

# Briefing Note 2

Conventional Arms Control in the Commonwealth Initiative (CACCI)

## National legislation to control conventional arms and address the illicit arms trade

Authors: Ali Arbia and Paul Holtom

### The CACCI Briefing Note series

At their meeting in 2018, the Commonwealth Heads of Government denounced the illicit trade in small arms and light weapons (SALW) and acknowledged its devastating consequences in member countries. Illicit conventional arms in the hands of criminals, terrorists, and armed groups significantly affect national and public security, stability, and socio-economic development across the Commonwealth. The Conventional Arms Control in the Commonwealth Initiative (CACCI) has been conceived by the Commonwealth Secretariat in response to concerns about the impact of illicit arms flows on development, expressed at Heads of Government Meetings and Law Ministers Meetings. CACCI, which is

supported by the Small Arms Survey, will serve as a platform for strengthening cooperation among Commonwealth member countries and for developing resources for practical capacity building, in order to improve national implementation of conventional arms control mechanisms to tackle the illicit arms trade. This is the second in a series of Briefing Notes that will introduce key elements for regulating the conventional arms trade and preventing, detecting, and responding to their diversion and illicit circulation, highlighting challenges and emerging practices in Commonwealth member countries.

### Introduction

This second Briefing Note for the Conventional Arms Control in the Commonwealth Initiative (CACCI) provides an overview of the state of play with regards the primary legislation Commonwealth member countries have in place to control and regulate the manufacture of conventional arms, international arms transfers, and civilian possession of conventional arms. Figure 1 in this Briefing Note provides an overview of the contents of primary legislation to regulate conventional arms and ammunition, in particular

firearms, for 52 of the 53 Commonwealth member countries.<sup>1</sup> Box 1 highlights commonalities between Commonwealth countries, particularly within regions and sub-regions. Box 2 briefly introduces model laws and 'how to' guidance for developing conventional arms control legislation, which have been developed at the international level and also in some sub-regions with a high concentration of Commonwealth countries.

## Conventional arms control legislation across the Commonwealth

This Briefing Note provides information on the primary legislation to control and regulate the manufacture, export, import, transit/trans-shipment, brokering, and civilian possession of conventional arms in 52 of the 53 Commonwealth countries. As noted in the CACCI Briefing Note 1, international and sub/regional instruments for conventional arms control oblige, or call for, countries to establish and maintain a legislative framework in order to effectively control the circulation of conventional arms (Holtom 2018). Furthermore, the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) calls upon countries to put in place 'the necessary legislative or other measures to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction' (UNGA 2001b, II.3).

**Figure 1** gives an overview of the Commonwealth countries that have indicated that they have established controls in their national legislation in six areas: manufacturing, export, import, transit/trans-shipment, brokering, and civilian possession. The first column in the table provides the name of the Commonwealth country, followed by the name of the primary legislation and/or regulations to control conventional arms, the date of adoption or last known amendment, followed by an indication of which six control areas are covered by national legislation. The review of Commonwealth country primary legislation reveals that almost all Commonwealth countries have provisions in national legislation to regulate the import (at least 51 Commonwealth countries), civilian possession (50 Commonwealth countries) and export (49 Commonwealth countries) of firearms and ammunition. National legislation for at least 45 Commonwealth countries contains regulatory measures for the manufacture of conventional arms and ammunition. However, it was possible to clearly identify provisions for the regulation of transit in primary legislation to control firearms in only 15 Commonwealth countries, and in only 14 countries for brokering.

### BOX 1. Conventional arms control legislation across the Commonwealth

The names of the laws covering the control of conventional arms in Commonwealth countries reveal common roots and a shared legal tradition. The primary legislation to control manufacturing and/or international transfers (import, export, transit/trans-shipment, and brokering) in around 80 percent of Commonwealth countries is either called the 'Arms Act' (five countries), 'Arms and Ammunition Act' (14 countries), or 'Firearms Act' (23 countries). Several countries have more than one piece of primary legislation for controlling international transfers, with countries also using a 'Customs Act' or 'Customs and Excise Act' and five countries referring to 'Strategic Trade Control' or a 'Defense Controls Act'.

