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HUMAN RIGHTS COMMITTEE COUNTRY REPORT

Kenya

Independent information for the 105th session

of the Human Rights Committee (HRC)

**HUMAN RIGHTS LITIGATION AND INTERNATIONAL ADVOCACY CLINIC
AND HUMAN RIGHTS PROGRAM
UNIVERSITY OF MINNESOTA**

CRITICAL ISSUES

Right to Life (Article 6)

Excessive use of force with firearms by law enforcement and security forces

Due diligence to prevent killings and injuries with small arms by private actors

PROPOSED QUESTIONS FOR THE GOVERNMENT OF KENYA

1. Please explain what measures the Government of Kenya is currently taking to reduce injuries to and deaths of civilians caused by small arms and light weapons (SALW) used by law enforcement officials or Kenyan security forces. In particular, do training programs emphasize alternatives to the use of SALW including the peaceful settlement of disputes, the understanding of crowd behavior and methods of negotiation with a view to reducing harm?
2. Please explain what measures have been taken to investigate and prevent extrajudicial killings by the Kenyan police force.
3. Please explain what steps have been taken by the Government to implement the United Nations Programme of Action on Small Arms and Light Weapons (PoA) and the Nairobi Agreement to improve public safety by destroying illegal weapons and educating the public about the dangers of SALW. Also, please describe measures taken by the government to limit the illicit sale, possession, and use of SALW and ammunition by private parties within the country.

4. Please explain what measures are being taken to investigate and respond to allegations of ammunition proliferation by security forces and police in northern Kenya. Please also explain what kinds of institutional controls the State party intends to establish to prevent distribution of ammunition in the region, as well as how the Kenyan government plans to continue to promote disarmament along the northern and western borders.
5. Please describe the measures that the Kenyan government has taken to minimize the misuse of SALW in its increased military operations along the Kenya–Somalia border.

INTRODUCTION

In 2000, Kenya, along with Burundi, the Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Rwanda, Sudan, Tanzania, and Uganda signed the Nairobi Declaration on the Problem of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.¹ Out of this initiative, the Regional Centre on Small Arms (RECSA) was created to coordinate action against SALW proliferation and misuse.²

In 2004, the Nairobi Declaration signatories along with the Seychelles signed 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.³

Since that time, Kenya's governmental response to SALW has expanded and evolved, and the State party has engaged in a number of disarmament initiatives, particularly in sensitive northern regions.⁴

In 2010, the UN Regional Center for Peace and Disarmament in Africa (UNREC) provided the Kenyan government with a standardized electronic register that manages records on arms brokers and brokering licenses in accordance with the RECSA Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol.⁵

¹ The Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (March 15, 2000), *available at* <http://www.recsasec.org/pdf/Nairobi%20Declaration.pdf> [hereinafter Nairobi Declaration].

² Regional Centre on Small Arms, Mission Statement, *available at* <http://www.recsasec.org/about.htm>.

³ The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (April 21, 2004), *available at* <http://www.recsasec.org/pdf/Nairobi%20Protocol.pdf> [hereinafter Nairobi Protocol].

⁴ *See infra* the section entitled, Ammunition Distribution and Violence in Northern Kenya.

⁵ *Kenya Receives Software to Control Small Arms Brokering and Brokers*, RECSA, *available at* www.recsasec.org/softr.htm.

Despite these significant improvements in SALW awareness and policy, there remain significant challenges to ensuring that state and non-state actors do not use SALW to violate the Article 6 right to life in Kenya. In particular, Kenya continues to experience problems with extrajudicial killings, urban gang-related crime, border conflicts, and SALW and ammunition proliferation (both intra- and inter-state). According to the Kenyan Police Annual Crime Report for the Year 2010, crime and insecurity in the country has been exacerbated in part by proliferation of SALW.⁶ In the first eight months of 2010 alone, Kenyan police recovered over 128 rifles, 60 pistols, and 36,458 rounds of ammunition through the course of normal police operations.⁷

I. STATE OBLIGATIONS WITH REGARD TO SMALL ARMS AND LIGHT WEAPONS

In order to prevent the violation of human rights committed with small arms, Governments and State agents shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State agent, is punished as a criminal offence.⁸

A. State Obligation Not to Violate the Right to Life with Small Arms and Light Weapons

A State's first duty under the SALW Principles is negative; not to violate the right to life in its officials' acts or omissions regarding the use of small arms and light weapons.⁹

In its report to the Committee, the State party acknowledges unlawful killings by the police, and commits to instituting police reforms and ceasing impunity.¹⁰ Extrajudicial shootings

⁶ KENYA POLICE, ANNUAL CRIME REPORT FOR THE YEAR 2010 1, *available at* www.kenyapolice.go.ke/resources/Crime%20report%202010.pdf [hereinafter ANNUAL CRIME REPORT]. Other factors identified include inequitable distribution of resources, organized crime, high unemployment rates, drug and substance abuse, high illiteracy levels, and sophistication of technology. *Id.*

⁷ *Id.*

⁸ Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, endorsed by Sub-Comm. on the Promotion and Protection of Human Rights res. 2006/22, U.N. Doc A/HRC/Sub.1/58/L.11/Add.1 at 3 (24 Aug. 2006) [hereinafter SALW Principles].

