

AN APPRAISAL OF THE ECOWAS LEGAL REGIME ON PROLIFERATION
AND MISUSE OF SMALL ARMS AND LIGHT WEAPONS: A CASE STUDY
OF NIGERIA

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DEPARTMENT OF PUBLIC LAW,
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MARCH, 2016

DECLARATION

I hereby declare that this Dissertation entitled: An Appraisal of the ECOWAS Legal Regime on Proliferation and Misuse of Small Arms and Light Weapons: A Case Study of Nigeria, has been written by me in the Department of Public Law, under the supervisions of Prof. K. S. Chukkol and Dr. Yusuf Dankofa.

The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this work has been presented for another degree or diploma in any institution.

Fatima ALHASSAN
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DATE

CERTIFICATION

This Dissertation entitled: THE PROLIFERATION AND MISUSE OF SMALL ARMS AND LIGHT WEAPONS UNDER THE ECOWAS LEGAL REGIME: A CASE STUDY OF NIGERIA by Fatima ALHASSAN meets the regulations governing the award of degree of Masters of Laws of Ahmadu Bello University, Zaria; and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

I dedicate this work to the loving memory of my mother Hajiya Rakiya Alhassan and to the innocent civilians who have lost their lives to the menace of Small Arms and Light Weapons circulating our streets and creeks.

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My utmost gratitude goes to the Almighty God, the most beneficent and the most merciful. It is by HIS Grace I am where I am today

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To my dear husband Engineer Muftau Kola Ojo, I say thank you for being there for me all the time. And to my children, thanks for your love and understanding. To my entire family, especially my beloved father, Alhaji Haruna Alhassan, I say thanks for your prayers.

To my boss, Amb. Abdullahi Sarki Mukhtar, I say thank you for opening up your library to me.

ABSTRACT

This dissertation examines the Proliferation and Misuse of Small Arms and Light Weapons under the ECOWAS Legal regime taking Nigeria as a case study. The objective of this dissertation is to find out why small arms and light weapons have continued to proliferate in Nigeria despite being a signatory to the ECOWAS Legal Regime, in this case, the ECOWAS Convention on Small Arms and Light Weapons and Other Related Materials. Using Doctrinal Methodology, the dissertation shows that Small Arms and Light Weapons proliferation and misuse has increased criminality, youth violence, hostage taking, militancy, community crises, oil bunkering and insurgency. More so, it further asserts that their wide availability fuels ethno/religious conflict, political instability and has direct influence on the escalation and sustenance of peace, insecurity and development. This dissertation examines the sources of small arms and light weapons, the motivational forces behind the proliferation and Federal Government initiatives to curb this menace in Nigeria. It also focuses on the legal regime on small arms as they concern the control of small arms proliferation in Nigeria and argues that the National Law in place is out-dated and inadequate to curtail and impede the proliferation and misuse of SALW. It further argues that though the extant ECOWAS legal regime is robust enough to support any sustainable progress in this area, however, non-compliance by member States and particularly Nigeria to harmonise their laws with the provisions of the ECOWAS Convention certainly lives much to be desired. Findings revealed that the inability of the Nigeria government and the law enforcement agencies to check the supply and the demand factors of the proliferation of SALW in Nigeria has heightened and worsened the security situations in the country. To this extent, the dissertation recommended amongst others, that there should be significant changes in the National legislation harmonizing same with the ECOWAS Convention because of the minimum standard requirement in article 21 of the Convention while dealing with the demand factors of SALW that heightens the proliferation of SALW by partnering with the private sector to undertake an aggressive job creation programme for Nigeria's teeming and idle youths.

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LIST OF ABBREVIATIONS

| | | |
|---------|---|--|
| ATT | - | Arms Trade Treaty |
| DDR | - | Disarmament, Demobilisation, Reintegration |
| ECOSAP | - | ECOWAS Small Arms Control Programme |
| ECOWAS | - | Economic Community of West African States |
| EG | - | For example |
| Eds. | - | Editors |
| E.t.c | - | Etcetera |
| GIABA | - | Inter-Governmental Group Against Money Laundering in West Africa |
| IANSA | - | International Action on Small Arms |
| IDP | - | Internally Displaced Persons |
| Ibid. | - | Ibidem |
| MEND | - | Movement for the Emancipation of Niger Delta |
| NACSA | - | National Commissions for Small Arms |
| NATCOM | - | National Committee on the Proliferation and Illicit Trafficking in Small Arms and Light Weapons |
| NCPTAW | - | National Committee on the Proliferation and Illicit Trafficking in Small Arms and Light Weapons |
| No. | - | Number |
| Op. cit | - | In the work cited or referred to |
| Ors. | - | Others |
| P | - | Page |
| PCASED | - | Programme for Coordination and Assistance on Security and Development |

| | | |
|--------|---|---|
| SALW | - | Small Arms and Light Weapons |
| Supra | - | Earlier in this text |
| UN | - | United Nations |
| UNDDA | - | United Nations Department for Disarmament Affairs |
| UNDP | - | United Nations Development Programme |
| UNHCR | - | United Nations High Commissioner for Refugees |
| UNIDIR | - | United Nations Institute for Disarmament Research |
| UNGA | - | United Nations General Assembly |
| UNODA | - | United Nations Office for Disarmament Affairs |
| UNREC | - | United Nations Regional Centre for Peace and Disarmament in Africa |
| UNSC | - | United Nations Security Council |
| UNPoA | - | United Nation Programme of Action |
| www | - | World Wide Web |

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Whether it is Africa, Sri Lanka, or even Chechnya and Afghanistan, it is not heavy weaponry or hi-tech devices that kill the most people, but the flood of cheap, easy to get, Small Arms and Light Weapons that has swept over so many countries. Yet a lot of this cross-border arms trade is illegal.¹ Relying on highly organized international logistical structures, criminals trespass territorial boundaries, whilst law enforcement agents act within the confines of domestic law to counter the proliferation of Small Arms and Light Weapons. Report has it that Small Arms and Light Weapons (SALW) are responsible for the majority of battle-related conflict deaths, an estimated 60-90 percent of all direct conflict victims are killed with firearms. Large numbers of men, women, older people and children die indirectly from the effects of armed conflict on the economy, ruined health and security infrastructures, disease and famine². Ironically, the use of these weapons is common to the global South. For instance Africa is one of such places because of its vulnerability to different kinds of conflicts including ethnic and religious crisis. The relation between the accessibility of SALW and the outbreak and severity of conflict is more dramatically evident in West Africa. Liberia was the first to suffer. With only 100 irregular soldiers armed primarily with AK-47 assault rifles, Insurgent leader

¹. Lumpe, L. (2000) *Running Guns: The Global Black Market in Small Arms*. London: Zed. PP. 1

² Akinosho, L (2014, February) Small Arms, Light Weapons and Weapons of Mass Destruction: The Journey Towards Non-Proliferation and Disarmament. *NigeriaWorld*. Retrieved on 24 July, 2015 at 6:24pm from www.nigeriaworld.com/feature/publication/akinoshos/021414.html

Charles Taylor invaded the country and within months, he had seized mineral and timber resources and used the profits to purchase additional light weapons. Had he needed to equip his forces with heavier weapons such as artillery, armored cars and tanks—the weapons conventionally associated with a conquering army—Taylor would have faced crippling logistical obstacles. In comparison, a few boatloads of assault rifles, rocket-propelled grenades and machine guns were simple to transport and provided more than enough firepower³.

The firepower of modern SALW —and the rapid escalation of violence that such weaponry makes possible—was evident even in the early stages of Liberia's civil war. Much the same cycle of violence engulfed in Rwanda, with SALW as the primary weapon of the day. Once competing groups have been armed with SALW, any minor dispute can escalate quickly into a major bloodbath. And the availability of such weapons, even in remote and inaccessible places makes it difficult for the International community to bring the warring parties to the bargaining table and, curb the cycle of bloodletting. Brokering peace has proved especially difficult in countries such as Angola and Sierra Leone, where rebel forces have been able to exchange diamonds or other commodities for guns and ammunition on the black market.⁴

In West Africa, due to porous borders, weak state institutions, and increasing trade in small arms and light weapons in the sub-region, post conflict States such as Cote d'Ivoire, Guinea-Bissau, Liberia and Sierra-Leone are increasingly prone to

³Boutwell, J and Klare, M.T (2000) A Scourge of Small Arms. *America Academy of Arts and Sciences*. <http://www.amacad.org/news/scourge.aspx> Retrieved on 1 March, 2013 at 5:15pm.

⁴. *Ibid* p 5

destabilization. The region has witnessed an outbreak of ethnic, religious and sectarian conflict characterized by routine massacre of civilians. These wars have killed millions, devastated entire geographic regions, and left tens of millions of refugees and orphans. Little of the destruction was inflicted by the tanks, artillery or aircraft usually associated with modern warfare; rather most was carried out with pistols, machine guns and grenades⁵. Recent events show that influx of small arms has caused instability even in relatively stable West African Countries. For example, armed with small arms and other light weapons, Islamic rebels returning from the Libyan conflict have excised Northern Mali from the rest of the Country⁶.

In Nigeria, Small Arms and Light Weapons (SALW) and groups misusing them, are dangerously out of control in the Niger Delta Region while Boko Haram insurgents employing the use of light arms have also caused considerable instability in the Northern part of the Country.⁷ Although small arms and light weapons are not themselves a cause of conflict, their ready accessibility and low cost can prolong combat, encourage a violent rather than a peaceful resolution of differences, and generate greater insecurity throughout society—which in turn leads to a spiraling demand for, and use of, such weapons⁸.

However, despite the notorious and disruptive reputation that SALW has generated, it has failed to attract the degree of International commitment it deserves.

⁵Boutwell, J and Klare, M.T (2000). *Op cit* p 2

⁶

⁷Edeko, S.E. (2011). The Proliferation of Small Arms and Light Weapons In Africa: A Case Study of the Niger Delta in Nigeria. *Sacha Journal of Environmental Studies*, 1(2). Retrieved on July 30, 2013 at 4:49pm from www.sachajournals.com/documents/EDEKOSJE5002B.pdf

⁸Boutwell, J and Klare, M.T (2000). *Op cit* p 8

Major world powers have not demonstrated the degree of resoluteness and unequivocation it has in stemming the proliferation of SALW. Some scholars expose the irony of this priority by arguing that nuclear weapons, with all their horror, have not killed since Nagasaki in 1945, while SALW have killed an estimated three million men, women and particularly children since 1990. For West Africa, foreign interest in her vast mineral resources and viability of the SALW trade has both been identified as being responsible for the less than sufficient interest of the developed world in stemming this lethal trade. The argument by some other scholars that SALW do not cause conflict is well taken, but its spiral effect on conflicts remains too significant to ignore.

According to Ero and Ndinga-Muvumba⁹ writing on Small Arms and Light Weapons in a contribution to Adebajo and Rashid's *West Africa's Security Challenges Building Peace in a Troubled Region* "While Small Arms and light weapons do not of course, cause conflicts, they soon become part of the conflict equation by fuelling and exacerbating underlying tensions, generating more insecurity, deepening the sense of crisis, and adding to the number of casualties."

The small arms trade is a lucrative industry. The gun trade is worth \$ 4 billion annually, of which up to \$ 1 billion may be unauthorized or illicit¹⁰ that exploits Regional conflicts for economic gain. Estimates of SALW in circulation worldwide is put at

⁹Comfort, E. & Angela, N.M. (2004). Small Arms and Light Weapons. In Adekeye, A., and Ismail, R. (Eds.), *West Africa's Security Challenges: Building Peace in a Troubled Region* (pp 224-235). London: Lynne Rienner Publishers.

¹⁰Osimen, G. U, & Akintunde, B. A. (2015) Small Arms and Light Weapons (SALW) Proliferation and Problem of National Security in Nigeria. *International Affairs and Global Strategy* vol. 29. Retrieved on July 24, 2015 at 4:51pm from www.iiste.org/Journals/Index.php/IGS/article/viewFile/19664/20160

between 640 million¹¹ to 875 million¹², 70 to 75% are illegally in civilian possession, 100 million are estimated to be in Africa, about 30 million in sub-Saharan Africa and 8¹³ to 10 million in West Africa¹⁴. Apart from civilian casualties, the global proliferation of small arms contributes to terrorism, the use of child soldiers in violent conflicts, Regional instability, and the weakening of National Governments as non-state actors monopolize military resources¹⁵.

The issue of proliferation of Small Arms has surfaced at the United Nations in recent years with International recognition of the disproportionately large destructive capacity and potential of Small Arms. Some of the largest exporters of small arms (which include the five permanent members of the United Nations Security Council) face responsibility for supplying arms, directly or indirectly, to conflict zones¹⁶. Lack of transparency by weapons exporters makes it difficult to assess the extent to which terrorist organizations and other non-state actors are receiving State support. Once Small Arms fall into the hands of Non-State actors that are unaccountable to International or domestic laws, regulating their distribution is an even larger challenge¹⁷.

Given the horrifying situation above, up on till 2014 when the Arms Trade Treaty was signed, the only existing Mechanism for the Timely Information on Global

¹¹*ibid*

¹²Small Arms Survey.(2013) *Civilian Inventories*. Retrieved on July 24, 2014 at 11am from www.smallarmssurvey.org.Small-Arms-Survey-2013

¹³Osimen, G. U. & Akintunde, B. A. (2015) *op cit*

¹⁴ Bello, A (2010, November 29) 70% of Illegal Arms in West Africa are in Nigeria – NATFORCE Boss. *Daily Trust*, 29. Retrieved on October 10, 2013 at 3:05pm from www.dailytrustnig.org/

¹⁵*The Question of Dealing with the Cross-Border Proliferation of Small Arms* (2011) www.valberta.ca/~hsmun/smallarmsproliferation/ Retrieved on February 23, 2014 at 10pm.

¹⁶*ibid*

¹⁷*ibid*

Trafficking, the United Nations Register of Conventional Weapons, covered major weapons only. No doubt that so many measures have been put in place by both Government and Non-Governmental organizations, but as recognized by Professor Micheal T. Klare,¹⁸ none of these measures by itself can overcome the dangers posed by the uncontrolled spread of Small Arms and Light Weapons. The problem is far too complex to be solved by any single initiative. Combating proliferation and illicit trafficking therefore requires a multi-sectoral approach that provides for a wide variety of measures and approaches, including legislation and regulation, law enforcement, civil society cooperation, stockpile management, collection and destruction and development¹⁹. This dissertation will identify measures that can help combat the proliferation of Small Arms and Light Weapons, by adopting a multi-sectoral and comprehensive approach.

1.2 Statement of the Problem

The ECOWAS Sub-region has for many years been the most unstable Sub-region on the continent. The preponderance of SALW has particularly fuelled conflicts from which the Sub-region is still struggling to survive. The wide spread availability of SALW has fueled conflicts that resulted in the loss of lives and displacement of millions of West Africans. It has also caused the destruction of an immeasurable amount of property, gross violation of human rights, and facilitation of the practice of bad Governance, subversion

¹⁸. *Ibid*

¹⁹UNDP (2008). How to Guide the Establishment and Functioning of National SALW Commissions. Retrieved on 24 July, 2015 at 7:09pm from <http://www.poa-iss.org/Poa/poa.aspx>.

of constitutions, coups d'état, creating and maintaining general state of fear, insecurity and instability. They are also being employed for non-political and non-conflict-related crime and violence. These conflicts have been fuelled by a pool of young people frustrated by a lack of employment prospects and easy access to light weapons. The proliferation and misuse of small arms is increasing in proportion. These Small Arms have played a major role in exacerbating crimes and armed violence.

Nigeria's internal security environment has deteriorated in the last decade. Old security threats have remained or even assumed worrisome dimensions, while new threats have emerged. One of the old threat that assumed new dimensions is small arms and light weapons (SALW) proliferation²⁰. Threats considered to be relatively new in Nigeria – though not without precedent, in the strict sense of it – are the outbreak of Insurgency and domestic terrorism, evident in the growing audacity of the Boko Haram sect²¹, the 50th Independence Day (1 October 2010) twin bomb blasts in Abuja that killed 12 people and injured several dozen others carried out by a faction of the Movement for the Emancipation of the Niger Delta, the recent, 14 April 2014, Nyanya motor park bombing that claimed more than 75 lives and injured several dozen others and the abduction of over 200 girls of GGSS in Chibok, Borno State the next day, leaving the country in a state of insecurity. A common denominator in the manifestation of both old and new threats is the use of SALWs. Thus, Nigeria now features prominently in the three-spot

²⁰Onuoha, F. (2011). Nigeria's Vulnerability to Terrorism: The Imperative of a Counter Religious Extremism and Terrorism (CONREST). *Strategy, Peace and Conflict Monitor*. Retrieved on February 23, 2014 at 10:05pm from http://www.monitor.upeace.org/innerpg.cfm?id_article=772/

²¹ The Boko Haram, a radical sect operating largely in Northern Nigeria, despises Western education and civilisation. This explains why the sect is popularly known as the Boko Haram, literally meaning 'Western education is a sin'.

cline of transnational organised trafficking of SALWs in West Africa: origin, transit route and destination²².

In a research carried by Oxfam International, the International Action Network on Small Arms (IANSA) and Safer world, African countries spent over 300 billion dollars on armed conflict and this amount according to the report corresponds almost identically to the sum of International aid that was granted to Africa within the same period²³. Spending this kind of money in a part of the world where millions perish yearly due to easily curable diseases, hunger and starvation and where basic education is not guaranteed is grossly irresponsible, intolerable and clearly demonstrates how many African countries suffer from bad governance as well as from the irresponsible actions of weapons producing states.

Africa is also a major transshipment point for the international trade, as well as a major producer of local arms.²⁴ This phenomenon threatens the consolidation of democracy and security in the region, which is necessary for sustainable development. According to Bello²⁵, there are about eight to ten million illicit small arms and light weapons in West Africa. The proliferation and misuse of Small Arms and Light Weapons directly enables a horrifying number of deaths and injuries around the world each year,

²²Osimen, G. U, & Akintunde B. A, *op cit*

²³IANSA, Oxfam International and Saferworld. (2007). *Africa's Missing Billions: International Arms Flows and the Cost of Conflicts*. Retrieved on November 17, 2013 at 1:15pm from http://www.oxfam.org/en/files/bp107_africas_missing_billions_0710.pdf/

²⁴Edeko, S.E. (2011). *Op cit*

²⁵Bello, A (2010, November 29) *op cit*

and it poses a grave threat to the stability and development of many countries, as well as to the success of UN-mandated peace operations.²⁶

There are an estimated three million to six million²⁷ small arms and light weapons in circulation in Nigeria. This dissertation appraised the ECOWAS Convention on SALW and Other Related Materials, 2006, and the level of Nigeria's compliance with the Convention, the dissertation also examined the extent to which Nigerian Firearms Act has curbed the proliferation and Misuse of SALW in Nigeria. It further examined the sources of small arms and light weapons into the area, discussed the motivational forces behind the proliferation, examined Federal Government initiatives to curb these menace and gave recommendations that can combat the proliferation of SALW in Nigeria.

1.3 Aim and Objectives of the Research

The aim of this dissertation is to appraise the ECOWAS Legal Regime against the proliferation and misuse of Small Arms and Light Weapons in the ECOWAS Sub-region with a view to finding out why SALW has continued to proliferate in the sub-region and in Nigeria in particular, despite being a signatory to the ECOWAS Convention on Small Arms and Light Weapons and other International Instrument on SALW, with a view to proffering solution on how to curb the menace of SALW proliferation. The objective of the dissertation is to realize the following:

²⁶. Harg, M.(2002) *Shining a Light on Small Arms Export: The Record of State Transparency*. Retrieved on March 1, 2013 at 5:30pm from www.smallarmssurvey.org/smallarms4.pdf

²⁷ Ikelegbe, A (2014) Routes and Illegal Arm Caches Between Ghana, Togo, Benin and Nigeria. In Asoba, S & Glokpor, R (Eds.), *Trafficking of Small Arms and Light Weapons (SALW) in West Africa: Routes and Illegal Arm Caches Between Ghana, Togo, Benin and Nigeria*. Retrieved on July 24, 2015 at 6:48pm from www.globalinitiative.net/.../FES_Trafficking%20in%20Small%20Arms%20....pdf.