While most of the primary legislation for Commonwealth countries dates back to the 1960s or 1970s, amendments and new legislation have been put in place since 2000. For example, as **Figure 1** shows, the primary legislation for controlling conventional arms transfers for all Commonwealth countries in the Caribbean is the 'Firearms Act'. This primary legislation has been amended since 2000 in these countries. Most Commonwealth countries in Africa and the Pacific regions have amended their legislation; or there are ongoing efforts to update or prepare new legislation to control conventional arms manufacturing and international transfers. However, few Commonwealth countries in Asia appear to have made significant changes to their legislative framework since 2000.

The adoption of the Arms Trade Treaty (ATT) in 2013 appears to have spurred a new wave of reviews of conventional arms control legislation and regulations in many Commonwealth countries. Thirteen of the 29 Commonwealth countries that submitted a voluntary national report on measures to implement the PoA during 2012–17 requested assistance to develop laws, regulations, and/or administrative provisions to exercise effective control over the export, import, transit, or retransfer of small arms and light weapons (SALW), of which seven are located in Africa, three in the Americas, and three in the Pacific.<sup>5</sup> Thirteen Commonwealth countries also requested assistance to revise or update their legislative framework to regulate brokering, of which seven are located in Africa, three in the Americas, and three in the Pacific. Only five Commonwealth countries requested assistance to develop laws, regulations, and/or administrative provisions to control SALW manufacturing, three of which are located in Africa and two in the Pacific.

**Figure 1.** An overview of national legislation to control conventional arms manufacturing, international transfers, and civilian possession in Commonwealth member countries

Country	Legislation and regulations	Year of adoption or last known amendment	Manufacturing	Export	Import	Transit	Brokering	Civilian Possession
Antigua and Barbuda	Firearms Act	1992	Yes	Yes	Yes			Yes
Australia	Firearms Act (for each Federal State)	NA	Yes	Yes	Yes		Yes	Yes
Bahamas, The	Firearms Act	2014		Yes	Yes	Yes		Yes
Bangladesh	Arms Act	1878	Yes	Yes	Yes			Yes
Barbados	Firearms Act	1998		Yes	Yes			Yes
Belize	Firearms Act	2000	Yes		Yes			Yes
Botswana	Arms and Ammunition Act	1979	Yes	Yes	Yes			
Brunei Darussalam	Arms and Explosives Act and Rules	2002	Yes	Yes	Yes	Yes		Yes
Cameroon	Weapons and Ammunition Regulations	2016	Yes	Yes	Yes	Yes	Yes	Yes
Canada	Firearms Act	1995	Yes	Yes	Yes		Yes	Yes
Cyprus	Firearms and non-Firearms Law	2004	Yes	Yes	Yes	Yes	Yes	Yes
Dominica	Firearms Act	2011	Yes	Yes	Yes			Yes
Fiji	Arms and Ammunition Act	2003	Yes	Yes	Yes	Yes		Yes
Gambia	Arms and Ammunition Act	1990	Yes	Yes	Yes			Yes
Ghana	Arms and Ammunition Act							
Explosives Act 1956	Explosives Act 1996							
	Yes	Yes	Yes			Yes		
Grenada	Firearms Act	2010	Yes	Yes	Yes	Yes		Yes
Guyana	Firearms Act	2007	Yes		Yes			Yes
India	Arms Act	1959	Yes	Yes	Yes		Yes	Yes
Jamaica	Firearms Act Gunpowder and Explosives Act	1967 1973	Yes	Yes	Yes	Yes		Yes
Kenya	Firearms Act Security Act	2014	Yes	Yes	Yes	Yes		Yes

