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PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS IN NIGERIA: LEGAL IMPLICATIONS

By

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*I*ntroduction

*I*n his famous 2000 Millennium Report to the United Nations (UN) General Assembly, the then Secretary General, Kofi Anan, brought the phenomenon of SALW¹ proliferation to the forefront of the UN's agenda by noting as follows:

The death toll from small arms dwarfs that of all other weapons systems—and in most years greatly exceeds the toll of the atomic bombs that devastated Hiroshima and Nagasaki. In terms of the carnage they cause, small arms, indeed, could well be described as “weapons of mass destruction” ... Small arms proliferation is not merely a security issue; it is also an issue of human rights and of development. The proliferation of small arms sustains and exacerbates armed conflicts. It endangers peacekeepers and humanitarian

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1. The terms ‘small arms’, ‘weapons’, ‘guns’, “arms” and ‘firearms’ are used interchangeably in place of “SALW”. Reference to any of these terms also covers ammunitions. “Firearms” covers various types of guns as defined in Article 3 of the *Protocol against the Illicit Manufacturing and Trafficking in Firearms, their Parts and Components and Ammunitions*, adopted by the General Assembly on May 31, 2001 (the UN Illicit Firearms Protocol). See also section 2 of the Nigerian *Firearms Act* Cap F28 LFN 2004.

workers. It undermines respect for international humanitarian law. It threatens legitimate but weak governments and it benefits terrorists as well as the perpetrators of organised crime.²

Since then, this genre of weapons has continued to attract concerns not only from the international community, but also from nation-States because of the multifaceted effect it has in conflict and non-conflict situations. SALW result in high death toll directly inflicted by their use; but more than this, they have indirect and pernicious consequences of humanitarian and socio-economic dimensions.³ This has underscored the imperative for legal measures to regulate SALW in order to prevent, combat and eradicate their proliferation.

From Nigeria's perspective, the pernicious and multidimensional effects of the proliferation and misuse of SALW have also been felt through the prevalence of organised armed violence and criminality, which have become defining characteristics of the socio-political landscape.⁴ Literarily, Nigeria cannot be described as a country at war; but it is predominantly militarised and is

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2. Kofi Anan: *We the People: the Role of the United Nations in the 21st Century*, (Geneva: United Nations, 2000), pp 52-53, at: <http://www.un.org/millennium/sg/report/full.htm> (Anan, Millennium Report). All websites cited were last visited between September 29 and October, 2, 2010.
 3. See Graduate Institute of International Studies, *Small Arms Survey 2001: Profiling the Problem*, (Oxford University Press, 2001); Small Arms Survey Year Book from 2001-2010, <http://www.smallarmssurvey.org/files/sas/publications/yearbooks.html>; Preamble to the *UN Program of Action to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All its Aspects*, Adopted at the UN 2001 Conference on the Illicit Trade of Small Arms and Light Weapons in All its Aspects and Trafficking (the *UNPoA*), A/CONF.192/15: <http://www.un-documents.net/paitsalw.htm>.
 4. Daily media reports are replete with accounts of armed violence, conflicts, murder and other criminal acts involving the use of guns.

plagued by armed criminality and internecine armed conflicts. Examples include “the recurrent ethno-religious Jos crises, the Niger Delta resource control struggle, armed robbery, assassinations, the recent kidnapping phenomenon and other criminal activities.⁵ Studies indicate that guns are the weapons of choice in armed robbery cases in Nigeria and are also used to perpetrate murder, rape and other kinds of assault by state and non-state⁶ actors comprising vigilantes, militias, cultists, armed gangs and other criminals.⁷ These reports also reveal that in most armed conflicts in Nigeria, small arms are the predominant weapons of aggression. This is so notwithstanding the long existing regulatory framework

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5. Report of the Roundtable on Harmonisation of National Gun Control Laws with ECOWAS SALW Convention facilitated by PANAAFSTRAG and NANSAs was held in Abuja on 28th October, 2006. See also “Task Force Vows to Stamp out Proliferation of Arms”, *Daily Independent Online*, 30 July, 2010, quoting the Chairman of the National Task Force set up to combat illegal importation of goods, small arms, ammunition and light weapons (NATFORCE), at: <http://allafrica.com/stories/201008020322.html>.
 6. “Non-state actors” includes militias, criminal gangs and vigilantes. See Rachel Stohle, “Consequences of the Proliferation and Misuse of Small Arms and Light Weapons”, *Small Arms Working Group Fact Sheet*, 2006, p 5 http://www.fas.org/asmp/campaigns/smallarms/sawg/2006factsheets/SAWG_Small_Arms_Fact_Sheets_2006.pdf.
 7. See Giniifer Jeremy and Olawale Ismail: “Armed Violence and Poverty in Nigeria”, (Centre for International Cooperation and Security, University of Bradford, March, 2005), p 4, at: http://www.smallarmssurvey.org/files/portal/spotlight/country/afr_pdf/africa-nigeria-2005.pdf; Jennifer Hazen and Jonas Horner: “Small Arms, Armed Violence, and Insecurity in Nigeria: The Niger Delta in Perspective”, *Small Arms Survey Occasional Paper 20*, (Geneva: Small Arms Survey, 2007), pp 61 – 62.

established to regulate SALW. With the deployment of anti-aircraft weapons in the Niger Delta and increasing incidents of bombing- with the latest occurring on October 1, 2010, in Abuja- the severity and urgency of the SALW proliferation concern has been further underscored.⁸

This chapter takes an in-depth look into the phenomenon of SALW proliferation in Nigeria from the legal perspective. First, the chapter defines SALW, the nature of the concerns it generates generally and the principles defining the approaches to addressing the phenomenon. It then discusses the nature of the phenomenon in Nigeria, identifying the sources, predisposing factors and the impacts. The framework for combating SALW proliferation is also examined and recommendations on how to reinforce the framework is provided based on the weaknesses highlighted.

Definition, Nature/Conceptual Background of SALW Concerns

SALW has been defined in different international and regional instruments, and also in national statutes. A common observation emerging from the different definitions is that the term “small arms and light weapons” covers a wide spectrum of weapons, their ammunitions and their spare parts.⁹ The

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8. CNN Breaking News, October 1, 2010, 3:00 p.m. See also the following online news articles titled “Car Bombs Hit Oil City”, *Aljazeera*, 15 March, 2010, at: <http://english.aljazeera.net/news/africa/2010/03/2010315122622747363.html>, “Helicopter shot down by militants in Bayelsa State”, *eNowNow*, 26 Feb., 2009, <http://www.enownow.com/news/story.php?sno=2579>.
 9. See Report of the Panel of Government Experts on Small Arms submitted by UN Secretary General to the fifty-second session of the General Assembly on 27th August, 1997, UN Document A/52/228, 27 August, 1997, para 24, at: <http://www.un.org/Depts/ddar/Firstcom/SGreport52/a52298.html> (hereafter Report of the Panel of Government Experts), paras 23-33.

*ECOWAS*¹⁰ *Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials of 2006*,¹¹ which is the West African sub-regional benchmark for regulating SALW provides the following definitions:

Small Arms: Arms destined for personal use and which include: firearms and other destructive arms or devices such as an exploding bomb, an incendiary bomb or a gas bomb, a grenade, a rocket launcher, a missile, a missile system or a mine. 1) Revolvers and pistols with automatic loading; 2) rifles and carbines; 3) machine guns; 4) assault rifles; 5) light machine guns.

Light Weapons

The following portable arms designed to be used by several people working together in a team: 1) heavy machine guns; 2) portable grenade launchers, mobile or mounted; 3) portable anti-aircraft cannons; 4) portable antitank cannons, non-recoil guns; 5) portable anti-tank missile launchers or rocket launchers; 6) portable anti-aircraft missile launchers; 7) mortars with a calibre of less than 100 millimetres:

10. The acronym for the Economic Community of West African States of which Nigeria is a Member State.

11. Hereafter referred to as “the *Convention*” or “the *ECOWAS Convention*”. The *Convention* came into force in 2006 following its 9th Member-State ratification by Benin.

- (1) cartridges, munitions for small calibre weapons;
- 2) projectiles and missiles for small arms; 3) mobile containers with missiles or projectiles for anti-aircraft or anti-tank simple action systems;

Other Related Materials

All components, parts or spare parts for small arms or light weapons that are essential for its functioning.¹²

Literally, SALW range from clubs, knives and machetes to weapons just below the UN Register of Conventional Arms;¹³ but the specific weapons broadly categorised as SALW under the official definitions contained in international instruments have special attributes which, on the whole, make them highly favoured for irregular warfare and criminality. They are widely available; low in cost; extremely lethal; simple to use; durable; very portable; easily concealed; and possess legitimate military, police, and civilian uses (making them present in virtually every society).¹⁴ Even though they have many lawful uses - including self defence and safeguarding the security of the State - these same weapons are equally susceptible to misuse by State actors, paramilitary forces and non-state actors as the main instruments of armed violence.¹⁵ Their widespread misuse affects the interests of the State and the individual.

The proliferation and misuse of SALW has been linked with the prevalence of intra-state armed conflicts and violence and is regarded as the proximate cause of conflicts.¹⁶ As noted in the forward to the Report of the Panel

12. See Article 1, *ibid*.

13. See Report of the Panel of Government Experts, *ibid*, para. 24.

14. See IRIN, "Small Arms: The Real Weapons of Mass Destruction", *IRIN Global*, May 2006, at:

<http://www.iirnnews.org/Indepthmain.aspx?IndepthId=8&ReportId=58952>.

15. See Report of the Panel of Experts, *op cit*, para. 27.

16. See, *ibid*, para 14.

of Experts, “while not themselves causing the conflicts in which they are used, the proliferation of small arms and light weapons affects the intensity and duration of violence and encourages militancy rather than a peaceful resolution of unsettled differences”.¹⁷ This creates a vicious circle in which insecurity leads to a higher demand for weapons by the State and individuals, which itself breeds still greater insecurity.¹⁸

SALW raise grave concerns in conflict situations, the most visible of which is the high death toll.¹⁹ This includes deaths directly inflicted by the use of small arms and indirectly resulting from the consequences of armed-conflict situations due to disease, starvation, and displacement; it also includes socio-economic problems like poverty, trauma and underdevelopment.²⁰ The injurious effects of small arms also manifest in the daily lives of citizens in non-conflict situations. As a result of their highly lethal nature, the widespread misuse of SALW causes large numbers of deaths in the hands of State agents, in domestic violence, through accidents and in violent crimes.²¹ Since the display of a

17. See the UN Secretary General’s forward to the Report of the Panel of Experts, *ibid*.

18. See *ibid*; Barbara Frey: “Preliminary Report on the Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, E/CN.4/Sub.2/2003.29, 25 June, 2003 (Frey: Preliminary Report).

19. Frey, *ibid*, para. 12.

20. See *Small Arms Survey 2004: Rights at Risk*, (Oxford University Press, 2004), chapter 6; *Small Arms Survey 2005: Weapons of War*, (Oxford University Press, 2005), chapter 9.

