com/stories/printable/2—207010070.html> (visited Sept. 9, 2005).

¹⁰³ See Halakhe D. Waqo, *Peacebuilding and Small Arms: Experiences from Northern Kenya*, http://www.iansa.org/un/notes/peacebuilding_and_small_arms.doc (visited Sept. 11, 2005) (“The region is highly marginalized 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.”).

Arms) declares that what Kenya really needs is “community arms collection and voluntary arms surrender activities.”¹⁰⁴

However, the pastoralists of Kenya have remained armed,¹⁰⁵ despite almost-continuous disarmament programs for over a century.¹⁰⁶ Some of the disarmament programs have been 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.¹⁰⁷

In 1961, then-Lieutenant Colonel Idi Amin of the Uganda’s King’s African Rifles¹⁰⁸ crossed the border into Kenya and tortured and terrorized civilians who refused to give up their weapons. Although at least 127 men were castrated and left to die, the operation failed to disarm the Turkana people of northwest Kenya.¹⁰⁹

The unsuccessful 1984¹¹⁰ “Operation NYUNDO” (Operation Hammer) 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 joint campaign against civilian gun owners which began in 2005. 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.”¹¹¹

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

¹⁰⁴ See Halakhe D. Waqo, *Peacebuilding and Small Arms: Experiences from Northern Kenya*, http://www.iansa.org/un/notes/peacebuilding_and_small_arms.doc (visited Sept. 11, 2005).

¹⁰⁵ See Moses Mwathi, *Politicians Fuelling the Conflict by Arming and Inciting Their People*, DAILY NATION (Kenya), May 22, 2006. (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.”).

¹⁰⁶ See Okech Kendo, *Genesis of the Pokot’s Love for the Gun and the Bullet*, THE STANDARD (Nairobi), Apr. 27, 2006 (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.); 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.”).

¹⁰⁷ See Gakuu Mathenge, *War-Like Activities and the Question of Disarmament*, DAILY NATION (Kenya), May 7, 2006.

¹⁰⁸ This was the name of the Ugandan army before Uganda received independence.

¹⁰⁹ See Mumia G. Osaaji, *Why Banditry is Here to Stay*, THE EAST AFRICAN STANDARD (Nairobi), May 7, 2006. See also Vukoni Lupa Lasaga, *Fiasco Looming with Disarming of Warriors*, THE MONITOR (Kampala), May 1, 2006.

¹¹⁰ See Masinde Kusimba and John Oroni, *Over 1,000 Illegal Firearms Recovered*, THE EAST AFRICAN STANDARD, June 8, 2005.

¹¹¹ See Gakuu Mathenge, *War-Like Activities and the Question of Disarmament*, DAILY NATION (Kenya), May 7, 2006.

to run away from each other, he said. Women were raped in front of their husbands, sometimes with empty beer bottles.¹¹²

In April 2006, Security Minister John Michuki told Parliament, “The 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.”¹¹³

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.”¹¹⁴ 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.”¹¹⁵

In early May 2006, the BBC described the latest military operation in Kenya, code-named “Okota” [Collect],¹¹⁶ utilizing tanks, trucks, and helicopters, and taking over a local school building as barracks for the army. In the village of about 2,000 people, eight weapons were recovered.¹¹⁷ 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 half received rations. Schooling was disrupted, and farmsteads were neglected.¹¹⁸

Five weeks after the forced disarmament began, seventy illegally possessed firearms had been recovered.¹¹⁹ 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 are—and for decades have 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

¹¹² See C. Bryson Hull, *Kenya's Pokot Haunted by Past as Soldiers Hunt Guns*, REUTERS, May 11, 2006.

¹¹³ See *Army Joins Disarmament Operation*, THE EAST AFRICAN STANDARD (Nairobi), May 1, 2006.

¹¹⁴ See *id.*

¹¹⁵ See *id.*

¹¹⁶ See *id.*

¹¹⁷ See Karen Allen, *Kenya Firearms Hunt Stokes Mistrust*, BBC NEWS, May 4, 2006. (“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.)

¹¹⁸ See Anderson Ojwang and Stephen Makabila, *18 Firearms Recovered in Gun Hunt*, THE EAST AFRICAN STANDARD, May 10, 2006. See also Vincent Bartoo and Stephen Makabila, *Hunger, Despair Set in as Disarmament Operation Continues*, THE EAST AFRICAN STANDARD (Nairobi), May 18, 2006:

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.

¹¹⁹ See Peter Mutai, *70 Guns Recovered in Disarmament Exercise*, THE EAST AFRICAN STANDARD (Nairobi), May 25, 2006.

that the only way anyone would ever get his guns was to take them “from my cold dead hands.”¹²⁰

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 government is still intent on disarming civilians in the region,¹²¹ there have not been reports of additional violence perpetrated by the government.

Instead, Internal Security Minister John Michuki launched the Kenya National Action Plan for Arms Control and Management (KNAP) on July 14, 2006,¹²² giving civil society and local NGOs, in lieu of government forces, greater responsibility for further disarmament. Rather than repeating his previous violent threats (which turned out to be accurate), Michuki merely stated that “The Government remains steadfast in its war against illicit small arms.”¹²³

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 rape women, pillage, and steal cattle, while recovering small quantities of weapons.¹²⁴

III. South Africa

South Africa manifests more mundane human rights violations than the extremes of Uganda and Kenya. Accepting the conventional wisdom of the United Nations—that severe firearm regulations will reduce civilian possession and thereby reduce violent crime—the Mbeki government in 2003 enacted very restrictive amendments to the South African firearms law. The amendments imposed a dysfunctional licensing system, which has drastically reduced the legal possession of firearms. South Africa’s government and gun control activists appear to have intended that the new law would decimate lawful firearm ownership.¹²⁵

¹²⁰ See *Heston Guns for Fourth NRA Term*, BBC NEWS, May 20, 2001.

¹²¹ See *Message from the Commissioner of Police Maj. Gen. Mohammed H. Ali. MGH, MBS*, Kenya Police web site, Sept. 12, 2006, <http://www.kenyapolice.go.ke/speech.asp> (visited Sept. 12, 2006) (“For residents of Northern Kenya, disarmament operations aimed at mopping up all illicit firearms are still on.”).

¹²² See Ochieng’ Oreyo, *Call for Unity in Arms War*, THE STANDARD (Nairobi), July 15, 2006, http://www.eastandard.net/hm_news/news.php?articleid=1143955342 (visited Sept. 12, 2006). See also Kenya National Action Plan for Arms Control and Management (2006), <http://www.iansa.org/regions/cafrica/documents/Kenya-National-Action-Plan-2006.pdf> (visited Sept. 12, 2006). The plan was approved in June 2004 by the Permanent Secretary Provincial Administration and Internal Security.

¹²³ See Kenya National Action Plan, *supra* note __, at vii-viii.

¹²⁴ See Osinde Obare, *UPDF Releases Hostages*, EAST AFRICAN STANDARD (Nairobi), Aug. 6, 2007. See also Osinde Obare, *Turkana Herders Flee Kenya-Uganda Border*, EAST AFRICAN STANDARD (Nairobi), Aug. 18, 2007.