- a) To ascertain the extent Nigeria has complied with and implemented the ECOWAS Convention on Small Arms and Light Weapons.
- b) Why Small Arms and Light Weapons proliferation have continued to thrive in Nigeria, despite being signatories to the ECOWAS Convention and other International Instruments dealing with illicit proliferation of SALW.
- c) To ascertain the extent the Nigerian Fire Arms law has curbed the proliferation of small arms and light weapons in Nigeria
- d) To ascertain if the inability of the Nigerian state to deal with the demand factors and the inability of the law enforcement agencies to check the supply factors heightened the proliferation of SALW in Nigeria.
- e) To also examine the successes, effectiveness and challenges of the ECOWAS Small Arms control regimes from voluntary to legally and politically binding Agreements.
- f) To come out with some viable recommendations.

1.4 Scope and Limitation of the Research

This dissertation is a general work that will take a look at the situation in Nigeria and how it can move along with the global community in addressing the problem of proliferation and misuse of SALW in the Country. There are several countries that are signatories to the ECOWAS Legal Regime on the proliferation and misuse of SALW within the sub-region. This Dissertation is not concerned about the effectiveness of the ECOWAS Legal Regime in curbing the menace of such proliferation of SALW in the

entire sub-region. Rather the Dissertation would be limited to the appraisal of ECOWAS Convention on SALW and how far it can assist in curbing such menace in Nigeria if complied with and implemented. Tremendous amount of research has already been done in this field. Therefore, due to logistical constraints, this dissertation will, to a large extent, make use of secondary data obtained from books, articles and publications in both print and electronic media (the internet). Where information and opinion(s) of experts in this field are used, it will be clearly indicated for purposes of credibility and reliability of the data in this research. To the extent of the dependence on secondary data, this dissertation will be limited in that regard.

1.5 Significance/Justification of the Research

Without doubt, there exists a major lacuna in the domain of public policy for the management of Small Arms and Light Weapons proliferation. By appraising Nigeria's effort at implementing the ECOWAS Convention on SALW in the West African sub-region, this dissertation is expected to identify the pitfalls inherent in the effort and how to plug them and thus provide useful reference to policy makers in the Sub-region and contribute to ongoing debates on the problem of SALW proliferation. The dissertation will x-ray various efforts Nigeria has made to curb the incidence of SALW and thus further contribute to existing body of knowledge, while serving as reference material for other researchers on similar topics. This dissertation shall therefore provide recommendations that will address the problems of Small Arms and Light Weapons. This will also enhance assessment of the extent to which small arms can be identified as a

threat to security and development, by outlining the existing scholarly work on re-conceptualizing security and analysing the socio-economic consequences of the phenomena of SALW. This dissertation is therefore justified because it is timely and topical and beneficial to Law makers, policy makers, researchers and students interested in the study of SALW.

1.6 RESEARCH METHODOLOGY

Research Methodology is defined as the overall strategy employed by a researcher in collecting and analyzing data with a view of finding solution to the identified problem. The research methodology of this dissertation is structured on a doctrinal approach, employing deductive reasoning to draw conclusions about the issues of SALW proliferation and misuse in Nigeria. Extensive use was made of the wealth of existing materials on the subject in private Libraries around me and on the internet. Sources of such secondary information are well acknowledged.

1.7 LITERATURE REVIEW

Weapons proliferation has attracted widespread attention and critical analysis not only from the media but also from the academic circles worldwide and within Nigeria too. This is because of the national sensitivity of the issue and the danger it posed to the sovereignty and hegemony of the State and the general public security. Corpus of literatures exist on the security related issues of weapons' proliferation detailing some of the origins, dynamics, evolution, peculiarities and extant danger to National, political, social and human security, not only within Nigeria but with equal strength West Africa.

Linda Darkwa²⁸ posits that the licit and illicit dichotomy in arms proliferation is problematic, given the fluidity of the two terms. It is a function of legal interpretation/status, which may depend on a change of location, designation, jurisdiction and ownership. Licit firearms are those that are (a) manufactured or assembled in conformity with the laws of the country of manufacture and (b) procured and distributed in accordance with national, regional and international laws. Illicit firearms, on the other hand, are those (a) manufactured or assembled in violation of national laws and (b) procured and distributed in contravention of national, regional and international laws. Distribution of arms includes sales by states and commercial entities as well as transfers by states. An arm is licit only if it meets the triple criteria of legal manufacture, procurement and distribution in its totality. Therefore, if arms are legally manufactured, legally procured, but illegally distributed, they lose their licit status. Flowing from this, the classification of an arm as licit or illicit is a product of origin, destination and use. It is important to clarify that the function to which a weapon is put does not render it illicit. Thus, a licit weapon used in the commission of an illegal act does not change the status of the weapon.

The end of the Cold War saw the opening of a Pandora's Box in several countries. Governments that had been able to fend off the opposition suddenly found themselves in fierce battles with non-state actors. The need to dispose of Cold War weapon surpluses and expansion of production capacity led to a glut of weapons in arms-producing

²⁸ Darkwa, L (2011). *The Challenge of Sub-Regional Security in West Africa: The case of the 2006 ECOWAS Convention* (Discussion Paper 69). Retrieved on July 24, 2015 at 6:41pm www.nai.diva-portal.org/smash/get/diva2:478514/FULLTEXT01.pdf

countries. Consequently the “desire to promote arms exports as a means of earning foreign exchange²⁹” resulted in the availability of weapons to non-state actors. This new access to weapons provided a new impetus to groups in opposition to the governments of their countries and arguably helped to transform erstwhile latent tensions into armed violence in some countries. With profit as the main driving force, states were willing to overlook weapons control regimes in order to promote sales and maximize returns. Consequently, although the end-user certificate was supposed to be “a pledge by relevant officials in the purchasing country that the arms were intended solely for the use of that country’s military forces and would not be transferred to third parties without permission of the country of origin³⁰”, this practice was severely undermined in a number of ways by states. Fiske³¹ observes that with a seemingly constant supply of smuggled arms at their disposal, groups as far afield as West Africa... have been able to prolong conflict, with disastrous effects on their immediate communities and beyond, gun runners need war to keep them in business. The proliferation of Small Arms is thus a brisk business in the West African sub-region for the USA and its allies. Estimates of the size of this trade are put at between \$1 billion to \$4 billion annually³².

²⁹Naylor, R.T.(2001). The Rise of the Modern Arms Black Market and the Fall of Supply-Side Control In Williams, P and Dimitri, V.(Eds).*Combating Transnational Crime: Concepts, Activities and Responses* (pp. 209–36). Oxford: Frank Cass.

³⁰*ibid*

³¹. Fiske, P. Gunning for Change in BBC on/air October. *VVC World Service Documentaries, 2000.*

³²IRIN In-depth. (2006). *Guns Out of Control: The Continuing Threat of Small Arms*. Retrieved on March 18, 2013 at 1: 45pm from <http://www.irinnews.org/pdf/in-depth/Small-Arms-IRIN-In-Depth.pdf>

For Onuoha³³, when and where these SALWs are deployed, human security has been the main victim. As Wallacher and Harang³⁴ cited in Linda Dikwa, noted in their well-researched report, there is a “common understanding that proliferation of conventional arms contributes to human rights violations, breaches of international humanitarian law, to intensifying and prolonging armed conflict, and threatens national and regional security”. Their observations have deeper significance in those regions of the world where SALW have become weapons of choice for warlords, criminal networks (drug and human trafficking, piracy, mineral and oil smuggling) and other conflict actors, resulting in immense human suffering, death, destruction and insecurity. They assume even more significance in national and local contexts where the destructive impact of SALW proliferation is directly experienced. This situation makes it more compelling that global efforts and discourses be harmonized with ongoing processes at the local, national and regional levels. Nigeria is one of the Third World countries where the proliferation of this arsenal is manifested in crisis proportions and its society has become fully militarized and enmeshed in the culture of the gun, opines Isiaka Badmus³⁵. Okoye cited in Gyong and Ogbadoyi³⁶, observes that, no man is an island unto himself. Individuals interact at the social, psychological and mental levels of existence in real life. This social interaction usually results in meeting the needs of members as well as creating situations of

³³ Onuoha, F.C (2012) Small Arms and Light Weapons Proliferation and Human Security in Nigeria. *Conflict Trends*. Retrieved on February 26, 2014 at 9pm from www.accorg.org.za

³⁴ Darkwa, L. *op cit*

³⁵ Isiaka, A B (2010). Oiling the Guns and Gunning for Oil: Oil Violence, Arms Proliferation and the Destruction of Nigeria's Niger-Delta. *Journal of Alternative Perspectives in the Social Sciences*, 2(1), 323- 363

³⁶ Gyong, J. E & Ogbadoyi, C (2013) *Public Perception of the Proliferation of Illegal Small Arms and Ethno-Religious Conflicts in Kaduna Metropolis, Kaduna State, Nigeria*. Retrieved on July 24, 2015 at 6:35pm from www.ajcrnet.com/journals/vol_3_No_1_January_2013/6.pdf

disagreements, quarrels, clashes and sorrow, which invariably lead to conflict. The above statement indicates the imperativeness of conflicts in human society. The world continues to witness various forms of conflict as a result of competing interests, values and ideologies.

In the words of, Godwin Onuoha³⁷,

The sources of small arms and light weapons proliferation are many and varied. They include the manufacture and supply of new weapons both inside and outside the continent to the remnants of weapons shipped into Africa in the 1970s and 1980s by the former Soviet Union, the United States, and their allies to facilitate different inter-state and intra-state proxy wars. Intra-state armed conflicts, such as in the case of Nigeria's Niger Delta region, has however expanded the frontiers of the gun trade in Africa by creating considerable demand for these weapons of war.

Malam³⁸ however posits that the proliferation of arms in West Africa could be attributed to a number of factors, prominent among them were: the surplus arms that were provided during the cold war by the two opposing super powers, these arms were pumped to serve proxy inter-state conflicts; Massive flow of weapons from central and Eastern Europe and the loosening control of arms industry as a result of the collapse of Soviet Union. Following the end of cold war, these arms in circulation lost their way into the hands of illegal arms dealers, security entrepreneurs, ethnic militia groups, private military companies, and local smugglers there by fueling on-going wars and facilitating the commencement of new ones in Africa. Also, the accelerated pace of globalization in the same period facilitated both legal and illegal cross-border transfers of these weapons,

³⁷ Onuoha, G.(2012) Contextualizing the Proliferation of Small Arms and Light Weapons in Nigeria's Niger Delta: Local and Global Intersections. *African Security Review* 15(2) Institute for Security Studies

³⁸Malam, B. (2014) Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security, *International Journal of Humanities and Social Science*. Retrieved on July 24, 2015 at 4:59pm from www.ijhssnet.com/journals/Vol_4_No_8_June_2014/27.pdf

while a sudden upsurge in intra-state conflicts created an overwhelming demand for the SALW, thereby making them weapons of choice in majority of recent conflicts and in non-war settings such as sectarian violence (ethnic, religious and chieftaincy conflicts), suicides, murders, homicides and accidents.

In the current world environment in which the realities of globalization are literally forcing the rapid break down of border lines, low intensity conflicts in which small arms are critical, and widely used, are threatening the non-negotiable core value (National Security) of especially developing countries of Africa and indeed the countries of the West African sub-region including Nigeria. According to Malam³⁹, the forces of globalization bring with it opportunities and challenges, the elimination of state enforced restrictions on exchanges across borders and the increasingly integrated and complex global system of production and exchange that has emerge as a result further complicate the challenge of containing SALWs proliferation. The idea of globalization and its advocate for free market forces with minimum economic barriers and open trade for world development provides ground for illicit trade in arms by minimizing custom regulations and border control, trafficking of small arms becomes easier. Malhotra, cited in Malam⁴⁰, stressed that, a miniscule percent of container ships have cargo checks, therefore making the arms movement smooth. Faking documents bribing officials and concealing arms as humanitarian aids are common practices. He went further to identify globalization factors that facilitate proliferation of illicit trade in arms as follows⁴¹:

³⁹*ibid*

⁴⁰ Malam, B: *op cit*

⁴¹*ibid*

(a) Political and economic integration are coupled with lesser restrictions in migration and human movement. Dealers in SALW migrate to various regions, motivated by business expansion or reduced operational risks.

(b) Banking reforms and capital mobility have aided the black market to spread its trade internationally, utilizing every angle of the well linked financial market. This also gives rise to offshore markets and tax shelters. Banks have introduced cards bearing microchips, which are able to store large sums of money. These cards are portable outside conventional channels or can be easily bartered among individuals.

(c) The linkage of banks with the internet has posed a new challenge in combating illegitimate activities in the financial sector. E-banking has digitized money making it prone to criminality, including illicit trade in SALW. Adding to this, economic integration among regions blesses arm brokers with more opportunities to shelter their money, by investing in different stock exchanges.

(d) Profound expansion of commercial airline and freight industry (making transport cheaper and easier) are instrumental in increased penetration of arms in conflict zones. Global merger of airline companies, supply chains, shipping firms make it tough to supervise unlawful practices in air and water.

(e) The growth of global communication in the past two decades has been unfathomable. This has enhanced the ability of arms dealers to communicate internationally through the web at a cheap rate.

The report from the Secretariat of the Geneva Declaration, 2011 cited by Bashir Malam⁴², provided that: SALW kill between 500,000 and 750,000 people annually and are a “contributory factor to armed conflict, the displacement of people, organized crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development”. An estimated 50 percent of illicit weapons that proliferate in Africa are used in internal conflicts, armed robbery and drug trafficking. Availability of small arms outside the formal security structures had contributed greatly in creating continuous cycle of violence and instability in which particularly women and children are brutalized. Studies indicates that people are very sensitive to electoral outcomes and that it is one of the biggest triggers of armed conflict in many countries in West Africa. Violence in Africa’s elections affects between 19-25 percent of elections. The regularity with which electoral violence occurs suggests that underlying grievances or structural characteristics may be tied to the elections and fuel the violence says Bekoe, cited in Malam⁴³. In recent past West Africa witnessed some of the worst moments of tension in; Cote d'Ivoire in 2010, Nigeria in 2003, 2007, and 2011 elections, Sierra Leone, Liberia, Guinea, Niger, among others⁴⁴. In many of these conflicts, small arms remain the key instruments used to unleash violence on innocent people destroying thousands of lives and property, displacing millions of people. Malam⁴⁵ citing Jones & Hoetu, underscored that resort to violence serves as a basis for refusal to accept the outcome of declared election’s results, sometimes, supporters of

⁴²Malam, B. (2014) *op cit*

⁴³Malam, B. (2014) *op cit*

⁴⁴*ibid*

⁴⁵*ibid*

political parties resort to the use of small arms to protest against their dissatisfaction against the outcome of the votes – a development that resulted in a full blown armed conflict. These are indications that people may choose to express their frustration, suspicion and dissatisfaction with the outcome of the elections by resorting to the use of arms as it happened in Cote d'Ivoire in 2010⁴⁶.

According to Gyong and Ogbadoyi⁴⁷, where there is the greatest deprivation and frustration... and where there exists the greatest disparity between the social values to which people aspire and the availability of facilities for acquiring these values in conventional ways, the development of crimes as an organized way of life is most marked. Crime, in this situation, may be regarded as one of the means employed by people to acquire, or to attempt to acquire, the economic and social values generally idealized in our culture, which persons in other circumstances acquire by conventional means. In Nigeria, there is overwhelming emphasis on being successful which means to be wealthy, to engage in ostentatious lifestyle and conspicuous consumption (possess expensive cars, large and expensive buildings, make huge donations at public fund-raising, etc.), to be highly educated and to wield political power. The emergence of men of means and wealth who indulged in conspicuous consumption and materialism and an equally impoverished human category⁴⁸ has negatively impacted on crime wave bordering on kidnapping and robbery spurred by the use of SALW. Nigerians who failed

⁴⁶ *ibid*

⁴⁷ Gyong & Ogbadoyi: *op cit*

⁴⁸ Ayuba, C. and Okafor, G. (2015) The Role of Small Arms and Light Weapons Proliferation in African Conflict. *African Journal of Political Science and International Relations*. Retrieved on July 24, 2015 at 5:04pm from www.academicjournals.org/journals/AJPSIR/article-full.../4EF75E050707.

to meet these aspirations and goals prescribed by society experience tremendous pressure or strain. Because of the, disconnect between the goals and the means, many individuals may turn to other (non-institutionally prescribed) means to attain the cultural goals. Hence, with the massive flow SALW into many parts of the sub-region, the incidences of high profile crime waves and criminality became entrenched⁴⁹. It is common to now hear young men pronounce the cliché “if the rich have smart cards to make purchases, I have my arm which is my smart card” says Dube cited in Ayuba and Okafor⁵⁰, explanation of crime and frequent conflicts in Nigeria, and particularly Kaduna metropolis lies in the degree of correspondence between culturally prescribed goals and institutionalized norms or means for attaining the cultural goals. In another dimension, Orosanye and Igbafe⁵¹ noted that the increased rate of indiscipline, disregard for the rule of law and the culture of impunity are some of the local factors that account mostly for the rise in criminal violence in Nigeria. The lack of respect for the rule of law results in indiscipline. And indiscipline thrives because of the culture of impunity. This is as a result of failure of government to effectively and adequately punish offenders. And such violation is prevalent amongst the elite class which has been engendered by the culture of impunity. And this has found its way from the elite class down to the grass root. The lack of ideals among the ethnic groups is another factor that accounts for the increased rate of violent crime and conflict in Nigeria. Ethnic groups should be built on ideals; and such ideals

⁴⁹ *ibid*

⁵⁰ *ibid*.

⁵¹ Orosanye, A. O & Igbafe, A.A. (2012) Ethnic Militia in Nigeria: An Assessment of the Terrain of Conflicts, Violence and Crime. *African Journal of Social Sciences*, 2(1), 97-115. Retrieved on July 24, 2015 at 8:00pm from www.sachajournals.com/AFEAYE_AJSS_002.pdf

should be the guiding principle for their existence. They should have a meaningful cause for which they struggle. In the absence of such ideals, criminal violence, conflict, crises and social and political disturbance have been the attendant results greatly empowered by the availability of SALW.

Abdel-Fatau Musah⁵², in his article: *The Political Economy of Small Arms* stated that many societies are becoming increasingly militarized. Militarization includes the presence of heavily armed policemen or soldiers patrolling streets, military personnel occupying high government posts, military censorship, armed guards in schools and public buildings, armed checkpoints along roads and curfews. The consequence of societal militarization has been the realization of cultural militarism and the horizontal diffusion of weapons throughout communities. Widespread proliferation has often led to the acceptance of weapons as a normal part of life and violent conflict as an everyday occurrence.

As noted recently by the UN Secretary-General⁵³: While not by 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. Perhaps most grievously, we see a vicious circle in which insecurity leads to a higher demand for weapons, which itself breed still greater insecurity, and so on.

⁵²Musah, A. (2001). *The Political Economy of Small Arms and Conflict*. DPMN Publications. Retrieved on March 12, 2015 at 6:32pm from www.upan1.un.org/intradoc/groups/public/documents/UPAN002406.pdf

⁵³. United Nations Economic and Social Council, Vienna, July 28, 1998.