21. See *Small Arms Survey 2001, op cit*, p. 59, where the number of deaths from small arms annually was estimated at 500,000; a figure which includes approximately 300,000 killed in armed conflicts and 200,000 killed in peacetime each year. See also Barbara Frey: “Small Arms and

weapon gives its holder the power to coerce, small arms are often used in a wide range of crimes which have no connection with conflicts, such as rape, robbery, kidnappings, and general gangsterism.

In addition to the enormous human death toll and inflictions on the human person, small arms also have aggregated negative impacts on the socio-economic development of entire populations, as widespread armed violence inflicts various social and economic costs on individuals and the state, including internal displacements of persons, medical treatment and rehabilitation; refugee flows; destruction of physical infrastructure; losses in productivity and foreign investment; general disruption of economic, social, civic and political activities.²²

SALW are also employed in widespread and systematic human rights violations. The ineffective regulation and misuse of SALW has human rights implications that affect the gamut of fundamental human rights and freedoms of the victims both individually and collectively. These are rights that have been codified in international and regional treaties, including the *Universal Declaration of Human Rights*,²³ the two human rights Covenants,²⁴ many thematic treaties,²⁵ the

Light Weapons: the Tools Used to Violate Human Rights”, presented at the Disarmament Forum on Human Rights, Human Security and Disarmament, UNIDIR, 2004. (Frey: “SALW, the Tools Used”), p 37, citing WHO, *Small Arms and Global Health*, (Geneva: WHO, 2001), being a study of 52 high and middle-income countries showing that more than 115,000 people died in those countries from firearm injuries in a one-year period in the mid-1990s, including 79,000 homicides, 29,000 suicides and 7,000 accidents or undetermined.

22. *Small Arms Survey 2006: Unfinished Business*, (Oxford University Press, 2006), chapter 8, at: <http://www.smallarmssurvey.org/files/sas/publications/yearb2006.html>.
23. United Nations General Assembly Resolution 217A (III), United Nations document A/810 at 71 (1948) (hereafter *UNDHR*).
24. The *International Covenant on Civil and Political Rights (ICCPR)*, United Nations General Assembly Resolution 2200 (XXI), United Nations document A/6316 (1966), entered into force 23 March 1976 and the

African Charter on Human and peoples' Rights,²⁶ and national statutes.²⁷ Specifically, they include right to life, liberty, movement; right not to be deprived of one's property; freedom from fear; freedom from inhuman treatment or torture; right of security; and communal rights like right to development, among others.²⁸ The devastating effects of the widespread use of SALW in conflict situations and their grave humanitarian consequences seriously threaten human security, which is defined as "the absence of danger and the feeling of a certain peace of mind" in the context of a political society like Nigeria.²⁹ Frey provides a graphic

International Covenant on Economic, Social and Cultural Rights (ICESCR), General Assembly Resolution 2200 (XXI), United Nations document A/ 6316 (1966), entered into force 3 January 1976.

- 25 E.g., the *Covenant against Torture and other Cruel Inhuman or Degrading Treatment or Punishment*, adopted by General Assembly Resolution 39/46 of 10th December, 1984 and the *Declaration on the Elimination of Violence against Women*, General Assembly resolution 48/104 of 20 December 1993.
- 26 Adopted on June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982, at: <http://www1.umn.edu/humanrts/instree/z1afchar.htm>).
- 27 See Part IV of the *Constitution of the Federal Republic of Nigeria* 1999, Cap C23 LFN 2004.
- 28 Asif Efrat: "Regulating Rifles: International Control of Small Arms Trade", at: <http://ssrn.com/abstract=1112468>, pp 1-3. See also Alioune Sall: "Human Security in International Law", in Anatole Ayissi and Ibrahim Sall (eds.), *Combating the Proliferation of Small Arms and Light Weapons in West Africa: A Handbook for the Training of Armed and Security Forces*, UNIDIR/2005/7, p 27. See also Small Arms Survey Year Book from 2001-2010, *op cit*.
- 29 Ayissi and Sall (eds.), *ibid*. See also "Law and National Security", Proceedings of the 1st Fellows' Dialogue of the Nigerian Institute of Advanced Legal Studies (NIALS), 20th February, 2007, p 13; Shiro Okubo: "'Freedom from Fear and Want', 'the Right to Live in Peace', and'

illustration of the multi-dimensional effects of SALW as follows:

The availability and misuse of small arms in our world has dramatic consequences. A single weapon, misused, can change the fate of an individual, a family, or even an entire community. A flood of small arms can shift the entire balance of power in a community, leading to a lack of personal security that destroys the rule of law. Small arms are used to facilitate an entire range of human rights abuses, including rape, enforced disappearance, torture, forced displacement and forced recruitment of child soldiers... An increase in expenditures due to deteriorating security conditions also results in decreased support for economic, social and cultural rights. No corner of the world has been left untouched by armed violence.³⁰

In yet another report, she further observed as follows:

The most visible impact of small arms on human rights is the human carnage, including half a million people killed each year in war, homicides, accidents and suicides. Millions more are disabled or die from untreated injuries inflicted by small arms. The lives of those affected by small arms-related violence are often changed forever due to long-term disability and ongoing psychological trauma. In addition to the immediate impacts on life and health, small arms-

Human Security”” *Ritsumeikan International Affairs*, vol. 5, pp 4-7, at: http://www.ritsumei.ac.jp/acd/re/k-rsc/ras/04_publications/ria_en/5-01.pdf.

30. Frey, “Preliminary Report”, para. 8.

related misuse affects the entire spectrum of civil, political, economic, social and cultural rights. Small arms have become the tools of choice in facilitating the barbarous acts which, a half-century after the Universal Declaration of Human Rights pledged to eliminate them, continue to outrage the conscience of humankind.³¹

On the bases of this grim picture, the international community has concluded that SALW have killed more people than other weapons of mass destruction (WMD) and that SALW are the most destabilising conventional weapons.³²

Nearer home, the devastating and pernicious effects of SALW proliferation have also been felt. In justifying its existence, the Preamble to the *Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa*, adopted by ECOWAS Member States in 1998,³³ noted “that the proliferation of light weapons constitutes a destabilising factor for ECOWAS Member States and a threat to the peace and security of our people”. These declarations evince solemn concerns regarding the devastating effects of the proliferation and

31. *Ibid*, para. 12.

32. Resolution A/RES/50/70, 15th January, 1996, at: <http://www.un.org/documents/resga.htm>.

33. Adopted by the 21st Session of the Authority of Heads of States and Government of ECOWAS on 30 October, 1998 (the Moratorium).

misuse of SALW, and the need for effective regulation at all levels.

The imperative for regulation is driven by the fact that small arms have legitimate and illegitimate uses,³⁴ which rules out absolute prohibition. This has been referred to as the paradox of SALW.³⁵ The paradox is epitomised by the self-defence function of SALW, which has featured as an important issue in the international effort to formulate the guiding principles and standards on combating and preventing the proliferation of SALW.

SALW double as weapons of self-defence against actual or perceived threats from others and as potential threats to the security of others from those bearing them.³⁶ With regards to nation-States, international law recognises the sovereign right and responsibility of States to protect themselves from external aggression and internal threats from insurgents in conformity with the rule of law. States also rightfully police their territory to maintain law and order. This is articulated in Article 51 of the *United Nations Charter*.³⁷ For this purpose,

34. Frey, *Ibid*.

35. Robert Muggah and Eric Berman: "Humanitarianism Under Threat: The Humanitarian Impacts of Small Arms and Light Weapons", *Small Arms Survey*, July 2001, p viii, at: http://www.smallarmssurvey.org/files/sas/publications/spe_reports_pdf/2001-sr1-humanitarian.pdf

36. See Michael Steven Green: "Why Protect Private Arms Possession", *Notre Dame Law Review*, Vol. 84, no. 1, 2008, p 131 (137), at: <http://ssrn.com/abstract=1095339>, where the author identified three dimensions of the danger as follows: (1) the owner can use it to commit a crime (including a crime of passion in the domestic circle); (2) mistaken act of self-defence; and (3) accidentally discharge.

37. Charter of the UN, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, entered into force 24 Oct. 1945, at: <http://www.un.org/en/documents/charter/index.shtml>. See also Report of the UN Secretary General on Small Arms, 2008, s/2008/258, p. 2, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/303/05/PDF/N0830305.pdf?OpenElement>.

States legitimately arm their armed forces, police and other security forces or “state actors” with a range of weaponry of which SALW form an integral part. States can acquire SALW by local production and from other States.³⁸ However, in the process of accumulating SALW, States are obliged to apply due diligence, transparency and accountability through effective regulation.³⁹ States are also enjoined to prevent misuse of SALW by lawful owners.⁴⁰

Apart from the collective sovereign interest, individuals also face threats to their person and property. Thus, customary international law broadly recognises self-defence as a defence to criminal responsibility in murder or homicide notwithstanding the fact that the right to life is guaranteed in mainstream international human rights instruments⁴¹ and

38. See the Preamble to the *UNPoA*.

39. See *Resolution on the Prevention of Human Rights Violations Committed with Small Arms and Light Weapons*, adopted by the Human Rights Council Sub-Commission at its fifty-eight session on 24th August, 2006, A/HRC/Sub.1/Add.1. See also the *Draft Principles on the Prevention of Human Rights Violations Committed with Small Arms*, submitted to the Sub-Commission on the Promotion and Protection of Human Rights, Prevention of Human Rights Violations Committed with Small Arms and Light Weapons, U.N. Doc. E/CN.4/Sub.2/2005/35 (2005), which explains the principles subsequently adopted in the *Resolution* (hereafter *Draft Principles*); Frey: “SALW, the Tools Used”, *op cit*, p 41.

40. The rules on use of firearms are defined in several international instruments, including the *ICCPR* and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, A/CONF.144/28/Rev.1, adopted in 1990 by the Eighth UN Conference on Prevention of Crime and Treatment of Offenders. These instruments prohibit law enforcement officials from using force except when strictly necessary and to the minimum extent required under the circumstances.