¹²⁵ See B. L. Fanaroff, *Foreword*, in 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.”). See also Sarah Meek, *Legal Firearms in South Africa: A Part of the Problem?* in SOCIETY UNDER SIEGE VOL III: MANAGING ARMS IN SOUTH AFRICA 54 (Virginia Gamba & Clare Hansmann, eds., 2000) (acknowledging the South African government’s “goal of reducing the number of weapons in society.”) Additionally, Gun Free South Africa, a lobbying group which greatly contributed to the creation of the new

The South African constitution has strong human rights guarantees. However, the nation's problems with multiple languages, literacy, and poverty have turned into felons many people who want to comply with the firearm law. Contrary to constitutional guarantees, lawfully owned property has been confiscated with no compensation. Moreover, the "firearm-free zones" portion of the Firearms Control Act¹²⁶ sets the stage for massive rights violations throughout the nation, including warrantless searches of any persons present in such a zone.¹²⁷

A. The Literacy Roadblock

The first major roadblock in South Africa's un navigable licensing system is the need to pass a test based on knowledge of the recent law.¹²⁸ In the abstract, the test might appear to be a useful criterion for firearm possession, especially since lack of knowledge of the law is no excuse for violation.¹²⁹ In practice, the South African firearms law test functions much as did literacy tests for voters in the American South: to prevent, rather than to improve, the exercise of the right.¹³⁰

Approximately ten percent of the South African population is illiterate,¹³¹ with many more people semi-literate. Eleven official languages are recognized in the South African constitution.¹³² If the government intended to apply the law 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.

Firearms Control Act, states as its primary goal, "reducing the number of guns / firearms in circulation." Gun Free South Africa, <http://www.gca.org.za/> (visited May 14, 2007).

¹²⁶ Firearms Control Act 60 of 2000, as amended by Firearms Control Amendment Act 43 of 2003, at ¶ 140 (effective July 1, 2004). [Hereinafter cited as "Firearms Control Act".]

¹²⁷ Firearms Control Act, at ¶ 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 states: "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 gunfree 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 of May 4, 2007, on file with authors.

¹²⁸ See Firearms Control Act, ¶ 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: Demonstrate Knowledge of the Firearms Control Act 2000 (Act No 60 of 2000) Applicable to Possessing a Firearm, <http://regqs.saqqa.org.za/showUnitStandard.php?id=117705> (visited May 19, 2007). ("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...").

¹²⁹ See Sarah Meek, *supra* note __, 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...").

¹³⁰ See, e.g., QUIET REVOLUTION IN THE SOUTH: THE IMPACT OF THE VOTING RIGHTS ACT, 1965-1990, at 3 (Chandler Davidson & Bernard Grofman eds., 1994).

¹³¹ See Literacy Exchange: World Resources on Literacy, South Africa, Sept. 06, 2005, <http://www1.uni-hamburg.de/UNESCO-UIE/literacyexchange/southafrica/southafricadata.htm> (visited May 19, 2007).

¹³² See S. A FR. C ONST., ch. 1, § 6(1) ("The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.").

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 [of the law], but with their ability to understand and answer the examination questions...Not easy for people who have had a limited education.”¹³³ Abios Khoele, Chairman of the Black Gun Owners’ Association, summarized: “They know they won’t pass.”¹³⁴

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.¹³⁵

Moreover, the test administration is structured so as to be extremely difficult to access for nearly half the population. Alex Holmes, a spokesperson for South Africa’s Arms and Ammunition Dealers Association, explained the problem: “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.”¹³⁶ The issue is not just that a rural person might have to spend time traveling to a test center. Forty-six percent of the population¹³⁷ 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.

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.”¹³⁸ 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 does not have a sufficiently “good motivation.” Yet the authorities refuse to specify what (above and beyond fulfilling the statutory requirements) constitutes “good motivation.” In essence, 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

¹³³ E-mail from Richard Wesson of Gun Owners of South Africa (May 11, 2007, 6:36:44 AM EST) (on file with authors).

¹³⁴ *Edwin Herrendorfer interviews Abios Khoele of the Black Gun Owners’ Association*, Victims Against Crime, Firearm News, 2004, vol. 4, http://www.christianaction.org.za/firearmnews/2004-04_BlackGunOwnersAssociation.htm (visited 5/19/07).

¹³⁵ See African Charter on Human and Peoples’ Rights, *supra* note __, pmb. (“civil 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 __, pmb. (“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...”).

¹³⁶ E-mail from Alex Holmes, spokesperson for South Africa’s Arms and Ammunition Dealers Association, (May 07, 2007, 3:07:54 PM EST) (on file with authors).

¹³⁷ Health Systems Trust, <http://www.hst.org.za/publications/535> (visited May 19, 2007).

¹³⁸ Firearms Control Act, *supra* note __ at ¶¶ 13-20.

violation.¹³⁹ 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.¹⁴⁰

The wealthy in South Africa often desire firearms for sporting purposes, while the impoverished overwhelmingly require firearms for self-protection. Abios Khoele stated: "White people want more firearms for sport, and black people only want one gun for self-defence." He continued: "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."¹⁴¹ As Anthony Minnaar, a law professor at the University of South Africa, admitted, regarding high-crime areas, "The police themselves, in fact, are afraid to go in..."¹⁴²

One young businessman, Vuyani Dingiswayo, who runs his family's business, routinely carries thousands of dollars to a bank in George, South Africa. "I'm afraid to drive alone with that kind of money", he said. However, Mr. Dingiswayo's firearms license was denied. "They said I don't have a good reason."¹⁴³

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..."¹⁴⁴

According to the *New York Times*, "Noel Stott, a small-arms specialist at the Institute for Security Studies in Pretoria" stated: "The police aren't saying what a good motivation is, because that would come to be like a template... The gun shops would just

¹³⁹ 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 susceptible to bribery. See International Covenant on Civil and Political Rights, *supra* note __, 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 __, pt. I, ch. I, art. 3,1 ("Every individual shall be equal before the law.").

¹⁴⁰ 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.") and § 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.")

¹⁴¹ *SOUTH AFRICA: Gun crime continues to devastate lives*, IRIN NEWS, May 26, 2006, <http://www.irinnews.org/PrintReport.aspx?ReportId=59075> (visited May 22, 2006).

¹⁴² *South Africa vigilante numbers rise*, Interview with reporter Sally Sara, May 30, 2003, ABC Online, <http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/am/content/2003/s868126.htm> (visited May 22, 2007).

¹⁴³ See Michael Wines, *In South Africa, Licensing Law Poses Hurdles for Gun Buyers*, N.Y. TIMES, Jan. 3, 2005.

¹⁴⁴ *Cops Deny Gun Quota Rumours*, NEWS24.COM, Feb. 09, 2003, http://www.news24.com/News24/South_Africa/News/0,,2-7-1442_1410747,00.html (visited May 22, 2007).

assist people, and it would become a pro forma type of thing. So they're being very subjective."¹⁴⁵ 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 make pro or con arguments about what should be considered a "good motivation." What is inarguable—and a violation of all standards of equality before the law and of 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 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.¹⁴⁶

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

POWA (People Opposing Women Abuse), a South African self-help group for women, states that "1 in 2 women have a chance of being raped in their lifetime."¹⁴⁷ However, our examination of data suggests that the figure may be an underestimate.

Between April 2004 and March 2005, the total number of reported rapes in South Africa was 55,114.¹⁴⁸ The One in Nine organization, a South African victim advocacy group, estimates that fewer than 1-in-9 rapes are reported to the authorities,¹⁴⁹ so that the total number of rapes would 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.¹⁵⁰)

¹⁴⁵ Michael Wines, *In South Africa, Licensing Law Poses Hurdles for Gun Buyers*, NEW YORK TIMES, Jan. 3, 2005.

¹⁴⁶ 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> (visited May 23, 2007) ("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'...."); see also South African Press Association, *DA Slates Gun Licence Cost*, June 7, 2004.