Country	Legislation and regulations	Year of adoption or last known amendment	Manufacturing	Export	Import	Transit	Brokering	Civilian Possession
Kiribati	Arms and Ammunition Ordinance	1977	Yes	Yes	Yes			Yes
Lesotho	Internal Security (Arms and Ammunition) Act	1966	Yes	Yes				Yes
Malawi	Firearms Act	1967	Yes	Yes	Yes			Yes
Malaysia	Arms Act	1960						
	Firearms Act	1971	Yes	Yes	Yes			Yes
	Explosives Act	1957						
Malta	Arms Act	2005	Yes	Yes	Yes	Yes	Yes	
Mauritius	Firearms Act	2006	Yes	Yes	Yes	Yes	Yes	
Mozambique	Arms and Ammunition Act	2007		Yes	Yes			Yes
Namibia	Arms and Ammunition Act Explosives Act	1996	Yes	Yes	Yes			Yes
Nauru								Yes
New Zealand	Arms Act	2018	Yes	Yes	Yes	Yes	Yes	Yes
Nigeria	Firearms Act	1990	Yes	Yes	Yes			Yes
Pakistan	Arms Ordinance	1965						
	Illicit Arms Act	1991	Yes	Yes	Yes			Yes
	Explosives Act	1908						
Papua New Guinea	Firearms Act	1996	Yes	Yes			Yes	
Rwanda	The Law No 13/2000 concerning firearms and their ammunitions	2000		Yes	Yes			
Samoa	Arms Ordinance Conventional Arms Act	1960 2017	Yes	Yes	Yes	Yes		Yes
Seychelles	Firearms and Ammunition Act	2012	Yes	Yes	Yes			Yes
Sierra Leone	Arms and Ammunition Act	2012	Yes	Yes	Yes	Yes	Yes	Yes
Singapore	Arms and Explosives Act	2003	Yes	Yes	Yes	Yes	Yes	Yes
Solomon Islands	Firearms and Ammunition Act	2000	Yes	Yes	Yes			Yes

Country	Legislation and regulations	Year of adoption or last known amendment	Manufacturing	Export	Import	Transit	Brokering	Civilian Possession
South Africa	Firearms Control Act National Convention Arms Control Act	2000 2002 2004	Yes	Yes	Yes	Yes	Yes	Yes
Sri Lanka	Firearms Ordinance	1996	Yes	Yes	Yes			Yes
St Kitts and Nevis	Firearms Act	2002	Yes	Yes	Yes	Yes		Yes
St Lucia	Firearms Act	2003	Yes	Yes	Yes			Yes
St Vincent and The Grenadines	Firearms Act Firearms Amendment Act	1995 2010		Yes	Yes			Yes
Swaziland	Arms and Ammunition Act	1964	Yes	Yes	Yes			Yes
Tonga	Arms and Ammunition Act	2016	Yes	Yes	Yes	Yes		Yes
Trinidad and Tobago	Firearms Act Explosives Act	2011 1994		Yes	Yes			Yes
Tuvalu	Arms and Ammunition Act	2008	Yes	Yes	Yes	Yes		Yes
Uganda	Firearms Act	1970	Yes	Yes	Yes			Yes
UK	Firearms Act		Yes	Yes	Yes		Yes	Yes
United Republic of Tanzania	Armament Control Act							
United Republic of Tanzania	Armament Control Act Arms and Ammunition Act	1991 1991	Yes	Yes	Yes	Yes	Yes	Yes
Vanuatu	Firearms Act	1987			Yes			Yes
Zambia	Firearms Act	1997	Yes	Yes	Yes			Yes
<b>Total</b>			<b>45</b>	<b>49</b>	<b>51</b>	<b>17</b>	<b>14</b>	<b>50</b>

Notes: \* New Zealand had not adopted the Brokering (Weapons and Related items) Control Bill at the time of writing this Briefing Note.

Only 11 Commonwealth countries have indicated in their national reports on PoA implementation that SALW are produced on their territory.<sup>2</sup> **Figure 1** identifies at least 45 Commonwealth member countries for which primary legislation to control conventional arms, in particular firearms, contains provisions on the regulation of the manufacture of firearms and/or SALW.<sup>3</sup> The most common approach is to prohibit manufacture, with exceptions for entities that have been granted a licence by the competent national authorities to manufacture arms and ammunition. **CACCI Briefing Note 9** addresses the issue of national controls over the manufacture of conventional arms and ammunition.