⁹ *Id.* at 8.

are a serious problem in Kenya. Persisting impunity exacerbates this issue, despite government efforts to reform the police system and the judiciary.¹¹

Human Rights Watch has attributed multiple extrajudicial shootings to members of the Kenyan police force, none of which have been prosecuted.¹² An internal report from the Ministry of Internal Security to the Kenya National Commission on Human Rights (KNCHR) stated that police were responsible for killing over 300 youths in 2008.¹³ In testimony given to the Truth Justice and Reconciliation Commission, a former Kenyan National Human Rights Commissioner (KNCHR), Hassan Omar, claimed that over 800 people died as a result of extrajudicial killings from 2007–2012.¹⁴ Mr. Omar testified that when police learned the KNCHR knew of the extrajudicial killings, "police devised new ways of carrying out the killings."¹⁵ In January 2011, police were observed on camera shooting at unarmed civilians in Nairobi. The police officers in question were suspended but later reinstated.¹⁶

Even where perpetrators of SALW violence have been prosecuted, demonstrations of excessive force indicate that there is a dire need for the State party to establish preventative measures and more robust training of police and armed forces personnel who have access to SALW. For instance, in 2010, police officers in Kawangware responded to a clash between boda boda (motorbike) and taxi operators; officers fatally shot seven taxi drivers.¹⁷ Seven officers were arrested and arraigned on murder charges. The status of their cases is unknown. Preparatory measures for handling such disputes should be implemented to prevent future incidents of misuse of force by Kenyan police.

¹⁰ Government of Kenya, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, U.N. Doc CCPR/C/KEN/3, ¶ 136 (Jan. 13, 2011) [hereinafter Kenya State Report].

¹¹ HUMAN RIGHTS WATCH, WORLD REPORT 2012: KENYA 2–3, available at www.hrw.org/sites/default/files/related_material/Kenya_2012.pdf [hereinafter WORLD REPORT].

¹² *Id.* at 2–3. HRW specifically points to the shootings of police whistleblower Bernard Kiriinya in 2008, human rights activists Oscar Kamau King'ara and John Paul Oulu in 2009, and Kenneth Irungu in 2011. *Id.* at 3.

¹³ 2010 Human Rights Report: Kenya, Bureau of Democracy, Human Rights, and Labor, United States Department of State, Apr. 8, 2011, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154352.htm>.

¹⁴ Peter Ng'Etich, *Police Executed 800 Men, Truth Team Told*, DAILY NATION, Apr. 20, 2012, available at <http://www.nation.co.ke/News/Police+executed+800+men+Truth+team+told+/-/1056/1374308/-/1afqcaz/-/>.

¹⁵ *Id.*

¹⁶ *Id.* at 3.

¹⁷ ANNUAL CRIME REPORT, *supra* note 6, at 3.

One particular target of extrajudicial killings is the Mungiki sect, a gang primarily based in Nairobi.¹⁸ As detailed below, the Mungiki is responsible for terrorizing populations where they operate, and have engaged in SALW misuse. Until 2009, police responded to Mungiki violence with overt extrajudicial shootings of Mungiki members.¹⁹ The passage of The Prevention of Organized Crimes Act in 2010 and the State party's implementation of an Independent Civilian Police Oversight Authority²⁰ indicate positive shifts in the Government's response to gang violence. These initiatives further signal that the State party is interested in processing suspected Mungiki members through the legal system, rather than relying on extrajudicial force.²¹ The State party should be recognized for innovative, non-violent responses to gang violence, but to prevent SALW violence by police in the future the State party should incorporate SALW-specific training and policies for police and reserves forces.

1. 2007–2008 Election Violence

Use of SALW to commit grave human rights violations was particularly salient during the 2007–2008 election violence in Kenya. Rioting began shortly after President Mwai Kibaki's Party of National Unity (PNU) declared victory. The Orange Democratic Movement (ODM) made claims of voting fraud, and soon other disenfranchised groups began actively protesting the outcome. From December 2007 through April 2008, over 1,000 people were killed and over

¹⁸ *Kenya: Mass Killings*, AFRICA RESEARCH BULLETIN 17313 (Nov. 2007) (the Kenya National Commission on Human Rights reported that police extrajudicially shot and executed over 450 suspected Mungiki members between June and November 2007); Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston to the Human Rights Council, 11th Session, *Mission to Kenya* 8–12, U.N. Doc A/HRC/11/2/Add. 6 (May 26, 2009) [hereinafter Report of the Special Rapporteur on Extrajudicial Executions].