¹⁴⁷ People Opposing Women Abuse, *Statistics*, <http://www.powa.co.za/Display.asp?ID=2> Visited Apr. 19, 2007).

¹⁴⁸ Antony Altbeker, *Positive Trends: The 2004/05 Crime Statistics*, SA CRIME QUARTERLY, No. 14, Dec 2005, Institute for Security Studies.

¹⁴⁹ See One in Nine, *Solidarity with Women Who Speak Out*, Home Page, <http://www.oneinnine.org.za/default.asp> (visited Apr. 16, 2007).

¹⁵⁰ USAID in Africa suggests that "more than 95 percent of rural cases [are] unreported." USAID in Africa, *Confronting the Scourge of Domestic Violence and Rape*, http://africastories.usaid.gov/print_story.cfm?storyID=255 (visited Apr. 18, 2007). The National Institute for Crime Prevention and Rehabilitation (NICRO) suggests that only five percent of rapes are reported. See Mary Robertson, *An Overview of Rape in South Africa*, Center for the Study of Violence and Reconciliation, <http://www.csvr.org.za/articles/artrapem.htm> (visited Apr. 20, 2007). 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)

The population of South Africa in 2004 was 47,432,000, and the female life expectancy was 49 years.¹⁵¹

Because of the high rate of child rape in South Africa, we chose the age of nine years¹⁵² 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,¹⁵³ child rape is a significant risk factor for contracting AIDS and for early death.¹⁵⁴ 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,¹⁵⁵ rapes often become death sentences.¹⁵⁶

We asked Alex Holmes if the possibility of rape was an acceptable “motivation” to obtain a license. He responded: “In short, no. 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.”¹⁵⁷

Abios Khoele stated to us that, although women comprise over half of his organization, the Black Gun Owners’ Association, they are told “Your husband will

¹⁵¹ WHO: South Africa, World Health Organization, Report 2006, <http://www.who.int/countries/zaf/en/> (visited Apr. 17, 2007); see also Wikipedia, Demographics of South Africa, Comparison of Black South Africans and White South Africans, Black South African demographics, http://en.wikipedia.org/wiki/Demographics_of_South_Africa (visited May 24, 2007).

¹⁵² 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.”).

¹⁵³ See Human Rights Watch, *Scared at School: Sexual Violence Against Girls in South African Schools*, ch. 4 (Mar. 2001), <http://www.hrw.org/reports/2001/safrica/> (visited Apr. 18, 2007).

¹⁵⁴ See *id.* 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.” See also Carolyn Dempster, *Rape – Silent War on SA Women*, BBC NEWS, Apr. 9, 2002 (“it 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 according to the child support group, Childline.”); Gavin du Venage, *Rape of Children Surges in South Africa: Minors Account for About 40% of Attack Victims*, SAN FRANCISCO CHRONICLE, Feb. 12, 2002 (“More than 52,000 rape cases were reported in 2000, and about 40 percent of the victims were under 18.”); Nicola Christofides, et al, THE STATE OF SEXUAL ASSAULT SERVICES: FINDINGS FROM A SITUATION ANALYSIS OF SERVICES IN SOUTH AFRICA, THE SOUTH AFRICAN GENDER-BASED VIOLENCE AND HEALTH INITIATIVE (2003) (“In the year 2000, 52,550 cases of rape and attempted rape of women were reported to the South Africa police, 21,438 of which were of minors under the age of 18 years and of these 7898 were under the age of 12 years (mostly between 7 and 11 years.... In addition 2,934 cases of indecent assault of men were reported, 1,627 of which were of minors.”).

¹⁵⁵ See *Scared at School*, *supra* note ____.

¹⁵⁶ In 1999, Lloyds 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> (visited Aug. 21, 2007).

¹⁵⁷ E-mail from Alex Holmes, spokesperson for South Africa’s Arms and Ammunition Dealers Association (May 4, 2007, 2:07:07 AM EST) (on file with authors).

provide your security.”¹⁵⁸ The statement is absurd on its face, since the wife will not be with the husband 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 a woman must be forced to rely on a male for protection, rather than be able to protect herself, is a violation of international human rights treaties on the equality of the sexes.¹⁵⁹

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.¹⁶⁰

D. Taking of Property without Compensation

The South African constitution protects one from being deprived of one’s property without compensation.¹⁶¹ The new gun law has a specific provision for compensation,¹⁶² yet no money has been allocated for compensation. Abios Khoele stated that his group’s members get nothing, so they prefer to take their guns home, hide them and declare them missing, rather than surrender them.¹⁶³ He observed that black gun owners have “been very adamant that they will not renew their licences [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.”¹⁶⁴

¹⁵⁸ Telephone interview by Joanne D. Eisen with Abios Khoele, Chairman of the Black Gun Owners’ Association, (Apr. 24, 2007).

¹⁵⁹ See International Covenant on Civil and Political Rights, *supra* note __, 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.*, arts. 2, 26; African Charter on Human and Peoples’ Rights, *supra* note __, at pt. I, ch. 1, art. 18,3 (“The State shall ensure the elimination of every discrimination against women....”), 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, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (visited Sept. 8, 2007), at pt. I, arts. 2d and 2e:

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 in May 2002.

¹⁶⁰ See §§ 120(1)(b), 121 of Firearms Control Act, Stats. of the Rep. of S. Afr., <http://www.dti.gov.za/nonproliferation/non/Act60of2000FirearmsControl.pdf> (visited Sept. 7, 2007) (“A person is guilty of an offence if he or she contravenes or fails to comply with any... condition of a licence, permit or authorisation issued or granted by or under this Act....”); Edwin Tshivhidzo, *Hand it Over, Or Face 25 Years in Jail*, BUANEWS (Tshwane), June 24, 2005; WORLD LAW/South Africa, Correspondents’ Reports, <http://jurist.law.pitt.edu/world/sacor2.htm> (visited May 24, 2007) (“The ‘Act’ in this context includes the regulations: section 1. Schedule 4 provides for penalties up to 25 years’ imprisonment.”).

¹⁶¹ S. AFR. CONST., § 25.

¹⁶² Firearms Control Act 60 of 2000, *supra* note __, at ¶ 137.

¹⁶³ Telephone interview by Joanne D. Eisen with Abios Khoele, Chairman of the Black Gun Owners’ Association, (Apr. 24, 2007).

¹⁶⁴ Edwin Herrendorfer interviews Abios Khoele of the Black Gun Owners’ Association, *supra* note __.

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.¹⁶⁵

One former store owner explained to us:

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.]¹⁶⁶

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 year.¹⁶⁷ However, the *Financial Mail* reported that recently there 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....” The *Financial Mail* suggested that foreign hunters were avoiding such inconveniences by switching their destination to Namibia.¹⁶⁸ Under the International Covenant on Economic, Social and Cultural Rights, a person has a right to earn a living.¹⁶⁹ 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

¹⁶⁵ See Wyndham Hartley, *Gun dealers 'driven out of business'*, *BUSINESS DAY*, Aug. 17, 2006, <http://www.businessday.co.za/articles/national.aspx?ID=BD4A251728> (visited May 24, 2007) (“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.”).

¹⁶⁶ E-Mail received May 7, 2007, on file with authors. The sender wished to remain anonymous out of fear of government retribution.

¹⁶⁷ See Sherry Shannon, *A Shot in the Arm*, *FIN. MAIL*, Aug. 10, 2007.