For Akinosho⁵⁴, it is more difficult to achieve agreements on SALW than on Weapons of Mass Destruction (WMD) and further argues that despite several agreements on SALW, these have not impeded the illicit trade in these arms compared to WMD. Existing instruments of SALW control have focused on criminalizing illicit transfers, marking and record keeping, stockpile security and reductions, international co-operation and assistance, transparency and information exchange, and transfer controls. However, transparency and transfer controls remain relatively weak⁵⁵ However, transparency and transfer controls remain relatively weak⁵⁶ while the regulation of interstate SALW transfers is weak⁵⁷

In the same vein, Abdul-Fatau Musah⁵⁸, observed that the thrust of international efforts to curb proliferation tend to concentrate on the manufacture and supply of new weapons, a major pipeline of SALW remains the stockpiles that were pumped into Africa in the 1970s and 1980s by the ex-Soviet Union, the USA and their allies to fan proxy interstate wars. These leftover weapons Musah claimed, have found their way through clandestine networks involving rogue arms brokers, private military companies, shady airline companies and local smugglers to exacerbate on-going conflicts and facilitate the commencement of new ones in the continent. Africa itself boasts of countries that are arms manufacturers – South Africa, Zimbabwe, Egypt, Morocco and Nigeria, among

⁵⁴ Akinosho, L: *op cit*

⁵⁵ Sears, N.A (2012) Controlling Small Arms and Light Weapons Proliferation: The Potential of the Arms Trade Treaty. *Paterson Review of International Affairs*, 12, 35–59.

⁵⁶ *ibid*

⁵⁷ Marsh, N.(2002) Two Sides of the Same Coin? The Legal and Illegal Trade in Small Arms. *Brown Journal of World Affairs*, (19)1, 217.

⁵⁸ .Musa, A: *op cit*

others, and countries that are dotted with growing small arms cottage industries. Finally, small arms have found their way into civilian hands from official sources due to a combination of factors, including the breakdown of state structures, lax controls over national armouries and poor service conditions for security personnel. According to Musah, these weapons have helped regionalize and prolong wars in conflict clusters around the Sub region. The effects – a most insecure social environment, spiraling violence, the mounting death toll and floods of refugees and Internally Displaced Persons (IDPs) – constitute a major developmental and human rights challenge. Where wars have officially come to an end, the presence of small arms makes sure that physical insecurity persists through banditry and violent settlement of scores. But even in these societies armed robbery is rampant and coercive; protection and vigilante justice are replacing the incapacitated state security rackets. As long as the small arms pipelines remain open, the prospects for peaceful conflict management, reigning in crime and promoting human rights will be greatly undermined. This has dire consequences for the process of democratization and fostering secure livelihoods. The proliferation and diffusion of SALW often take on a life of their own, creating multiple centre of power and bring into play many more armed actors. SAWL are particularly prone to rights abuse, as they are easier to maintain, manipulate and carry, and are deadly.

From our review of literature, there is growing body of published and unpublished works on SALW proliferation in Nigeria. Such works consider issues pertaining to small arms proliferation in the entire West African sub-region. Some dealt in detail with the dynamics of small arms trafficking, factors that encourage its proliferation and its

implications. They also provide a critical appraisal of the ECOWAS Moratorium on Small Arms over the years and identify the challenges and prospects of sustainable disarmament in the West African sub-region. However, none of these studies have appraised the ECOWAS Convention on SALW to ascertain the extent that the Nigerian State has complied with the contents of the Convention in its fight against the proliferation and misuse of SALW. It is this gap in literature and knowledge that this study sets out to fill.

1.8 ORGANIZATIONAL LAYOUT

This dissertation examines the proliferation and misuse of Small and Light Weapons under the ECOWAS Legal Regime, with particular reference to Nigeria. The Dissertation is structured into five chapters:

Chapter one provides a general introduction and background information of the Dissertation and opens the reader up to the purpose and significance of the subject matter. Furthermore a review of existing literature on SALW was conducted with the intent to providing an insight into the dynamics of SALW in general.

Chapter two deals with conceptual clarification of key terms. Key terms are defined. The definitions of key terms are critical to the dissertation owing to the general held misconception of what differentiates Small Arms from Light Weapons.

In Chapter three, the first part of the core analysis and appraisal of the topic of the dissertation commences. It contains sequential details of the scourge, the modes of circulation of SALW and the impact of the presence of SALW in the West African Sub-

Region. It also gives an insight into the history of the establishment of the ECOWAS. Furthermore, it evaluates and appraises the ECOWAS Legal instruments in combatting the SALW proliferation, its successes, weaknesses and challenges.

Chapter Four, the 2nd and main core analysis of this dissertation, critically evaluates the problem of SALW in Nigeria. It gives brief history the possession and proliferation of SALW in the country. While also acknowledging the existence of artisans in the country, it gave a run-down of the active participation of Nigeria on the developments of International Instruments against illicit proliferation of SALW. It also outlined the impact of this menace on the country. It concluded this chapter by stating that the existing National Law on Firearms is outdated, weak and falls short of modern day instruments against the misuse and illicit proliferation of SALW.

Chapter 5 will dwell on the conclusion drawn from the body of analysis presented within the preceding chapters. These conclusions would represent a credible analytical deduction from observed trends and patterns in the analysis of Chapter 4. This Chapter will also make recommendations in the context of Law Reviews, capacity building of relevant departments and good governance as measures to stem the proliferation of SALW in West Africa in general and Nigeria in particular.

CHAPTER TWO

CONCEPTUAL CLARIFICATION OF KEY TERMS

2.0 Introduction

For a better understanding of this dissertation, the definition of certain key terms has to be explained precisely. One important factor fuelling conflict and insecurity in the sub-region is the uncontrolled proliferation of SALW which constitutes one of the greatest humanitarian challenges of our time. The proliferation and misuse of SALW plays a key role in denying people entitlement to the three basic instincts of self-determination, self-extension and self-fulfillment, therefore a conceptual discussion of these key terms of peace, security, conflict, SALW and Control of SALW is thus vital to this dissertation.

2.1 Concept of Regional Peace, Security and Conflict

For a long time, peace was critically considered as the absence of war or armed conflict and international or internal security as synonymous with the absence of a military threat. Hence peace meant first and foremost that weapons were silent. If there was no armed confrontation, then peace was considered to prevail. Security is therefore the absence of danger and the feeling of a civilian peace of mind⁵⁹. The Glossary of Terms defines Peace as a political condition that ensures justice and social stability

⁵⁹Abdullahi, I. (2014) Arming Genocide In Darfur and South Africa: The Small Arms and Light Weapons Question. *International Journal of Peace and Conflict Studies*, 2(2), 140-154. Retrieved on July 24, 2015 at 6:05pm from www.rcmss.com/.../ARMING%20GENOCIDE%20IN%20DARFUR%20AND%20...

through formal and informal institutions, practices, and norms. Several conditions must be met for peace to be reached and maintained:

- a) Balance of political power among the various groups within a society, region, or, most ambitiously, the world
- b) Legitimacy for decision makers and implementers of decisions in the eyes of their respective group, as well as those of external parties, duly supported through transparency and accountability
- c) Recognized and valued interdependent relationships among groups fostering long-term cooperation during periods of agreement, disagreement, normality, and crisis
- d) Reliable and trusted institutions for resolving conflicts
- e) Sense of equality and respect, in sentiment and in practice, within and without groups and in accordance with international standards
- f) Mutual understanding of rights, interests, intents, and flexibility despite incompatibilities

Security, according to the Glossary of Terms⁶⁰ is a subjective state in which an individual or collectivity feels free from threats, anxiety, or danger. Such insecurities have typically been defined in relation to nation-states, for example regarding borders or institutions responsible for governance. A reconceptualization of security has been put forward under the rubric of collective security. This reformulation rests upon an understanding that security threats are not necessarily political in nature, although the

⁶⁰ Miller, C.E (2005) *Glossary of Terms in Peace and Conflict Studies*. Retrieved on August 4, 2014 at 1:40pm from www.upeace.org/pdf/glossaryv2.pdf

repercussions of such threats eventually may call for political solutions. For instance, environmental problems have not usually been incorporated in definitions of security, yet the political repercussions from environmental degradation are increasingly being realized. This evolution is linked to the increasing tendency of threats in societies to arise from internal rather than external factors. This expanding doctrine includes the coinage of new terminology, such as ‘human security’, ‘common security’, ‘co-operative security’, ‘democratic security’, ‘environmental security’, and ‘preventive security’.

Within the field of international relations, Peter Wallensteen cited in a Glossary of Terms in Peace and Conflict Studies⁶¹, identifies three general forms of conflict: interstate, internal, and state-formation conflicts. Interstate conflicts are disputes between nation-states or violations of the state system of alliances. The international community, however, has become increasingly concerned with the rise in frequency and intensity of internal conflicts, which are contributing to the expanding nature, sophistication, and, at times, legitimization of interventionist policies. Examples of internal and state-formation conflicts include civil and ethnic wars, anti-colonial struggles, secessionist and autonomous movements, territorial conflicts, and battles over control of government. Today, attention has also focused on ‘global conflicts’, where non-state groups combat international and regional organizations. Conflict is an inevitable aspect of human interaction, an unavoidable concomitant of choices and decisions. . . . The problem, then, is not to court the frustrations of seeking to remove inevitability but rather of trying to

⁶¹ Miller, C.E (2005) *Op cit*

keep conflicts in bounds. Not all conflicts are harmful. Some may ultimately result in positive social change.

As noted by Nigerian sociologists Onigu Otite and Isaac Olawale Albert quoted in Glossary of Terms in Peace and Conflict Studies, ‘although conflicts have negative connotations . . . [many] constitute an essential creative element for changing societies and achieving the goals and aspirations of individuals and groups’⁶².

2.2 The Concept of Small Arms and Light Weapons

There is no universally accepted definition of SALW. This is because the understanding of what constitutes these categories of weapons has undergone some changes due to the dynamics of technological development. In the views of Honwana and Lamb⁶³, there seems to be a lack of consensus in the literature with respect to identifying a small arm as opposed to a standard conventional weapon. This has led to the formulation of an alternative concept ‘light weapons’ which emphasizes a more technologically sophisticated category. However, despite the emergence of the light weapons concept, defining small arms still lacks clarity and even the distinction between ‘small arms’ and ‘light weapons’ is a matter of debate. There seems to be a certain amount of uncertainty as to where small arms end and light weapons begin or whether there is an overlap between the two. Despite the diverse views held by scholars there remains a commonality of characteristics that permeates the various definitions. While

⁶² Miller, C.E (2005) *Op cit*

⁶³ Joao, H. & Guy, L. (1998, February). *Small Arms Proliferation and Drug Trafficking in Southern Africa*. Paper presented at the Center for Conflict Resolution, University of Cape Town South Africa. Retrieved on January 12, 2012 at 2:15pm from https://www.ccrweb.ccr.uct.ac.za/archive/staff_papers/guy.

Small Arms include revolvers and pistols, rifles and carbines, assault rifles, submachine guns and light machine guns⁶⁴, Light weapons on the other hand are heavy machine guns; hand-held grenade launchers; portable anti-aircraft and anti-tank guns; recoilless rifles; portable launchers of anti-aircraft and anti-tank missile systems; and mortars of calibres of less than 100 mm)⁶⁵.

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. The report of the United Nations panel of Government Experts on small arms in 1997⁶⁶ gives the most widely accepted definition: “Those weapons ranging from knives, clubs and matches to weapons particularly below the caliber of 100millimeter, small arms are those weapons manufactured to military specification and designed for use by one person, whereas light weapons are those used by several persons working as a crew.”

The Economic Community of West African States (ECOWAS)⁶⁷ Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials of 2006,⁶⁸ the West African sub-regional benchmark for regulating SALW provides the following definitions:

⁶⁴United Nations (1997, August) *Panel of Group of Government Experts on Small Arms* (Report) Retrieved on 24 May, 2013 at 9:22am<http://disarmament.un.org/cab/smallarms/docs/rep52298.pdf>

⁶⁵ibid

⁶⁶ibid

⁶⁷The acronym for the Economic Community of West African States of which Nigeria is a Member State.

⁶⁸ Hereafter referred to as “the Convention” or “the ECOWAS Convention”.

- i. LIGHT WEAPONS: Portable arms designed to be used by several persons working together in a team and which include notably:

Heavy machine guns; Portable Grenade Launchers, mobile or mounted; Portable anti-aircraft cannons; Portable anti-tank cannons, non-recoil guns; Portable anti-tank missile launchers or rocket launchers; Portable anti-aircraft missile launchers; Mortars with a caliber of less than 100 millimeters

- ii. SMALL ARMS: Arms used by one person and which include notably: 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 landmine; Revolvers and pistols with automatic loading; Rifles and carbines; Machine guns; Assault rifles; Light machine guns.

- iii. AMMUNITION: Devices destined to be shot or projected through the means of firearms including among others: Cartridges; Projectiles and missiles for light weapons; Mobile containers with missiles or projectiles for anti-aircraft or anti-tank single action systems;

- iv. OTHER RELATED MATERIALS: All components, parts or spare parts for Small Arms or Light Weapons or ammunition necessary for its functioning; or any chemical substance serving as active material used as propelling or explosive agent.⁶⁹

⁶⁹*Ibid* Article 1.

The Court of Appeal sitting in Kaduna in the case of Mohammed v State (2014)⁷⁰

gave a broad definition of weapons and Firearm as follows:

“Weapon” has been defined to include pistol, revolver or any kind of gun, dirk, bowie knife, switchblade, ballistic knife or other knife with a blade of more than two inches, straight edge razor or razor blade, spring stick, knuckles (metal, wood or plastic), blackjack, bat, club or other bludgeon type weapon, stun gun or taser, fighting chain, nun chukka, and/or throwing star or oriental dart.

On meaning of Firearm, the Court said: “Firearm” includes any cannon, gun, rifle, carbine, machine gun, flint lock gun, revolver, pistol, explosive, or ammunition or other firearms, whether whole or in detached pieces.” Broadly speaking, Small Arms are those weapons for personal use, and Light Weapons are those designed for use by several persons serving as a crew,⁷¹ together they comprise Small arms and Light weapons.

2.3 The Concept of Proliferation and Control of Small Arms and Light Weapons

Proliferation is defined as the sudden increase in the number or amount of something. In other words it simply implies rapid expansion or abundance. When used in relation to arms, it describes the spread of weapons, generally, from one country to another.

Obasi defines proliferation as the spread of weapons from one group of owners and users to other; this he elaborated could be vertical as in the case of different actors within states already possessing particular weapons, or lateral where the acquisition

⁷⁰(2014)2 NWLR Part 1390, page 44

⁷¹ Thom-Otuya (2009) Proliferation of Small Arms and Light Weapons in the Niger Delta: A Threat to National Security in Nigeria. *International Journal of Sustainable Development*, Vol. 2 No. 5

involves a spread to states not previously possessing them.⁷² Another writer, Alex Ekemenah⁷³ defines Weapons' proliferation as the illegal acquisition and circulation of arms and ammunitions of different types (usually small, light and medium) and from one degree to another (at the local, state or national scale). He went on to say that Weapons' proliferation is a product of many factors: first, a sure sign of breakdown of moral and constitutional respect for the sanctity of human life in the realm of nature and society; second, a failure of security and intelligence institutional leadership, vision, strategies and methodologies; and third, a thriving underground economy in contraband goods upheld by “death merchants” in the general context of poor performing economy.

It has been argued that the definition appears to restrict the concept of proliferation of arms to such States, whereas arms transfers are known to transcend States, groups and individuals, with multifarious modes of transmission. Acquisition of small arms can be transacted through official channels or, through covert, clandestine or black market networks. Proliferation of arms is facilitated by certain intermediaries based on legal or illegal demands coming from particular lawless or restricted environments. The Geneva-based organization, Small Arms Survey, maintains, that “SALW do not proliferate themselves ... rather, they are sold, resold perhaps stolen, diverted and maybe legally or illegally transferred several time. At each juncture in this complex chain of legal and illicit transfer, people-brokers, insurgents, criminals, government officials and or

⁷²Nnamdi Obasi, (2003, October). *Small Arms and Sustainable Disarmament in West Africa; Progress and Prospects of ECOWAS Moratorium*. Lecture delivered at the Command and Staff College, Jaji, Nigeria.

⁷³Ekemenah, A. (2013, March 25), National Security and the Menace of Weapon Proliferation in Nigeria, *BusinessWorld Interview*. Retrieved on October 8, 2013 at 4pm from www.businessworldng.com/web/authors/12/alex-ekemenah

organized groups are active participants in the transmission.”⁷⁴ The UN acknowledges that massive acquisition and accumulation of arms could enhance proliferation. It however, qualifies the accumulation with such terms as ‘excessive’ and ‘destabilizing’ under certain conditions. It noted in the report by the panel of Government Experts on Small Arms, that “The mere accumulation of weapons is not sufficient criterion by which to define an accumulation of weapons as excessive or destabilizing, since large numbers of weapons that are under the strict control of a responsible state do not necessarily lead to violence. Conversely, a small number of weapons can be destabilizing under certain conditions.”⁷⁵

For the purpose of this study, proliferation is construed to refer to excessive accumulation and illegal spread of weapons which could have a destabilizing effect on the state. Those in the Government stock meant for responsible use by the military for the defense of the State and safeguarding of citizens constitutes legal holdings.

There are three broadly established and conventional modes of transferring arms. Legal transfer of arms conforms to all legal formalities usually from one state actor to another or their accredited agents. The second and third avenue is what have been dubbed grey channels or covert transfers. Grey channels, according to Pearson are arrangements by which “Government officials look the other way as their agencies arrange for arms to be sent to foreign group and countries for profit, strategic calculation or both,” while

⁷⁴Graduate Institute of International Studies, Small Arms Survey (2001).*Profiling the Problem*. Retrieved on January 11, 204 at 1am from www.smallarmssurvey.org/publications/by.../small-arms-survey-2001.htm

⁷⁵United Nations Report of Panel of Group of Government Experts on Small Arms. *Op cit*

black market transfers involve “unlawful transfers by private arms dealers and smugglers.”⁷⁶

The proliferation of light weapons and illicit arms trafficking in Africa pose a major threat to peace, security and development in the continent. Although they do not in themselves cause the conflicts and criminal activities in which they are used, the wide availability, accumulation and illicit flows of such weapons tend to escalate conflicts; undermine peace agreements; intensify violence and impact on crime; impede economic and social development; and hinder the development of social stability, democracy and good governance⁷⁷.

Arms Control is the imposition of restrictions or compliance by state actors with restrictions on the production, exchange and spread of weapons by an authority vested with legitimate powers to enforce such restrictions⁷⁸. It encompasses all those restrictions that are imposed on the production, development, stockpiling, proliferation, and usage of small arms and light weapons, conventional weapons, chemical and biological weapons, and nuclear weapons. Arms control is typically pursued by means of diplomatic approaches and instruments, such as international treaties, agreements, as well as regional and Sub-regional protocols. Arms control can also be achieved by means of national legislation and policy. Thus, when the target of arms control measures is SALW (weapons and ammunition of less than 100 mm caliber), it is known as ‘Small Arms

⁷⁶Pearson, F (1994) *The Global Spread of Arms: Political Economy of International Security*. USA: Westview Press, 12.

⁷⁷O.A.U. Institute of Security Studies.(2004). *Small Arms Proliferation and Africa*. Retrieved on 4 August, 2015 at 2:10pm from www.issafrica.org/pubs/Newsletters/OAU/OAUISS1

⁷⁸Akinosho. L. *op cit*

Control'. SALW control thus refers to activities that, together, aim to reduce the social, economic and environmental impact of uncontrolled SALW spread and possession. These activities include cross-border control issues, legislative and regulatory measures, SALW awareness and communications strategies, SALW collection and destruction operations, SALW survey and the management of information and SALW stockpile management. However, SALW control and its activities are interrelated and overlap with complementary humanitarian and developmental programmes, and in some cases with peacekeeping and peace support operations. SALW control requires management planning at global, National and Local levels, and involves International, Regional, National, commercial, NGO and military stakeholders operating under a variety of conditions. The need for SALW control is also grounded in Human Rights Law and International Humanitarian Law and principles. SALW control programme should involve measures that address the three dimensions of demand, supply, and Misuse. These three dimensions are interrelated. In order to combat the problem of SALW, all three dimensions of the problem must therefore be addressed in a sustainable and effective manner.⁷⁹

Demand is the reason why guns are acquired, owned and/or used. These can be:

- (i) For income and/or part of a livelihood option;
- (ii) To extort money in criminal activities;

⁷⁹Ashkenazi, I. Isikozlu, E& Radeke, H. (2008).*SALW Control Training Manual for West Africa*. Retrieved on 30 July, 2013 at 4: 43pm from http://www.kaiptc.org/upload/general/SALW_october08_Part%201.pdf

- (iii) To enhance personal security in places where the capacity of the state to do so is limited;
- (iv) For status, power and prestige;
- (iv) For traditional uses in celebrations, burials, and other ceremonies;
- (v) Self-protection and defense in the absence of the state and/or during conflict situations;
- (vi) The protection of one's assets, including crops or cattle, against theft;
- (vii) National defense and security.