¹⁹ Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 8–12. Death squads within the Kenyan police force have allegedly been formed to eliminate Mungiki and other high-profile criminal suspects. *Id.* at 8–9. There is substantial evidence that these squads use SALW to shoot suspects at close range from behind. *Id.* at 9. In some situations, police have allegedly attempted to alter scenes of extrajudicial killings to give the impression that a shoot-out occurred. *Id.*

²⁰ Government of Kenya, Replies from Government of Kenya to the List of Issues to be Taken up in Connection with the Consideration of Its Third Periodic Report ¶ 71, U.N. Doc CCPR/C/KEN/Q/3/Add.1 (May 30, 2012) [hereinafter Replies from Government of Kenya].

²¹ ANNUAL CRIME REPORT, *supra* note 6, at 5. See also Mutuma Ruteere, Dilemmas of Crime, Human Rights and the Politics of Mungiki Violence in Kenya, Address for the Centre of Criminology (March 1, 2012), available at vimeo.com/37795746.

600,000 displaced.²² Human Rights Watch reports that police officers killed at least 405 people during the election violence, and used SALW to shoot a number of civilians.²³

In Nyanza province, where election violence was particularly aggressive, there were 82 cases reported of individuals killed by bullet wounds; over half of the gunshot victims had wounds from behind.²⁴ There were further reports of police indiscriminately using live ammunition against unarmed crowds, justified by the police as necessary to control looting.²⁵ Of the patients brought to Nyanza General Provincial Hospital or its morgue with gunshot wounds, most of the men had been shot directly in the head or body; women and children sustained more random gunshot wounds, indicating that police had shot to kill the male subjects, while female and child victims were struck by stray bullets.²⁶ This pattern was confirmed by interviews with policemen who spoke of an unofficial ‘shoot to kill’ policy.²⁷

In Nairobi, police used SALW and force to attempt to contain protesters in the slum areas of the city, including Mathare, Kibera, Dandora, Kariobangi, and others.²⁸ Throughout the month of January 2008, police reportedly fired tear gas and live ammunition to disperse protesters in these areas. The Independent Medical and Legal Unit, an NGO, reported that there were 50 victims of gunshot wounds in Nairobi mortuaries in the first half of January; they believe that these SALW victims were most likely killed by the police.²⁹ Likewise in Mombasa, Eldoret and other cities across the country, human rights groups reported many incidences of police shooting civilians.³⁰

²² *Crisis in Kenya: Land, Displacement, and the Search for 'Durable Solutions,'* 31 HUMANITARIAN POLICY BRIEF: OVERSEAS DEVELOPMENT INSTITUTE (Apr. 2008), available at <http://www.odi.org.uk/resources/docs/2263.pdf>.

²³ *Kenya: ICC Judges OK Election Violence Trials*, HUMAN RIGHTS WATCH NEWS (Jan. 23, 2012), available at <http://www.hrw.org/news/2012/01/23/kenya-icc-judges-ok-election-violence-trials>.

²⁴ Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 26.

²⁵ *Id.*; HUMAN RIGHTS WATCH, *BALLOTS TO BULLETS: ORGANIZED POLITICAL VIOLENCE AND KENYA'S CRISIS OF GOVERNANCE* 28 (March 2008) [hereinafter *BALLOTS TO BULLETS*].

²⁶ *BALLOTS TO BULLETS* *supra* note 25, at 31.

²⁷ *Id.* at 25.

²⁸ *Id.* at 32. In its Response to the List of Issues, the State party acknowledges the responsibility of law enforcement officers to ensure citizens' right to assemble and to disperse protesters peacefully. Replies from Government of Kenya, *supra* note 20, at ¶ 113.

²⁹ *BALLOTS TO BULLETS*, *supra* note 25, at 32.

³⁰ *Id.* at 26. In the first few days after Kibaki's victory, human rights investigators reported 20 people fatally shot by the police in Mombasa. In Eldoret many of the bodies that arrived at the Moi Teaching and Referral Hospital morgue in the first few weeks of January were victims of police use of force. Similar scenarios were reported in Kisumu, Kericho, Homa Bay, Kakamega, and Molo. *Id.*

The State party is to be commended for its creation of the Waki Commission, established to investigate the election violence. Nonetheless, accountability for these violations has been insufficient.³¹ The Waki Commission found that the government was ill prepared and did not take sufficient measures prior to the election to prevent the loss of life,³² despite the availability of intelligence regarding potential violence.³³ It should be noted that the State party acknowledges that the post-election violence was a “serious affront to the right to life in Kenya,” and a “blatant manifestation of embedded impunity.”³⁴

To date, only a few election violence cases have been seen before Kenyan courts, but individuals allegedly responsible for planning and funding the violence, including security officers, have not yet been convicted.³⁵ At least 19 victims of police misuse of SALW have won civil suits, but they have yet to receive their court-ordered compensation from the government.³⁶ In April 2011, the Truth Justice and Reconciliation Commission (TJRC) began public hearings to investigate gross human rights violations in Kenya between December 1963 and February 2008.³⁷ The Commission will hear testimony from victims of abuses in Nairobi, Nakuru, Isiolo, Mombasa, Mt. Elgon, Kisumu, Kisii, and Kuria. This is a positive development, which will hopefully encourage accountability and the development of policies to prevent and regulate SALW misuse.

