

# PARLIAMENT OF KENYA



## THE SENATE

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### PARLIAMENTARIANS FOR GLOBAL ACTION 37<sup>TH</sup> ANNUAL PARLIAMENTARY FORUM

*San Salvador, El Salvador  
30<sup>th</sup> November - 1<sup>st</sup> December, 2015*

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**Theme: The Role of Parliamentarians in Support of Peace and Security**

**Sen. David Musila, MP**

**ADDRESSING THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS AND  
PROMOTING THE RATIFICATION OF THE ARMS TRADE  
TREATY: THE CASE OF KENYA**

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**Fellow Honourable members, distinguished delegates, ladies and gentlemen,** I take this opportunity to thank the organizers of the 37<sup>th</sup> Annual PGA forum for giving me an opportunity to make brief remarks on the sub-topic “Parliamentary Strategies towards Ratification and Implementation of ATT”. The PGA has for many years been in the forefront in promoting issues that promote Global peace and Security. In the past, for example, PGA has played a key role in promoting matters relating to environment, the International Criminal Court, among others. However, there has been no other area that PGA’s presence on global issues has been felt, than in the area of campaign against proliferation of Small Arms and Light weapons and the promotion of, and ratification of the Arms Trade Treaty (ATT). Indeed this year’s 37<sup>th</sup> Forum by itself speaks volumes.

The Arms Trade Treaty (ATT) underlines “the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market or for the unauthorized end use and end users, including in the commission on terrorist act”.

According to the UN Security Council *“The destabilizing accumulation and uncontrolled spread of small arms and light weapons in many regions of the world increases the intensity and duration of armed conflict, undermines the sustainability of peace agreements, impedes the success of peace building, frustrates efforts aimed at the prevention of armed conflict, hinders considerably the provision of humanitarian assistance and compromises the effectiveness of the Security Council discharging its primary responsibility for the maintenance of international peace and security”* (UN, 2002: 31)<sup>1</sup>.

## **The Kenyan Context**

In the East African region the availability of small Arms and Light weapons has contributed immensely to insecurity in the region especially in Kenya where vices like cattle rustling and armed crimes and terrorism have greatly increased in the recent past.

The importance of the ATT to Kenya and the world cannot therefore, be understated. The unregulated trade in SALW has had devastating effects on the national security of our country. It is to be appreciated that Kenya borders two major conflict areas; The South Sudan to the north–west and Somalia to the north-east which has led to an unprecedented influx of refugees through our less policed porous borders and an increased access of illegal Light Arms and weapons.

Due to general insecurity in the region, Kenya is host to over 650,000 refugees from conflict prone areas (UNHCR, 2015)<sup>2</sup>. Infact, Kenya is home to some of the world’s biggest refugee camps.

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<sup>1</sup> United Nations (2002). UN Security Council, New York.

<sup>2</sup> UNHCR (2015). UNHCR country operations profile – Kenya, <http://www.unhcr.org/pages/49e483a16.html> [accessed 17th November, 2015]

While majority of refugees are innocent civilians who are victims of indiscriminate violence, there is always the risk of combatants slipping through, the security cracks and bringing into the country these dangerous weapons.

This has been seen with incidences of Improvised Explosive Devices (IEDs) targeting law enforcement and the planning of terrorism attacks traceable to the expansive refugee camps.

As part of the African Union Mission in Somalia (AMISOM), Kenya has faced retaliatory terrorist attacks from *Al Shabaab*. In 2013 the Westgate Mall in Nairobi was attacked resulting in 67 deaths, and more than 175 people wounded in indiscriminate mass shooting. This year, on 2<sup>nd</sup> April 2015, we were also devastated by mass shooting at the Garissa University College in North Eastern region of the country bordering Somalia where 148 young, promising students and security personnel were killed and 79 seriously wounded.

The carnage caused by SALW proliferation has not only visited its ugly side on the people but has threatened to deplete our rich natural heritage – the wildlife. With the rise in the demand for ivory, Kenya has in recent years witnessed a resurgence of poaching of elephant tusks and rhino horns resulting in the depletion of these endangered species where poachers are now armed with sophisticated SALW (Small Arms Survey, 2014)<sup>3</sup>.