Supply is where guns come from and how they proliferate within a community, country or region. Sources are:

- (a) Industrial production by licensed national and international producers;
- (b) Illegal production by manufacturers without a license;
- (c) Legal and illicit trade in SALW by sea and across borders;
- (d) Diversion from state stockpiles;
- (e) Migration of weapons from one conflict situation to another.

Misuse involves the use of guns to commit crimes and atrocities, such as:

- (i) Murder, manslaughter, attempted murder, intimidation, or robbery;
- (ii) The settling of private scores and causing harm;
- (iii) Inter-ethnic/religious violence, rivalry between armed group/criminal gangs, armed conflicts and civil wars;
- (iii) Land conflicts;

- (iv) Intimidation of political opponents during elections;
- (v) Use by land-guards and armed robbers, and in ‘contract killings’;
- (vi) Domestic violence.

2.3.1 The Objectives of SALW Control Interventions include:

- (a) Reducing the availability and use of illicit SALW in societies;
- (b) Reducing the number of SALW- and ammunition-related accidents;
- (c) Increasing public awareness of the connection between the availability of weapons and the level of violence in any given society;
- (d) Reducing and disrupting the illicit transfers of SALW at the national and regional levels;
- (e) Regulating the possession and use of SALW through national legislation and registration;
- (f) Recovering illicit SALW from the community;
- (g) Reducing the visibility of weapons in the community, and counteracting the culture of weapons, especially among the youth; and
- (h) Reducing gender-based violence related to the holding and carrying of weapons legally or illegally.

2.4 The Nature and Characteristic of Small Arms and Light Weapons

There is an agreement amongst scholars on the nature of small arms and light weapons regarding the exacerbation of violence and collateral damage such as its major

socio-economic consequences at local and International levels⁸⁰. As opposed to heavy conventional weapons like battle tanks, armored vehicles, artillery, warships, combat aircraft and helicopters, several characteristics make SALW very attractive to paramilitary and irregular forces and even untrained civilians⁸¹. SALW 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). 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. Their widespread misuse affects the interests of the State and the individual.⁸²

(a) Simplicity and durability

Due to their relative simple nature, SALW are quite easy to use even by people who have had very little or no military training. This explains their use by untrained combatants and even child soldiers as it was the case in many armed conflicts like in Liberia, Sierra Leone and Uganda. In addition, they require little maintenance and logistical support and can remain operational for very long periods of time. The long lifespan of SALW makes them a constant threat to the society in which they are

⁸⁰ Akinosho, L. *op cit*

⁸¹ Ngboawaji, D. N (2012). *The changing patterns of small and light weapons (SALW) proliferation and the challenges of national security in Nigeria* Retrieved on July 24, 2015 at 3pm from www.academia.edu/.../The-changing_patterns_of_small_and_light_wea...

⁸² Chuma-Okoro, Helen (2011) *Proliferation of Small Arms and Light Weapons in Nigeria: Legal Implications*. Retrieved on July 30, 2013 at 4:25pm from <http://www.nials-nigeria.org/pub/HelenChumaOkoro.pdf>

especially if they are present in large numbers. The AK-47, the undisputed number one SALW worldwide can stay operational for 20 to 40 years and that with relatively little or no maintenance depending on the conditions to which it is exposed. Even in cases where they begin to malfunction due to age and wear, the old and malfunctioning components can be replaced by new ones or spare parts taken from other weapons⁸³.

(b) Low costs and wide availability

According to Adetiba⁸⁴, significantly, they require little or no maintenance as they are rugged and can remain operational for very long years. The long lifespan of SALW makes them a constant threat to the society in which they are. Due to the fact that the production of SALW does not necessarily involve sophisticated or hi-tech capacity and also because they are produced for military, police and civilian usage, there are a lot of producers and suppliers all over the world, thus making SALW very inexpensive to procure, especially as much of them are being recycled from conflict to conflict.

The availability and cheapness of SALW in the sub region is further enhanced by the fact that some African countries have joined the ranks of producers though on a much lower scale. They include; Nigeria, Ghana, Burkina Faso, Namibia, Kenya, South Africa, Uganda, Zimbabwe, Cameroon, Sudan, Tanzania, Guinea and Ethiopia⁸⁵.

⁸³ Ngbowage supra

⁸⁴ Adetiba, T.C, (2012) Socio-Political and Economic Development under Threat: The Proliferation of Small Arms and Light Weapons in Nigeria *Greener Journal of Social Sciences*, Vol. 2(5) p 180. Retrieved on 17 March, 2013 at 9:305pm from www.gjournals.org/GJSCPDF/2012/November/AdetibaandRahim.pdf

⁸⁵ Ngbowaji *op cit*

(c) Portability and Easiness to Conceal

As their definitions demonstrate, SALW can be moved from one place to another by a single person or by a light vehicle. They can thus be smuggled quite easily from one place to another. In the Great Lakes region, SALW shipments are sometimes disguised as non-lethal cargo or as humanitarian supplies and are often discovered only after the trafficker fails to bribe police and customs officers or when a plane crashes and reveals the hidden nature of its cargo. Small arms are sometimes imported into Nigeria hidden in clothing, vehicles or kitchen utensils⁸⁶.

(d) Lethality

Though many SALW are quite simplistic in nature, their lethality has increased making it possible for a single combatant to constitute a big threat to an entire society. Today's assault rifles and other automatic weapons can fire up to several hundred rounds a minute. An AK- 47 assault rifle can release 600 rounds per minute as long as the trigger remains pressed down and when being operated in automatic mode. Its maximum range lies between 800 to 1000 meters, but its accuracy is guaranteed when used by a trained marksman with the range of 400 to 600 meters⁸⁷.

(e) Usability by Military, Police and Civilians

Due to their very nature, SALW unlike heavy conventional weapons are designed to suit police or military forces as well as civilian use. Depending on the rigor of firearms laws and control mechanisms in any given country, citizens can be in possession of

⁸⁶ *ibid*

⁸⁷ *Ngbowaji op cit*

anything ranging from hunting guns, simple pistols and shotguns to fully automatic weapons⁸⁸. This explains their frequent use by untrained non-conventional armed groups in Nigeria.

2.5 Concepts of Disarmament, Demobilization and Reintegration

Disarmament, Demobilization and Reintegration (DDR) is a process that contributes to security and stability by disarming combatants, removing them from military structures, and socially and economically integrating them into society.⁸⁹ DDR programs downsize armed forces, or disband them completely. They are usually part of other efforts to demilitarize (e.g. Landmine removal, Security Sector Reform, etc.) and consolidate peace (e.g. justice, reconciliation, community-based reconstruction, etc.). Over the last twenty years, there have been DDR programs in more than 30 countries. About two-thirds of these countries have been in Africa.⁹⁰

Disarmament includes a range of processes and measures by which the holdings, stockpile and supply of weapons (including arms, ammunition and explosive devices) to states, non-state groups and individuals are reduced or destroyed. Disarmament measures typically include: weapons collection initiatives; weapons destruction and disposal programmes; decommissioning of weapons systems; arms embargoes; as well as weapons moratoriums and prohibitions. Disarmament initiatives generally take place as part of a peace agreement (implementing UN Peace Support Operations and often refers

⁸⁸ *ibid*

⁸⁹ Nezam, T. and Marc, A. (1999) Disarmament, Demobilization and Reintegration. *Social Development Department*, No.119 Retrieved on July 30, 2013 at 4: 54pm from www.DDRFinal3-print/119.pdf

⁹⁰ Nezam, T. and Marc, A. (1999) Disarmament, Demobilization and Reintegration. *Op cit*

to as Disarmament, Demobilization and Reintegration – DDR) after a prolonged period of armed conflict, such as civil war. Disarmament also includes the development of responsible arms management programs.⁹¹ Disarmament also takes place in countries without an immediate history of armed conflict; to support a national SALW control strategy in the framework of national recovery or development programme and this is known as ‘arms collection’ this was the case in Nigeria during the Amnesty Programme of Yar’adua regime.

Disarmament often includes the following activities:

- a) Information gathering and operational planning.
- b) Weapons collection.
- c) Stockpile management and weapons destruction.

Demobilization is the formal and controlled discharge of active combatants from armed forces or other armed groups. The first stage of demobilization may extend from the processing of individual combatants in temporary centers to the massing of troops in camps designated for this purpose (cantonment sites, encampments, assembly areas or barracks). The second stage of demobilization encompasses the support package provided to the demobilized, which is called reinsertion.⁹²

Demobilization usually consists of the following activities:

- (a) Registration and documentation.
- (b) Health screening.

⁹¹*ibid*

⁹²Nezam, T. and Marc, A. (1999) Disarmament, Demobilization and Reintegration. *Op cit*

(c) Pre-discharge orientation.

(d) Discharge.

Reintegration is the process by which ex-combatants acquire civilian status and gain sustainable employment and income. Reintegration is essentially a social and economic process with an open time frame, primarily taking place in communities at the local level. It is part of the general development of a country and a National responsibility and often necessitates long-term external assistance.⁹³ Reintegration assistance must be based on a detailed assessment of:

(i) Beneficiaries.

(ii) Areas of return and resettlement.

(iii) Reintegration opportunities and services.

This assistance can include the following activities:

I. Information, counseling and referral.

II. Economic reintegration.

III. Social reintegration.

Beneficiaries include:

i. Combatants.

ii. Dependents.

iii. Communities.

iv. Children.

⁹³ *ibid*

- v. Youth.
- vi. Women.
- vii. Disabled.

2.6 Concept of Arms Trade

The small arms trade, or small arms market, includes both authorized transfers of small arms and light weapons (and their parts, accessories, and ammunition), and illicit transfers of such weapons. The trade occurs globally, but is concentrated in areas of armed conflict, violence, organized crime. Legal transfers are generally defined as those approved by the involved governments and in accord with national and international law. Black market (illegal) transfers clearly violate either national or international law and take place without official government authorization. Gray (or grey) market transfers are those of unclear legality that do not belong in either of the other categories⁹⁴. In 2010, the number of countries exporting at least \$100 million of small arms annually rose from 12 to 14. The exporters' list was led by the U.S., followed by Italy, Germany, Brazil, Austria, Switzerland, Israel, Russia, South Korea, Belgium, China, Turkey, Spain and the Czech Republic. Sweden dropped off the list because its exports fell from \$132 million in 2010 to \$44 million in 2011⁹⁵.

⁹⁴Small Arms Survey (2013) *Transfers*. Retrieved July 24, 2015 at 1pm from www.smallarmssurvey.org/2013 .

⁹⁵ *Turkey and China among major small arms exporters: UN*(2011). Retrieved on July 24, 2015 at 1:30pm from www.hurriyetdailynews.com

2.7 The Development of the United Nations Initiative in Combatting the Proliferation and Impact of Small Arms and Light Weapons.

The major objective of the United Nations can be categorized into two groups: To expand international cooperation and friendly relations among states in the economic, social, political, cultural and humanitarian fields, that is, in almost all the areas of human endeavor; and to maintain international peace and security, through prevention of threats to the peace, and the peaceful settlement of disputes between states, that is, the solving of their differences through dialogue or by judicial means and not by means of war. In this way, the concept of “collective security”, that of “threat to international peace and security”, are fundamental concepts in the Charter⁹⁶. They show the degree to which the issue of security is a matter of concern to the United Nations. Indeed, this is why the United Nations has modified its concept of security. Security, peace, is no longer silence on the part of the official weapons of the state; it is also peace and stability within states, among the people. This is also the purpose of the Programme for Coordination and Assistance for Security and Development (PCASED) in West Africa. A determination to combat the traffic in light weapons also falls into this context: these weapons are not really used by official armies, but by groups or individuals within states, with or without political objectives⁹⁷.

⁹⁶ Ayissi, A & Sall, I (Eds). (2005). *Combating the Proliferation of Small Arms and Light Weapons in West Africa: Handbook for the Training of Armed and Security Forces*. Retrieved on July 24, 2015 at 4:35pm from www.undir.org/.../combating-the-Proliferation-of-Small-Arms-and-Light-Weapon

⁹⁷ Ayissi, A& Sall, I (2005). *Op cit*

In the words of Sato Heigo⁹⁸, it was not the 1990s that the world witnessed and recognized disasters triggered by the spread of small arms and light weapons for the first time. It goes without saying that small arms had a long history of causing heavy damage before the 1990s. However, it was in the 1990s that the small arms issue was considered an International Agenda requiring International action. After the Cold War ended, many criminal activities took place in complicated regional conflicts and over national boundaries, while personnel engaged in U.N. peace-keeping operations were increasingly exposed to dangers, leading to common understanding that a realistic approach was necessary.

The issue on the development of the small arms developed after the U.N. Secretary-General Ghali's proposal to the U.N. Conference. Ever since, the United Nations has played a central role in provoking an interest in the issue as common agenda among various countries and in the international community.

In December 1994, the United Nations General Assembly adopted its resolution "Assistance to States for curbing the illicit traffic in small arms and collecting them." Sato Heigo⁹⁹ observed that this was the first resolution whose title used the term 'Small Arms'. The resolution was adopted after the Mali Government had asked the United Nations to cooperate in collecting small arms circulating illicitly in the country after their civil war. The resolution expressed the international community's concern about illicit traffic of small arms particularly in Sub-Saharan countries. The resolution pointed out

⁹⁸ Sato, H. (2004, March)*NIDS Security Reports No.5*. Retrieved on July 30, 2013 at 5: 15pm www.bulletin_e2003_3.pdf

⁹⁹ Sato H, *op cit*

that small arms in conflicting areas hampered the restoration of peace and stressed the importance of local Governments controlling the illicit trade of small arms. In December 1995, the United Nations also adopted the resolution entitled "Small Arms" (A/RES/50/70)¹⁰⁰. It was designed to organize the main points of the small arms issue, analyze the nature and cause of the issue, and work out preventive measures to reduce the number of small arms. The resolution called on the U.N. secretary-general to prepare a report on the issue. Specifically, it asked the secretary-general to (a) classify the types of small arms and light weapons used in U.N. defined conflicts; (b) explain how and why the excessive inflow of small arms and light weapons, including their illicit production and trade, leads to regional instability; and (c) work out measures to prevent accumulation and transfer of small arms and light weapons, which cause and exacerbate conflicts and thereby bring about instability in the regions concerned. This resolution included respect for the spirit of self-defense based on Article 51 of the United Nations Charter and self-determination defined in the Vienna Declaration and action program adopted at the U.N. World Conference on Human Rights. It also mentioned that small arms acquired through illicit trade would most likely be used for violence and that small arms obtained directly and indirectly by terrorist groups, drug traffickers, and underground organizations would threaten regional and international security, and political stability of the regions concerned. Following the resolution, the secretary-general set up a panel consisting of Government experts from sixteen countries. In August 1997, the panel completed the report (United Nations, "Report of the Panel of

¹⁰⁰*ibid*

Government Experts on Small Arms," A/52/298, August 27, 1997)¹⁰¹, and the report classified then-categorized small arms into small arms and light weapons.

In October 1998, the U.N. Security Council adopted the resolution 1209¹⁰², which criticized the accumulation and illicit transfer of small arms for threatening the security of nations (particularly African Nations), regions and the world, and for hampering humanitarian development. It also recommended that African countries consider measures to increase transparency of arms transfer, calling for control on export, import, and re-export of arms through export management systems and expansion of regional arms registration systems now in operation in western African countries. In July 1999, the Security Council Chairman announced in the statement on "maintenance of freedom and safety, and establishment of peace in the wake of conflicts" that arms control, demilitarization and return of soldiers to society should be regarded as a series of processes toward peace, stability and development. This initiative led to DDR (Disarmament, Demilitarization and Reintegration)¹⁰³.

The U.N. Conference on small arms was held in July 2001. The official name of the conference was "Illicit Trade in Small Arms and Light Weapons in All its Aspects."

¹⁰⁴ As this name indicates, the conference, while recognizing humanitarian and socio-economic problems caused by small arms and light weapons, confirmed the individual and collective self-defense in the Article 51 of the United Nations Charter, the right of self-determination and manufacturing small arms, import and possession of small arms

¹⁰¹Sato H, *op cit*

¹⁰²*ibid*

¹⁰³ Sato H, *op cit*

¹⁰⁴*ibid*

and light weapons based on each nation's sovereignty. Indeed, the focal point of the action program was limited to how to prevent illicit trade. In other words, what was discussed was the reinforcement of the existing framework for small arms control, such as economic sanctions by the United Nations and the protocol against the illicit manufacturing and trafficking in firearms, their parts and components and ammunition. The official name is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. This was adopted in the resolution 55/255 at the 55th United Nations General Assembly on May 31, 2001.¹⁰⁵ The conference dealt with the trade in and unnecessary accumulation of uncontrolled weapons in order to ensure safety necessary for the implementation of development programs and peace-keeping operations.

The final report of the conference described measures at the national, regional and global levels designed to prevent the illicit trade in small arms and light weapons, and at the same time explained how to implement them, pointing to the need for international cooperation and assistance. Among the proposals made were; more strict control systems against export and import, and manufacturing of small arms and light weapons (including establishment of license systems); identification of individuals and groups engaged in illicit trade and manufacturing; marking of small arms and light weapons to be manufactured legally; implementation of control on re-export; restrictions on brokering;

¹⁰⁵*ibid*

disposal of unnecessary small arms and light weapons collected; and thorough control on stored small arms and light weapons.

Chapter Three

PREVENTION AND CONTROL OF SMALL ARMS AND LIGHT WEAPONS UNDER THE ECOWAS LEGAL REGIME

3.1 Introduction

Former President William Tubman of Liberia first mooted the idea for a West African community in 1964. A subsequent agreement that was signed between Côte d'Ivoire, Guinea, Liberia and Sierra Leone in February 1965, did not work. In April 1972, General Gowon of Nigeria and General Eyadema of Togo re-launched the idea with new proposals. This brought forth the treaty (Treaty of Lagos) for an Economic Community of West African States (ECOWAS) which was finally signed by 15 West African countries on 28 May 1975 in Lagos, Nigeria. Subsequently, the protocols launching ECOWAS were signed in Lomé, Togo on 5 November 1976.