On January 23, 2012, the ICC announced that it would try four Kenyans for their role in planning and financing the election violence. Human Rights Watch has requested that ICC prosecutors continue to investigate police abuse of SALW and other acts of excessive force

³¹ *Kenya: Prosecute Perpetrators of Post-Election Violence*, HRW NEWS (Dec. 9, 2011), available at www.hrw.org/news/2011/12/09/Kenya-prosecute-perpetrators-post-election-violence; *Kenya: Q&A on Pre-Trial Hearing in First ICC Case*, HRW NEWS (Aug. 30, 2011), available at www.hrw.org/news/2011/08/30/Kenya-qa-pre-trial-hearing-first-icc-case; *Kenya: Q&A on Pre-Trial Hearing in Second ICC Case*, HRW NEWS (Sept. 21, 2011), available at www.hrw.org/news/2011/09/20/Kenya-qa-pre-trial-hearing-second-icc-case.

³² *See McCann v. United Kingdom*, ECtHR, Application No. 18984/91, Judgment of 27 Sept. 1995. (The European Court of Human Rights held that the government of the United Kingdom had violated its obligation to protect the right to life because the government failed to adequately prepare for an anti-terrorism operation which resulted in unnecessary extrajudicial shootings of suspects).

³³ Waki Commission, A REPORT TO THE HON. ATTORNEY GENERAL BY THE TEAM ON THE REVIEW OF POST ELECTION VIOLENCE RELATED CASES IN WESTERN, NYANZA, CENTRAL, RIFT VALLEY, EASTERN, COAST, AND NAIROBI PROVINCES 29–30 (Feb. 2009); Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 25.

³⁴ Kenya State Report, *supra* note 10 at ¶ 137.

³⁵ *Id.* at 3.

³⁶ *Id.*

³⁷ KENYA NAT’L COMM. ON HUMAN RIGHTS, ANNUAL REPORT FOR THE 2010/ 2011 FINANCIAL YEAR 43 (2011) [hereinafter KENYA NAT’L COMM. ANNUAL REPORT 2011].

during the election violence.³⁸ The State party has committed to cooperating with the ICC in this matter, despite the fact that members of the Kenyan parliament have called upon the government to withdraw from the Rome Statute in the wake of the prosecutions.³⁹

2. *Mt. Elgon Operations*

In March of 2008, a Kenyan military detachment partnered with the Kenyan police, the General Service Unit, the Administration Police, and the Anti-Stock Theft police to contain violence in the Mt. Elgon area.⁴⁰ In particular, the security operation was responding to security threats posed by the Sabaot Land Defence Force (SLDF).⁴¹ Though there was early popular support for the operation, police abuse, torture, threats with SALW and extrajudicial killing were widely reported by civilians as the operation went on.⁴² Kenyan police and military allegedly shot multiple civilians during the operation;⁴³ Human Rights Watch reports that Kenyan security forces killed an estimated 270 people, and disappeared 199.⁴⁴

The State party asserts that it has been unable to confirm allegations of torture and extrajudicial killing at the hands of military and state police.⁴⁵ The Kenya National Commission on Human Rights suggests that victims have been unable to file complaints locally because local police collaborated with military in committing the abuses.⁴⁶ Human Rights Watch has recommended that the Mt. Elgon abuses should be investigated by the ICC,⁴⁷ and NGOs have filed cases against the State party at the East African Court of Justice, the UN Working Group on

³⁸ *Kenya: ICC Judges OK Election Violence Trials*, HRW NEWS (Jan. 23, 2012), available at www.hrw.org/news/2012/01/23/Kenya-icc-judges-ok-election-violence-trials.

³⁹ *Id.* at 2.

⁴⁰ Replies from Government of Kenya, *supra* note 20, at ¶ 61; Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 20.

⁴¹ Replies from Government of Kenya, *supra* note 20, at ¶ 61. *See infra* the section entitled The Sabaot Land Defence Force (SLDF).

⁴² KENYA NAT'L COMM'N ON HUMAN RIGHTS, THE MOUNTAIN OF TERROR: A REPORT ON THE INVESTIGATIONS OF TORTURE BY THE MILITARY AT MT. ELGON 15 (2008) [hereinafter THE MOUNTAIN OF TERROR]; *Kenya: Account for 'Disappeared' in Insurgency Crackdown*, HUMAN RIGHTS WATCH, OCT. 27, 2011, available at www.hrw.org/print/news/2011/10/27/Kenya-account-disappeared-insurgency-crackdown [hereinafter *Account for Disappeared*] (reporting, among other abuses, that soldiers tortured a man and then said to his wife, "Have you heard those bullets at Kimaswa? That's the weapon that is going to be used on your husband.").

⁴³ THE MOUNTAIN OF TERROR, *supra* note 42, at 13, 26.

⁴⁴ *Account for Disappeared*, *supra* note 42.

⁴⁵ Replies from Government of Kenya, *supra* note 20, at ¶ 62–63.