¹⁶⁸ See Sherry Shannon, *It's Not a Game*, *FIN. MAIL*, Aug. 10, 2007.

¹⁶⁹ International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, art. 6(1) (“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.”)

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,¹⁷⁰ but the South African authorities refused to release accurate crime figures. They finally did so in the summer of 2007. As *Business Day* reported:

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...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.¹⁷¹

According to the United Nations, 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 protect them from rape, homicide, home invasion, and other violent crimes.¹⁷² Even so, it is undeniable that South Africa's 2003 gun licensing system is implemented by 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 unusual that an emergency phone call reporting a violent crime in progress will result in the police arriving soon enough to stop the crime.¹⁷³ Indeed, when the police are alerted during a violent crime in progress,

¹⁷⁰ See David B. Kopel, Paul Gallant & Joanne D. Eisen, *South African Stupidity*, NAT'L REV. ONLINE, Nov. 11, 2000, <http://www.nationalreview.com/kopel/kopel101100.shtml>. See also B. L. Fanaroff, *Foreword*, in FIREARM USE AND DISTRIBUTION IN SOUTH AFRICA (2000) (Robert Chetty, ed.). (“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.”).

¹⁷¹ See Ernest Mabuza, *Figures Confirm Violent Crime is on the Rise*, BUS. DAY (Johannesburg), July 4, 2007.

¹⁷² See Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-eighth session, Item 6 of the provisional agenda, *Prevention of Human Rights Violations Committed with Small Arms and Light Weapons*, Final Report Submitted by Barbara Frey, Special Rapporteur, in accordance with Sub-Commission Resolution 2002/25, U.N. General Assembly, A/HRC/Sub.1/58/27, July 27, 2006, available at <http://www.geneva-forum.org/Reports/20060823.pdf> (visited Aug. 23, 2006). See also Human Rights Council, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-eighth session Item 6 (d), U.N. General Assembly, A/HRC/Sub.1/58/L.24, Aug. 21, 2006, available at http://www.iansa.org/un/documents/salw_hr_resn_eng.pdf (visited Sept. 8, 2007).

¹⁷³ See WILLIAM SPELMAN AND DALE K. BROWN, CALLING THE POLICE: CITIZEN REPORTING OF SERIOUS CRIME, Police Executive Research Forum (1981). See also David B. Kopel, Paul Gallant & Joanne Eisen, *911 Is a Joke....Or Is It? Let's Find Out*, TECH CENT. STATION, Jan. 5, 2005, <http://www.techcentralstation.com/010505H.html>.

American police apprehend the criminal only about 1/3 of the time.¹⁷⁴ But apprehending the criminal is a far cry from preventing harm to the victim. Statistics on how often calls to 9-1-1 lead to the prevention of harm to the victim are not kept in the U.S., nor 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. However, on the whole, “victim resistance appears to be generally a wise course of action,” as Jongyeon Tark and Gary Kleck have concluded, based on data from the National Crime Victimization Survey.¹⁷⁵ In general, the more forceful the resistance, including resistance with a gun, the less injury suffered by the victim.¹⁷⁶

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 Mugenya, police are inadequate to the task of protecting the populace. Mugenya stated: “The public needs to appreciate the efforts of the 14,000 police personnel who are supposed to protect 28 million people.”¹⁷⁷

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.¹⁷⁸

In support of civilian self-disarmament, the UN has directed much effort and resources to finding ways to overcome the human survival instinct. According to the Institute for War and Peace Reporting, and Saferworld (a pair of pro-disarmament NGOs), “Disarming civilians in Albania, Kosovo and Macedonia means making them see

¹⁷⁴ See sources cited at *supra* note ____.

¹⁷⁵ Jongyeon Tark & Gary Kleck, *Resisting Crime: The Effectiveness of Victim Action on the Outcomes of Crimes*, 42 CRIMINOLOGY 861 (2004).

¹⁷⁶ *Id.*

¹⁷⁷ See Ibrahim Kasita, *Armed Robbers Resume Terror Attacks in the City*, THE MONITOR (Kampala), June 7, 2005, <http://allafrica.com/stories/printable/200506070200.html> (visited June 8, 2005). See also Muchemi Wachira and Stephen Muiruri, *53 Butchered as Bandits Raid Town*, THE NATION (Nairobi), July 13, 2005, <http://allafrica.com/stories/printable/200507130108.html> (visited July 14, 2005). (Deputy Police Commissioner Lawrence Mwadime stated: “We couldn’t dispatch police helicopters until we confirmed there was such an incident and its magnitude. We received scanty details in the morning and we had to wait for a concrete report from the officers we sent there.”)

¹⁷⁸ See, e.g., ROBERT FRUMP, THE MAN-EATERS OF EDEN: LIFE AND DEATH IN KRUGER NATIONAL PARK (2006)(lion predation on Mozambican refugees in South Africa); Kritivas Mukherjee, *Urban leopard attacks increase as habitat shrinks: Development Preys on World's Largest Urban Forest*, REUTERS, March 23, 2007, <http://news.mongabay.com/2007/0323-india.html> (visited Sept. 07, 2007)(“ In 2004, at least 14 people were killed in attacks by leopards in Mumbai after their shrinking habitat forced them to stray from the national park and enter nearby neighbourhoods.”); Sri Lanka: Data on past disasters to help forecast cyclical trends, IRIN NEWS, 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.”); Craig Packer, *Researchers propose measures to curb lion attacks in Tanzania*, NATURE, Aug. 18, 2007 (“Since 1990 lions have killed more than 563 Tanzanians, including nursing mothers, children playing outside their huts and people dragged from their beds.”).

guns are a threat to security....The real challenge is to *convince* people that giving them up is a good idea.”¹⁷⁹

Geoffrey Mugumya, Director of Peace & Security for the African Union, described one UN strategy: “A combination of confidence building measures and application of pressure are important in promoting and enforcing weapon collection activities.”¹⁸⁰ Tactics range from “Continuation of sensitization activities [about the dangers of weapons possession] and application of pressure from the traditional leaders” to “Government promises to provide adequate security to the communities.”¹⁸¹

The hope of the disarmament community is that when citizens unilaterally disarm, peaceful societies spontaneously form.¹⁸² In 1992, then-UN Secretary-General Boutros Boutros-Ghali coined the term “micro-disarmament,” explaining, “By 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.”¹⁸³ However, while massive awareness campaigns that proclaim the dangers about firearms may change some minds,¹⁸⁴ the UN itself is aware that micro-disarmament is not an easily achievable goal.

¹⁷⁹ Emphasis added. See David Quin, Vladimir Jovanovski and Ana Petruseva, *Albania, Kosovo and Macedonia: Armed to the Teeth*, ReliefWeb, Nov. 27, 2003, <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/16b39ed35e51c2f2c1256dec004dd120>.

¹⁸⁰ GEOFFREY MUGUMYA, EXCHANGING WEAPONS FOR DEVELOPMENT IN MALI: WEAPON COLLECTION PROGRAMMES ASSESSED BY LOCAL PEOPLE 80 (United Nations Institute for Disarmament Research 2004).

¹⁸¹ *Id.*

¹⁸² 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, measureable 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: Tackling the Illicit Trade in Small Arms and Light Weapons*, Jan. 2002, at 15.

¹⁸³ *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. Doc. A/50/60-S/1995/1, at ¶ 60 (1995) (“Micro-disarmament” and “practical disarmament” are used interchangeably by the disarmament community.), available at <http://www.un.org/Docs/SG/agsupp.html#DISARM>.