In July 1993, a Revised ECOWAS Treaty designed to accelerate economic integration and to increase political co-operation, was signed. ECOWAS is one of the pillars of the African Economic Community (AEC). Generally, ECOWAS, like similar Sub-regional bodies around the world, was not envisioned at its inception as a collective security institution.¹⁰⁶ The core objectives of ECOWAS are to promote co-operation and integration in economic, social and cultural activity, ultimately leading to the establishment of an economic and monetary union through the total integration of the national economies of member states. It also aims to raise the living standards of its

¹⁰⁶ Self Study: *ECOWAS* (2014). Retrieved on July 30, 2013 at 5: 17pm from http://en.wikipedia.org/wiki/Economic_Community_of_West_African_States

peoples, maintain and enhance economic stability, foster relations among member states and contribute to the progress and development of the African Continent. ECOWAS integration policies and programmes are influenced by the prevailing economic conditions in its member countries and the need to take the principal provisions of the Africa Economic Communities (AEC) Treaty into account, and relevant developments on the international scene. The Revised Treaty of 1993, which was to extend economic and political co-operation among member states, designates the achievement of a common market and a single currency as economic objectives, while in the political sphere it provides for a West African Parliament, an Economic and Social Council and an ECOWAS Court of Justice to replace the existing Tribunal and enforce Community decisions. The treaty also formally assigned the Community with the responsibility of preventing and settling regional conflicts. The Revised Treaty of ECOWAS (24th July, 1993) conferred the status of supra-nationality on ECOWAS. Paragraph 2 of Article 58 of the Revised Treaty on Regional Security, commits Member States to cooperate with the Community for the purposes of reinforcing the appropriate mechanisms to ensure the timely prevention and resolution of inter and intra-state conflicts.¹⁰⁷

The era of the 1990s mark a watershed in the history of ECOWAS as an economic union and Sub-regional Security. Because of distressing events in several of its Member States, ECOWAS soon realized that the case of economic development and progress can only be pursued in an environment of peace and stability. It found that it had to involve itself in conflicts in Member States to ensure that an environment conducive to the

¹⁰⁷*The Revised Treaty of ECOWAS 1993 (West Afr.).*

implementation of its economic programmes was maintained¹⁰⁸. Article 2 of Protocol Relating To The Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security states ‘...the economic and social development and the security of peoples and States are inextricably linked;...’¹⁰⁹

In the framework of comprehensive operational conflict prevention and peace-building, since the inception of ECOWAS (ECOWAS Treaty, 28th May 1975, Lagos), the principles of cooperation, mutual assistance and non-aggression have provided the ethos for organizational behavior within the Community and with external partners. It is within this context that ECOWAS adopted the Protocol on Non-Aggression (1978), and the related Protocol on Mutual Assistance in Defense (1981). Building on these foundational documents, the Community has adopted groundbreaking instruments in response to the demands for conflict prevention, resolution and peace-building¹¹⁰.

3.2 The Scourge and Magnitude of Small Arms and Light Weapons in the ECOWAS Sub-Region

West Africa is at a critical juncture in its socioeconomic and political development. On the one hand, it is well endowed in terms of natural resources, strategic location and large market and has great potential for development and peace, while on the other, it is confronted with a number of challenges that render its rather fragile

¹⁰⁸Zuneidu, S. O (2011) *A Look at The Efforts of The ECOWAS Sub-Region Towards Combating The Proliferation of SALW.*(Thesis, United Nations Peace Operations Training Institute). Retrieved on 31July, 2013 at 4:15pm from www.cdn.peaceopstraining.org/theses/zuneidu.pdf . P 101

¹⁰⁹*ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security 1999 (West Afr.).*

¹¹⁰Zuneidu. *Op cit* 102

institutions and post-conflict societies vulnerable to political instability, economic crisis and violent conflict. One such threat is the proliferation of small arms and light weapons (SALW) in the sub-region.

West Africa has over the last decade witnessed some of the most devastating armed conflicts in the world. Nowhere has the relation between the accessibility of light weapons and the outbreak and severity of conflict been more dramatically evident than in West,¹¹¹ as is evident from the outbreak and aftermath of civil wars in Liberia, Sierra Leone, Guinea Bissau and Côte d'Ivoire, the Tuareg revolts in Niger and Mali and the insurgencies in the North East and Niger Delta areas of Nigeria. The region today remains fragile with some States on a number of international watch lists for further violence, where SALW remains the primary weapons of choice.¹¹² These conflicts have been fuelled by a pool of young people frustrated by a lack of employment prospects and easy access to light weapons.¹¹³

Dokubo¹¹⁴ provided that: An estimated 50 percent of illicit weapons that proliferate in Africa are used in internal conflicts, armed robbery and drug trafficking. Of the approximately 640 million¹¹⁵ to 875 million¹¹⁶, 100 million are estimated to be in Africa, about 30

¹¹¹Boutwell, J & Klare, M.T (2000). *Op cit*

¹¹²Vines, A. (2005). Combating Light Weapons Proliferation in West Africa. *International Affairs* 81(2): 358.

Retrieved January 12, 2014, at 1:37pm from

www.chathamhouse.org/sites/default/files/public/International%20Affairs/2005/inta_454.pdf

¹¹³Boh, H. (2000) Instability and Insecurity in West Africa: State of the Art. In *The Making of a Moratorium on Light Weapons*, (33-42). Oslo, Norway: United Nations Regional Centre for Peace and Disarmament in Africa

¹¹⁴.Dokubo C. (2003) *Small Arms as a Threat to National Security: a Nigerian Case Study*. University of Ilorin Press.

¹¹⁵Osimen, G. U, & Akintunde B. A (2015) *op cit*

¹¹⁶ Small Arms Survey (2013) *Civilian Inventories*. Retrieved on August 4, 2015 at 9:39pm from

www.smallarmssurvey.org/smallarmssurveycivilianinventories

million in sub-Saharan Africa and 8 to 10 million in West Africa alone¹¹⁷. Kofi Anan cited in Chuma Okoro¹¹⁸ is reported to have said that:

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 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.

The United Nations (UN) stated that: Small arms and light weapons destabilize regions; spark, fuel and prolong conflicts; obstruct relief programmes; undermine peace initiatives; exacerbate human rights abuses; hamper development; and foster a culture of violence¹¹⁹. According to Malam, SALW kill between 500,000 and 750,000 people annually and are a “contributory factor to armed conflict, the displacement of people, organized crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development”¹²⁰. It is equally responsible for fueling crime and sustain armed conflicts world over, facilitating terrorism and creating anarchy after civil wars. The Small Arms scourge in West Africa is compounded by the easy accessibility of natural resources such as rubber, crude oil,

¹¹⁷Osimen, G. U, & Akintunde B. *Aop cit*

¹¹⁸Chuma-Okoro, Helen (2011) *Proliferation of Small Arms and Light Weapons in Nigeria: Legal Implications*. Retrieved on July 30, 2013 at 4:25pm from www.nials-nigeria.org/pub/HelenChumaOkoro.pdf

¹¹⁹UN Report (2003). Retrieved on June 24, 2015 at 4:59pm from www.disarmament2.un.org:8080/cab/salw.htm

¹²⁰ Malam, B. (2014) Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security, *International Journal of Humanities and Social Science*. Retrieved on July 24, 2015 at 4:59pm from www.ijhssnet.com/journals/Vol_4_No_8_June_2014/27.pdf

timber and, most importantly, diamonds. This has effectively meant that weapons can be bartered for these resources, thereby sustaining the decade-long wars in Liberia and Sierra Leone.

The insecurity associated with the activities of Boko Haram insurgents and the Niger Delta militant is evident in the spate of SALW attacks and killings of thousands of Nigerians. The spate of attacks and hijack by pirates is largely due to their ability to access SALWs¹²¹. In fact, according to a Security Council report of the United Nations, piracies in the economies of the region has resulted in an annual loss of revenue of \$2 billion, while the numbers of ships docking at Cotonou, Benin Republic, has declined by 70% as a result of serial attacks.¹²² The spate and intensity of violent conflicts in West Africa have been linked to the proliferation and weak control mechanisms on small arms and light weapons. While \$18 billion is being spent on conflicts in Africa, 60 to 90 percent of deaths associated with conflicts in West Africa are linked to the illegal sale and proliferation of small arms and light weapons.¹²³ Decades of violence and instability in Sierra Leone, Liberia as well as the activities of insurgent groups in Mali, Guinea Bissau, Cote d'Ivoire and Nigeria's Niger Delta were major drivers of proliferation, illicit circulation of SALWs.¹²⁴ Over the years this has reinforced the scepter of insecurity, which in turn compromises the prospects for growth and development. A consequence of

¹²¹ Kwaja, C (2012) Confronting the Challenges of Small Arms and Light Weapons. *West Africa Insight*. Retrieved on March 31, 2013 at 4:18pm from www.westafricainsight.org/articles/view/187

¹²² United Nations (2012) *Security Council Report: Monthly Forecast*. Retrieved on July 24, 2015 at 4:60pm from www.securitycouncilreports.org

¹²³ Ahmad, W. Rumoke (2012). *Armed Conflicts Cost Africa \$18 Billion Annually*. Retrieved on March 1, 2013 at 5:45pm from http://www.dailytrust.com.ng/index.php?option=com_content&view=article&id=160370:armed-conflicts-cost-africa-18bn-annually&catid=1:news&Itemid=2.

¹²⁴ United Nations Office on Drugs and Crime (2005) *Transnational Organised Crime in the West African Region*. Retrieved March 1, 2013 at 5:57pm from www.unodc.org/pdf/transnational_crime_west-africa-05.pdf

this is the fact that people are often the worst victims due to conflicts that continue to exacerbate organized crime, poverty and underdevelopment, which in turn has led to a high sense of insecurity among the rural and urban poor in the region¹²⁵.

A sizable number of illicit small arms in West Africa are locally manufactured. Around 80% of the weapons seized by the police and the Ghanaian security forces are locally manufactured¹²⁶. The level of manufacturing, however, differs across ECOWAS states. The commonest types of locally manufactured guns are pistols as well as short, long and double-barrel guns. However, Light weapons are bigger and deadlier than small arms and are not produced in West Africa. They are imported into the region and include weapons such as grenade launchers, anti-aircraft cannons, anti-tank missile launchers, non-recoil guns, and anti-aircraft missile launchers, among others.¹²⁷ Large caches of combat weapons transferred from Libya after the fall of Muammar Gaddafi are suspected to have fallen into the hands of terrorist groups. This prompted the adoption of Resolution 2017, which drew attention to the risk of destabilization posed by the dissemination of illicit SALWs¹²⁸. After the over-throw of the Gaddafi regime, a Sahel assessment report revealed influx of about 420,000 returnees to Niger, Mali, Chad and Mauritania as well as the inflow of un-quantified and unspecified number of ammunitions from Libya¹²⁹. Countries that make up the Sahel within the West Africa region include

¹²⁵Kwaja, C (2012). *Op cit p 2*

¹²⁶Craft Guns Fuel West Africa Crime Epidemic (2008, July) *The Independent*.

¹²⁷ GIABA Report (2013) *The Nexus between Small Arms and Light Weapons and Money Laundering and Terrorist Financing in West Africa*. www.giaba.org/media/f/519 Retrieved on 22 March, 2014 at 2:52pm

¹²⁸Kwaja, C (2012). *Op cit p2*

¹²⁹Security Council report (2012, February). *Threats to Peace and Security in West Africa and the Sahel Region*. Retrieved on 22 March, 2014 at 2:54pm from www.securitycouncilreport.org.

Burkina Faso, Mali, Mauritania, Niger, Nigeria and Senegal. On 27 October 2010, barely few months after it received about 20,000 small arms surrendered by Niger Delta militants under the country's Amnesty Program, Nigeria uncovered 13 containers loaded with rocket launchers, grenades and other explosives hidden under tiles¹³⁰. Evidently, more arms are very likely to be proliferated than the authorities are able to seize or destroy.¹³¹ Within the last 16 years, attempts have been made to manage the menace posed by the proliferation of SALWs in terms of putting in place control mechanisms.

This includes:

- a) The Moratorium on the Importation, Exportation and Manufacture of Light Weapons in ECOWAS Member States, signed in October 1998;
- b) The ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, signed in 2006;
- c) as well as the West African Action Network on Small Arms (WAANSA), which was adopted at the WAANSA General Assembly in January, 2007

The ECOWAS Conference of Heads of State and Government also provided a basis for the establishment of National Commissions on Small Arms by Member States. Across the region too, there have been several initiatives by civil society and think tanks, which seek to leverage on what member states of ECOWAS have put in place in containing arms proliferation. Some of these include – the International Action on Small Arms (IANSA), West African Network on Small Arms (WAANSA), African Security

¹³⁰Linda Darkwa (2011). *Op cit*

¹³¹GIABA. *Op cit*

Sector Network (ASSN), African Strategic and Peace Research Group (AFSTRAG) and Reseau Journaliste Afrique de l'Ouest.¹³²

The conflict-ridden West African sub-region is a showcase of the uncontrolled SALW proliferation. Vast quantities of arms have flooded the region despite their rampant misuse by state and non-state actors alike. The widespread availability of small arms to abusive actors poses a threat of unprecedented magnitude to West Africa, far greater than that of HIV/AIDS in terms of its socio-economic and human consequences. Because of this proliferation, the fabric of the sub-region itself is rapidly changing, moving toward self-destruction. This can be observed in three different areas:

i. The easy availability and use of SALW is leading to tragic consequences, not only for combatants but also for civilians, who form the majority of casualties—people are losing their lives, their health, their families, their homes and their livelihoods;

ii. The growing illegal character of the flow of SALW in West Africa is transforming the bulk of arms transfers from a legal, accountable trade to what is better described as trafficking. What is perhaps most alarming is the number of state and non-state actors involved in the network of illegal transfers of light weaponry; and

iii. The most significant and far-reaching consequence of SALW proliferation, beyond the huge economic cost and social crisis, is the shift in cultural values—West African societies have been weaponized and a culture of violence now prevails in much of the sub-region.

¹³² Kwaja, C (2012). *Op cit*

SALW are extreme tools of violence in West Africa for several reasons. They are durable, highly portable, easily concealed, simple to use, extremely lethal and possess legitimate military, police and civilian uses. These weapons are cheap, widely available and they are also lightweight, and so can be used by child soldiers, who have played such a significant role in recent conflicts in West Africa.¹³³ SALW therefore remain the primary weapons of intra- and inter-communal feuds, local wars, armed insurrections, armed rebel activities and terrorism throughout the sub-region. Every West African country has experienced widespread violence in which small arms featured. SALW have particularly fuelled overlapping and uncontained conflicts in Côte d'Ivoire, Guinea-Bissau, Liberia, Mali, Niger, Senegal, Sierra Leone and Togo, and the sub-region is still struggling to survive ongoing conflicts in which small arms play a central and destabilizing role. Millions of West Africans have been killed or displaced as a result, and an immeasurable amount of property has been destroyed. SALW have been used to grossly violate human rights, to facilitate the practice of bad governance, to subvert constitutions, to carry out coups d'état and to create and maintain a general state of fear, insecurity and instability. They are also being employed for non-political and non-conflict-related crime and violence.¹³⁴ The true magnitudes of the problems caused by SALW proliferation in West Africa cannot be accurately quantified, as so many of the effects are hard to measure—such as fear and want. However, there is no dispute that

¹³³Keili, F. L,(2009) Small Arms and Light Weapons in West Africa: A Stock-taking. In Vignard, Kerstin (Ed.).*The Complex Dynamics of Small Arms in West Africa*. Geneva: United Nations Institute for Disarmament Research. Retrieved on March 12, 2014 at 7:26pm from www.unidir.org/files/publications/pdfs/the-complex-dynamics-of-small-arms-in-west-africa-en-329.pdf

¹³⁴ Keili *op cit*

small arms have had a devastating effect on development, governance and everyday life for West Africans. Despite the ending of many conflicts in the sub-region, smuggling and the illicit trade in small arms are reported to be on the increase. Proliferation has also been facilitated by legal means. During conflict, some states in West Africa have liberalized gun possession laws in order to stimulate civilian arming. Arms were directly distributed to paramilitary groups by governments in order to fight rebel forces during the civil wars in Côte d'Ivoire, Liberia and Sierra Leone, but legislation was also liberalized, and proved a major driver of small arms diffusion.¹³⁵

Finally, the fragmentation of the political and economic space in West Africa has shaped the availability and circulation of SALW. The deterioration of many West African states' capacity to enforce the rule of law has blurred the boundaries between legal and illicit markets, enabling a thriving trade in SALW. Politicians have even been known to acquire weapons from illegal dealers to arm security personnel during election season.¹³⁶ In another dimension, Orosanye and Igbafe¹³⁷ noted that the increased rate of indiscipline, disregard for the rule of law and the culture of impunity are some of the local factors that account mostly for the rise in criminal violence in Nigeria. The lack of respect for the rule of law results in indiscipline. And indiscipline thrives because of the culture of impunity. This is as a result of failure of government to effectively and adequately punish offenders. And such violation is prevalent amongst the elite class which has been

¹³⁵ *ibid*

¹³⁶ Keili *op cit*

¹³⁷ Orosanye, A. O & Igbafe, A.A. (2012) Ethnic Militia in Nigeria: An Assessment of the Terrain of Conflicts, Violence and Crime. *African Journal of Social Sciences*, 2(1), 97-115. Retrieved on July 24, 2015 at 8:00pm from www.sachajournals.com/AFEAYE_AJSS_002.pdf

engendered by the culture of impunity. And this has found its way from the elite class down to the grass root. The lack of ideals among the ethnic groups is another factor that accounts for the increased rate of violent crime and conflict in Nigeria. Ethnic groups should be built on ideals; and such ideals should be the guiding principle for their existence. They should have a meaningful cause for which they struggle. In the absence of such ideals, criminal violence, conflict, crises and social and political disturbance have been the attendant results greatly empowered by the availability of SALW.

3.3 Modes of Transfer and Circulation of Small Arms and Light Weapons in West Africa

In principle, small arms are not supposed to be flowing into West Africa, as in 1998 the members of ECOWAS pledged not to import, export or manufacture SALW.¹³⁸ This moratorium has since become a legally binding and permanent convention,¹³⁹ but both measures have been routinely flouted, with disastrous consequences for human rights and regional security. Firearms are smuggled through several routes around the world into West Africa and other parts of the African continent. Although these illicit routes snake covertly into each other with often unpredictable stopovers and diversions along the way, four arms-trafficking routes can be identified in West Africa: (a) West Africa routes, (b) Africa routes, (c) Middle East routes, and (d) European routes. These illegal arms circuits cut across land, air, and sea borders. The trajectory of an

¹³⁸*Moratorium on the Importation, Exportation and Manufacture of Light Weapons in ECOWAS Member States*, signed 31 October 1998 at Abuja.