41. See for instance Article III of the *UNDHR*.

international humanitarian law.⁴² As such, self-defence is sometimes designated as a right,⁴³ a position which is in harmony with ancient philosophical expositions of the right of an individual to possess arms for the purpose of self-defence as a natural right.⁴⁴ Similarly, under common law, the right to defend oneself and his or her property against threats remains a basic right.⁴⁵ Self-defence, as a defence to murder and other offences relating to bodily harm, is codified in national statutes⁴⁶ and is well-established by case law.⁴⁷

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42. See the four Geneva Conventions of 1949 and the Additional Protocol I Relating to the Protection of Victims of International Armed Conflicts and ICRC, Basic Rules of the Geneva Conventions and their Additional Protocols, at: www.icrc.org/Web/Eng/siteeng0.nsf/html/57JMJR?OpenDocument. See also "Prevention of Human Rights Violations Committed with Small and Light Weapons", being final report submitted by Barbara Frey, in accordance with Sub-Commission resolution 2002/25, A/HRC/Sub.1/58/27, 27 July, 2006 (Frey, "Final Report"), at: http://www.iansa.org/un/documents/salw_hr_report_2006.pdf.
43. See Article 2 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)*, 1950 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by *Protocols Nos. 3, 5, and 8* which entered into force on 21 September 1970, 20 December 1971 and 1 January 1990 respectively. See also Frey, *Ibid*, paras 20-21 and sections 59 and 60 of the *Penal Code* Cap 89 Laws of Northern Nigeria 1963, which guarantees the right of private defence. Section 60 (a) provides: "Every person has a right, subject to the restrictions hereafter contained, to defend his own body and the body of any other person against any offence affecting the human body."
44. Aristotle: *The Politics*, Stephen Everson (ed.) (Benjamin Jowett Trans., 1988); cited in David B. Kopel, Paul Gallant and Joanne D. Essien: "Firearms Possession by 'Non-State Actors': The Question of Sovereignty", *Texas Law Review of Law and Politics*, vol. 8, no. 2, 2004, p 378, at: <http://ssrn.com/abstract=742647>.
45. See Christopher Smchmidt: "An International Human Rights to Keep and Bear Arms", *William & Mary Bill of Rights Journal*, Vol. 15, 1983, at: <http://www.davekopel.com/2a/OthWr/AN-INTERNATIONAL-HUMAN-RIGHT-TO-KEEP-AND-BEAR-ARMS.htm>.
46. See 59, 60 and 65 of the *Penal Code* and sections 286-289 of the *Criminal Code Act* Cap C38 LFN 2004
47. See *Ahmed v. State* (1999) 7 NWLR Pt. 612, p 641 (674), para B.

However, the question whether civilians can possess firearms for self-defence as of right remains a matter of controversy at all levels even as national laws adopt different positions.

Among nations and individuals that recognise the right of an individual to possess arms for self-defence, the need for statutory regulation is recognised. Thus, as far back as the 18th Century, Sir William Blackstone wrote about the right to possess arms being ancillary to the “natural right of resistance or self-preservation”, but conceded that the right was subject to the suitability of the arms and their allowance by law.⁴⁸ Just recently, in the landmark case of *District of Columbia v. Heller*,⁴⁹ the United States (US) Supreme Court established that an individual has a constitutionally protected right to bear arms for purposes unrelated to state militia service, including self-defence; but also recognised the constitutional power of the Federation to regulate the possession of firearms by individuals. Also, section 10 of the Constitution of Mexico guarantees the right of inhabitants of Mexico to possess arms within their domicile for their safety and legitimate defence, except for those forbidden by Federal Law and those reserved for the exclusive use of the army.⁵⁰ It is clear that subscribers to this position recognise that whilst

48. Blackstone's Commentaries on the Laws of England, at: http://avalon.law.yale.edu/18th_century/blackstone_bk1ch1.asp.

49. S. Ct. 2783 (2008). This position was extended to States laws on small arms in the *McDonald vs. Chicago*, 561 US 2010.

50. See the *Political Constitution of the United Mexican States 1917* as amended, at: http://en.wikipedia.org/wiki/PoliticalConstitution_of_the_United_Mexican_States.

civilians⁵¹ exercise their “rights” to own arms for self-defence or any other lawful purpose, such arms should not constitute danger to others or jeopardise the interest of the State. This appears to be the position of international law.

The international human rights community adopts a slightly different position from the above. Whilst it endorses the principle of self-defence, international human rights law does not recognise an affirmative right of private individuals or non-state agents to carry guns for the purpose of self-defence. Rather, it imposes the due diligence responsibility on states to regulate civilian possession of firearms in order to control the number of firearms in circulation and prevent them from getting into the hands of those that might likely misuse them.⁵² It also imposes a legal duty on States to prevent or deter misuse of firearms by legal owners such as State security agents.⁵³ These obligations entail regulating firearms possession, criminalising unauthorised acts relating to SALW, and prosecuting and penalising infringers.⁵⁴ Under these principles, the State is obliged to investigate and prosecute armed groups and criminals for unlawful use of SALW, and those engaged in illicit manufacture, possession, stockpiling and transfer of SALW.

Some countries adopt the approach of enacting firearms control regulations which codify the right of civilians to own firearms for self-defence and other purposes, but simultaneously stipulate stringent conditions for the enjoyment of such privileges in fulfilment of their obligation

51. The term “civilian” as used here covers private persons and non-state actors.

52. Frey, “Final Report”, *op cit*.

53. It was confirmed by the Human Rights Committee in *Jimenez Vaca v. Colombia*, CCPR/C/74/D/859/1999, at http://www.bayefsky.com/pdf/colombia_t5_iccpr_859_1999.pdf. See Frey: “Final Report”, *op cit*, pp 5-11.

54. See the Resolution on prevention of Human Rights violations committed with SALW, *op cit*.

to protect human rights and the security of the greater population. Under the South African *Firearms Control Act 2000*,⁵⁵ the right of an individual to own firearms for self-defence⁵⁶ or other legitimate purposes is recognised, but is subject to stringent conditions. The objective is to regulate the possession of firearms and prevent their misuse as part of government's responsibility to guarantee the safety and human rights of persons.⁵⁷ This is depicted in the Preamble to the South African *Act* and in section 2(1). The Preamble reads:

Whereas every person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either public or private sources; and whereas the adequate protection of such rights is fundamental to the wellbeing and social and economic development of every person; and whereas the increased availability and abuse of firearms and ammunitions has contributed significantly to the high levels of violent crime in our society; and whereas the constitution places a duty on the state to

55. See the South African Firearms Control Act No. 60 of 2000.

56. See Sections 13 and 14 of the South African Firearms Control Act.

57. See also the Firearms Control Amendment Regulations *No. R2004*. A draft review of the Regulation exists as the Firearms Control Amendment Regulations 2007 submitted for Public Comment, Gov Gazette No 30401 26 Oct 2007. It is however uncertain whether it has been passed.

respect, protect, promote and fulfil the rights of the Bill of rights; be it therefore enacted by the Parliament of the Republic of South Africa as follows:

Section 2 provides

The purpose of this Act is:

- (b) “to prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;
- (C) “to enable the state to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms.”

The Preamble therefore depicts a primary responsibility on the State to protect the security of persons, which is complemented with the preserved right of individuals to protect themselves and the *Act* reconciling these two potentially contradictory objectives.

Similarly, in countries where possession of guns by civilians for self-defence is not recognised and civilian possession of guns is highly restricted, the underlining consideration is equally security related. It is the fear that such privilege would encourage the accumulation of guns in the Community, thereby exposing the larger population to higher risks from gun homicide and jeopardising public safety.⁵⁸ In other words, “the individual’s desire to possess a gun for self-defence is outweighed by the broader context of the State’s obligation to “maximise human rights protection

58. Smehmidt, *op cit.*

for the greatest number of people”.⁵⁹ However, the State must fully assume the duty to guarantee the security of the citizenry in a manner that ensures freedom from fear thereby reducing the need to possess arms for self-defence.⁶⁰ This means that the State “must take effective measures to reduce the need for people to arm themselves by ensuring an atmosphere of public safety, supported by law enforcement that is committed and trained to protect the rule of law”, to prevent illegal acts and “to suppress private violence”.⁶¹ It implies that in a situation where the State fails to discharge this function and civilians are prohibited from possessing guns for their security at the same time, the level of insecurity increases.⁶²

Whether the right to own guns is extended to civilians or restricted to State security forces only, the imperative for regulation is recognised. The immediate concern of the international community and national laws is not to ban SALW or the possession and use of same by State actors or non-state actors, but to prevent illicit proliferation and unlawful use of SALW.

Beyond this is also the wider concern to control the proliferation or accumulation of small arms generally. This is because lawful accumulation of SALW may also be threatening when it is excessive and has a potentially

59 Frey, “Final Report, p 4.

60. See Green, *op cit*, pp 140-144. See also the Preamble to the *UDHR* and Article 3 of same.

61. Frey, *ibid*, p 14.

62. Smchmidt, *ibid*; Green, *op cit*, p 166.

destabilising effect on national security.⁶³ The question whether the accumulation of SALW in a particular region or setting is excessive and destabilising is relative and depends not on the number of arms in circulation; rather, it depends on the efficacy of the legal framework in preventing misuse, deterring criminal acts and armed violence, and protecting the rights of persons through the rule of law. Accumulation of SALW becomes excessive and destabilising only when the following predominantly apply:

- A state does not exercise restraint in the production, transfer and acquisition of such weapons beyond those needed for legitimate national defence and internal security.⁶⁴
- A state, whether a supplier or recipient, cannot exercise effective control to prevent the illegitimate acquisition, transfer, transit or circulation of such weapons.
- The use of such weapons manifests in armed conflicts, in crime, or other actions contrary to the norms of national and internal law.⁶⁵

This implies that the accrual of a relatively high number of SALW in a country with well developed legal and regulatory framework and stability like the US may not be classified as excessive and destabilising; whereas the comparatively modest number in Nigeria⁶⁶ maybe so

63. Report of the Panel of Government Experts, *op cit*, para 14.

64. Articles 2 (1) and 15 of the ECOWAS Convention.

65. Report of the Panel of Experts, *ibid*, para 37.

66. See *Small Arms Survey 2007: Guns and the City*, (Oxford University Press, 2001), Chapter 2 and Appendix 4, at: <http://www.smallarmssurvey.org/files/sas/publications/yearb2007.html>. In a list of countries in descending order of guns ownership in 2007, US is listed as number 1 with the highest number of guns ownership of 90 per

classified mainly because of the state of its regulatory and law enforcement infrastructures in juxtaposition with the existence of predisposing factors to instability and conflicts.⁶⁷

From the foregoing, it can be concluded that no nation can afford to ban SAWL entirely. They can only control its accumulation and prevent its abuse through effective regulation. This implies strategies targeting the control of the legal sources of proliferation alongside the illegal sources. It implies controlling the manufacture, importation, possession, use, transfer and other dealings in SAWL.

Proliferation of Illicit SALW: The Nigeria Position

The SALW paradox is also relevant to Nigeria in the context of regulation. As a nation-State, SALW also have legitimate and illegitimate functions in Nigeria. The legitimate uses are majorly for purposes of national security which is the responsibility of the armed forces⁶⁸ and the police.⁶⁹ Under Nigeria law, civilians are not entitled to possess arms as of right irrespective of the fact that the right of self-defence is recognised as earlier noted.⁷⁰ However, it is inferable from the Firearms Act that civilians can possess arms, which informs the conditional prohibition of firearms possession. The Act subjects the possession of arms to the grant of a

100 persons, while Nigeria is listed as number 41 with ownership of 1 per 100 persons.

67. See generally, Hazen and Horner, *op cit*.

68. Section 1(2) of the Armed Forces Act Cap A20 LFN 2004.

69. See section 4 of the Police Act Cap P19 LFN 2004.

70. Section 6 of the Firearms Act.

licence requiring the satisfaction of certain conditions.⁷¹ It also regulates other dealings in firearms and ammunitions along with other statutes to prevent the uncontrolled proliferation of arms and to ensure that they do not get into the hands of persons that are likely to misuse them. It regulates the manufacture,⁷² sale, transfer and importation of firearms.⁷³ Concerns regarding proliferation emerge from activities falling outside these provisions.