¹⁸⁴ See United Nations Development Programme, Small Arms and Light Weapons Control Project, Small Arms and Light Weapons Control, ALB/01/003, Monthly Report, Apr. 2002, at § 1.2 (“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 *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 82:

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.

In truth, reduced violence does not necessarily follow micro-disarmament attempts.¹⁸⁵ 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.¹⁸⁶ Because the survival instinct is so strong, even a psychologist from the United Nations Development Programme (which is heavily involved in gun confiscation) acknowledges: “As long as people feel unsafe there will always be a tendency for them to carry weapons.”¹⁸⁷

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 attitudes towards armed self-defense. Indeed, one of the co-authors of this Article (Kopel) has written a book which contrasts American gun culture with the gun cultures in seven other democratic nations.¹⁸⁸ 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 élites who claim that citizens should surrender their defensive arms even when the government has not yet established solid conditions of personal security.

Before detailing the data, we offer an important caveat about why the international data likely *understate* the prevalence of defensive gun ownership. Firearms surrender/confiscation programs almost always are implemented in conjunction with public relations “awareness programs” which emphasize the costs, harms, and dangers of

¹⁸⁵ See David B. Kopel, Paul Gallant & Joanne Eisen, *Micro-Disarmament: The Consequences for Public Safety and Human Rights*, 73 UMKC LAW REV. 969 (2005)(detailing the experiences of Cambodia, Bougainville, and Albania). See also *Putting People First: Human Security Perspectives on Small Arms Availability and Misuse*, Centre for Humanitarian Dialogue (2003), at 45 (In a rare admission from the disarmament community, the authors acknowledge “we know that fewer weapons do not always result in safer people.”)

¹⁸⁶ Some researchers are beginning to acknowledge that, because of the difficulty in carrying out disarmament programs, demand-side aspects need to be examined. See Jurgen Brauer & Robert Muggah, *Completing the Circle: Building a Theory of Small Arms Demand*, 27 CONTEMP. SECURITY POL’Y 138 (2006)(“the 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.”) .

¹⁸⁷ David Quin, Vladimir Jovanovski and Ana Petruseva, *Albania, Kosovo and Macedonia: Armed to the Teeth*, Institute for War and Peace Reporting, Nov. 27, 2003, <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/16b39ed35e51c2f2c1256dec004dd120> (visited Oct. 26, 2004). See also Shane McLeod, *PNG Police Target Illegal Guns*, Radio Interview broadcast on ABC Radio National, Australia, June 6, 2004, <http://www.abc.net.au/correspondents/content/2004/s1125332.htm>. (Stated McLeod: “However, one of the biggest challenges for Mr. Kimisopa [Papua New Guinea’s police minister] will be convincing PNG’s legal owners of guns, many of them businessmen and politicians, to give them up....it would not seem sensible for individuals who have the means to protect themselves to willingly give this away – when they clearly cannot rely on the State for protection.”); *Public Perceptions of Small Arms and Security in South Serbia*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), Belgrade, May 30, 2004, at 18 (“As long as there are rumors that there will be war, people will keep weapons.”).

¹⁸⁸ DAVID B. KOPEL, *THE SAMURAI, THE MOUNTIE AND THE COWBOY: SHOULD AMERICA ADOPT THE GUN CONTROLS OF OTHER DEMOCRACIES?* (1992)(contrasting U.S. gun culture with that of Japan, Great Britain, Canada, Australia, New Zealand, Jamaica, and Switzerland).

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,”¹⁸⁹ such as legal repercussions. Such research is particularly vulnerable to problems of data quality assurance.

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. For example, in a Serbian survey which 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.¹⁹⁰

Emile 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.¹⁹¹ 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.¹⁹²

1. Albania

Albania was the site of one of the most dramatic illicit gun transfers in recent history, as a result of political unrest in that country during March 1997.¹⁹³ During a temporary collapse of civil government, civilians looted 1,300 armories,¹⁹⁴ stealing more than a half million weapons.¹⁹⁵ While approximately 75,000 weapons were rapidly

¹⁸⁹ RAYMOND M. LEE, *DOING RESEARCH ON SENSITIVE TOPICS 2-4* (1993).

¹⁹⁰ See *Living with the Legacy – SALW Survey Republic of Serbia*, SACISCG, UNDP Small Arms Control in Serbia and Montenegro (2005), at 2 (“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 62 (“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 socially acceptable....It is far more likely that those with registered firearms would answer such questions truthfully than those with unregistered firearms.”).

¹⁹¹ See *SILENCING GUNS: LOCAL PERSPECTIVES ON SMALL ARMS AND ARMED VIOLENCE IN RURAL PACIFIC ISLANDS COMMUNITIES 18* (Emile LeBrun and Robert Muggah, eds.), Small Arms Survey Occasional Paper 15, disseminated at the United Nations 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 NYC in July 2005).

¹⁹² Gary KLECK, *TARGETING GUNS: FIREARMS AND THEIR CONTROL 65-68* (1997).

¹⁹³ The situation in Albania is detailed in Kopel, Gallant & Eisen, *Micro-Disarmament*, *supra* note ____.

¹⁹⁴ See *Support to Security Sector Reform (SSSR)—The United Nations Development Programme* (UNDP), Albania, Background, § 1, available at <http://www.undp.org.al/salwc/?background> (last visited May 20, 2005).

¹⁹⁵ See Afrim Krasniqi, *Demilitarizing Communities in Albania*, CHOICES, Dec. 2002, at 14, available at <http://www.undp.org/dpa/choices/2002/december/Pages14-15.pdf>. The International Monetary Fund and the British Broadcasting Corporation reported that the number of weapons looted was closer to one million; the Organization for Security and Cooperation in Europe reported an even higher estimate: 1.5 million weapons stolen by civilians. See Christopher Jarvis, *The Rise and Fall of Albania's Pyramid Schemes*, 37 FIN. & DEV. 46, 48 (Mar. 2000), available at <http://www.imf.org/external/pubs/ft/fandd/2000/03/jarvis.htm>. See also *Timeline: Albania*, BBC NEWS, Mar. 26, 2003, available at <http://news.bbc.co.uk/1/hi/world/europe/1004984.stm>.

retrieved by the Albanian government,¹⁹⁶ and many more were smuggled out of the country, it has been estimated that about 200,000 weapons remained in civilian hands.¹⁹⁷ Between 1997 and the spring of 2003, approximately 25,000 weapons were recovered with help from UN weapons collection programs.¹⁹⁸ More recently, about 1,000 per month were being recovered.¹⁹⁹

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.²⁰⁰ Civilians legally possessed 65,747 weapons, and illegally possessed an estimated 200,000 weapons.²⁰¹ 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.²⁰²

A 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. 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 have still weapons.”²⁰³ As Lawrence Doczy, who was in charge of the UN’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.”²⁰⁴

2. Bosnia and Herzegovina

In a poll conducted in Bosnia and Herzegovina, 34.2% of respondents stated they would legally choose to own a firearm, given the opportunity. Of males who responded, 46.8% would so choose. Of respondents who would choose to legally own a firearm, 67.1% gave reasons of protection of self, family, and property.²⁰⁵ As of 2003, there were 144,469 legally possessed weapons, with an estimated 432,000 weapons illegally

¹⁹⁶ E-mail from Lawrence Doczy, SSSR Programme Manager, to Paul Gallant (Sept. 6, 2003) (on file with author).

¹⁹⁷ See *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 20.

¹⁹⁸ E-Mail from Lawrence Doczy, Manager of the Support to Security Sector Reform Programme, to Paul Gallant (July 15, 2003) (on file with author).