⁴⁶ THE MOUNTAIN OF TERROR, *supra* note 42, at 9.

⁴⁷ *See ICC Judges OK Election Violence Trials*, *supra* note 38; WORLD REPORT, *supra* note 11, at 3.

Enforced or Involuntary Disappearances, and the African Commission on Human and People's Rights. Victims of SALW and human rights abuses in Mt. Elgon will have the opportunity to testify before the TJRC.⁴⁸

The Special Rapporteur on Extrajudicial Executions charges that the State party could have done more to prevent SLDF abuses earlier, and thus protected civilians and prevented the police use of excessive force with SALW during the 2008 operation.⁴⁹

B. States' Due Diligence Obligation to Prevent Small Arms and Light Weapons Violations by Private Parties

The due diligence standard to protect the right to life from violence by small arms and light weapons includes the responsibility "to take steps to prevent reasonably foreseeable abuses by private actors" (occurring within a state's own territory).⁵⁰

Widespread access to SALW among private parties has contributed to increased misuse and excessive violations of the right to life by non-state actors. In 2010, a number of disturbing incidents confirmed the dire need for the State party to tighten regulation on private ownership and use of SALW.

- In February 2010, a cache of illegal SALW and 31,211 rounds of assorted ammunition were recovered from a businessman in Narok town. Arms had previously been recovered from the same premises in 2009.⁵¹
- In June, an explosive device was detonated at Uhuru park during a large gathering of church clergy. Six people were killed and seventy-two were injured.⁵²
- Also in June, a civilian named Peter Karanja fatally shot eight members of the public and two administration police officers in Mbeere after learning that he had contracted HIV from his girlfriend. Karanja surrendered himself and a G3 Rifle with an empty magazine to police.
- In July, retired Colonel Jan Kamenju, director of Kenya's Security Research and Information Centre and IANSA member was shot and killed by carjackers.⁵³

⁴⁸ KENYA NAT'L COMM. ANNUAL REPORT 2011, *supra* note 37, at 43.

⁴⁹ Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 19–20.

⁵⁰ SALW Principle 10, *supra* note 8, at 10.

⁵¹ ANNUAL CRIME REPORT, *supra* note 6, at 3.

⁵² *Id.*

⁵³ IANSA Member Shot and Killed, IANSA, Aug. 12, 2010, available at <http://www.iansa.org/news/2010/08/iansa-member-shot-and-killed>.

1. *Gang-Related Crime and Non-State Armed Factions*

a. *Urban Gang-Related Crime*

Though there are many criminal operations in Kenya's urban centers, the Mungiki sect became the most prominent in recent years.⁵⁴ The Mungiki gang originated in the Rift Valley, but now has strong roots in Nairobi, and has used SALW and a number of violent tactics to cement their authority in Nairobi slums.⁵⁵ Kenyan police forces initiated a crackdown on the Mungiki gang in 2007, which included widespread extrajudicial killing, discussed above. In recent years, Mungiki's activities have been less aggressive, but the organization continues to rely on SALW; as of late 2008 Mungiki members had continued to stockpile SALW and seek new members.⁵⁶ Members of the Mungiki sect claimed responsibility for the shooting assassination of parliamentarian Melitus Were on January 29, 2008.⁵⁷ In November 2009, a week after Mungiki leader Maina Njenga was acquitted of murder for lack of evidence,⁵⁸ Mungiki spokesman David Gitau Njuguna was fatally shot at point blank range in Nairobi.⁵⁹

Other criminal enterprises misuse SALW as well. A 2009 report highlights the use of SALW in Nairobi's growing criminal kidnapping industry.⁶⁰ The enactment of The Prevention of Organized Crimes Act 2010 represents a positive development in the government's response to non-state SALW violence and has led to the arrest and arraignment of a number of suspected members of criminal gangs.⁶¹ However, the State party should also establish concrete measures to limit the capacity of criminals and gang members to amass and proliferate SALW.

⁵⁴ Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 7.

⁵⁵ *Kenya in Crisis*, CRISIS GROUP AFRICA REPORT (Feb. 21, 2008), available at http://www.crisisgroup.org/~media/Files/africa/horn-of-africa/kenya/137_kenya_in_crisis_web.pdf [hereinafter *Kenya in Crisis*]. There continue to be Mungiki factions in other parts of the country, but its strongest presence is in Nairobi slums. Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 7.

⁵⁶ *Kenya in Crisis*, *supra* note 55 at 23.

⁵⁷ *Id.*

⁵⁸ *Mungiki Sect Head Freed in Kenya*, BBC NEWS, Oct. 27, 2009, available at <http://news.bbc.co.uk/2/hi/africa/8323082.stm>.

⁵⁹ *Mungiki Spokesman Shot Dead*, THE STANDARD, Nov. 6, 2009, available at <http://www.standardmedia.co.ke/?articleID=1144027857&pageNo=1>. On June 9, 2012, former Mungiki leader Maina Njenga launched a political party, the Mkenya Solidarity Party. *Maina Njenga Mkenya Solidarity Party Launch*, CITIZEN NEWS, June 9, 2012, available at <http://www.citizennews.co.ke/component/k2/item/1887-maina-njenga-mkenya-solidarity-party-launch>.