History of SALW in Nigeria and the Genesis of Proliferation

Gun possession by civilians in Nigeria is not new. Literature sources indicate that guns were first introduced by the Europeans before and during the colonial period and have for long been used as part of tradition and in hunting activities in the rural community.⁷⁴ With time, guns and gun powder became symbols of strength and power, and were later transformed into ceremonial weapons displayed during death ceremonies and customary festivals across tribes and ethnic groups. They also became a symbol of individual and ethnic grandeur as they were believed to deter aggressors and invaders. Today, guns have transformed in terms of functionality, lethality, sophistication, ubiquity and motive for ownership. They have become more of weapons of criminality and instruments of the underworld than ornaments of prestige.⁷⁵

71. Sections 3, 4 and 5, *ibid.*

72. For instance, the Defence Industries Corporation of Nigeria Act.

73. For further discussion of the *Act* see section on “Legal Framework”, *infra*.

74. See Zebulon Takwa: “Small Arms Proliferation Poses Challenges in West Africa”, *Focus on Arms in Africa*, Vol. 3, issue 1, October, 2004, p 7, at: http://www.iss.org.za/pubs/Newsletters/Focus/Vol3No1_04/Takwa.pdf.

75. Takwa, *ibid.* For the progressive account of Nigeria’s gun history to date see *Timeline for Nigeria*, at: http://www.google.com.ng/search?q=history+of+guns+in+nigeria&hl=en&sa=G&tbs=tl:1&tbo=u&ei=8PKhTO6EF8eCOJmPhNYD&oi=timeline_result&ct=more-results&resnum=11&ved=0CDoQ6AfwCg.

Though, several reports have traced illicit trafficking and proliferation of guns to the failure of the Nigerian Government to execute a comprehensive disarmament and arms destruction programme after the end of the 1967-70 civil war, there is evidence that the Country had cause to worry about SALW proliferation even before the civil war broke out and that this concern predates the 1959 Firearms Act.⁷⁶ The phenomenon was however, aggravated by the civil war and has steadily increased owing to the interplay of a number of factors.⁷⁷

There is dearth of accurate data on the current amount of SALW accrued in Nigeria. As noted by Hazen and Horner, existing data have not been updated for years.⁷⁸ Studies and reports have consistently estimated the number of SALW in Nigeria at between 1 and 3 million since 2002.⁷⁹ This includes arms in the lawful possession of members of the armed forces and the police, and those in the hands of

76. See the Explanatory Note to the Firearms (Amendment) Decree No. 31 of 1966 explaining the rationale for the Decree as the “large number of pistols, revolvers, automatic shotguns and several rounds of ammunitions” and the increasing number of offences relating to illegal possession and control of firearms. See also the Firearms Ordinance No. 7 of 1958 and Firearms Regulations of 1959 made pursuant to the Ordinance.

77. Christiane Agboton-Johnson, Adedeji Ebo and Laura Mazal: “Small Arms Control in Ghana, Nigeria and Senegal” in *Monitoring the Implementation of Small Arms Control, International Alert*, West Africa Series no. 2, March 2004, p 21, at: http://www.international-alert.org/pdfs/MISAC_NigeriaStudy.pdf.

78. Hazen and Horner, *op cit*, p 26.

79. *Ibid*, pp 25-26; Agboton-Johnson *et al*, *ibid*, p 2; Small Arms Survey 2003, *Development Denied*, (Oxford University Press, 2003), p 83; *Small Arms Survey 2007*, *op cit*.

civilians, which is said to be in the majority.⁸⁰ It has also been reported that as at 2002, 80% of weapons in civilian possession were illegally acquired because of the strict regulations⁸¹. This gives rise to the conclusion that a large percentage- if not majority- of the small arms in circulation in Nigeria are illicit. The outdated state of the data creates the possibility that these figures are understated.⁸² Even so, they can be regarded as excessive and destabilising going by the milieu of small arms related criminality and violence inundating many parts of the country and the militarised nature of the society. Furthermore, the fact that many of these weapons are illicit raises specific concerns regarding illicit arms and the adverse effects.

Incidents of Religious and Ethnic Conflicts in Nigeria and their Impact on Human Lives

Date	Event	Impact
May 1999	Clashes between ethnic Ijaws and Itsekiris in Niger Delta	Up to 200 killed
November 1999	Clashes between Yoruba and Hausa in Lagos	100 + killed
2000	Protests against imposition of Sharia across the	Thousands Killed

80. Agboton-Johnson *et al, ibid*, pp 26-42.

81. The regulations are strict in the sense that they make it difficult to obtain firearms lawfully. However, they are not effectively implemented and the processes are easily circumvented due to institutional deficiencies.

82. It is conceivable that these figures have multiplied since 2002 going by media reports of rampant illicit firearms interceptions. Again, firearms have a long lifespan, which rules out the likelihood that a greater proportion of the arms making up these figures would have become unserviceable and gone out of circulation.

	North	
September 2001	Riots between Christians and Muslims in Jos, Plateau State	915+ killed
October 2001	Clashes in Kano between Christians and Muslims after protests against US bombing of Afghanistan	200+ killed
February 2002	Clashes between ethnic Hausa and Yoruba in Lagos 100+ killed, 430 wounded	100+ killed and 430 wounded
November 2002	Riots in Kaduna over Miss World pageant	215+ killed
August 2003	Ethnic clashes in Warri over oil rights and political power	100+ killed 1000+ injured
May 2004	Clashes between Christians and Muslims in Plateau; government declares state of	600+ killed

	emergency	
May 2004	In spill over from unrest in Plateau, clashes between Christians and Muslims take place in Kano	200+ killed
February 2006	Riots and protests across northern Nigeria and in southern city of Onitsha over the Danish publication of cartoons of the Prophet	100+ killed
March 2006	Ethnic clashes over land and property rights in the south-east	8+ killed

*Culled from Hazen and Horner.*⁸³

Problems of armed violence and insecurity are not limited to ethno/tribal and religious clashes. They also play

83. Hazen and Horner, *op cit*, pp 21. The study in turn relied on statistics from Reuters AlertNet (2007) and BBC (2004). These incidents are just 'the tip of an iceberg' due to lack of accurate data. In most cases, official reports understate the figures to avoid stirring sentiments that could lead to reprisal attacks. Moreover, more devastating clashes have occurred since 2006. See "Security Challenge of Boko Haram's Terrorist Threat", *The Punch Editorial*, Wednesday, September 15, 2010, p 14; "Nigeria: Armed Conflicts Report", *Ploughshares*, February, 2010, at: <http://www.ploughshares.ca/libraries/ACRText/ACR-Nigeria.html>. "Thousands Flee Nigeria's Violence", *Aljazeera*, July 30, 2009, at: <http://english.aljazeera.net/news/africa/2009/07/200972922491198633.html>.

out in a multiplicity of individual settings.⁸⁴ This is in addition to political violence, militancy,⁸⁵ vigilantism and cultism.⁸⁶ SALW are used for criminal activities ranging from petty crimes, to more serious crimes like armed robbery, kidnapping, hostage taking, assassinations and mass attacks.⁸⁷ Between November 2006 and February 2007, 212 incidents of violent crime were reported in the international press. 189 of these were carried out with firearms, 34 with other tools and 2 involved bombs.⁸⁸

The prevalence of armed violence in Nigeria has created an endemic and pervading sense of insecurity, as “the average Nigerian does not feel secured and confident in a country that is not at war”,⁸⁹ a situation which is clearly

84. *IRIN*, “In-depth: Guns out of Control; the Continuing Threat of Small Arms”, May, 2006, p. 18, at: <http://www.irinnews.org/pdf/in-depth/Small-Arms-IRIN-In-Depth.pdf>.

85. Sola Odunfa: “Nigeria’s Oil Capital under Siege”, *BBC News*, 8 September, 2009, at: <http://news.bbc.co.uk/2/hi/africa/3634368.stm>.

86. Immigration and Refugee Board of Canada, *Nigeria: Societal and Government Reactions to Student Cult Activities (2007 - July 2009)*, 12 August 2009, NGA103199.E, available at: <http://www.unhcr.org/refworld/docid/4b20f038c.html>. (Hereafter Report of Refugee Board of Canada).

87. See *Ploughshares*, *op cit*.

88. See Che Kervin Ngang: “Small Arms and Light Weapons, Africa’s True WMDs: The Role of SALW in Conflict and Insecurity in Sub-Saharan Africa”, a Thesis submitted in partial fulfilment of the requirements for the Degree of Master of Arts at the European University Centre for Peace Studies (EPU) Stadtschlaining, Austria, 2007, p 74, at: <http://www.aspr.ac.at/epu/research/Che.pdf>. The researchers noted correctly that the real SALW harm is much higher bearing in mind that the foregoing figures represent only figures reported in the international press.

89. “Who’ll Tame These Armed Robbers?": *This Day Online Newspaper*, March 3rd, 2008, at:

inconsistent with the tenets of human rights. The following excerpt vividly describes the prevailing atmosphere in Nigeria:

Every day, at least three people somewhere in the country will be killed, and as readers go through the paper, a head is being blown away, a stomach is being ripped open and a limb is being shattered by bullets whizzing off the barrels of an armed robber's gun. From Lagos to Abuja, Kaduna to Bida, Onitsha to Yola, armed hoodlums showing neither mercy nor pity have unleashed a reign of terror on Nigerians. They are all-over in towns and villages, in ghettos and GRAs. No one is safe, no place is sacred, and no security is inviolable. The armed hoodlums are not just daring, they are ruthless. They steal, they rape and the kill....⁹⁰

Factors Encouraging the Proliferation of SALW in Nigeria

Generally, the proliferation of small arms is a correlation of two major and mutually supportive factors – the demand for small arms (motivating factors) and the supply or sources.⁹¹

Sources of Illicit Weapons

The proliferation of illicit SAWL in Nigeria has external and internal sources:

<http://www.thisdayonline.com/nview.php?id=105382>.

90. Egwu Smart Out: "Armed Robbery in the South-eastern States of Contemporary Nigeria: A Criminological Analysis", (Ph.D Thesis) South Africa, June 2003, p 94, quoting *Thisday Newspaper*, (citation unavailable) and cited in Ngang, *ibid*, p 73.

91. Report of Panel of Experts, *op cit*.

- 1) ***Cross-Border Smuggling:*** Nigeria procures arms from other countries for her legitimate use in connection with state security obligations.⁹² This constitutes a significant source of SALW proliferation. Additionally, Nigeria is vulnerable to illicit SALW infiltration from abroad because of her geographical location. She shares a long stretch of land border with the Republic of Niger and Chad in the North, Benin Republic in the West, and Cameroon in the East; in addition to a long stretch of Atlantic coastline. Each of these frontiers provides entry points for systematic smuggling of arms into the country.⁹³ Reportedly, the three most notorious arms smuggling frontiers are Idi-Iroko and Seme in the South-Western States of Lagos and Ogun; the Niger Delta Region; and the border posts in the north-eastern region.⁹⁴

Smuggling is also aided by the increased number of potential suppliers as a result of the end of the Cold War⁹⁵ and weak international controls of armament

92. See section 9 of the *Defence Industries Corporation of Nigeria Act*. See also "How Illegal arms Find their Way into Nigeria", *The Nation*, January 1, 2009, at:

<http://thenationonline.net/web2/articles/23834/1/How-illegal-arms-find-their-ways-into-Nigeria-/Page1.html>.