¹³⁹*ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*, signed at Abuja, 14 June 2006.

international illicit arms movement, for instance, may necessitate several detours involving land and sea points, such as, rivers, creeks and footpaths across more than one country or region.¹⁴⁰The proliferation of arms in West Africa is assisted by plentiful supplies from current and past conflict zones, corrupt law enforcement and military personnel selling their weapons, and growing domestic artisan production from Togo, Benin Ghana and Nigeria, which passes down established trade routes and major border towns, forests, mountain areas, lakes, rivers, seaports and airports.¹⁴¹ The routes themselves have been in existence since before independence and were created to meet several needs, such as migration and the cross-border smuggling of minerals and cash crops. Contributing factors include lax arms export controls in supplier countries, sub-regional allies who provide cover and sometimes financing (for example Burkina Faso facilitated the supply of arms to Liberia, despite a UN embargo)¹⁴², and transnational arms dealers motivated by profit to break the law, such was the case when Nigeria uncovered 13 containers loaded with 107mm rockets, 120mm, 80mm, and 60mm mortars and small arms ammunition at the country's largest seaport, said to have come from Iran¹⁴³.Another key factor is the ability of embargoed buyers to use misappropriated funds or trade valuable commodities, such as diamonds or timber concessions, for arms. The Small Arms Survey notes that Nigeria has porous borders on both its land and sea

¹⁴⁰ GIABA

¹⁴¹Ikelegbe, A (2014) Routes and Illegal Arm Caches Between Ghana, Togo, Benin and Nigeria. *Op cit*

¹⁴² Keili *op cit*

¹⁴³UPI News (2010, 15 November) *Evidence Iran is Behind Seized Arms Cargo*. Retrieved on March 13, 2013 at 4: 16pm from http://www.upi.com/Top_News/Special/2010/11/15/Evidence-Iran-is-behind-seized-arms-cargo/UPI-30221289854759/

edges, allowing gun smuggling from a variety of countries.¹⁴⁴ Others have found that many of the arms smuggling rings operate out of Cameroon, Equatorial Guinea and Nigeria. The smugglers use speed-boats to connect to the high seas, and then ferry the arms back to shore. Looking at the armed conflict in the Niger Delta region of Nigeria, SALW are brought into the delta from various locations. Most of the weapons—such as the Russian AK-47, the German G-3, the Belgian FN-FAL, Czech machine guns and Serbian rocket-propelled grenades (RPGs)—are supplied by illegal dealers and sellers, who are paid through the proceeds of bunkered (stolen) oil. On a smaller scale, weapons are brought in to West Africa by poorly paid soldiers who have served in peacekeeping missions, for example in Liberia or Sierra Leone, and who often return home with their weapons to sell them on to combatants and gun dealers.¹⁴⁵ Once in the sub-region, weapons circulate in a number of ways. During an armed conflict, there is a continual circulation of arms between factions, as weapons are captured and stolen by all sides. Some of the weapons in armed groups' stockpiles are acquired during attacks on police and military armories. Leakages from poorly constructed and insecure stockpiles are also a chronic problem in West African countries with large numbers of weapons, both during and before and after conflict. Under resourced security forces may be unable to secure stockpiles properly, and poorly paid individuals may resort to using their official weapons for criminal activities or may rent them out to others to supplement their income. SALW also circulate through the desertion of military personnel. Many of these

¹⁴⁴ N. Florquin and E.G. Berman (Eds). (2005). *Armed and Aimless: Armed Groups, Guns, and Human Security in the ECOWAS Region*, Geneva, Small Arms Survey. Retrieved on March 17, 2013, at 9:30pm from http://www.smallarmssurvey.org/files/sas/publications/b_series1.html

¹⁴⁵ Keili *op cit*

legal weapons find their way into the illicit market.¹⁴⁶ But not all weapons are externally manufactured and sourced: artisan firearms are now being made in such profusion that they constitute a major problem across West Africa. Blacksmiths have a significant role in the manufacture and circulation of firearms in West Africa. An IRIN report told the story of a Ghanaian blacksmith, while he is trained to produce cooking utensils, he prefers to make guns as he can earn more money that way, making about a thousand dollars weekly when sales are good. He claims that most of his buyers come from Nigeria and Sierra Leone.¹⁴⁷

“When the war ends, the guns remain¹⁴⁸”, is a common refrain among West Africans. After conflict, small arms are recycled for use in new conflicts and crime at home, or sold to other West African countries for use in new conflicts or to prolong ongoing conflicts. The easy availability of small arms and their circulation within and across borders facilitates the formation of new armed groups and new conflicts; it also facilitates the use of untrained civilian militias, ill-disciplined fighters, and unaccountable mercenaries¹⁴⁹. The spread of light weapons by organized criminal groups is nowhere better illustrated than in West Africa. No country in the Economic Community of West African States (ECOWAS) region is exempt from this deadly proliferation, and the need to stop it expanding further presents an urgent challenge. Most countries in West Africa have outdated arms control ordinances and legislation, which date back to the colonial

¹⁴⁶*Ibid*

¹⁴⁷ Illoani, F.A. and Echewofun, S. (2016). *Illegal Guns Flooding Nigeria, Fuelling Violence. Daily Trust March 12, vol. 18. No. 90 pp. 4*

¹⁴⁸Keili *op cit*

¹⁴⁹*Ibid*

era:¹⁵⁰ Lack of effective legislation and enforcement mechanisms does not just affect the small arms problem in one country, it also affects neighboring countries: a state with ineffective legislation enables the movement of arms, which can then flow across borders with relative ease.¹⁵¹ The porous nature of West Africa's borders plays a significant role in proliferation. Unmanned border crossing points and widespread corruption facilitate illicit trafficking in small arms. In fact, SALW seem to know no borders in West Africa. Weapons are circulating at all levels—from the smuggling of individual weapons to large shipments. Recent research assessing the border threat conducted by Keili¹⁵² noted the borders between West Africa's states are long and full of footpaths, which are poorly patrolled. Arms are smuggled to and within West Africa, either from one state to another and/or from Europe and other African locations, such as Chad, Cameroon, South Africa and the Great Lakes region. Nigeria's borders with Cameroon, Niger, and Chad are well-known routes for arms trafficking.¹⁵³ Smugglers on these routes employ a great deal of trans-border dissimulation and subterfuge, often concealing weapons in coffins, iced fish cartons, cement bags, paint buckets and under car seats.¹⁵⁴ Such tricks are common on many borders within the region via which lorry-load of arms are successfully trafficked.¹⁵⁵

¹⁵⁰ Nte, N.D. (2011) The Changing Patterns of Small and Light Weapons (SALW) Proliferation and the Challenges of National Security in Nigeria. *Global Journal of Africa Studies* 1 (1): 5-2

¹⁵¹ *ibid*

¹⁵² Keili *op cit*.

¹⁵³ GIABA *op cit*

¹⁵⁴ *ibid*

¹⁵⁵ *ibid*

The illicit SALW that are smuggled from countries outside West Africa should be of particular concern to the Regional and National authorities, as the types of light weapons smuggled are more sophisticated and lethal.

3.4 The Impact of Small Arms and Light Weapons on Regional Peace and Security in West Africa

Regional Internal security refers to freedom from, or absence of those factors which could reduce internal cohesion, the corporate existence of a nation and its ability to maintain its vital institutions for the promotion of its socio-political and economic objectives, as well as meet the legitimate aspirations of its people. It is a primary concern for West African Governments as the proliferation of all sorts of sophisticated weapons has encouraged violent crimes, electoral violence, sabotage, communal conflicts and terrorism. This is worrisome because they threaten national unity and cohesion, discourage investments and retard development¹⁵⁶. West Africa is at a critical juncture in its socioeconomic and political development. On the one hand, it is well endowed in terms of natural resources, strategic location and large market and has great potential for development and peace, while on the other; it is confronted with a number of challenges that render its rather fragile institutions and post-conflict societies vulnerable to political instability, economic crisis and violent conflict. The threat posed by the proliferation of small arms and light weapons (SALW) in the sub-region, is evident from the outbreak and aftermath of civil wars in Liberia, Sierra Leone, Guinea Bissau and Côte d'Ivoire, the

¹⁵⁶ Obi, A (2010) *Internal Security Challenges Of Weapons Proliferation In West Africa*. Retrieved on March 10, 2015 at 12:21pm from www.Small_Arms_and_Light_Weapons_in_West_Africa-libre.pdf

Tuareg revolts in Niger and Mali and the insurgency in Nigeria¹⁵⁷. Without peace and security there cannot be growth and stability in West Africa. This is confirmed by the words of President John Mahama when he said, “we need peace to grow as a country, as a region and as a continent at large.”¹⁵⁸

It is said that the sub-region has one of Africa’s most sophisticated peace and security architectures, yet it still faces formidable intra-regional security challenges. Of note are the threats posed by the connections between the proliferation of SALW, violent conflict and the activities of transnational criminal networks operating in the region and peace, security and development in West Africa¹⁵⁹. The relationship between small arms and insecurity has been the object of contentious debates among scholars. While some scholars argue that small arms are the direct cause of insecurity, others maintain that small arms are merely trigger of insecurity or precipitating factor. Despite this seeming apparent disagreement, both scholars commonly agree that the proliferation of small arms poses serious challenges to the sustenance of peace and stability of any society. They further assert that availability of small arms have direct influence on the escalation and sustenance of insecurity.¹⁶⁰ The interdependence of small arms control, security and development suggests that no meaningful development can take place in an atmosphere which is conducive to the production and distribution of small arms. It prevents people from conducting business, leading to reduction in trade and foreign investment. In West Africa a civil war that started in one State triggers fighting in neighboring State as was

¹⁵⁷ Darkwa, L. *op cit*

¹⁵⁸ Obi, A. *op cit*

¹⁵⁹ Darkwa, L. *op cit*

¹⁶⁰ Osimen, G. U, & Akintunde B.A (2015).*op cit*

the case in Liberia that later triggered fighting in neighboring Sierra Leone, Cote D'Ivoire, and Guinea¹⁶¹.

As succinctly put by Wallacher and Harang cited in Dikwa, L¹⁶², there is a “common understanding that proliferation of conventional arms contributes to human rights violations, breaches of international humanitarian law, to intensifying and prolonging armed conflict, and threatens national and regional security”.

Frey provides a graphic 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.¹⁶³

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-related misuse affects the entire spectrum of civil, political,

¹⁶¹ Malam B. *op cit*

¹⁶² Darkwa, L. *op cit*

¹⁶³ Chuma-Okoro. *op cit*

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 human kind.¹⁶⁴

It is on the basis of this horrifying account that the international community concluded that SALW have killed more people than other weapons of mass destruction (WMD) and that SALW are the most destabilizing conventional weapons.¹⁶⁵ 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, noted “that the proliferation of light weapons constitutes a destabilizing 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 misuse of SALW, and the need for effective regulation at all levels.

a. Small Arms and Violent Crimes:

Violent crimes are characterized by the use of force or dangerous weapons as evident in murder, rape, assault, armed robbery and manslaughter. It is often assumed that there is a relationship between small arms, their misuse, and levels of armed criminality. However, perspectives differ on whether easy access to weapons increases or decreases crime. One view is that small arms possession serves as a deterrent leading to improved personal security and a reduction in interpersonal crime. Proponents of this

¹⁶⁴ Chuma Okoro *op cit*

¹⁶⁵ *ibid*

view assume that small arms possession in controlled circumstances serves as a micro-deterrent to would-be criminals. Another view is that small arms availability, ownership, and portability are linked to a greater incidence of violent death (e.g. homicide, suicide, and unintentional death), interpersonal violence, intimidation, and criminality¹⁶⁶.

A number of reasons underlie the presence of such crimes including economic decadence, widespread poverty, unemployment, youth restiveness, and failure of governments to provide adequate security services to their citizens. This creates a general feeling of insecurity¹⁶⁷. Accordingly, more firearms equal more violent crime. In the Northern part of the country the insecurity associated with the activities of Boko Haram enabled by their access to SALW, is evident in the spate of bomb attacks, drive-by shooting and killing of thousands of Nigerians, with serial attacks on police stations and armories where stockpiles of weapons are acquired by the dreaded sect in Borno and Kano States¹⁶⁸. Nevertheless, the proliferation SALW is said to be partly responsible for the rise in criminal acts such as armed robberies, piracy as is the case in Somalia, hijacking, terrorism, stealing of livestock, drug trafficking, kidnapping as seen in the Niger Delta region of Nigeria, smuggling and Electoral Violence. Electoral processes in West Africa are perceived to be unfair, unrepresentative or corrupt, and their political legitimacy is thus compromised. This undermines national security because of the violence that usually ensues as seen in the crises in Cote D'Ivoire in 2010 and Nigeria in

¹⁶⁶ Mogire, E (2004) *The Humanitarian Impact of Small Arms and Light Weapons and the Threat to Security*. Retrieved on August 4, 2015 at 10:26pm from www.lincci.it/rapporti/amaldi/papers/XV-Mogire.pdf

¹⁶⁷ Obi, A. *op cit*

¹⁶⁸ Oronsanye, A. O & Igbafe, A.A(2012) *Ethnic Militia in Nigeria: An Assessment of the Terrain of Conflicts, Violence and Crime*. Retrieved on July 24, 2015 at 8:00pm from www.sachajournals.com/AFEAYE_AJSS_002.pdf

2011. Both countries historically have been divided along political, ethnic and religious lines, and such crises have threatened their unity and national security¹⁶⁹. This enduring climate of violence has often resulted in refugees and displaced persons fearing to return home after a conflict have ended.¹⁷⁰

b. Small Arms and Sabotage:

Ideologies, deprivation and poverty forces individuals to take up arms to perpetrate acts aimed at undermining the government and its security machinery, so as to create a sense of poor security in society. These acts target government infrastructure, facilities, or top government officials. In many cases, acts of sabotage include acquisition of arms in anticipation of the fall of a government. The attacks on oil pipelines in Nigeria by the Niger-delta militants over the last decade are an example of such sabotage. In Nigeria, the country's oil-rich Delta State has seen conflict since involving well-armed militia groups motivated in part by economic interest in stolen crude oil using a range of SALW to carry out deadly and paralysing attacks on oil and gas installations. They have killed scores of security officials, damaged oil facilities and infrastructure, and shut down oil production. They have also taken foreign oil workers hostage. Hundreds of people have been killed in the violence, which has also resulted in the displacement of thousands and the destruction of hundreds of properties.¹⁷¹ These have cost the Nigerian government millions of dollars in cleaning up oil spills and reduced revenue¹⁷². It is

¹⁶⁹*ibid*

¹⁷⁰Keili. *op cit*

¹⁷¹Keili. *op cit*

¹⁷²*ibid*

argued that arms dealing in the region is the second most lucrative organized crime after drug trafficking. It has been stated that the unregistered weapons are in circulation in Ghana are mostly paid for using hard currency and natural minerals such as diamonds, gold and crude oil. This factor is responsible for the increase in the number of regional dealers who seek to maximize their profits from sale of such arms. Unfortunately, the huge advantages recorded from arms dealing suggests that the practice is very likely to continue as it is attractive to both illegal dealers and government agents¹⁷³.

c. Small Arms and Conflicts:

The heterogeneous nature of the West African society is one of the greatest threats to internal security. It has been argued that “the massive quantities of small arms in circulation have been primary contributors to a world-wide epidemic of ethnic, sectarian, and criminal violence¹⁷⁴.” As Harting observes, Guns don’t kill people, but societies awash in guns are far more likely to resolve their differences violently, in ways that can quickly spiral out of control. Once this happens, the international community can neither stop the killing nor heal societal wounds inflicted by militias, warlords, criminal gangs or repressive governments¹⁷⁵. 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 conflicts¹⁷⁶. As noted in the forward to the Report of the Panel of Experts, “while not themselves causing the conflicts in which they are used, the

¹⁷³Obi, A. *op cit*

¹⁷⁴Morgire. *op cit*

¹⁷⁵*ibid*

¹⁷⁶United Nations (1997, August) *Panel of Group of Government Experts on Small Arms* (Report). *Op cit*

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”¹⁷⁷. 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 insecurity¹⁷⁸. Available data indicate that SALW are the major weapons used in today’s conflicts¹⁷⁹, thereby threatening the peace and stability in the region. Increasing ethnic diversity fosters disputes among groups in relation to land, inheritance, or resource allocation¹⁸⁰. This hampers security and development of the sub-region. SALW have escalated the intensity and impact of intra-state armed conflicts in West Africa. They are responsible for the majority of direct conflict deaths in West Africa and play a central role in the many thousands of indirect conflict deaths caused by taken into account: the lost productivity as refugees are forced to live in camps and become dependent on humanitarian aid, and the immeasurable psychological trauma¹⁸¹.

SALW have been called “weapons of mass destruction” in West Africa with good reason. The availability of SALW in West Africa has long-term and widespread pernicious effects. Even when conflicts have been officially terminated, small arms have remained, illicitly, making it easy for fighting to recommence. Even when further combat is avoided, the easy availability of small arms means that they have become common

¹⁷⁷The UN Secretary General’s forward to the Report of the Panel of Experts, *op cit*

¹⁷⁸Chuma-Okoro, Helen. *op cit*

¹⁷⁹Morgire. *op cit p 6*

¹⁸⁰Obi, A. *op cit*

¹⁸¹Keili. *op cit*

tools of violence, used in criminal activities and ethnic and political rivalries. Armed ex-combatants may become affiliated with local gangs, warlords or militias.¹⁸²

d. Small arms and human rights abuse:

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,¹⁸³ the two human rights Covenants,¹⁸⁴ many thematic treaties many thematic treaties like the Covenant against Torture and other Cruel Inhuman or Degrading Treatment or Punishment and the Declaration on the Elimination of Violence against Women.,¹⁸⁵ African Charter on Human and Peoples' Rights, adopted on June 27, 1981 and National statutes.¹⁸⁶ 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.¹⁸⁷ 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

¹⁸²*ibid*

¹⁸³*UN General Assembly Resolution A/RES/217 (III) (1948).*

¹⁸⁴The International Covenant on Civil and Political Rights (ICCPR), entered into force 23 March 1976 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), entered into force 3 January 1976.

¹⁸⁵The Covenant against Torture and other Cruel Inhuman or Degrading Treatment or Punishment and the Declaration on the Elimination of Violence against Women.

¹⁸⁶*Constitution of the Federal Republic of Nigeria 1999, Cap C23 LFN 2004 Part IV*

¹⁸⁷Chuma-Okoro. *op cit*

absence of danger and the feeling of a certain peace of mind” in the context of a political society like Nigeria.¹⁸⁸

The proliferation of SALW is largely responsible for the violation of humanitarian laws. According to the International Committee of the Red Cross, “the proliferation of weapons in the hands of new and often undisciplined actors has outpaced efforts to ensure compliance with the basic rules of warfare” resulting in “appalling levels of wanton violence and a stream of horrific images which threaten to immunise the public and decision makers to ongoing violations of international humanitarian law”¹⁸⁹. Small arms-aided abuses by either governments or private actors occur in wartime, post-conflict settings, and in countries not at war. These violations include the deliberate targeting of civilians or other non-combatants, and indiscriminate attacks likely to disproportionately harm civilians and torture. In post conflict situations the widespread availability of small arms has greatly added to the death toll. Particularly where security is weak, former combatants have not been disarmed, and abusive actors have not been held accountable for past behaviour, a situation of lawlessness can emerge where civilians are at grave risk. Even in countries nominally at peace, the misuse of small arms accounts for many serious human rights abuses. Small arms confer power, even without being fired. The coercive

¹⁸⁸Sall, A (2005). Human Security in International Law In Ayissi, A& Sall, I (Eds). *Combating the Proliferation of Small Arms and Light Weapons in West Africa: Handbook for the Training of Armed and Security Forces*. Retrieved on July 24, 2015 at 4:35pm www.undir.org/.../combating-the-Proliferation-of-Small-Arms-and-Light-Weapo

¹⁸⁹Morgire .op cit p 7

potential of these weapons, when exploited by abusive government agents, can enable human rights abuses such as torture, rape, intimidation, and looting¹⁹⁰.

e. SALW and forced displacement :

One particularly disturbing example of the indirect impacts of small arms is the forced displacement of populations, both internally as internally displaced people (IDPs) and externally as refugees. The Office of the United Nations High Commissioner for Refugees (UNHCR) has acknowledged that ‘armed conflict is now the driving force behind most refugee flows’¹⁹¹. The UN has repeatedly observed that ‘in many recent and current internal armed conflicts, combatants deliberately intimidate, attack and displace local populations to further their pursuit of economic control over natural resources’¹⁹². In such cases, combatants rely on, even profit from, civilian displacement. UNHCR recognizes that curtailing the sale or transfer of small arms would contribute to greater stability and security, and would reduce people’s incentive to flee in the first place. Predictably, household entitlements and the access of individuals to basic need collapse when people are forced to flee. Food security is also undermined by the activities of armed groups. For example, the threat and harassment of civilians by armed groups constrains mobility (e.g. of farmers to their fields or traders to markets) and trade¹⁹³.

f. Deaths from SALW:

¹⁹⁰Mogire. *op cit* p 7

¹⁹¹Mogire. *op cit* p 11

¹⁹²*ibid*

¹⁹³Mogire. *op cit*

A key indicator of the direct impact of small arms on human security is firearms-related deaths and injuries. The proliferation of SALW has also led to higher combat and civilian casualties during conflicts as well as deaths from rising criminal activities¹⁹⁴. SALW raise grave concerns in conflict situations, the most visible of which is the high death toll¹⁹⁵. 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. Although the influx of firearms is not the cause of conflict “the abundance of arms at every level of society means that any increase in inter communal tensions and hostility will entail an increased likelihood of armed violence and bloodshed.” Even after the end of hostilities SALW continue to maim and kill. The International Committee of the Red Cross (ICRC) estimates that, 18 months after the formal end of hostilities, weapons-related casualties remain at 60-80 per cent of the previous rate¹⁹⁶.

g. Small arms and development:

“It is axiomatic to say that development can take place in an environment that is characterised by lack of security. Easy access to small arms and light weapons create insecurity which in turn impede growth and development in several countries within our

¹⁹⁴ *ibid*

¹⁹⁵ Chuma-Okoro *op cit*

¹⁹⁶ Morgire. *op cit*

neighbourhood¹⁹⁷,” says Ambassador Emmanuel Imohe, the chairman of the Committee on the Proliferation of SALW at their inauguration on April 24, 2013 at the Presidential Villa by former President Jonathan. The spread of SALW adversely affects economic development by discouraging investment, divestment, and misallocation of resources to security instead of development, and affects the implementation or initiation of development projects. The proliferation of arms will prevent development objectives from being reached. It is in recognition of this that the United Nations Development Programmes (UNDP) has established a special organization under the Bureau for Crisis Prevention and Recovery (CPR) to deal with the SALW problem. According to the UNDP, Where guns dominate, development suffers, schools close, shops close, commerce stops, and the local economy grinds to a halt. Buildings are destroyed, bridges are blown up, and whatever development there has been, is gone. Private investment dried up and development organizations can’t operate. Even after the shootings stops, there is no security. People can’t return to their homes or a normal life...Humanitarian workers have noted persistent food insecurity among households in arms-saturated areas – even where those locations are ‘benefiting’ from substantial agricultural and food aid – indicating a relationship between armed violence and access to basic entitlements. Besides, arms hinder development by diverting limited national resources to weapons purchases, especially in developing countries like West Africa¹⁹⁸. According to a study

¹⁹⁷Small Arms, Light Weapons C’ttee Not A Task Force, Says Jonathan. (2013, April 24). *The Will Nigeria*. Retrieved on July 7, 2014 at 23:14pm from <http://thewillnigeria.com/general/index.1.html>

¹⁹⁸Morgire. *op cit*

carried out by Oxfam¹⁹⁹, the cost of armed conflict is approximately \$18 billion a year, reducing a State's economic output by approximately 15%.

h. SALW and Militarization:

Widespread proliferation of Light Weapons and Small Arms has often led to the militarization of daily life. Militarization includes the presence of heavily armed policemen or soldiers patrolling streets, military personnel occupying high government posts, military censorship, armed guards in schools and public buildings, armed checkpoints along roads and curfews.²⁰⁰The militarisation of refugee camps and populated areas and Internally Displaced Persons (IDP) camps has resulted in insecurity not only to civilians but also to states concerned²⁰¹.