⁶⁰ Jeffrey Gettleman, *Kenya's Criminals Tap a Growth Industry: Kidnapping*, N.Y. TIMES, Oct. 12, 2009, available at <http://www.nytimes.com/2009/10/12/world/africa/12kenya.html?pagewanted=all>.

⁶¹ ANNUAL CRIME REPORT, *supra* note 6, at 5.

b. The Sabaot Land Defence Force (SLDF)

The SLDF was formed as an armed guerilla militia in 2005.⁶² The SLDF emerged largely as a response to land disputes and a government initiative to evict squatters in the Chebyuk region of Mt. Elgon.⁶³ In 2007, as land settlement negotiations between multiple community factions in the region began to break down, funds collected for legal challenges were used to amass firearms.⁶⁴ The SLDF took its SALW stores into hiding areas in the forest, emerging primarily to carry out targeted killing operations.⁶⁵

Prior to the 2008 military operation in Mt. Elgon, the SLDF was accused of murdering 400 civilians, displacing 30,000 people, and closing 16 schools.⁶⁶ More recent figures estimate that the SLDF is responsible for killing an estimated 750 people in Kenya between 2006 and 2008.⁶⁷ Police forces in Mt. Elgon reported that in 2008, just before the commencement of the military operation, SLDF members shot six of their officers.⁶⁸ The SLDF reportedly amassed weapons and repeatedly used them to threaten, intimidate and kill members of Mt. Elgon communities.⁶⁹

2. Arms Distribution and Violence in Northern Kenya

Ethnic and cross-border conflicts have been marked by widespread misuse and proliferation of SALW and ammunition. From January to October 2010, State police recovered 60 pistols, 128 rifles, and 36,458 rounds of ammunition.⁷⁰ The State party should be commended for its series of disarmament programs in the region, and should strive to continue to promote disarmament and facilitate reconciliation among conflicting parties in the region. However, further action is needed by the State party to establish accountability structures for

⁶² THE MOUNTAIN OF TERROR, *supra* note 42, at 3.

⁶³ Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 18–19; THE MOUNTAIN OF TERROR, *supra* note 42, at 3–6.

⁶⁴ THE MOUNTAIN OF TERROR, *supra* note 42, at 7.

⁶⁵ *Id.* at 7–9. The targets were primarily those occupying land desired by the SLDF, those who failed to follow SLDF rules or orders in SLDF controlled areas, and those who supported political candidates not backed by the SLDF. Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 19.

⁶⁶ Replies from Government of Kenya, *supra* note 20, at ¶ 61. The schools were allegedly closed because students stopped attending due to escalating insecurity. THE MOUNTAIN OF TERROR, *supra* note 46, at 8. The numbers are not entirely consistent. According to the Kenya National Commission on Human Rights, the SLDF has been accused of killing over 600 people, and facilitating the displacement of over 66,000 people. *Id.*, at 3.

⁶⁷ *Account for Disappeared*, *supra* note 42.

⁶⁸ THE MOUNTAIN OF TERROR, *supra* note 42, at 14.

⁶⁹ Report of the Special Rapporteur on Extrajudicial Executions, *supra* note 18 at 39–41.

⁷⁰ *Id.* at 18.

dealing with illicit transfers of weapons by police and military forces operating in a private capacity.

a. Turkana North and the Kenya – Uganda – Sudan borders

Violent conflict is ongoing in Turkana North District in Kenya⁷¹ primarily between Kenyan Turkana pastoralists, Dodoth pastoralists in northeastern Uganda,⁷² and Sudanese Toposa pastoralists who reside in southwestern Sudan.⁷³ There is conflict along the Kenyan border with Sudan and the Ugandan border where it intersects with Kenya and Sudan as well.⁷⁴ The conflict has contributed to substantial misuse of SALW and illicit distribution of ammunition in the region.

Though porous borders and weapons transfers from neighboring states contribute to SALW proliferation in Turkana North,⁷⁵ a study by Small Arms Survey argues that internal transfers within Kenya are the primary source of the SALW and ammunition used in Turkana North.⁷⁶ Ammunition transferred to the Turkana pastoralists in the region is the same as that used by the Kenyan Police and Kenyan Police Reserves (KPR); non-state actors use this ammunition in the highest concentrations in locations where the Kenyan Police have outposts.⁷⁷ Numerous eyewitness accounts and field interviews with ammunition users, KPR members, chiefs, and Kenyan Police confirm that State police and security officers have routinely

⁷¹ *Kenya: Drought Exacerbates Conflict in Turkana*, IRIN: HUMANITARIAN NEWS AND ANALYSIS (July 29, 2011). Other groups such as the Sudanese Nyangatom, Sudanese Didinga and Ugandan Jie are also implicated in the conflict, though these groups are not in as direct conflict with the Turkana. James Bevan, *Blowback: Kenya's Illicit Ammunition Problem in Turkana North District*, SMALL ARMS SURVEY OCCASIONAL PAPER NO. 22, 20–21 (June, 2008).