All Commonwealth countries import at least some of their arms and ammunition for national security forces, as well as controlling imports for authorized civilian users. At least 51 Commonwealth countries have measures to control imports of conventional arms, in particular firearms and ammunition, in their primary national legislation (see **Figure 1**). The most commonly used measure to regulate the import of firearms by dealers intended for civilian end user are import licences – documentation authorized by a competent government authority that permits the import of a designated quantity and type of firearm and/or ammunition. National government end users provide an end user certificate (EUC) or related documentation for competent authorities in exporting countries. **CACCI Briefing Note 5** provides an overview of control measures used by Commonwealth countries to regulate imports.

Even though only 15 Commonwealth countries have been identified as exporting at least USD 10 million worth of SALW at least once during 2001–14, or any major conventional weapons during 2001–17,<sup>4</sup> most Commonwealth countries have measures in place to regulate arms exports. The most common method is a prohibition on the export of conventional arms and ammunition, with exemptions for entities that have been granted an export license by a competent government authority. **CACCI Briefing Note 6** addresses national export controls.

The ATT, UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (UN Firearms Protocol), and PoA, require states to take measures to regulate transit (UNGA 2001a, Article 10; UNGA 2001b, II.2; UNGA 2013, Article 9). However, as **Figure 1** shows, it has only been possible to identify 17 Commonwealth countries that have provisions to regulate the transit or trans-shipment of conventional arms in their primary legislation to control conventional arms, including firearms. As this is a topic of special concern for many Commonwealth member countries, particularly due to high volumes of trade through their seaports, facilitating an exchange on the regulation of transit/trans-shipment among Commonwealth member countries could help to strengthen such controls. This issue will be covered in more detail in **CACCI Briefing Note 7**, including a review of relevant legislation beyond primary legislation to control conventional arms.

The international arms transfer control issue for which it has been most challenging to find evidence of regulatory practices in Commonwealth country national legislation is the issue of brokering. The ATT, UN Firearms Protocol, and PoA refer to the registration of brokers and/or the licensing of brokering activities as measures that could be utilized to regulate brokering activities (UNGA 2001a, Article 10; UNGA 2001b, II.14; UNGA 2013, Article 10). The national legislation of 13 Commonwealth countries contains such provisions to regulate arms brokers and/or brokering (see **Figure 1**). **CACCI Briefing Note 8** reviews national systems to regulate brokering and recent developments in Commonwealth member countries in this regard.

**Figure 1** identifies 51 Commonwealth countries that have provisions in national legislation to control civilian possession of conventional arms. The most common approach taken by Commonwealth countries is to prohibit the possession of conventional arms, but authorize civilian possession for certain types of firearms if an individual fulfils a set of criteria. **CACCI Briefing Note 10** introduces the common approaches, as well as emerging and innovative practices, to regulate civilian possession.

## Box 2. Resources to support the development or strengthening of the legislative framework for conventional arms controls in Commonwealth member countries

This box provides examples of the existing resources available to Commonwealth countries to help them establish or strengthen their legislation to control the manufacture, international transfer, and civilian possession of conventional arms. Model laws have been developed at the international and sub/regional levels to support implementation of international and sub/regional instruments. The examples provided below can provide particular support for countries with a common law tradition, particularly the model laws developed for Pacific countries and Caribbean Community (CARICOM) countries to support implementation of the ATT. The UN Office on Drugs and Crime (UNODC) Model Law is intended to support implementation of the UN Firearms Protocol, while the UN Development Programme (UNDP) guide covers many topics of relevance for the implementation of the PoA and is therefore of interest for Commonwealth countries. A limited selection of references to the various model laws and guides are provided below.

### Model laws and legislation

UNODC (2011). Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (2005). Guidance on Model Legislation.

New Zealand and the Small Arms Survey (2014). Arms Trade Treaty: Model Law for Pacific States.