The spread of small arms and light weapons also makes governance more difficult and polarizes communal groups and leads to the erosion of respect for human rights.²⁰²SALW-fuelled conflicts have severely damaged governance systems and eroding popular confidence in them, and destroyed hitherto peaceful relationships amongst communities and groups in West Africa. More importantly, SALW trafficking and proliferation continue to pose serious threats to the rule of law and economic growth and development in West Africa.²⁰³ It threatens legitimate but weak Government.

¹⁹⁹Multiple West African States Sign the ATT during UNGA High Level Week (2013). Retrieved 19 August, 2015 at 1pm from www.controlarms.org/.../multiple-west-africa-states-sign-the-att-during-the-unga

²⁰⁰Christopher L. (1995) The social Impacts of Light Weapons Availability and Proliferation, Discussion paper for UNIDIR. *International Alert*.

²⁰¹Morgire. *op cit*

²⁰²Christopher Louise. *op cit*

²⁰³GIABA. *op cit*

3.5 The ECOWAS Control Initiatives

On paper, West Africa is at the forefront of African regions in efforts to curtail the proliferation of light weapons in the continent. West Africa became the only Region in the world to announce a halt in further light weapons procurement²⁰⁴. This dissertation will now discuss the ECOWAS SALW control initiatives and the successes and challenges.

3.5.1 The ECOWAS Moratorium

A moratorium on light weapons has not been tried before. Neither has the recipient of arms been in the habit of seizing non-proliferation initiatives: nearly all initiatives to control and constrain the transfer of weapons have been taken by supplier states. The West African initiative was a novel one in both respects²⁰⁵. The West African Moratorium on light weapons originated from a succession of events and initiatives over the 1993–97 period. Acting upon an initial request from former President Alpha Oumar Konare of the Republic of Mali, the United Nations Secretary-General established an Advisory Mission on the control and collection of small arms in the Sahara-Sahel region. This mission, after its investigation, concluded that curbing the dissemination of small arms within each country and throughout the region was an essential factor in establishing the minimal security prerequisites for future development efforts to be

²⁰⁴Vines, A. op cit at PP 342

²⁰⁵Lordgaard, S & Ronnfeldt, C.F (Eds.) (1998) *A Moratorium on Light Weapons in West Africa*. Norwegian Institute of International Affairs. Pp 39. Retrieved on July 21, 2013 at 7:44pm from http://nisat.org/publications/a_moratoruim_on_light_weapons_in.pdf

undertaken effectively.²⁰⁶ In this spirit, a UNIDIR/UNDP conference on conflict prevention, disarmament and development in West Africa was convened in Bamako on 25–29 November 1996²⁰⁷.

The Moratorium was declared in Abuja (Nigeria) on 31 October 1998 by the 16 ECOWAS member states. It came into force on 1 November 1998, for a renewable period of three years. On 5 July 2001 it was extended for an additional three years, valid until 31 October 2004; and in October 2004 it was extended again.

The moratorium has three main instruments:

- 1) the Moratorium Declaration;
- 2) the Plan of Action for the Implementation of the Programme for Coordination and Assistance on Security and Development (PCASED)—a UNDP support programme—approved in March 1999;
- 3) A Code of Conduct, adopted on 10 December 1999, which includes the establishment of National Commissions (NatComs), preparation of reports, development of a regional arms register, harmonization of legislation, training of security personnel, and the declaration of weapons and ammunition used for peacekeeping operations. There was also a commitment to arms collection and destruction.

The ECOWAS Moratorium allowed Governments to create National Commissions, ‘which gives each Government the ability to implement and monitor its

²⁰⁶*Ibid.*, p. 40

²⁰⁷*Ibid*

own initiatives as set forth by the Moratorium, with the help of State Police, the Government, and civil society organizations'²⁰⁸. In cooperation with several UN programmes and agencies, member States were able to initiate several successful arms collection and destruction programmes.

Despite its importance as a model for responsible sub-regional action in the small arms debate, there are several criticisms of the ECOWAS Moratorium. Human Rights Watch claims that violators of the moratorium have made it irrelevant and thereby its potential impact has been reduced. During the conflict in Liberia, despite the moratorium being in place, the Government of Guinea allegedly imported mortar rounds and ammunition from Iran and re-exported them to Liberia. On cargo documents, these were described as 'technical equipment'²⁰⁹. This ammunition was later sent to the Liberians United for Reconciliation and Democracy (LURD) rebels, who used it in civilian areas of Monrovia. Human Rights Watch notes that LURD used child soldiers as young as 11 to fire these mortar rounds, which, if the ECOWAS Moratorium had been obeyed, should not have been in circulation in the first place²¹⁰. Similarly, A UN report on illicit arms supply to Liberia incriminated Ivory Coast, Burkina Faso and Guinea for complicity in the supply of arms to various militant factions in the countries armed violence²¹¹. The report revealed that these members states, themselves signatories to the Moratorium have

²⁰⁸ Garcia, Denis (2009) Arms Restraint and Regional International Law Making: The case of the Economic Community of West African State. *African Security Review 18.2 Institute for Security Studies, 80*. Retrieved on March 12, 2014 at 7:35pm from www.mercury.ethz.ch/serviceengine/files/ISN/112041/Chapter+7.pdf

²⁰⁹Misol, L (2004), Small Arms and Conflict in West Africa. Retrieved on 18 March, 2013 at 1:47pm from <http://hrw.org/news/docs/2004/05/20/small-arms-and-conflict-west-africa8680.htm>.

²¹⁰ Ibid.

²¹¹United Nations Report.(2001). *2001 UN Report of Panel of Experts on Liberia to the Security Council 1343*. Retrieved on January 23, 2016 at 8:am from www.un.org/press/sc7196.doc.htm

violated the terms of the Moratorium conniving with arms manufacturers in Europe and Asia to channel SALW to Liberia in breach of UN arms embargo on Liberia. Despite such damning evidence against these States, the moratorium not being legally binding cannot be evoked to initiate any punitive action against erring parties.

Despite its shortcomings, the ECOWAS Moratorium paved the way for the creation of the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material later on and the related ECOWAS Code of Conduct, adopted on 10 December 1999.

3.5.2 Analysis of the Implementation of the Moratorium

In this dissertation, the analysis of the implementation of the Moratorium focuses on the following thematic areas: Establishment of National Commissions; Arms Collection and Destruction Programmes; Enhancement of border controls; Training of security personnel; Harmonisation of Legislation; Peacekeeping Arms Register and Regional Arms Register and database

- a) **Establishment of National Commissions.** Article 4 of the Code of Conduct states that: In order to promote and ensure co-ordination of concrete measures for effective implementation of the Moratorium at the national level, Member States shall establish National Commissions, made up of representatives of the relevant authorities and civil society. The ECOWAS Executive Secretariat shall prepare guidelines to assist the Member States in the establishment of their National Commissions²¹².

²¹²*The Code of Conduct for the Implementation of the Moratorium on the Importation, Exportation and*

National commissions (Natcoms) are meant to serve as the hub around which national and regional initiatives will revolve. Their function is to promote and ensure the coordination of the concrete measures adopted in view of the implementation of the Moratorium (now transformed to Convention) at the national level. These National Commissions have played an important role in the implementation of the former PCASED, now replaced by the ECOSAP²¹³.

Crucial as the NATCOMs are to the successful implementation of the Moratorium, their establishments in the various states have rather been very slow throughout the life of the Moratorium. The situations on the ground revealed varying degree of compliance to the provision of Article 4 of the Code of Conduct by the member states. As a response to their peculiar national challenges some member states created national committees/focal points (models different from the one recommended in the Code Conduct)²¹⁴. The establishment of Natcoms in Ghana, Nigeria and Sierra Leone all required special legal procedures and the approval of their national assemblies. This is in contrast with the francophone member states where Natcoms can be established by a presidential decree²¹⁵. Nigeria for instance had a National Committee and was just recently converted to a National Commission in 2013 and presently housed in the Ministry of Foreign Affairs.

Manufacture of Light Weapons, 1999 (West Afr.).

²¹³Zuneidu, S. O (2011) *A Look at The Efforts of The ECOWAS Sub-Region Towards Combating The Proliferation of SALW.*(Thesis, United Nations Peace Operations Training Institute). Retrieved on 31 July, 2013 at 4:15pm from www.cdn.peaceopstraining.org/theses/zuneidu.pdf

²¹⁴*ibid*

²¹⁵ Bah, M.S (2004) Micro-Disarmament in West Africa: the ECOWAS Moratorium on Small Arms and Light Weapons. *African Security Review* 13(3).

However, by November 2009, all 15 member states had established one form of small arms coordination body or the other in respect of Article 4 of the Code of Conduct.

The major Challenges confronting the NATCOMs effective functionality include; the lack of political will, office space, Information exchange among major stakeholders, problem of coordination and internal/external institutional relationships, decentralization, human resource management (Lack of staff), administration and finance (absence of dedicated budget lines) and lack of Technical capacity²¹⁶.

There is also the challenge of rivalry between key government departments for their control such as foreign affairs, defence and interior. Such rivalries have often delayed the establishment of Natcoms²¹⁷.

Though Natcoms or their equivalent have been established in nearly all the countries, most of these committees are not functional. For instance, Natcoms or their equivalents exist in Ghana, Nigeria, Togo, Cape Verde, Sierra Leone, Benin, Burkina Faso, The Gambia and Niger; however, they lack the human and financial resources to be fully functional and operationally effective. The creation of non-statutory bodies such as the National Committee or Focal Point in some member state instead of National Commission (as prescribed by the Code of Conduct) deprives it of an operational budget, thereby reducing its efficacy. In addition, most staff of Natcoms across the sub-region are also full-time employees in other government departments; as a result, they see their role in the Natcoms as secondary. Their part-time status, coupled with their lack of technical

²¹⁶ Zuneidu *op cit*

²¹⁷ Bah, M.S. *op cit*

understanding of issues relating to arms proliferation and disarmament, weakens the operations of Natcoms²¹⁸.

b) **Arms Collection and Destruction.** Arms collection and destruction is a major component of the fight against SALW proliferation if you consider the fact that the presence of illicit weapons constitutes a major threat to human security in the West African sub-region. Consequently, reducing and eventually eliminating illicit weapons from the Sub-region is seen as a sine qua non for socioeconomic development in the sub-region. If not destroyed, excess weapons in government armouries are likely to enter the illicit weapons market and exacerbate the conflict cycle in the region²¹⁹. The link between socio-economic development and a stable weapons-free environment was captured by UN Research Centre for Peace and Disarmament in Africa (UNRCPSA) Ivor Richard Fung:

If countries in Africa are to have a chance of realising sustainable socio-economic development, they must first collect and destroy excess weapons not wanted at peace time and curb the flow and proliferation of small arms. Whilst light weapons remain in circulation, the potential for conflicts erupting or resuming will remain very high²²⁰.

Article 13 of the Code of Conduct calls for the “collection, registration and destruction of all weapons, ammunition and components covered by the Moratorium

²¹⁸ Bah, M.S. *op cit*

²¹⁹ Zuneidu. *op cit*

²²⁰ Bah, M.S. *op cit*

...".Mali set the stage off with its spectacular "Flames of Peace" organized in Timbuktu in 1996, since then arms destruction events in West Africa have attracted worldwide interest and attention. Member states emerging from internecine conflicts have been active in weapons collection and destruction. These include Liberia, Sierra Leone, Niger, Mali²²¹ and Nigeria. Although the Moratorium does not address locally produced arms, dialogue between law enforcement agencies and gunsmiths is an important strategy in Ghana's attempt to deal with illicit weapons proliferation, in line with the Moratorium.²²²

- c) **Enhancement of Border Controls.** The West African sub-region is characterized by long and porous borders which contribute to the flourishing cross border crimes including weapons trafficking. Consequently, Article 12 of the Code of Conduct requires that; "The Executive Secretariat, in conjunction with Member States and with the assistance of PCASED, will develop more effective border control mechanisms, including improved equipment, and training and co-operation of customs and other border officials".

This part of the Moratorium regime seeks to improved national and regional capacities for the detection and prevention of small arms trafficking in the Sub-region, facilitated by improved exchange of intelligence. Strategies for enhancing the capacity of border controls within and between Member States have been developed. To date, PCASED has provided technical and logistical assistance to the Governments of Mali, Niger and Ghana through National Commissions. Activities included the strengthening of border control Infrastructure, procurement of vehicles and communication equipment;

²²¹Zuneidu. *op cit*

²²²Bah, M.S. *op cit*

training of border control officers and undertaking sensitization missions to elicit the support and participation of local communities in border areas²²³.

d) **Training of Security Personnel.** The Moratorium regime is also based on the availability of adequate professional security personnel to monitor, document, and stop the illicit flow of arms in the Sub-region. The Code of Conduct therefore requires the training of security and law enforcement personnel on the modalities and best methods for controlling illicit flows of SALW within and between member states. In this direction, A PCASED/ECOWAS sponsored workshop in August 2000 developed a four-part training programme comprising the following stages:

- (i) Developing a training curriculum;
- (ii) Training of trainers, on the basis of the four ECOWAS Monitoring Zones;
- (iii) National-level training; and
- (iv) In-service training for respective individual armed forces.

PCASED has successfully conducted 3 regional training of trainers' workshops as part of its Regional Training of Trainers Programme. A training handbook has been produced and over 300 senior military and security officers from the ECOWAS member states have benefited from those training programmes. PCASED has decentralised training to the national level through the National Commissions²²⁴. The aim of the national training programmes is to allow "local security forces to benefit from the most

²²³Zuneidu. *op cit*

²²⁴Zuneidu. *op cit*

current knowledge and the procedures for the maintenance of peace and the fight against proliferation²²⁵”.

e) **Harmonisation of Laws.** The diverse cultural and colonial background of the West African societies and states implies different customary practices and legal systems that are in place in West Africa. This also means that relevant legislation to control SALW at the national level in most states is nonexistent, outdated or not strong enough. The Code of Conduct therefore recognizes the need for similar legal and administrative structures on small arms control to be in place²²⁶. Thus the development of a regional framework to deal with the possession of firearms should start with a review of domestic laws regulating the possession and use of firearms in all member states. It is in recognition of this need that article 7 of the Code of Conduct calls on members to “harmonise and adopt the regulatory and administrative measures necessary for exercising control of cross-border transaction with regard to light weapons, components and ammunition relating to them.” It calls for the training of law and order, immigration,licencing, customs, water resources and forestry officials in the effective implementation of domestic firearms legislation. In this respect member states, with assistance from PCASED and other partners including civil society, will:

- i. review, update and harmonise national legislation and regulations on light weapons bearing on civilian possession, use and transfer;

²²⁵ Bah, M.S. *op cit*

²²⁶Zuneidu.*op cit*

- ii. apply legal instruments, such as export and import permits and end-user certificates; and
- iii. harmonise different national legislation with a view to developing a regional convention on light weapons that would relate to control and reduction, as well as to humanitarian law issues.

The harmonisation of legislation is aimed at producing a comprehensive regional convention that will reflect the new aspects of collective security in the sub-region and the enhancement of security in general. Current legislation regulating the possession of firearms in nearly all member states does not reflect the contemporary security landscape in the sub-region. For instance, in Sierra Leone there is no single firearms law, but rather two ordinances established by the British colonial powers. The Arms and Ammunitions Ordinance 1955 No. 14 and the Explosive Ordinance 1955 No. 15 were accepted by the post-independent government but were never passed as laws. They were merely added to the laws of Sierra Leone and have since served as the framework through which civilian possession and use of firearms was regulated²²⁷. Ghana's current arms legislation consists of laws from 1962, aspects of which were revised in 1972, 1993 and more recently in 2001²²⁸. In Nigeria the Firearms Act dating back to 1959 is the main instrument regulating Firearms in the country and it has witnessed little or no review.

The delay by member states to make their legislation on small arms available to PCASED for comparative analysis hampered this aspect of the Moratorium considerably,

²²⁷ Bah, M.S. *op cit*

²²⁸ Zuneidu. *op cit*

because regional model legislation is not possible without a thorough analysis of the firearms laws of all member states. Furthermore, it had also been realised that many member states operated outdated laws. It was therefore resolved that ‘member states should first undertake national legislative reviews before continuing with the regional harmonisation process.’²²⁹ Though there appears to be considerable interest and political will on the harmonisation of laws among both state actors and Civil Society, the objective, as of the date of this report, remains largely unrealised. Guinea, Guinea Bissau, Mali and Cape Verde have requested PCASED’s assistance to review their existing laws. Mali also submitted its national legislation on SALW to United Nations Department for Disarmament Affairs (UNDDA). However, so far, PCASED has only provided assistance to Mali and Guinea²³⁰. Although some ECOWAS member states have started the process of reviewing their national firearms legislations, the objective of harmonising laws at regional level still has a long way to go before it is realised. However, PCASED has recruited a consultant to undertake the review and harmonisation of national legislations²³¹.

- f) **Peacekeeping Arms Register.** This aspect of the Moratorium seeks to keep an up-to-date record of the movement of weapons used in peacekeeping operations, so as to ensure their effective control and withdrawal after peacekeeping operations have been completed. This applies to weapons earmarked for use by West African troops engaged in peacekeeping operations outside the Sub-region, as well as weapons used by troops from

²²⁹Zuneidu. *op cit*

²³⁰ *ibid*

²³¹ *ibid*

any part of the world in the management of West African conflicts. A major handicap is that countries contributing to peacekeeping operations outside ECOWAS are reluctant to subscribe to an ECOWAS political and security framework. This appeared to be the case in the management of the Sierra Leone civil war, where discussions between PCASED and UNAMSIL were protracted and difficult. While PCASED would appreciate a speedy declaration by UNAMSIL on the ground, UNAMSIL officials insist that there are political and legal issues that need to be regularized with the United Nations Department of Peacekeeping Operations (DPKO). However, it is important to emphasise that the Peacekeeping Arms Register represents a strategic objective within the Moratorium regime in West Africa, as experience has shown that peacekeeping operations could be sources of illicit arms and agents of small arms proliferation²³².