⁷² The Dodoth primarily use Warsaw Pact-standard weaponry and Kalashnikov-pattern assault rifles. Bevan, *supra* note 71 at 26.

⁷³ The Toposa are heavily armed, arguably due to leftover weaponry from the Sudanese war. They frequently use PK machine guns with 7.62 x 54% cartridges, as well as RPD light machine guns, NATO-standard G3 and SLR rifles and Kalashnikov-pattern assault rifles. The Toposa also carry RPG-7 grenade launchers though deploy them infrequently. *Id.* at 28.

⁷⁴ *Id.* at 20–21. See also *Responses to Pastoral Wars: A Review of Violence Reduction Efforts in Sudan, Uganda, and Kenya*, SMALL ARMS SURVEY: SUDAN ISSUE BRIEF NO. 8 (Sept. 2007), available at www.smallarmssurveysudan.org/pdfs/HSBA-SIB-8-Responses.pdf.

⁷⁵ The Turkana most frequently use Kalashnikov-pattern rifles, which were transferred across the Kenya-Sudan border in the wake of the Sudan war. Bevan, *supra* note 71 at 62.

⁷⁶ *Id.* at 30.

⁷⁷ *Id.* at 49. An estimated 75 percent or more of ammunition used in Turkana North is 7.62 x 39 mm, used in Kalashnikov-pattern rifles, which is consistent with ammunition used by Kenyan police and KPR. The sample of over 3,382 ammunition cartridges studied included ammunition manufactured in 25 countries and by 51 factories within those countries. The sample also notably included ammunition manufactured in Kenya, Sudan, Uganda, and Zimbabwe. *Id.* at 32–34.

distributed ammunition in a private, profit-making capacity to Turkana pastoralists in the region primarily through their chiefs and sub-chiefs.⁷⁸

In 2005, the Kenyan government undertook a voluntary disarmament within six districts in the North-Rift region of Kenya.⁷⁹ The Regional Centre on Small Arms (RECSA) reports that over 2,200 illicit firearms and 3,700 rounds of ammunition were collected during this effort. A ceremony was held on June 29th, 2005 at Uhuru Gardens in Nairobi to burn over 3,800 SALW.⁸⁰

In mid-2006, the government of Kenya embarked on a series of military-led disarmament efforts in seven North Rift region districts, including Turkana. Local peace committees were appointed to resolve disputes as a follow-up to the disarmament process.⁸¹

In 2010, the Kenyan government undertook another disarmament effort in Rift Valley Province and Eastern Province. The disarmament began with a 70-day amnesty. The Kenyan Police report that 2,545 illegal firearms were collected from the initial disarmament phase, and burned in a ceremony at Uhuru Gardens on March 24, 2010.⁸² Phase 2 of the disarmament process, which began in April 2010, focused on SALW that were not voluntarily surrendered. That phase resulted in the recovery of 1,064 arms and 3,078 rounds of ammunition.⁸³

Despite disarmament initiatives, SALW remain widely available in the region and have continued to facilitate conflict. In January 2010, for instance, 15 men armed with AK.47 rifles ambushed a group of Kenyan police officers near Gababa on the Kenya–Sudan border. One of the armed men was fatally shot.⁸⁴ In another incident, a rocket-propelled grenade, believed to have been fired by individuals from southern Sudan, attacked a Kenyan Army lorry in Turkana North.⁸⁵ Two soldiers were fatally wounded and twelve others were injured.⁸⁶

⁷⁸ *Id.* at 51, 63–64.

⁷⁹ RECSA Kenya Country page, www.recsasec.org/Kenya.htm.

⁸⁰ *Id.*

⁸¹ *Responses to Pastoral Wars: A Review of Violence Reduction Efforts in Sudan, Uganda, and Kenya*, SMALL ARMS SURVEY: SUDAN ISSUE BRIEF NO. 8, 5 (Sept. 2007), available at www.smallarmssurveysudan.org/pdfs/HSBA-SIB-8-Responses.pdf.

⁸² ANNUAL CRIME REPORT, *supra* note 6, at 8. ALL AFRICA reported that 14,980 bullets were also recovered during the first disarmament phase. *Kenya: Fear Grips Villagers Ahead of Arms Crackdown*, ALL AFRICA (Feb. 22, 2010).

⁸³ ANNUAL CRIME REPORT, *supra* note 6, at 8.

⁸⁴ *Id.* at 12.