93. Agboton-Johnson, *et al*, *op cit*, p 21.

94. See Hazen and Horner, *op cit*, pp 33-34; Federal Government of Nigeria, "Strategic Conflict Assessment: Consolidated and Zonal Reports", (Abuja: Institute for Peace and Conflict Resolution, 2003), p 21.

95. Reinhide Weidache: "Behind a Veil of Secrecy: Military Small Arms and Light Weapons Production in Western Europe", Geneva, *Small Arms Survey*, Occasional Paper No. 16, (2005); Anan, "We the People", *op cit*.

flows. These factors have created opportunities for militant groups and other private actors to access sophisticated SALW previously accessible only by members of the armed forces.⁹⁶

2) **Security Sector Black-racketeering:** A large portion of illicit firearms consist of leakages from members of the armed forces and the police both serving and retired. This includes the remnants from the Nigerian civil war and leakages from returnees of peace keeping operations.⁹⁷

3) **Local Manufacturing:** Nigeria also has a significant local supply of legitimate and illicit SALW through local manufactures.⁹⁸ Section 22 of the *Firearms Act* prohibits the manufacture of firearms. However, the government established Defence Industries Corporation of Nigeria (DICON) set up in 1964 via the *Defence Industries Corporation of Nigeria Act*, is legally empowered to produce arms and ammunitions in the country mainly for use by the military and the police. Given the legal status of its mandate, this does not constitute a significant source of illicit small arms.

96. Ngang, *op cit*, pp 21-24; Small Arms Survey, 2001, *op cit*; Human Rights Watch, "The Warri Crisis: Fuelling Violence", *Human Rights Watch*, Vol. 15, no. 18(A), pp 24-25.

97. See Report of the PANAFSTRAG and NANSAs, *op cit*. See also Hazen and Horner, *ibid*, pp 36-37.

98. See Study by Bako Wali: on "National Arms Production Capacity of Nigeria", 2005, pp 51-53, available at: http://www.un-casa.org/CASACountryProfile/OtherDocument/61@InvRpt_Nigeria.pdf.

As far back as 1989, DICON's annual production capacity was as follows: 15, 000 rifles, 9000-10,000 pistols and 1000 machine guns. See "Nigeria: Arms Procurement and Defence Industries", *Library of Congress Country Studies: CIA World Factsheet*, June 1991, at: http://www.photius.com/countries/nigeria/national_security/nigeria_national_security_arms_procurement_and-10039.html.

However, this is not the case with the cluster of unlicensed local craftsmen located in different parts of the country, who produce on the aggregate, a substantial quantity of illicit guns⁹⁹ in contravention of section 22 of the *Firearms Act*. The clandestine nature of their activities negates due diligence, transparency and regulation as required by international standards. It also makes their products difficult to trace and makes the SALW position of Nigeria opaque.

Motivations for SALW Possession and Proliferation

The demand for or need to possess small arms in Nigeria is motivated by a combination of factors which can be grouped under three major heads: activities of the military, multiplicity of conflicts and personal security arrangements:

Activities of the Military and Law Enforcement Agencies
The role of the armed forces and the police involves use of arms and ammunitions. Thus, a large proportion of legally acquired SALW are for their requirements. Their increasing demand for arms and ammunitions to enable them successfully confront the equally increasing number of armed criminals has aggravated the proliferation of arms in the country.¹⁰⁰

Also, the legacy of protracted military rule is widely regarded as a major dynamic in the proliferation of illicit SALW in Nigeria.¹⁰¹ It is believed that this led to the entrenchment of the militarised psyche and a culture of

99. See Wali, *ibid*; Hazen and Horner, *op cit*, pp 29-37.

100. Hazen and Horner, *ibid*, pp 29-33.

101. Military rule spanned 1966-1999 with interludes of civil rule.

violence predominant in the country today; and that it provided the essential dynamic for the particularly violent character of criminality in Nigeria and the increasing demand for small arms by non-state actors.¹⁰²

Furthermore, the culture of impunity that continues to undermine the rule of law to date was planted during the military era. This has contributed to the inefficacy of the provisions regulating SALW. The same goes for corruption and failed governance, a conundrum which has not only undermined the rule of law, but has also created the discontent and animosity fuelling the conflicts inundating the country, thus increasing the demand for SALW.¹⁰³

The Prevalence of Internecine Conflicts and Criminality

The desire to possess small arms and the unlawful use of same in Nigeria has also been attributed to the prevalence of organised armed conflicts and the increasing culture of violence which has become a defining character of the socio-political scene since 1999.¹⁰⁴ Except for self-defence and other lawful purposes, the possession of illicit firearms usually follows a premeditation of mayhem, violence or criminal act.¹⁰⁵ This correlation between crime and conflicts on one hand, and the demand for arms on the other has caused the multiplicity of conflicts and criminality to consequentially increase the demand for illicit SALW by civilians and non-state actors.¹⁰⁶ While criminals, militants

102. Agbono-Johnson *et al*, *op cit*, pp 21-22.

103. See Nnosike Ogbuanyi: "Electoral violence and the threat to Democracy", *NBF News*, January 26, 2010, at: <http://www.nigerianbestforum.com/blog/?p=34626>.

104. *The Nation*, *op cit*.

105. See Daniel Howden: "Militia's hunt for guns renews fears of violence in Nigeria", *The Independent*, Thursday, March 11, 2010, at: <http://www.independent.co.uk/news/world/africa/militias-hunt-for-guns-renews-fears-of-nigeria-violence-1919473.html>.

106. For full discussion of the various dimensions of conflicts and criminality in Nigeria see Emmanuel Kabirat Jekada: "Proliferation of Small Arms

and hoodlums require them to perform their nefarious acts, their activities create an arms race between rival gangs wanting to maintain an edge over each other; and also between the State security forces and the criminals.¹⁰⁷ The conflicts in the Niger Delta and the emergence of the Niger Delta militias are very important dynamics in the SALW situation in Nigeria because of the amount of weapons they have at their disposal and their active involvement in gunrunning. The government recognised this fact when it initiated a number of disarmament programmes in the region in 1999 and 2004,¹⁰⁸ and recently extended amnesty to the militants in the region in 2009.¹⁰⁹

Insecurity and the Privatisation of Security

The failure of the Nigerian government to guarantee human security and freedom from fear has transformed security from a public service and necessity to be provided by the

and Ethnic Conflict in Nigeria: Implication for National Security”, being dissertation submitted in partial fulfilment of the award of Ph.D in International Relations and Strategic Studies at St. Clements University, September 2005, at: <http://esvc000040.wic056u.server-web.com/grad/gradjeka.pdf>; Ginifer and Ismail, *op cit*, pp 10-17; Agboton-Johnson, *op cit*; Hazen and Horner, *op cit*; Ngang, *op cit*, p 59; Reuters Alert Net, at: <http://www.alertnet.org/thenews/newsdesk/L04414052.htm>, for kidnappings reported in the international media between July and October, 2007.

107. See *Ploughshares*, *op cit*; *the Nation*; *op cit*.

108. Hazen and Horner, *ibid*, pp 94-98

109. Xan Rice: “Nigeria begins Amnesty for Niger Delta militants”, [guardian.co.uk](http://www.guardian.co.uk), Thursday, August 9, 2009, at: <http://www.guardian.co.uk/world/2009/aug/06/niger-delta-militants-amnesty-launched>.

government to a private necessity which individuals and groups have to provide for themselves.

The government's inability to prosecute persons arrested in respect of the various religious and ethnic crises fans violence and its continuity;¹¹⁰ while the weakness of law enforcement exacerbates the culture of impunity and robs the criminal justice system of the deterrence role.¹¹¹ The Nigeria Police Force suffers from poor training, lack of equipment, corruption and other inherent and extraneous handicaps.¹¹² Criminals and dissidents are often better equipped than the police thereby making the police incapable of repelling their attacks and unable to defend the public from criminals. Most recorded incidents of armed violence occur without the intervention of the police, a situation which the public perceive as a lack of willingness on the part of the former to engage armed crime and wilfully putting their lives in danger.¹¹³ Entities therefore rely on private security companies and vigilantes, possession of guns and installation of security gadgets, thereby increasing the demand for SALW.¹¹⁴

Moreover, some vigilante groups often enjoy tacit support and encouragement from political establishments and

110. For instance, it is reported that out of about 12,000 arrests made for illegal possession of firearms between 1990 and 1998, only about 500 (4.2%) were successfully prosecuted. See Agboton-Johnson, et al, *ibid*, p 22.

111. See *Report of Refugee Board of Canada, op cit*, discussing culture of impunity with reference to secret cults.

112. Human Rights Watch: "Rivers and Blood: Guns, Oil and Power in Nigeria's Rivers State", A Human Rights Watch Briefing Paper, February 2005, at: <http://www.eldis.org/assets/Docs/18139.html>.

113. Hazen and Horner, *ibid*, pp 53 - 57; *This Day* Online Newspaper of March 3rd, 2008, *op cit*.

114. E. E. O. Alemika: "The Nigerian Police Force: A Preliminary Assessment of Functional Performance", *International Journal of Sociology and Law*, Vol. 7, 1993, pp.61 – 83; Human Rights Watch, "The Warri Crisis", *op cit*, p 23; Adedeji Ebo, "Small Arms and Criminality in Nigeria: Focus on Kaduna State (Rural and Urban)", being study conducted for Small Arm Survey, Geneva, October, 2002, p 20.

public office holders. Thus protected, they commit flagrant and gross human rights violations against persons including extra-judicial executions of perceived criminals without been called to account for their actions.¹¹⁵ The scenario equally develops into a vicious circle where, civilians and various armed groups and criminals acquire more arms to outweigh each other.¹¹⁶

This development represents failure on the part of the Nigerian State to fulfil the legal and due diligence obligation imposed by international human rights laws requiring her to “maximise human rights protection for the greater number of people”. It depicts failure in the obligation to reduce small arms violence by private actors and consequently reduce the demand for small arms and the need for people to arm themselves.¹¹⁷

Predisposing Factors to SAWL Proliferation- the Socio-Economic Dimension

As noted above, SALW are a response to the intention to perpetrate violence and acts of criminality.¹¹⁸ This makes those acts relevant dynamics in the SALW proliferation discourse; but beyond this, it makes the underlying factors promoting violence and crime indirectly relevant to the

115. Human Rights Watch, “The Bakassi Boys: The Legitimation of Murder and Torture, Nigeria”, May 20, 2002, at: www.unhcr.org/refworld/docid/3cea124a4.html.

116. Ginifer and Ismail, *op cit*, p 10.

117. D. Agekameh: “Guns, Guns Everywhere”, *TELL Magazine*, 6 August, 2001, (Lagos), p 33.

118. Ngang, *op cit*, p 22 and Hazen and Horner, *ibid*.

discourse from the hypothesis that where those factors are absent, the intention to perpetrate acts of criminality and violence would also not materialise.