The illicit trade in SALW and their widespread availability in the wrong hands is compounded by incidences of cattle rustling in the country which have escalated, occasioning fatalities of both pastoralist communities and security forces, not to mention increased levels of banditry and the perpetual high levels of violent crime in urban areas in Kenya. The recovery of illegal arms by law enforcement authorities every so often indicates the availability of small arms and light weapons within our borders.

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<sup>3</sup> Small Arms Survey (2014). *Breaking New Ground? The Arms Trade Treaty*, 2014 <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2014/en/Small-Arms-Survey-2014-Chapter-3-EN.pdf>

These facts indicate that human suffering caused by illegal arms and the need therefore to ratify the Arms Trade Treaty (ATT) to curb access to weapons by criminals and terrorists.

I also note the great suffering caused by illegal arms to the people living within the Great Lakes Region, the Horn of Africa and many other countries on the African Continent.

### **Parliamentary Intervention in Promoting the Ratification of the ATT**

As most of you are aware, Kenya was actively involved as one of the seven member states that co-sponsored the negotiation of the Arms Trade Treaty (ATT) when it was introduced in the United Nations General Assembly in 2006. However, it is regrettable to note that Kenya has not yet signed, ratified or acceded to the treaty, although our six co-sponsor countries of Argentina, Australia, Costa Rica, Finland, Japan and the United Kingdom were among the first to ratify the ATT.

The PGA Kenya group is alive to the threat that faces our country as a result of the illicit trade in SALW and the need to ratify the UN General Assembly resolution 61/89 of 6<sup>th</sup> December, 2006, on the Arms Trade Treaty (ATT).

The Kenya Group has made efforts to encourage the government to sign the ATT through the Cabinet Secretary for Foreign Affairs. The Cabinet Secretary has explained that Kenya was not able to sign the treaty on 3<sup>rd</sup> June, 2010 due to lack of administrative and legal requirements in accordance with our new Constitution which came into force in the year 2010.

Despite these hurdles, we are assured by the competent authority of the Kenyan Government that with the necessary consultation completed, Kenya will soon be able to ratify the ATT. The good news is that international treaties and conventions ratified by Kenya now have constitutional backing and their domestication is made easy, Article 2 (6) of the Constitution of Kenya, 2010 now elevates and recognizes treaties and

conventions. It states that “*Any treaty or convention ratified by Kenya shall form part of the law of Kenya...*” (CoK, 2010)<sup>4</sup>.

The above notwithstanding we take comfort of the fact that Kenya has a wide range of other pieces of legislation with relevance to SALW including the Firearms Act, The Police Act, Explosives Act and the Wildlife Act, to mention a few.

Therefore, with the assurance that the Kenyan government will expedite ratification of the ATT, the Kenya delegation to this forum anticipates a review process to consolidate exiting legislation to align them with the ATT. I am even more confident because, at this forum, Kenya is represented by no less than 5 distinguished parliamentarians who will do everything possible to have the ATT ratified by our Parliament. The experience gained from this forum will no doubt go a long way in enriching our legislative capacities, particularly in the formulation of legal framework with strong institutions that will effectively address the illicit trade in SALW.

In conclusion, I urge all of us, as representatives of the people, to do everything in our power to identify and eliminate risk factors and address the indirect cause of armed violence. Like other countries we have seen increased radicalization and recruitment of young people to join terrorist groups and criminal gangs which means that we have to address structural issues and developmental challenges such as unemployment. No doubt, there is need to adopt a broader approach to address the funding of arms control programs in our regions particularly in capacity building of the youth, training of law enforcement officers, stockpile management and border controls and security, among other matters related to ratification and implementation of the ATT. (Ngului, 2014)<sup>5</sup>.

***“I THANK YOU”***

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<sup>4</sup> Constitution of Kenya (2010). Government Printer, Nairobi.

<sup>5</sup> Ngului, J. (2014). *Ending armed Violence for peace and development*. Presentation made during the Regional review Conference on the Geneva Declaration, 26-27<sup>th</sup> November, 2014.