¹⁹⁹ See *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 26.

²⁰⁰ *Turning the Page: Small Arms and Light Weapons in Albania*, Small Arms and Security in South Eastern Europe, Center for Peace and Disarmament Education and Saferworld, Dec. 2005, <http://www.saferworld.org.uk/images/pubdocs/Albania%20ENG%20report.pdf> (visited April 30, 2006), at 50.

²⁰¹ *Id.*, at 36.

²⁰² *Id.*, at 50.

²⁰³ See *Socio-Economic Analysis and Impact Assessment*, SALWC Project, Centre for Rural Studies, at 26 <<http://undp.org.al/salwc/?reports>> (last visited Dec. 21, 2003).

²⁰⁴ Paul Henly, *Albania’s Gun Culture Proves Hard to Shift*, BBC NEWS, Jan. 15, 2003.

²⁰⁵ See Wolf-Christian Paes, Hans Risser and Tobias Pietz, *Small Arms and Light Weapons Survey (SAS) Bosnia and Herzegovina*, Bonn International Center for Conversion, on behalf of the UNDP, July 2004, at 44.

possessed.²⁰⁶ Authorities conducted a weapons collection program dubbed “Operation Harvest” from 1998 to 2004, and obtained 40,651 weapons. Tactics included search and seizure efforts by NATO’s²⁰⁷ 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.²⁰⁸

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.²⁰⁹ A study in the major city of São Paulo by the Latin-American Institute of the UN estimated that 58% of firearm owners possessed guns for “personal protection.”²¹⁰

In 2001, there were approximately seven million lawfully owned firearms in Brazil, distributed among 4.35% of the population, because of an extremely severe gun licensing statute. However, authorities estimate that there are as many as 11.5 million illegally owned firearms.²¹¹

According to fifty-year-old taxi driver Luiz Marcelo, “All 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.”²¹²

Brazil has recently been the target of several disarmament campaigns, collection programs (including “buy-backs”), and sensitization campaigns.²¹³ A referendum pushed by the notoriously corrupt Lula da Silva government would have banned almost all citizen firearm ownership.²¹⁴ However, in the October 23, 2005 vote, sixty-four percent of Brazilians rejected the ban.²¹⁵

According to Human Rights Watch:

²⁰⁶ See *id.*, 19, 23.

²⁰⁷ See *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at xiv.

²⁰⁸ See Paes et al., *Small Arms and Light Weapons Survey (SAS) Bosnia and Herzegovina*, *supra* note __, at 25.

²⁰⁹ See Maria Fernanda Tourinho Peres, National Project Coordinator, *Firearm-Related Violence in Brazil: Country Report 32*, table 6 (São Paulo: Center for the Study of Violence, University of São Paulo, 2004).

²¹⁰ See *Brazil: Overview*, Safer-Net (Small Arms/Firearms Education and Research Network), Regions, May 15, 2003, http://ryerson.ca/SAFER-Net/regions/Americas/Bra_FY03.html (n.d.)(visited June 11, 2006).

²¹¹ See *Brazil*, http://ryerson.ca/SAFER-Net/regions/Americas/Bra_FY03.html (visited June 11, 2006)(“Approximately 4.35% of the population possess a registered firearm. It is estimated, however, that the actual percentage of firearm ownership is much higher.”).

²¹² See Andrei Khalip, *Crime-hit Brazil Split Over Possible Gun Sales Ban*, REDNOVA.COM, July 20, 2005, http://www.rednova.com/news/health/180797/crimehit_brazil_split_over_possible_gun_sales_ban/ (visited Sept. 2, 2005).

²¹³ See Jonathan Franklin, *Soap Stars Join 50,000 in Rainy Rio to Demand Guns Crackdown*, PEACEWOMEN.ORG, <http://www.peacewomen.org/news/Brazil/newsarchive03/rio.html> (visited Sept. 2, 2005).

²¹⁴ See INTERNATIONAL ACTION ON SMALL ARMS 2005: EXAMINING IMPLEMENTATION OF THE UN PROGRAMME OF ACTION, IANSA (2005), at 73-74. (“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.”).

²¹⁵ See *Brazilians Reject Gun Sales Ban*, BBC NEWS, Oct. 24, 2005.

unofficial estimates have placed the total number of police killings in Brazil at around 3,000 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.²¹⁶

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.”²¹⁷ According to Oxfam: “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.”²¹⁸

Disarmament groups, such as Oxfam, were obviously not unaware of the extensive abuses perpetrated by Brazil’s police. 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...”²¹⁹ 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.²²⁰

4. Bulgaria

Researchers from the South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) asked 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%, and protection of property and business was one of the top three reasons for 64.2%. SEESAC researchers noted: “Twenty-six percent of HHS [household

²¹⁶ See WORLD REPORT 2005: EVENTS OF 2004, at 192-193 (Human Rights Watch 2005). See also Martha K. Huggins & Jessica MacTurk, *Armed and Dangerous*, AMERICAS.ORG, http://www.americas.org/item_117 (visited Sept. 2, 2005) (A study of Rio de Janeiro police shootings found that approximately 65% of police extrajudicial killings were committed from behind the victim.); Angus Stickler, *Brazil’s Police ‘Execute Thousands’*, BBC NEWS, Nov. 23, 2005, <http://news.bbc.co.uk/2/hi/americas/4463010.stm>.

²¹⁷ See Steve Kingstone, *Controversial Rio Raids Under Way*, BBC NEWS, Mar. 9, 2004.

²¹⁸ See *Shattered Lives: The Case for Tough International Arms Control*, joint publication of Oxfam and Amnesty International (2003), at 25.

²¹⁹ See INTERNATIONAL ACTION ON SMALL ARMS 2005: EXAMINING IMPLEMENTATION OF THE UN PROGRAMME OF ACTION, IANSA (2005), at 75.

²²⁰ See Peter Muello, *Brazilians Block Gun Ban*, FOX NEWS, Oct. 23, 2005, <http://www.foxnews.com/story/0,2922,173154,00.html> (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 *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# (visited Aug. 22, 2007) (Bene Barbosa, president of Viva Brasil, an advocacy group promoting the ban, noted: “If it’s rejected it will show once again that the government isn’t walking in the same direction as the population...It’s also a vote against the government.” Denis Mizne, executive director of Sou da Paz institute, stated: “A victory of the ban would be helpful to accelerate a world agenda on disarmament.”).

survey] respondents stated that if they or another member of their household could own a firearm legally, they would choose to do so....²²¹ 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.”²²² The researchers also surmised that any weapons collection program attempted in Bulgaria would not succeed because of public mistrust of the authorities.²²³

Bulgaria had a population of 7,385,367²²⁴ in about 2,921,887 households.²²⁵ 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.²²⁶ 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,²²⁷ then the figure would be nine to thirteen percent of households.²²⁸

5. Canada

In Canada, only five percent of persons report self-defense as the reason for owning a gun.²²⁹ The reason for the low figure, according to Gary Mauser of Simon Fraser University and his fellow Canadian scholar H. Taylor Buckner, is “The prevailing attitude is that there is no need for self defense in Canada as superior social systems have eliminated these problems [of violent crime].²³⁰ Although “self-protection has been demonized,”²³¹ a surprising fact emerges from Mauser and Buckner’s survey: 67% of Canadian gun-owners, and even 59% of non-gun-owners stated they would use a gun to defend themselves.²³² Furthermore, the researchers reported that “a majority (54%) of

²²¹ See *Taming the Arsenal – Small Arms and Light Weapons in Bulgaria* , South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 61-62.