⁸⁵ *Id.*

⁸⁶ *Id.*

b. Kenya – Ethiopia Border

In 2010, the Kenyan government disarmed a number of Oromo Liberation Front groups. The groups had been crossing the border between Kenya and Ethiopia carrying SALW in an effort to continue a campaign against the Ethiopian government. The State party recovered 10 firearms, 295 rounds of ammunition, 1 bomb, 17 hand grenades, and 3 tear gas canisters.⁸⁷

In August of 2010, SALW violence occurred between Ethiopian Nyangaton tribesman and Kenyan Turkana herdsman along the Kenya – Ethiopia border at Kibish. Two Kenyans and six Ethiopians were fatally shot in this incident.⁸⁸

Similarly, a number of violent and deadly clashes using SALW have occurred between the Merrile community in Ethiopia and neighboring Kenyan Turkana.⁸⁹ In one incident, a police officer was fatally shot. During a clash between fishermen, two Turkana fishermen were fatally shot and in another SALW clash between herdsman over allegedly stolen cattle, eight people and thirty heads of cattle were fatally shot. In a separate incident, five people were shot and killed during a peace meeting between Merille and Turkana herdsman.⁹⁰

c. Kenya – Somalia Border

Increased Kenyan military involvement in the ongoing conflict in Somalia has reportedly had an impact on SALW-related human rights abuses along the Kenya Somalia border.⁹¹ In October of 2010, Kenyan officers were patrolling the Kenya – Somalia border when they encountered four people armed with rifles. The parties exchanged gunfire, resulting in the death of one of the unidentified persons, and serious wounds sustained by a Kenyan army officer and another unidentified armed person.⁹² In December 2011 alone, there were 15 reported attacks using SALW, namely grenades and improvised explosive devices.⁹³ In mid-January 2012, five Kenyans were shot and killed near the border, including three police officers.⁹⁴

⁸⁷ *Id.* at 9.

⁸⁸ *Id.* at 11.

⁸⁹ *Id.* at 11–12.

⁹⁰ *Id.* at 12.

⁹¹ Media Briefing, *UK Conference on Somalia Must Prioritize the Protection of Civilians and Human Rights*, AMNESTY INT’L (Feb. 21, 2012), available at <http://www.amnesty.org/en/library/asset/AFR52/002/2012/en/f49b7a8a-67e2-429b-b960-a87f6118b605/afr520022012en.pdf>.

⁹² ANNUAL CRIME REPORT, *supra* note 6, at 12.

⁹³ *Kenya-Somalia: Paying High Price for Military Incursion*, IRIN: HUMANITARIAN NEWS AND ANALYSIS (Jan. 13, 2012), available at <http://www.irinnews.org/Report/94641/KENYA-SOMALIA-Paying-high-price-for-military-incursion>.

⁹⁴ *Five Kenyans Shot Dead Near Somali Border*, VANGUARD NEWS GROUP (Jan. 12, 2012), available at <http://www.vanguardngr.com/2012/01/five-kenyans-shot-dead-near-somali-border>.

In its report to the Committee, the Kenyan government presents the severity of widespread conflicts along the State's borders, and the proliferation of SALW as a result of these conflicts.⁹⁵ Perhaps more importantly, the State party acknowledges that corrupt law enforcement officials may exploit the situation of insecurity, and has committed to making anti-corruption police reform a priority.⁹⁶ Unfortunately, the State party primarily acknowledges this corruption insofar as it applies to officials extorting bribes from refugees, and does not address the alleged connections between SALW distribution and corruption within the ranks of police and armed forces.⁹⁷ Police complicity and participation in unregulated SALW and ammunition proliferation must be addressed if disarmament reforms are to be successful.

CONCLUSION

In the past 10 years, Kenya has made important strides in responding to SALW proliferation and abuse. However, additional reforms are necessary to prevent Article 6 violations due to SALW misuse. Extrajudicial killings and impunity are still a problem within the Kenyan police force, and widespread proliferation of SALW has led to misuse by a variety of non-state actors.

The State party has taken measures to respond to the post-election violence of 2007–2008. However, further training of government forces in SALW use and implementation of policies that provide concrete alternatives to use of force are necessary if Kenyan police and military forces are to act consistent with right to life guarantees.

The State party has also begun to explore innovative and non-violent mechanisms for responding to gang violence and armed factions in the Mt. Elgon region. However, poor training and SALW regulation continue to contribute to extrajudicial killings and misuse of arms. The State party should continue to develop its anti-insurgent violence strategy consistent with right to life protections.

With regards to the conflict along Kenya's borders, the State party is to be commended for its disarmament efforts in the northwest region, but a lack of institutional controls and long-term accountability structures have created gaps through which enterprising KPR and police force members can undermine proliferation controls.⁹⁸ In accordance with Kenya's broader initiatives to curb SALW misuse and proliferation, and the State party's admirable commitment to

⁹⁵ Kenya State Report, *supra* note 10, at ¶ 158. It appears in this paragraph that the State party is referring more specifically to the Kenya-Somalia border, though the critique applies to the Kenyan government's inadequate response to police corruption in conflicts throughout the northern sector of the country.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Bevan, *supra* note 71, at 64.

addressing impunity through the National Task Force on Police Reform,⁹⁹ the State party should incorporate police reform measures that address the role of police and armed forces in ammunition distribution and abuse.

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⁹⁹ Kenya State Report *supra* note 10 at ¶ 138.