The primary causes of crime and conflicts in Nigeria, going by available literature on the subject, are rooted in the inept structural forms which create and sustain human insecurity in its broadest sense, including deprivation of social and economic rights.¹¹⁹ These factors are complex and cannot be expatiated in this discourse. All the same, they are relevant in their collective capacity as an indirect stimulant of the demand for small arms. They include high levels of unemployment among the teeming population of youths and the working class age, inequality in the distribution of income and privileges of governance, low level of infrastructural and economic development, lack of social amenities, poverty, corruption, profligacy, declining moral standards, lack of good governance, neglect of the minority especially the Niger Delta, among others.¹²⁰

The unemployment factor is specifically identified as an important dynamic in the armed-conflict cum small arms challenge. Ginifer and Ismail underscored the nexus between the two phenomena in their study, noting that political violence “percolates the entire Nigerian State where political elites mobilise the pool of unemployed youths, often along ethnic, religious and party affiliations, as a vital political

119. See Ifedayo Adebayo: “We’re Failed State No. 14”, *Next News Alert*, at: http://234next.com/csp/cms/sites/Next/Home/5591733-146/were_failed_state_number_14.csp, citing the current 2010 failed State index report released by Peace Fund and published in *Foreign Policy Magazine*, which listed Nigeria among countries like Sudan and Zimbabwe as failed States. A State is deemed to have failed when the government of such a State is unable to perform the basic responsibilities of a sovereign State such as providing security, rendering of social services and protecting the human rights of its inhabitants.

120. Hazen and Horner: *op cit*, pp 22-23; Human Rights Watch “The Warri Crisis”, *op cit*, pp 24 - 25. See also Ginifer and Ismail, *op cit*.

resource”.¹²¹ This contributes to the proliferation of illicit weapons without any account on their whereabouts after the elections.¹²²

Impacts of Small Arms Proliferation

The discourse has intermittently mentioned the impact of SALW in Nigeria in terms of loss of lives. However, the impact of SALW in Nigeria is not limited to homicides and injuries, though the direct deaths and injuries caused by firearms are probably the most visible impacts. Proliferation and misuse of SALW has pernicious effects on the rule of law in the broadest sense and human rights, and manifest in more ways than one.

Though firearms are not the root cause of crime, it is generally agreed that the deployment of illicit small arms in conflicts and crimes aggravates their gruesomeness and impact not only on the victims but also on the wider society. Again, the possession of firearms could provoke the intention or temptation to commit a crime such as robbery or rape, thus further increasing the scale of premeditated violence involving use of firearms. It also provides the courage and means to actualise criminal intents. In these contexts, proliferation of SALW can be said to contribute to the rate of crimes and violence in Nigeria.¹²³ The activities perpetrated by use of SALW are criminalised under Nigerian Statutes.

121. *Ibid*, *op cit*, p 8; See also Agboton-Johnson pp 23-24.

122. Human Rights Watch, “The Warri Crisis”, *ibid*, p 25; Human Rights Watch, “Patterns of Election Violence”, at: <http://www.hrw.org/reports/2004/nigeria0604/2.htm>.

123. Ngang, *op cit*, p 44.

The Criminal Code criminalises the following acts: promoting inter-communal war;¹²⁴ membership of unlawful societies such as secret cults;¹²⁵ going armed so as to cause fear or terror in the public;¹²⁶ threatening violence with loaded firearms;¹²⁷ murder;¹²⁸ intentionally causing grievous harm;¹²⁹ kidnapping;¹³⁰ robbery with firearms;¹³¹ illegal possession of firearms.¹³² Thus, the proliferation of illicit SALW increases the incidence of these crimes and further criminalises the society given the absence of effective deterrence. The overall effect of this is a breakdown of law and order and the undermining of the rule of law.

Again, where state actors or law enforcement agents are routinely armed without proper orientation and training on the rules regarding use of firearms against civilians, it increases the chances of extra-judicial killings by gun-shot, accidental discharges or stray bullets. The application of vigilante justice and their existence grossly undermine the rule of law which recognises only the police as responsible for the internal security of Nigeria and the security of lives and properties,¹³³ as well as the rights of fair hearing, right to life and right to dignity of the human person recognised in the Constitution. Research has shown that, in general, high

124. Section 42 of the Criminal Code Act.

125. Sections 60, 62A, 63 and 64, *ibid.*

126. Section 80, *ibid.*

127. Section 86, *ibid.*

128. Section 316, *ibid.*

129. Section 335, *ibid.*

130. Section 364, *ibid.*

131. Section 401, *ibid.*; sections 1, 2 & 3 of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004.

132. See section 428 Criminal Code Act and section 3 *Robbery and Firearms (Special Provisions) Act*. Section 26 of the *Firearms Act* criminalises acts done in contravention of the *Act* and prescribes corresponding penalties.

133. Section 4 of the *Police Act*.

rates of gun ownership are related to increases in the incidence of arms-related violence.¹³⁴

Human Rights

The protection of human rights forms part of a longstanding tradition in international law as well as in Nigeria.¹³⁵ Human rights include rights codified in the laws of nation-States and other rights which, though not so guaranteed, are nevertheless inherent in every human being. Nigeria is bound under various international treaties and the *jus cogens* of international human rights law to protect these rights.¹³⁶ The 1999 Nigerian Constitution guarantees to some extent the fundamental rights and freedoms of persons while the bulk of the socio-economic rights are stated as aspirational principles.¹³⁷ These include political rights;¹³⁸ economic rights,¹³⁹ social rights,¹⁴⁰ environmental rights,¹⁴¹ and

134. See generally, *Small Arms Survey 2001, op cit*; Frey: *Small Arms and Light Weapons, op cit*, p 41.

135. See Chapter III of the Constitution of the Federal Republic of Nigeria No. 20 LFN 1963.

136. See *Abacha v. Fawehinmi*, (2000) 4 FWLR 533.

137. See Part II and IV of the 1999 Constitution.

138. See section 15, *ibid*, which provides- "The State shall foster a feeling of belonging and of involvement among the various peoples of the Federation to the end that loyalty to the nation shall override sectoral loyalties."

139. See section 16, *ibid*. It declares that government will control the national economy in a manner that secures the maximum welfare, freedom and

political rights.¹⁴² Part IV of the 1999 Constitution guarantees the right to life,¹⁴³ dignity of human person;¹⁴⁴ personal liberty;¹⁴⁵ right of fair hearing by an impartial tribunal and right of presumption of innocence until proven guilty;¹⁴⁶ right of freedom of thought, conscience and religion including “freedom to change ones religion or belief, freedom to manifest and propagate ones religion or belief in worship either alone or in the company of others.”¹⁴⁷ It forbids membership of secret cults.¹⁴⁸

The Constitution does not affirmatively guarantee the right of security; nevertheless, Part II recognises that government has a responsibility to ensure that the citizen feels secured even as it assures socio-economic, political and environmental rights. Section 14 (1) provides that “the Federal Government shall be a state based on the principles of democracy and social justice, while sub-two (2) declares

happiness of every citizen on the basis of social justice and equality of status and opportunity; and that government will ensure that suitable and adequate shelter and food is guaranteed; and old age care, unemployment and sick benefits and welfare of disabled are provided for all.

140. Section 17, *ibid*. It affirms that the social order of the state is founded on ideals of freedom, equality and justice and declares that every citizen shall have equality of rights, obligations and opportunities before the law. It also enjoins government to ensure the following:- that the sanctity of the human person is recognised and human dignity maintained; governmental actions are humane; exploitation of human and natural resources in any form whatsoever for “reasons other than the good of the community is prevented.

141. See section 20, *ibid*, which provides that the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

142. Section 15(4), *ibid*.

143. Section 33, *ibid*.

144. Section 34 (a) provides: “no person shall be subjected to torture or to inhuman or degrading treatment.

145. Section 35, *ibid*.

146. Section 36(1) (5), *ibid*.

147. Section 38(1), *ibid*.

148. Section 38(4), *ibid*.

that the security and welfare of the people shall be the primary purpose of government. Furthermore, sub-four (4) provides that the affairs of government shall be conducted in such a manner as to “command loyalty and promote a sense of belonging and loyalty among all the peoples of the Federation”. These are declarations by the Constitution regarding the responsibility of government to protect the rights of the peoples.

The proliferation of SALW and the misuse of same by State and non-state actors have created room for the infringement of these rights. The killing of people by use of firearms clearly deprives them of their right to life whether at the hands of State agents through extra-judicial killings or excess force, or at the hands of criminals, vigilantes or rioters. The use of military tactics to quell civil disturbances, state-sponsored or state-sanctioned violence against civilians as happened in Odi, Bayelsa State, in 1999 and replicated against the Tivs of Zaki Biam in Benue in October 2001 are examples of misuse of SALW by State agents in contravention of the aforementioned legal obligations imposed by the international community.¹⁴⁹ The Niger Delta represents a typical example of the failure of the State to guarantee the gamut of human rights and to prevent the misuse of or need for SALW.¹⁵⁰ This has further underdeveloped the region notwithstanding that the right to

149. Ginifer and Ismail, *op cit*, pp 9-10; Agboton-Johnson, *ibid*, p 3.

150. Centre for Law Enforcement Education (CLEEN) World Organisation Against Torture (OMCT), *Hope Betrayed?: A Report On Impunity and State-Sponsored Violence In Nigeria*, (Lagos: CLEEN/OMCT, 2002); cited in Agboton-Johnson *et al*, *op cit*, p 22.

development has been described as “a core right” from which all other rights stem.¹⁵¹

The Framework for Regulating SALW Proliferation

At the global level, the international community has endeavoured to map out strategies geared towards addressing the phenomenon of SALW, which are implemented at the international, regional and national levels. They have also formulated specific guidelines and rules to help nation-States develop an effective national framework for addressing the phenomenon. Even where the instruments embodying these benchmarks lack legal force, there is nevertheless a strong moral obligation on States to respect them. The legal responsibility and due diligence obligations imposed by international human rights law in connection with SALW entails putting in place an effective regulatory framework for SALW as well as an effective enforcement mechanism following the international guidelines. Nigeria has ratified some international and regional instruments benchmarking the regulation of SALW; thus, she is morally or legally bound by them depending on the legal status of the instrument embodying such standards.¹⁵² Also, because of the humanitarian concerns associated with SALW, it is a matter of international interest that Nigeria addresses the issue of SALW proliferation and misuse. Given their significance in

151. Nsongurua J. Udombana: *Human Rights and Contemporary Issues in Africa*, (Lagos: Malthouse Press Limited, 2003), pp 16-17. Declaration on the Right to Development: resolution adopted by the General Assembly, 4 Dec. 1986, A/RES/41/128, at: <http://www.unhcr.org/refworld/docid/3b00f22544.html>.

152. Nigeria can be guided by these Instruments, whether binding or not. However, where they have binding force, they are still subject to domestication as mandated by section 12 of the 1999 Constitution before they can take effect.

determining the content of national frameworks for SALW regulation, the discussion on Nigeria's framework requires a brief look at some of the relevant international and regional instruments.