²²² See *Taming the Arsenal – Small Arms and Light Weapons in Bulgaria* , South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 72.

²²³ See *Taming the Arsenal – Small Arms and Light Weapons in Bulgaria* , South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 99.

²²⁴ THE WORLD FACT BOOK, <http://www.cia.gov/cia/publications/factbook/rankorder/2119rank.html> (data as of June 4, 2006),

²²⁵ *Frequently Asked Questions about Bulgaria, People of Bulgaria*, Question 42, <http://www.visittobulgaria.com/faq/Dir.asp?d=faq-people&q=47> (visited Sept. 7, 2007).

²²⁶ See *South Eastern Europe SALW Monitor 2005* , South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 53.

²²⁷ See *supra* text at note ____.

²²⁸ Presuming one gun-owner per household.

²²⁹ Gary A. Mauser, *National Experiences with Firearms Regulation: Evaluating the Implications for Public Safety*, Simon Fraser University, Working Paper Series 2003-1 (2003), at 19 (citing GPC Research, “Fall 2001 Estimate of Firearms in Canada, Report on Findings,” Submitted to the Canadian Firearm Centre, 2001.). Cf. Thomas Gabor, *Firearms and Self-Defence: A Comparison of Canada and the United States*, Canada Firearms Centre (1997), at table 2, http://www.cfc-ccaf.gc.ca/pol-leg/res-eval/publications/reports/1997/reports/selfdef_rpt_e.asp. (reporting a figure of one percent).

²³⁰ Gary A. Mauser and H. Taylor Buckner, *Canadian Attitudes Toward Gun Control: The Real Story* , Mackenzie Institute Occasional Paper, Jan. 1997, at 50.

²³¹ Private E-Mail from Dr. Gary Mauser to Paul Gallant, Aug. 22, 2005.

²³² Mauser & Buckner, *supra* note ____, at 51.

those who wanted to confiscate the self-defense handguns of other people would use a gun for self-defense if they themselves were threatened.”²³³

According to various surveys, approximately 18% to 26% of Canadians own at least one firearm.²³⁴ Mauser estimates that there are between 2.3 to 4.5 million lawful gun-owners, and “between 7.9 and 15 million firearms in Canada.”²³⁵

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 the registration system has been plagued by enormous cost over-runs and corruption.²³⁶ Even so, it is clear that the issue of public resistance of 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 very high risk of being killed, or made destitute. Such fears are much less prevalent in Canada, and for good reason.

6. Croatia

In Croatia, the stated purpose of 47% of registered firearms was “self-defence.”²³⁷ According to current records, approximately 376,000 firearms are currently registered, for a total of approximately 20% of Croatian households²³⁸, but there are no estimates of illegally possessed weapons.

7. El Salvador

When Salvadorans were asked about reasons for “having and wanting a firearm.” the total combined response for “self-defense,” “for protection,” and “to combat crime” were 86.4%.²³⁹ As of 2002, there were an estimated 400,000 firearms in El Salvador, of

²³³ *Id.*, at 52. As Mauser and Buckner commented: “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.”

²³⁴ See *Canada: Overview*, Safer-Net (Small Arms/Firearms Education and Research Network), Regions, Jan. 2004, http://ryerson.ca/SAFER-Net/regions/Americas/Can_JY04.html (visited June 11, 2006) (Roughly 14% of households in Ontario own firearms compared to 76% in the Yukon.”).

²³⁵ See Gary A. Mauser, *The Failed Experiment: Gun Control and Public Safety in Canada, Australia, England and Wales*, 71 PUB. POL’Y SOURCES 9 (2003).

²³⁶ 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.

²³⁷ See *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 68.

²³⁸ See *id.*

²³⁹ See *Weapons...not even as toys!: An initiative for Small Arms Control in El Salvador*, Toward Building a Society Without Violence Program, (UNDP El Salvador, n.d.), 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.

which 250,000 were estimated to be illegal.²⁴⁰ Approximately 30% of El Salvadoran households possessed a firearm.²⁴¹

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 “Anecdotal 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.”²⁴² 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 interior of the country were forced to acquire weapons because of the failure of the government to provide them adequate security.²⁴³

9. Montenegro

In a 2003 poll, 37.2% of respondents reported keeping a firearm for “personal security.”²⁴⁴ There were 86,000 weapons registered to civilians, and an estimate of between 40,000-89,000 unregistered illegally possessed weapons.²⁴⁵ In 2003, the government’s “Farewell to Arms” program, lasting two months, collected 1,600 firearms.²⁴⁶

²⁴⁰ See *El Salvador: Overview*, Safer-Net (Small Arms/Firearms Education and Research Network), Regions, May 15, 2003, http://www.ryerson.ca/SAFER-Net/regions/Americas/EIS_MY03.html (visited June 4, 2006).

²⁴¹ See *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.”).

²⁴² See Nicolas Florquin and 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 60* (Nicolas Florquin and Eric G. Berman, eds. 2005).

²⁴³ GEOFFREY MUGUMYA, *EXCHANGING WEAPONS FOR DEVELOPMENT IN MALI: WEAPON COLLECTION PROGRAMMES ASSESSED BY LOCAL PEOPLE* (United Nations Institute for Disarmament Research 2004), at 34.

²⁴⁴ *Respect Life – Return the Weapons: Montenegrin Public Opinion in 2003*, Center for Democracy and Human Rights, Apr. 2003, at A, table 1, http://www.cedem.cg.yu/opolls/images/CEDEM_ReturnTheWeapons03.pdf.

²⁴⁵ See *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 142.

²⁴⁶ See *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 159. See also “A House Isn’t a Home Without a Gun,” SALW Survey Republic of Montenegro, 2004, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) with Small Arms Survey, at 25, http://www.smallarmssurvey.org/files/sas/publications/co_publi_pdf/2004/2004-montenegro-eng.pdf (visited Sept. 2, 2007) (“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.”).

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 self-protection.²⁴⁷ Australian criminologist and gun control advocate Philip Alpers suggested that in the Southern Highlands, there were only five factory-made firearms per thousand population, while the huge number of home-made firearms may approach one weapon per male.²⁴⁸ Firearm amnesties in PNG have not progressed well, as few firearms have been surrendered to authorities.²⁴⁹

11. Serbia

In Serbia, in 2005, there were 1,056,314 registered firearms (including 543,070 handguns) in about 40% of households,²⁵⁰ and an estimated 944,000 illegally possessed firearms.²⁵¹ Between 2001-2003, about 10,000-15,000 weapons had been voluntarily collected from the populace.²⁵² In the weeks that followed Serbian Prime Minister Djindjic's murder on March 12, 2003, confiscations by government authorities removed about 50,000 weapons.²⁵³

In a poll conducted in the South Serbian municipalities where both ethnic Albanians and ethnic Serbians lived together, the data were reported by ethnicity. Self-protection was cited by 61% of Serbian household heads, and 70% of Albanian household heads; property protection was cited by 37 % of Serbian household heads and

²⁴⁷ Philip Alpers, GUN-RUNNING IN PAPUA NEW GUINEA: FROM ARROWS TO ASSAULT WEAPONS IN THE SOUTHERN HIGHLANDS, Small Arms Survey, undated, disseminated at the United Nations 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 NYC in July 2005, at 117-118. See also Help Desk for Practical Disarmament: Cambodia, Bonn International Center for Conversion, http://www.bicc.de/weapons/helpdesk/3_experiences/profiles/Cambodia.html (visited Jun. 24, 2003). (“A disarmament survey on small arms conducted by the Working Group for Weapons Reduction in Cambodia (WGWR) has found that it is increasingly common in Cambodian society for people to believe that weapons are needed to protect businesses and homes.”).