Caribbean Community (CARICOM) IMPACS (forthcoming). CARICOM model legislation for the implementation of the ATT.

### Guidance for arms control legislation

UNDP's Bureau for Crisis Prevention and Recovery (2008). How to Guide on Small Arms and Light Weapons legislation

United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) (2010). Guide for the harmonization of national SALW legislation in West Africa.

Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECSA) (2005). Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons.

Wassenaar Arrangement (2016). Best Practices for Effective Legislation on Arms Brokering



## Abbreviations

### ATT

Arms Trade Treaty

### CACCI

Conventional Arms Control in the Commonwealth Initiative

### CARICOM

Caribbean Community

### EUC

End user certificates or End use certificates

### POA

UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

### SALW

Small arms and light weapons

### UN

United Nations

### UNDP

United Nations Development Programme

### UN Firearms Protocol

UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

### UNGA

United Nations General Assembly

### UNODC

United Nations Office for Drugs and Crime

### UNREC

United Nations Regional Centre for Peace and Disarmament in Africa

### USD

US dollar

## References

Holtom, P (2018), Introduction to international instruments to control conventional arms and address the illicit arms trade. Conventional Arms Control in the Commonwealth Initiative (CACCI): Briefing Note 1.

Holtom, P. and M. Ben Hamo Yeger. 2018. Implementing the Programme of Action and International Tracing Instrument: An Assessment of National Reports, 2012–17. Geneva: Small Arms Survey.

Norwegian Initiative on Small Arms Transfers (NISAT) (2017), Small Arms Trade Database, available at: <http://nisat.prio.org/Trade-Database/> (accessed 30 April 2018);

Stockholm International Peace Research Institute (SIPRI) (2018), SIPRI Arms Transfers Database, available at <https://www.sipri.org/databases/armstransfers> (accessed 30 April 2018).

United Nations (n.d.), 'National reports', Website of the United Nations Office for Disarmament Affairs, Programme of Action on Small Arms and Its International Tracing Instrument, available at: <https://www.un.org/disarmament/convarms/salw/programme-of-action> (accessed 30 April 2018).

United Nations General Assembly (UNGA) (2001a), Resolution 55/255, adopted 31 May, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime ('Firearms Protocol'), A/RES/55/255 of 8 June 2001.

UNGA (2001b), Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA), A/CONF.192/15 of 20 July 2001.

UNGA (2013), Arms Trade Treaty (ATT), 'Certified True Copy (XXVI-8).' May 2013.

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- 1 Nauru is the only Commonwealth member country for which it was not possible to locate primary legislation on conventional arms control using open sources.
  - 2 Australia, Canada, India, Malaysia, Nigeria, New Zealand, Pakistan, Singapore, South Africa, Tanzania, and the United Kingdom indicated in their national reports on the implementation of the PoA, submitted during 2012-17, that SALW are produced in their national territory.
  - 3 The issue of craft production is considered in CACCI Briefing Note 9.
  - 4 Australia, The Bahamas, Botswana, Brunei Darussalam, Canada, Cyprus, Ghana, India, Malaysia, Malta, New Zealand, Pakistan, Singapore, South Africa, and the United Kingdom. Norwegian Initiative on Small Arms Transfers (2017), Small Arms Trade Database, available at: <http://nisat.prio.org/Trade-Database/> (accessed 30 April 2018); Stockholm International Peace Research Institute (2018), SIPRI Arms Transfers Database, available at <https://www.sipri.org/databases/armstransfers> (accessed 30 April 2018).
  - 5 All UN Member States are encouraged to submit a voluntary national report on measures to implement the PoA and ITI every two years, with a voluntary reporting template requesting information on legislation to control manufacture, export, import, transit, and brokering. United Nations (n.d.), 'National reports', Website of the United Nations Office for Disarmament Affairs, Programme of Action on Small Arms and Its International Tracing Instrument, available at: <https://www.un.org/disarmament/convarms/salw/programme-of-action> (accessed 30 April 2018). A recent analysis of these reports can be found in Holtom and Ben Hamo Yeger 2018.