Multilateral Framework

One of the earliest international instruments addressing the proliferation of SALW is the *UNPoA*. As stated in its Preamble, the *UNPoA* seeks to address the uncontrolled spread of SALW, which have "a wide range of humanitarian and socio-economic consequences and poses a serious threat to peace, reconciliation, safety, security, stability and sustainable development." Article II (2) instructs nation States to put in place "adequate laws, regulations and administrative procedures to exercise effective control ... over the export, import and transit of small arms." However, the Instrument does not specify what constitutes "adequate laws" or "effective control". Furthermore, it lacks a legally binding force. This notwithstanding, it provides the fundamental international benchmark for determining the adequacy of any national legislation on regulating SALW.

There is also the *UN Illicit Firearms Protocol*,¹⁵³ which promotes uniform international standards for the movement of firearms. It urges State parties to criminalise illicit manufacture and trafficking in firearms and to also adopt preventive measures. The *International Instrument to Enable*

153. Adopted by the General Assembly on May 31, 2001 and entered into force in 2005. It supplements the *United Nations Convention against Transnational Organised Crime* A/RES/55/25, at: www.un-documents.net/unecatoc.htm.

States to Identify and Trace Illicit Small Arms and Light Weapons is also an important standard setting document regardless of its non-binding status.¹⁵⁴ It was adopted in recognition of tracing as a key mechanism in the effort to prevent, combat and eradicate illicit SALW.¹⁵⁵ It is intended to help States establish a mechanism to facilitate the identification and tracing of illicit SALW.¹⁵⁶

At the African regional level, the most outstanding initiative on controlling SALW is the *Bamako Declaration on Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons*.¹⁵⁷ The *Bamako Declaration* is a politically binding instrument adopting a common African approach to combating illicit proliferation, circulation and trafficking of SALW. Paragraph 3A of the *Declaration* enjoins Member Countries to establish specific legal regimes with specific structures and procedures to deal with the problem of SALW at both the national and regional levels. It encourages, *inter alia*, the enhancement of the capacity of national law enforcement and security agencies and officials.

ECOWAS Regional Framework

It is at the ECOWAS sub-regional level that Nigeria has been foisted with comprehensive legally binding obligations to address the proliferation of SALW. The ECOWAS approach is derived from Article 58 of the ECOWAS Revised Treaty of 1999.¹⁵⁸ Article 58 enjoins Member States “to work to

154. Available at:

http://www.poa-iss.org/InternationalTracing/ITI_English.pdf

155. See the Preamble.

156. Article 1.

157. *The Bamako Declaration*, adopted by the Ministerial Conference of Member States of the defunct Organisation of African Unity (OAU) on December 1, 2000.

158. See the *Revised Treaty of the Economic Community of West African States* (ECOWAS), 24th July, 1993, available at: <http://www.unhcr.org/refworld/docid/492182d92.html>.

safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region”, and to establish “and strengthen appropriate mechanism for the timely prevention and resolution of conflicts”. Regulating SALW proliferation within the Community is regarded as crucial to the maintenance of peace within.

The current flagship instrument on SALW proliferation within the ECOWAS sub-region is the ECOWAS Convention. It supersedes the ECOWAS Moratorium,¹⁵⁹ which is limited in time and lacks a binding force.¹⁶⁰ The ECOWAS Moratorium was the first initiative to control the proliferation of SALW within the sub-region and was adopted following the destabilising effect of SALW proliferation in the sub-region and their threat to the peace and security of the sub-region.¹⁶¹ The Convention addresses issues regarding the manufacture, stockpiling, tracing, marking, brokering and transfer of SALW within West Africa. It institutionalises the National Commission to coordinate the fight against the proliferation of illicit SALW at the national level.¹⁶² It also provides for the prohibition, without exception, of arms transfer to non-state actors

159. The Moratorium was signed on October 31, 1998, at the 21st Ordinary Session of the Authority of Heads of State and Government of ECOWAS Member States in Abuja, Nigeria, in October 1998.

160. See article by Ilhan Berkol: “An Analysis of the ECOWAS Convention on Small Arms and Light Weapons Recommendations for the Development of an Action Plan: “*Note d’Analyse du GRIP*, April 1, 2007, Brussels; available at : <http://www.grip.org/bdg/g1071en.pdf>.

161. See the Preamble to the Moratorium.

162. Ayisi and Sall (eds.), *op cit*, pp 45.

without the approval of the importing country.¹⁶³ Measures aimed at reducing the number of arms already accrued within the region are provided as well as preventive measures like collection and destruction of excess weapons,¹⁶⁴ public enlightenment,¹⁶⁵ and provisions regarding transparency and information exchange.¹⁶⁶

National Framework

Currently, there is no instrument in Nigeria specifically defining the term “fire arms and light weapons”. However, the *Firearms Act* defines the term “firearms” in a manner that covers the genre of weapons contemplated by the definition of SALW under the Convention; it is also in line with the definition of “firearms” under the UN Firearms Protocol”. Therefore, SALW are regulated as firearms under Nigerian laws. Firearms is a matter under the Exclusive Legislative List in the 1999 Constitution, implying that only the Federal Government can make laws regarding its regulation. The *Firearms Act* is the foremost national legislation regulating SALW. Others are the Robbery and Firearms (Special Provisions) Act, the Defence Industries Corporation of Nigeria Act, the Criminal Code Act and the Penal Code. The main institutions enforcing or implementing these provisions are NATCOM,¹⁶⁷ the Courts and the Police.

The Firearms Act

163. See Chapter II of the Convention.

164. Article 16 *ibid.*

165. Article 17 *ibid.*

166. Articles 8-11 *ibid.*

167. NATCOM is the acronym for the National Committee on the Proliferation and Illicit Trafficking in Small Arms and Light Weapons inaugurated in 2001.

The *Firearms Act* dates back from 1959 and, despite its long existence, has experienced only limited review.¹⁶⁸ In its amended form, it defines “firearms” as “any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, and includes a prohibited firearm, a personal firearm and a muzzle-loading firearm of any of the categories referred to in Parts I, II and III respectively of the Schedule hereto, and any component part of any such firearm.”¹⁶⁹

With reference to Parts I, II and III of the Schedule, firearms include- artillery, apparatus for the discharge of any explosive or gas diffusing projectile, rocket weapons, bombs and grenades, machine guns and machine pistols, military rifles, revolvers and pistols, short guns, sporting rifles, humane killers, flint-lock guns, dane guns, cap guns any other firearm not specified in Part II or Part III. “Ammunitions” is defined simply as “ammunition for any firearm and any component part of any such ammunition, but does not include gun powder or trade powder not intended or used as such a component part.”

The Act subjects the possession of firearms and ammunitions to the grant of a license by the relevant authorities save for certain persons.¹⁷⁰ It also prohibits anyone from selling or transferring ownership of firearms or

168. It was reviewed several times in 1966, but the most comprehensive review was the Firearms (Amendment) Decree No. 31 of 1966, which increased the penalties for illegal dealings in or possession of firearms.

169. Section 2 of the Firearms Act.

170. Sections 3, 4, 5 and 8, *ibid.* See sections 37 and 38 exempt certain persons from the requirement of a license.

ammunitions except by registered dealers.¹⁷¹ Other important provisions are sections 17 and 20, which restrict the importation or exportation of prohibited firearms and ammunitions except through designated entry. With regards to personal weapons, the person importing or exporting the firearm is only required to declare the same to the relevant officer at the time of importation or exportation.¹⁷² Section 22 deals with the production of firearms and prohibits the manufacture, assembly and repair of any firearm or ammunition except at a public armoury or at arsenals established for the purposes of the armed forces with the consent of the President. This is however subject to the discretion of the Inspector-General of Police who may grant a permit to any person to carry on the business of manufacture and repair of the firearms referred to in Part III of the Schedule to the Act.¹⁷³

With regards to penalties for breach of the provisions, the Act not only criminalises these breaches, but also imposes penalties ranging from 10 years imprisonment without option of fine, to 2 years imprisonment or one thousand naira fine or both.¹⁷⁴ Section 38 exempts members of the armed forces and the police from the provisions with regards to arms issued to them for official purposes. This means that the provisions regarding transfer, sale and otherwise dealing in are not applicable to guns issued to members of the armed forces and the police.

The Firearms Regulations made pursuant to section 32 of the Act complements the Act in several ways. It provides *inter-alia* for the duration and renewal of licences (section 3); marking and stamping of firearms (sections 7 and 42);

171. Section 9, *ibid.*

172. Sections 19 and 21, *ibid.* See also section 20, which prohibits importation of firearms by post.

173. These comprise dane guns, flint lock guns and cap guns.

174. See section 27, *ibid.*

revocation of licence (section 9); application for registration as a dealer (section 12); procedure for the grant of the relevant licences; sale and transfer of weapons by a registered dealer.¹⁷⁵ Section 27 criminalises acts contravening certain provisions of the Regulations and provides penalties accordingly.

The Robbery and Firearms (Special Provisions) Act¹⁷⁶ also deals with firearms possession and provides sanctions for gun-related offences. Under the *Act*, illegal possession of firearms attracts a fine of ₦20, 000 or a minimum of ten years imprisonment, or both. The *Act* also specifies death by hanging or firing squad as punishment for robberies with firearms, and life imprisonment for attempted robbery involving the use of firearms.¹⁷⁷

Nigeria's main statutory provisions on firearms are elastic enough to cover the types of weapons referred to as SALW. However, the *Act* is inadequate in several respects and falls short of present day international benchmarks on regulating and deterring proliferation of illicit arms. The penalties for infringements are inadequate, particularly with regards to fines, while the enforcement of the provisions has been constrained by corruption and inadequate institutional capacity as indicated by the dearth of successfully prosecuted cases involving persons caught with illicit weapons. Also, the *Act* does not reflect some measures which are considered

175. Section 12 *Firearms Regulation*.

176. It was initially promulgated as the *Robbery and Firearms (Special Provisions) Decree* No. 5 of 1984.

177. Sections 1- 3 of the *Robbery and Firearms (Special Provisions) Act*.

very important by the international community in combating and preventing illicit arms proliferation.

Institutional Framework

The institutional framework for regulating SALW comprises mainly of the NATCOM, the police as the main body responsible for law enforcement, and the courts. Inaugurated in 2001, the NATCOM is responsible for the following- registration and control of SALW; regulating the importation and exportation of SALW; detection and destruction of illicit SALW; granting of permits for exemptions under the ECOWAS Moratorium.¹⁷⁸ The reconstituted Committee (NATCOM), which should be the epicentre for the control of illegal flow of SALW, is however incapacitated by several factors. These include under-funding, lack of technical expertise, corruption on the part of law enforcement agencies and lack of political will to make it work. The lack of an independent status as prescribed by the Convention generally hampers the effectiveness of the Committee.¹⁷⁹

The role of the police, which is directly responsible for enforcing the laws against illicit weapons alongside the courts, cannot be overrated. This notwithstanding, the two institutions are weighed down by inherent weaknesses and extraneous factors which substantially inhibit the effective performance of their roles.¹⁸⁰

Summary of the State of SALW in Nigeria

On the whole, the following summarises the nature of the SALW concern in Nigeria:

- i. SALW are becoming endemic in Nigeria and the rate of accumulation is increasing;

178. Hazen and Horner, *op cit*, p 93.

179. *Ibid*, *op cit*, p 93.