²⁴⁸ PHILIP ALPERS, GUN-RUNNING IN PAPUA NEW GUINEA: FROM ARROWS TO ASSAULT WEAPONS IN THE SOUTHERN HIGHLANDS, Small Arms Survey, undated, disseminated at the United Nations 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 NYC in July 2005, at 44-45.

²⁴⁹ *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.”); Nicole Haley & Robert Muggah, *Jumping the gun? Reflections on armed violence in Papua New Guinea*, 15 AFRICAN SECURITY REVIEW (No.2, 2006), at 53-54, available at http://www.iss.co.za/dynamic/administration/file_manager/file_links/15_2F3.PDF?link_id=19&slink_id=3332&link_type=12&slink_type=23&tmpl_id=3 (visited Sept. 08, 07)(“Certainly past initiatives have either failed or have tended to yield mainly homemade weapons.”).

²⁵⁰ See *Living with the Legacy – SALW Survey Republic of Serbia*, SACISCG, UNDP Small Arms Control in Serbia and Montenegro (2005), at 1.

²⁵¹ See *id.*, at 10.

²⁵² See *South Eastern Europe SALW Monitor 2005*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, at 156.

²⁵³ See *id.*

24% of Albanian household heads; community protection was cited by 8% of Serbian household heads, and 4% of Albanian household heads.²⁵⁴

A separate Serbian “household survey confirmed that lack of trust in the police...prevented people from handing in weapons....” during a 2003 amnesty program.²⁵⁵ We can assume that because of the desire to possess weapons for self-defense and the lack of trust in the authorities, that significant further disarmament will be unlikely to succeed.²⁵⁶

12. United States

U.S. criminologists Philip J. Cook and Jens Ludwig estimated the civilian gun stock at nearly 200 million, distributed among 35% of American households.²⁵⁷ 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.²⁵⁸

²⁵⁴ See *Public Perceptions of Small Arms and Security in South Serbia*, SEESAC, Belgrade 2004, at 17, <http://www.seesac.org/reports/Public%20Perceptions%20Final.pdf> (visited Aug. 17, 2005). Other reasons, such as hunting, sporting purposes, work and tradition were also cited.

²⁵⁵ See *Living with the Legacy*, *supra* note __, at 13, 63 (“The effect corruption has on the state’s capacity to implement the rule of law is without a doubt significant.”). See also *Taming the Arsenal – Small Arms and Light Weapons in Bulgaria*, South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 2005, 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. HHS [nationwide household survey] and FGD [focus group discussions] results showed that public trust in state institutions, including the police, is lacking.”).

²⁵⁶ “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 (€ million annually from licensing.” 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.” See *South Eastern Europe SALW Monitor 2005*, *supra* note __, at 149.

²⁵⁷ See Philip J. Cook & Jens Ludwig, *Guns in America: National Survey of Private Ownership and Use of Firearms*, National Institute of Justice, Research in Brief, May 1997. 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, TARGETING GUNS, *supra* note __, at 74-85 (citing most of the many studies published before 1997); We do not supply a comprehensive list of those surveys, since they all tend towards the same result as the Cook/Ludwig survey.

²⁵⁸ See *Guns & Ammo’s Anonymous Gun-Owners Survey*, GUNS & AMMO MAGAZINE, Dec. 2000, at 33. Instructions for participation in the survey were noted on the form thusly: “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 also Paul Gallant and Joanne Eisen, *G&A’s Survey Results*, GUNS & AMMO MAGAZINE, Oct. 2001, at 30-32. The Gallant/Eisen survey is the only anonymous poll of all those discussed herein. Respondents had no fear of self-incrimination from their answers. Non-anonymous polls conducted by agents of government or the UN 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*, Working Paper 7967, National Bureau of Economic Research, Cambridge, Mass., Oct. 2000, at 5.

13. Macedonia

Although we do not have household survey evidence about the reason for gun ownership in Macedonia, it appears that security concerns are a key motivation for firearms possession there.

The nation currently has an estimated 100,000 to 450,000 firearms possessed illegally.²⁵⁹ Although the government has strengthened restrictive laws and attempted to control civilian firearm possession, “reports note that until trust in the police has been further developed, Macedonians are likely to own guns in an attempt to guarantee their own security.”²⁶⁰

Not only do Macedonians believe their police to be inept, but according to Human Rights Watch, “Local nongovernmental organizations also reported widespread impunity for police abuses, with the judiciary often responding ineffectively and slowly to complaints of ill-treatment.”²⁶¹

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 had not been well-armed.²⁶² 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.²⁶³ Police have no track record of serving the populace.²⁶⁴

Conclusion

The Small Arms Survey, the most prestigious and credible scholarly organization dedicated to global gun control, accurately writes that:

The widespread proliferation 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.²⁶⁵

²⁵⁹ See *South Eastern Europe SALW Monitor 2005*, *supra* note __, at 87.

²⁶⁰ See *id.*, at 88.

²⁶¹ See HUMAN RIGHTS WATCH, *WORLD REPORT 2005: EVENTS OF 2004*, at 343 (2005).

²⁶² See Burkhard Conrad, *The Problem of Small Arms and Light Weapons in Tajikistan* Strategic Analysis - Monthly Journal of the IDSA, http://www.ciaonet.org/olj/sa/sa_nov00cob01.html (visited Aug. 30, 2005).

²⁶³ See *id.* It is evident that the population carries arms and that the government cannot stop them. See Bobi Pirseyedi, *THE SMALL ARMS PROBLEM IN CENTRAL ASIA: FEATURES AND IMPLICATIONS*, United Nations Institute for Disarmament Research (2000), at 69 (“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.”).

²⁶⁴ See OSCE, *U.S. Suggests Measures to Improve Rule of Law, Policing*, <http://belgrade.usembassy.gov/policy/regional/031015b.html> (visited Aug. 30, 2005) (“In Tajikistan, police often beat and force confessions from detainees.”).

²⁶⁵ See *SMALL ARMS SURVEY 2004: RIGHTS AT RISK 1* (Small Arms Survey, 2004).

Commendably, 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.”²⁶⁶

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 there is a grave risk that the government will escalate its tactics, and begin perpetrating 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 who want to own a car or to open a small business: that is, to have their license application treated fairly, and not to be discriminated against because they speak one but not another of a country’s official languages, not to be subject to arbitrary and capricious decision-making, not to be discriminated against on the basis of race, sex, or political beliefs, and not to be denied a license on the basis of palpably false and sexist claims 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.²⁶⁷

²⁶⁶ See *id.* See also *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*, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005), <http://www1.umn.edu/humanrts/instree/res2005-35.html> (visited June 15, 2006). The UN 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.

²⁶⁷ “You can’t make an omelette 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

But 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 which 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 which possess firearms can be confident that they will not endanger themselves by surrendering their means of self-protection.²⁶⁸ Such security includes 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.

Soviet Union. Askold Krushelnycky, *Ukrainians want pro-Stalin writer stripped of Pulitzer*, THE OBSERVER, May 4, 2003, <http://www.guardian.co.uk/russia/article/0,,949090,00.html>.

²⁶⁸ 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. We also recognize that because even democratic, civilized governments (e.g., 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 are avoiding the gun control debate per se, and instead focusing on human rights concerns which ought to be shared by everyone, including by persons with very diverse stands on gun control.