180. Alemika, *op cit*.

- ii. The proliferation of SALW in the country has a destabilising effect;
- iii. There is lack of capacity and strong and effective legal and institutional frameworks to regulate SALW and combat the phenomenon of SALW proliferation;
- iv. The prevalence of small arms and related violence has also led to human rights abuses and undermined the rule of law in the country.

Concluding Remarks and Recommendations

A successful resolution of the SALW conundrum in Nigeria requires a holistic approach that addresses the underlying factors creating the demand for SALW and the sources of supply, rather than treating the SALW problem as an independent or a compartmentalised issue. Furthermore, because armed violence is also a socio-economic issue, there is a much larger group of stakeholders and appropriate responses beyond law makers and law enforcers.

As earlier noted, the demand and supply factors of SALW proliferation are mutually dependent. Therefore, addressing one without the other may not produce the desired results. For instance, addressing the supply factor without simultaneously addressing the demand end may create a situation where arms become more expensive to acquire without necessarily preventing their acquisition, since those acquiring it may still be able to afford it. In such a situation, SALW will remain affordable to groups like the Niger Delta militias that generate large funds from illegal oil bunkering activities and those sponsored by politicians and other influence members of the society. Moreover, as long as the

need for SALW subsists, persons in need of same will always circumvent legal restrictions on obtaining them regardless of the vigilance of the law. An effective approach requires coordinated and sustained legislative, administrative and judicial strategies that address the factors encouraging demand for arms and concurrently dam the outlets through which illicit arms are proliferated. The strategies should go beyond the national level because of the cross-border implications of SALW.

The *Firearms Act* and the *Firearms Regulations*, which were enacted years before the ECOWAS Moratorium and *Convention*, as well as the *UNPoA* benchmarks, are obviously outdated and therefore overdue for review to synchronise their provisions with current international standards in combating the SALW scourge. The ECOWAS Convention, being the sub-regional benchmark for the control of SALW, is the most relevant to Nigeria. The Convention contains pertinent provisions on SALW, which should be enacted in the Nigerian statute on SALW, or reinforced if already enacted. These include provisions governing travellers, tourists, stockpiling or storage of weapons, brokering, markings and tracing.

Furthermore, the ultimate objective of the ECOWAS initiative is to harmonise the regulation of SALW within the region.¹⁸¹ Therefore, it is imperative that any review exercise embarked upon by Nigeria be geared towards achieving this objective in the long run. For further guidance, the example of South Africa is worth considering. Like Nigeria, South Africa is also contending with escalating crime rates and widespread use of SALW. In order to address this challenge, the South African Arms and Ammunitions Act¹⁸² was

181. See Article 13 of the Convention.

182. No. 75 of 1969.

reviewed and replaced with the 2000 Firearms Control Act.¹⁸³

With the above guidelines in mind, the following measures are hereby recommended:

- i. The underlying objectives and principles regarding the regulation of SALW should be clearly defined in the principal Statute, in this case, the Firearms Act, as is the case with section 2 of the South African Firearms Control Act. Also, the objective should be wider than merely preventing illicit proliferation; it should also be directed towards preventing and combating the excessive accumulation of SALW beyond the national needs of Nigeria as provided in Articles 2 and 3 of the ECOWAS Convention, in order to also regulate arms procurement by government security agencies.
- ii. To complement the above, the definition of “illegal” should be clearly stated to cover purpose. This is because not all civilian usages are illegal. Thus, an open-ended definition may allow the licensing authority wide discretion to decide when to grant or refuse a license; a power which could be abused. Similarly, too narrow a definition may shut out otherwise legal uses. To avoid any of these, the definitions contained in the Convention should be adopted.

183. The Firearms Control Act came into effect after the enactment of the Firearms Control Regulations of 2004.

- iii. The criteria for granting licences should be reinforced. The minimum age of 17 for possession of firearms stipulated in the *Act* should be reviewed upward to align with the current global trend where the minimum age is being reviewed upward and is generally higher than 17.¹⁸⁴ Furthermore, the different purposes for which arms may be required should be provided and different criteria provided for each. The current one-size-fits-all approach adopted in the *Act* does not take cognisance of the fact that arms may be required by juristic persons for corporate uses;¹⁸⁵ not only by natural persons for personal use. In adopting the recommended approach, the criteria should be designed to specifically unveil the purpose for requiring firearms and the ability of the entity to properly account for their custody and use. In the South African *Act*, separate criteria are provided for juristic and natural persons each.
- iv. Going by the international position and the trend in other countries like South Africa, the essence of regulation is not to make it impossible for civilians to possess small arms, but to make people realise the seriousness of possessing them. As noted already, the *Firearms Act* and other relevant statutes do not specifically affirm the right of individuals to own arms for self-defence. However, this is inherent in the provisions which envisage that individuals would apply for “personal firearms”; howbeit the permitted

184. For instance, Brazil increased the minimum age from 21 to 25, South Africa from 16 to 21. In the US and Australia, the minimum age is 18. See “Guns Politics”, *Wikipedia*, http://en.wikipedia.org/wiki/Gun_politics and the *Fire Arms Control Regulation* of South Africa, Notice No. 12. 345.

185. Section 6(2) on criteria for refusal to grant licence clearly envisages only natural persons.

purposes are not apparent. Moreover, the right of self-defence is tacitly recognised in section 33(2) of the 1999 Constitution, which derogates the right to life under section 33(1). Section 33(2) allows a person to defend himself from unlawful violence or for the defence of property. Self-defence is also codified in the Criminal Code Act and the Penal Code as already noted. If considered together with the inherent right of individuals to own personal arms in the *Act* and the right of security and freedom from fear, it becomes arguable that the right to own arms in self-defence is recognised in Nigeria.

However, even if this is not the case, the chapter is of the opinion that in view of the obvious failure of the State to defend its citizen, it is necessary to categorically provide for the right of individuals to own arms for self-defence and to accordingly legislate comprehensive due diligence measures to ensure proper regulation of the exercise of the right as is the case with the South African Act. This will encourage individuals to readily apply for firearms through legal channels rather than patronise black-markets; thereby facilitating proper record keeping of arms ownership and transfer in Nigeria, and engendering an atmosphere of transparency and accountability in accordance with international standards.

- v. There is need to amend the Act to reflect Article 21 of the Convention on measures aimed at controlling the manufacture of SAWL. Rather than out rightly

banning production by local craftsmen,¹⁸⁶ a system of regulation should be established to introduce transparency in the production and sale of arms. The focus should be on encouraging transparency in local manufacturing and should aim at co-opting local manufacturers in the war against illicit arms proliferation, considering their role in the aggravation of the phenomenon.

- vi. The following Articles in the *Convention* are either absent from the Act or limited, thus requiring amendment of the Act to incorporate or reinforce them, as the case maybe:

Article 14 on National Computerised Database and Register of SAWL

The Act and the Regulations provide a number of instances requiring keeping of records, but this does not satisfy the requirement of a national computerised database.¹⁸⁷ Rather, it creates a cumbersome system with fragmented registers that could lead to inconsistency. It is necessary that the Act be amended to cure this defect by providing for a centralised and computerised database capable of affording a clear indication of the status of SALW accumulation and possession in the country at any point in time.¹⁸⁸

Article 18 on Marking and Tracing

186. See section 22 of the Firearms Act which ostensibly bans manufacture of firearms by local craftsmen.

187. See section 9(3), *ibid* on register of firearms dealers and section 10, *ibid*, on register to be kept by registered armouries dealers; see sections 18, 31 and 43 of the Regulation on register to be kept by public armouries, repairers and manufacturers.

188. See section 100 of the South African Firearms Control Act which obligates the Registrar to establish and maintain a central Official Institution firearms databases.

Section 12 of the *Act* and sections 7 and 42 of the Regulations should also be amended to specifically require that the year and country of manufacture be marked on the firearm as stipulated by Article 18 of the Convention. The purpose of Article 18 is to facilitate the easy tracing of weapons internationally and the relevant sections in Nigeria's laws, in their present form, do not specifically mandate that such markings be made.

Article 10 on visitor's certificate, Article 15 on collection and destruction of firearms, Article 19 on regulating the activities of brokers and marketers and Article 23 on public education are not captured in the Nigerian Statutes. These are very fundamental provisions recognised not only in the Convention, but also in other multilateral instruments directed towards preventing accumulation of SALW beyond the legitimate needs of the State.¹⁸⁹ The *Act* should be amended to reflect these Articles.

Section 16 should be amended to reflect ECOWAS's position underscoring the need to ensure that public armouries are safe and well protected by trained persons.

The penalty for unlawful possession of firearms belonging to the armed or police forces which is currently fixed at 40 kobo under section 428 of the *Criminal Code* is particularly inadequate and should be reviewed upwards along with other penalties for illicit possession. Furthermore, penalties should cover acts in breach of the wider objectives and provisions of Article 12 of the Convention with respect to arms embargoes placed by the UN, the African Union and

189. See Article 19 Part II of the *UNPoA*.

ECOWAS. The penalties provided under section 48 of the Regulation are also inadequate to effectively deter infringement. Moreover, there is need to streamline the penalties provided under the different statutes to achieve common standards, unlike the present situation where different penalties apply in the various statutes.

The menace of endemic corruption in the country also affects the effective regulation of SALW. Therefore, to guarantee the effectiveness of any reform embarked upon and to achieve the desired results, appropriate measures for combating corruption in relation to the manufacture, importation, exportation, transfer and transit of SALW, their munitions and other related materials should be instituted.

The enforcement mechanisms for the control of illegal circulation of SALW should be strengthened in line with the due diligence responsibility imposed on Nigeria as a member of the comity of nations. This entails strengthening of the rule of law; abhorrence and penalisation of impunity; an efficient criminal justice system to ensure the successful detection and prosecution of unlawful acts relating to SALW. Relevant institutions like the courts, police and other regulatory bodies should be reformed.

Since SALW do not cause conflicts on their own, there is need to address the underlying factors giving rise to conflicts and criminality and consequently, to the demand for SALW such as insecurity, unemployment, religious intolerance, poor governance and other socio-economic factors creating conflicts.

Nigeria should implement the provisions of Articles 22 and 23 of the Convention by establishing the National Commission as a statutory body with an independent status, and statutory budgetary provision to guarantee its effective performance.

Further to this, Nigeria should champion the cause for a regional approach in combating the SALW phenomenon

because of the spill over effect of SALW proliferation and their potential to create new cycles of violence and crime across national borders.¹⁹⁰

The proliferation of SALW in Nigeria calls for urgent attention given its destabilising effects on the security of the nation as a whole and on the citizenry. The recent kidnapping of 15 school children in Abia State and the October 1, 2010 bombing underscore the urgency and gravity of the phenomenon. However, combating SALW goes beyond legality and regulations. It is a problem that has socio-economic roots, thus requiring a holistic approach. This entails addressing the underlying causes of conflicts and crime as a means of reducing the demand for SALW.

190. Stohle, "the Legacy of Small Arms" *op cit.*