This objective remains unrealised, and several questions remain unanswered, namely who has the mandate to authorise the Arms Register, who funds it, and who administers it²³³.

- g) **Regional Arms Register and Database.** The Code of Conduct also envisages a Regional Arms Register and Database, which would provide the necessary information and data upon which informed intervention and policies could be based. However in implementing this objective, a top down approach which concentrated on a regional electronic database was initially used making the project over ambitious and unrealistic. Such a centralised approach ignored the absence of national arms registers, and failed to recognise the poor

²³²Zuneidu. *op cit*

²³³ *ibid*

state of information exchange between ECOWAS states, especially in the peace and security sector. An alternative paper-based database, with a focus on capacity building for effective national registration and management of weapons stocks, including imports, exports, arms manufactures, seizures and destruction, is currently being pursued, with external technical and financial support. A UN Register currently exists for conventional weapons (e.g. battle tanks, artillery, aircraft, warships and missiles), but it does not list SALW. As SALW are among the greatest security threats in the region, it is essential that a regional arms register and database is established. In October 1999, PCASED held in Accra its first workshop on the setting-up of a register. However, despite the provision of international assistance towards pilot projects in a few selected countries, this component of the Code of Conduct is yet to be achieved²³⁴.

3.5.2 ECOWAS Response to the Implementation Issues and Challenges

In November 2000, in accordance with the provisions of the Moratorium, an evaluation of the first trial period was conducted with a view to ascertaining the effectiveness of its provisions, general impact and constraints encountered during the course of implementation and recommendations for improvement in all aspects. The evaluation was successfully conducted in October 2002 and the recommendations submitted to the Summit of Heads of State and Governments of ECOWAS in December 2002²³⁵. The Summit decided to:

²³⁴Zuneidu. *op cit*

²³⁵UNDP/ECOSAP (2007) *Programme to Tackle the Illicit Proliferation of Small Arms and Light Weapons in ECOWAS States: Programme Document*. Retrieved on 19 August, 2015 at 12:23am from www.undp.org/content/dam/undp/.../0004998_prod%20ECOSAP.pdf.

- a. Renew the Moratorium for another three years
- b. Establish a Small Arms Unit in the ECOWAS Secretariat
- c. Transform the Moratorium into a Convention

In line with the decision of the Summit, the ECOWAS Council of Ministers, in their fifty-first Session in December 2003, elaborated and ratified the regulation governing the establishment of the Small Arms Unit, while the process of transforming the Moratorium into a Convention is ongoing. PCASED was evaluated in March 2004 to assess what progress had been made since the major evaluation in 2000. The strengths and weaknesses of the current programme were examined in terms of PCASED's core objective of addressing the proliferation of small arms and light weapons and related security questions in West Africa. The meeting noted that significant achievements have been made by PCASED in the implementation of its mandated activities, but however noted that there has been a fundamental shift in the security priorities in the region that needed to be addressed in a more comprehensive manner. It was therefore decided that UNDP's assistance to ECOWAS should continue and that the two institutions should collaborate on the elaboration of a new successor programme, taking into account the new security needs of the region and the need to deepen ownership of the programme by ECOWAS²³⁶. The successor program to PCASED is called ECOWAS Small Arms Control Programme (ECOSAP). ECOSAP will provide a broad spectrum of technical and financial support to ECOWAS Member-States through National Commissions, and build the capacity of the new Small Arms Unit (SAU) within the ECOWAS Commission for

²³⁶UNDP/ECOSAP (2007) *op cit*

policy development and operational activities related to the implementation of the Moratorium on Small Arms in the region. ECOSAP is thus an embodiment of an "integrated and proportional approach to security and development", that explicitly links security, stability, human rights, disarmament and development²³⁷. This initiative complements the ongoing effort of the ECOWAS Commission to build its own capacity to conceive and execute peace and security initiatives in the sub-region in an efficient and sustainable manner. This will enable the ECOWAS Commission to meet its responsibility for effective political leadership and coordination in the implementation of the Moratorium and its associated measures. ECOSAP will be executed by ECOWAS under the National Execution modality (NEX). ECOWAS will be responsible for project delivery and for results. UNDP will provide advisory support, program assurance and will be responsible for fiduciary management and financial reporting. The new programme will continue to be guided by the Code of Conduct governing the Moratorium, the Plan of Action adopted by the Council of Ministers, the OAU Bamako Declaration of 2000 and the 2001 United Nations Programme of Action on Small Arms and Light Weapons. The links between conflict, security and development have become much better recognized and understood over the past decade, and it is now widely accepted that the work of sustainable development is under threat from recurrent violent conflict. Violent conflicts can erase decades of development progress and further entrench poverty and inequality. The interdependence of peace and development speaks

²³⁷UNDP/ECOSAP (2007) *op cit*

to the core development mandates of poverty eradication, enhanced human security, inclusion and governance²³⁸.

3.6 Analysis of the Legal Regime in Combatting the Proliferation of SALW in the ECOWAS Region: The ECOWAS Convention

The review process of the implementation of the Moratorium pointed out some weaknesses and recommendations. One recommendation was to transform the Moratorium into a legally binding Convention, and this was approved by the Heads of State. The Convention makes it legally binding for all states to adopt and implement measures on arms trafficking and proliferation reduction. According to Sola Ogunbanwo²³⁹, International consultant for the Convention, ‘the preceding moratorium had “no teeth” because it was not legally binding.

The 2006 ECOWAS Convention is the primary regional instrument for regulating SALW trafficking proliferation in West Africa. Its adoption was based on the firm understanding by ECOWAS Member States that the proliferation of SALW constitutes a major destabilizing factor in the sub-region²⁴⁰.

The objectives of the Convention are, amongst others:

- i. To prevent and combat the excessive and destabilizing accumulation of SALW in the region;
- ii. To continue the efforts for the control of SALW within the region;

²³⁸ UNDP/ECOSAP (2007) *op cit*

²³⁹ IANSA, Interview with Dr Sola Ogunbanwo, lead international consultant, on the Convention. Retrieved on 19 March, 2013 at 1:37pm from <http://www.iansa.org/regions/wafrica/ecowas-interview.htm>

²⁴⁰ *ECOWAS Convention on Small Arms and Light Weapons 2006 Preamble*

- iii. To build institutional and operational capacities of ECOWAS Commission and the member states to curb the proliferation of SALW in the region; and
- iv. To promote the exchange of information and cooperation among member states²⁴¹.

Most of the provisions of the Convention are of international standard and also relevant to the peculiar needs and circumstances of the sub-region in the campaign against illicit trafficking in SALW²⁴². The ECOWAS Convention is unique in the sense that it includes several new elements that are not found in already existing measures. Among the most salient of these are:

- i. Ammunition and other related material;
- ii. Reference to non-state actors;
- iii. Provision of a sanctions mechanism in the case of non-compliance.

The Convention seeks to achieve its mandate by:

- (a) Enhancing the capacity of the ECOWAS member states through their respective National Committees on SALW, commonly called NATCOM;
- (b) Obliging member states to undertake revisions of existing legislation.

GIABA's Report of 2013²⁴³ states that the ECOWAS Convention on SALW included certain "Proactive" provisions which were improvements on previous International Conventions of this nature:

1. Weapons transfers are clearly and broadly defined in the ECOWAS Convention on SALW, the first time it is defined in an international instrument. Transfers covered

²⁴¹*Ibid* Article 2

²⁴² GIABA op cit p.38

²⁴³ GIABA op cit., at page 40

any movement of arms, as opposed to movement of arms as export, the usual provision in similar international conventions.

2. In preceding international conventions, arms tracing focused on weapons seized in illegal situations, whereas in the ECOWAS Convention, a tracing operation may start from the beginning of the weapons transfer, as long as deviation in marking is suspected.

3. Also for the first time in international instruments, the ECOWAS Convention on SALW brought non-state actors to the fore-front by banning arms transfers to them.

4. Another notable novelty in the ECOWAS Convention is the provision on necessary components and spare parts of SALW which are made subject to controls.

5. The provision on compulsory registry of arms for peace-keeping operations (Article 11), which enhances arms-tracing, is an ECOWAS novelty. Before the adoption of the Convention, there was no inventory of weapons held by soldiers in peace-keeping operations in the region, and that became a source of weapons proliferation. These novelties point to the will of ECOWAS heads of government to go beyond the norm in tackling headlong the problems of SALW proliferation in the region.

The ECOWAS Convention breaks new ground as it is based on human security, international humanitarian law, and sustainable development and human rights principles. The ECOWAS Convention reaffirms the basic principles of the Moratorium and includes a number of the same key provisions.

3.6.1 Analysis of the Implementation of ECOWAS Convention

This subsection shall analyse some of the key legal tenets of the convention based on the following: (a) Establishment of National Commissions for Small Arms; (b) Transparency and Exchange of Information; (c) The Harmonisation of Laws; (d) The Enhancement of Border Controls; (e) Arms Collection and Destruction; (f) Manufacturing; (g) Transfer; (h) Civilian Possession; (i) Management and Security Stockpiles; (j) Marking; (k) Tracing; (l) Brokering

(a) The Establishment of National Commissions for Small Arms (NACSA)²⁴⁴ or NATCOM:

In effect, the establishment of National Commissions (NATCOMs) for SALW is seen as a legal obligation and the necessary first step to address SALW problems within a country. Although National Commissions or focal agencies have been instituted in most states in West Africa, they are limited in their capacity to lead in addressing SALW problems. The guidance and the resources needed by the commissions to operate with are lacking²⁴⁵. NATCOMs are mandated to ensure a reduction in the challenges that SALW poses in a state. As such, they have to undertake a range of functions to fulfill their overall mandate. The United Nations Development Programme (UNDP) guide for establishing a national commission indicates some basic functions of NATCOMs²⁴⁶.

²⁴⁴ ECOWAS Convention of SALW, their Ammunition and Other Related Materials, 2006 Article 22a.

²⁴⁵ Sosuh, M (2013) *Managing National Commissions for Small Arms and Light Weapons Control in West Africa: Policy Brief 1/2013*. Kofi Annan International Peace Keeping Training Centre. Retrieved on 19 August, 2015 at 12:15pm from www.kaiptc.org/.../KAIPTC-Policy-Brief-1-Managing-National-Commissions-for-Small-Arms-and-Light-Weapons-Control.pdf

²⁴⁶ UNDP (2008) *How to Guide the Establishment and Functioning of National SALW Commissions*. Retrieved on 24 July, 2015 at 7:09pm from <http://www.poa-iss.org/Poa/poa.aspx>.

These include planning and implementation of national policies and strategies. This is often referred to as National Action Plan (NAP). The National Action Plan should describe the SALW situation in a country, the objectives of the intervention, operational objectives and activities as well as the resources available for their implementation. The NAP should also be constantly reviewed to ensure that it addresses current SALW challenges. In addition, the NATCOM should coordinate and cooperate with the various actors or stakeholders at the local, national and regional levels to ensure consistency and coherence of all small arms interventions²⁴⁷.

Another key function of the NATCOM is to engage in research. This will help to implement effective SALW control strategies as accurate research will reveal the nature and the extent of SALW proliferation in the country and its effect on socio-economic development. Research will also help in identifying resources available to deal with particular SALW problems. The NATCOM must also engage in resource mobilization and allocation as resources are needed for effective functioning. Thus, the NATCOM should identify potential and interested donors and civil society organizations as well as working closely with national parliaments for allocation of a budget. The development of a National Action Plan is a good basis for fund raising. The NATCOM must also manage information, which involves its collection, analysis and dissemination as the basis for awareness-raising campaigns. Information is also the basis for reporting to relevant international and regional bodies on national small arms initiatives in accordance with commitments made in regional and international small arms agreements, such as the

²⁴⁷ Sosuh, M. *supra*

reporting responsibilities under UNPoA. For support and the sustainability of the activities of the NATCOM, the needs, interests and expectations of all segments of society must be reflected in their programmes²⁴⁸.

1. **Achievements:**

In West Africa, the institution of NATCOM has set the pace for SALW control efforts in a number of countries. In Ghana, for instance, since its establishment in 2007, the NATCOM has embarked on a series of programmes and activities outlined in its NAP to manage SALW issues. The Commission has already completed a baseline assessment of the dynamics of illicit circulation of arms in the country. The Commission has also designed a number of activities and projects. These include capacity building for security sector agencies, engagement with local arms producers and gunsmiths on alternative livelihood ventures, and the collection of confiscated weapons for destruction. Currently, the NATCOM has embarked on the marking of state security weapons and has commenced the SALW baseline survey in Ghana²⁴⁹. Similarly in Sierra Leone, the National Focal Agency on arm established in 2003 became a Commission in 2010. The Commission has undertaken a series of activities, which include completion of a national survey in four thematic areas: stockpile security, legal and institutional frameworks, socio-economic impact of SALW after the war, and impact on national development. This was later validated, leading to the development of a five-year National Action Plan. The National Commission in Sierra Leone also played a key role in the process which led

²⁴⁸ *ibid*

²⁴⁹ *ibid*

to the enactment of Arms and Ammunition Bill to replace an Act of 1955 which regulates the possession and use of firearms²⁵⁰.

Côte d'Ivoire is another post-conflict country that has made some progress in SALW control issues. During the election violence in 2011, the national security stockpile of weapons was plundered, leading to weapons getting into the hands of criminal and ex-combatants, heightening the state of insecurity. The NATCOM has successfully contributed to disarming most of the civilians. Together with the help of the United Nations and the government, they have embarked on the registration and marking of state weapons as well as illegal weapons for effective tracing²⁵¹.

(b) Transparency and Exchange of Information:

By the Provisions of Articles 9-12 the Convention among other things, enjoins institutionalizing databases and arms registries and establishing a dialogue with manufacturers and suppliers of SALW to promote their support for the Convention. The requirement for Arms Registry for peacekeeping operations, which is another novelty in the Convention, has made compulsory the registration of any weapon introduced into the Sub-region for this purpose. This raised an important problem relating to the management of these weapons, as no country taking part in peacekeeping operations in the Sub-region had hitherto wanted to agree to an inventory of the weapons held by their soldiers. As a result, a number of these weapons remained in the ECOWAS territory even after the departure of the peacekeepers, resulting in an important source of proliferation that was

²⁵⁰ ibid

²⁵¹ ibid

particularly difficult to control. With the new measures introduced under the Convention, weapons held by peacekeeping forces can be traced from the time of their entry into the region until their effective withdrawal at the end of the peacekeeping operation²⁵².

The Convention laid emphasis on the establishment and regular updating of the national computerized and centralized registers and databases for permanently gathering and keeping all specific information on small arms and light weapons. Existing national legislations controlling civilian arms and ammunitions have set up various kinds of registers designed to collect data on firearms and ammunition. These registers collect essentially information on arms and ammunitions stockpiled by civilians who have been allowed, by the competent authorities, to acquire, stockpile and bear firearms. They also keep data on sellers, traders, warehouses and private stores registered by the responsible authorities to trade and stockpile arms and ammunitions. These registers are sometimes kept by individuals within the same departments (such as central arms bureau). They may be centralized and, in some cases, they may be under the control of various administrations and police services. As for the registers on arms and ammunitions stockpiled by traders and private warehouses, they are just kept locally, by the traders. There is no centralized national register. Details of the information that should be collected by these registers vary from country to country. However, none of the national legislation includes provisions for the establishment of a centralized computerized database which will regroup nationally, all information on SALW in the national

²⁵²Berkol I(2007). *Analysis of the ECOWAS Convention on Small Arms and Light Weapons and recommendations for the development of an Action Plan*, Note d'Analyse du GRIP, April, 2007, Brussels. Retrieved on January 2, 2015 at 2pm from <http://www.grip.org/bdg/g1071en.pdf>

territory, as provided by Article 9 of the Convention. To this end, ECOWAS Guide recommended as follows²⁵³:

a) provide for the establishment of the national register stipulated by the Convention for: local manufacturers (Article 7[3]) and the register of locally manufactured SALW (Article 8b); small arms held and detained in a personal capacity by civilians (Article 14[2] and [6]); stockpiled or commercialized SALW by civilians (Article 14[2]); temporary import certificates (Article 15[4]); obsolete weapons and/or surplus weapons, seized weapons; unmarked weapons; illicitly held weapons (Article 17[1]) ; and brokers (Article 20[1]).

b) provide for the establishment of a computerized and centralized database to collect, at the national level, all the information on small arms and light weapons. (Article 9 Paragraph 1);

c) specify that the information hereunder shall be permanently entered and kept in the national register: description of the product (type or model, caliber) and quantity (if it concerns a batch); the content of the marking; the names and addresses of the former and current owners and, when possible, successive owners; the date of registration; information concerning each transaction including: - the name and address of the shipper, the intermediary (where applicable), the consignee and the user indicated on the end-user certificate; - the point of departure, transit and destination, as well as the customs references and the dates of departure, transit and delivery to the end-user; - the export,

²⁵³ UNREC (2010) *Guide for The Harmonization of National SALW Legislations in West Africa*. Retrieved on August 19, 2015 at 3pm from www.unrec.org/.../ECOWAS/English%20Guide%20for%20Harmonization.pdf

transit and import licence (quantities and batches corresponding to the same licence as well as the validity of the licence); - full details concerning the method of transport and transporter(s); - the controlling agency or agencies (at the point of departure, transit and entry); - the nature of the transaction (commercial, non-commercial, private or national, conversion, repair); - where applicable, the insurer and/or the financial institution intervening in the transaction.

(c) The Harmonization of Laws

The Convention cannot be efficiently implemented without the harmonization of updated national legislations on SALW²⁵⁴. The application of this Convention requires States Parties to review and harmonize national legislation on small arms and light weapons as prescribed in Article 21(1) that "Member states undertake to revise and update national legislation to ensure that the provisions of this Convention are minimum standards for small arms and light weapons control and their ammunition as well as other related materials."

The harmonization of national legislation is indispensable given that the Convention adopted key concepts and common mechanisms which need to be incorporated into national legislation for a harmonized implementation. Harmonization is even compulsory as ECOWAS zone is marked by great diversity of legal traditions, culture and languages. Also, existing national legislations often contain provisions that

²⁵⁴UNDP (2008) *How to Guide the Establishment and Functioning of National SALW Commissions*. Retrieved on 24 July, 2015 at 7:09pm from <http://www.poa-iss.org/Poa/poa.aspx>.

are outdated in relation to current situations²⁵⁵. To this end and in fulfillment of the relevant provisions of the Convention, particularly those provided for in Article 21(3), which request ECOWAS Commission to propose to Member States guidelines for harmonization of legislative provisions, the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC), upon the request from the ECOWAS Commission and with the financial support from the Austrian government, developed a Guide for the Harmonization of National SALW Legislations in West Africa. The Guide will be the working document for ECOWAS Member States to incorporate operational provisions of the Convention into their respective national legal framework. The present project, which is in line with the 8th output of the ECOWAS Commission Five Year Priority Plan of Activities for the Implementation of the ECOWAS Convention on SALW (2011-2015), is designed to lend UNREC's expertise to the harmonization process by the States²⁵⁶.

In the execution of this project, the UNREC collected the existing national legislation on small arms and light weapons in the fifteen ECOWAS Member States. National legislation provisions were analyzed against those of the Convention and the Convention was discussed in comparison with international instruments. The comparative analysis of national legislation has highlighted the complexity of the task of harmonization: ECOWAS Member States have varying linguistic, cultural and legal traditions. Seven areas were identified for harmonization based on operational issues relating to SALW control as covered by the Convention, including: Definitions,

²⁵⁵ UNREC (2010) *Guide for The Harmonization of National SALW Legislations in West Africa*. *Op cit*

²⁵⁶ UNODA (2011) *Regional Initiatives for Disarmament and Non-Proliferation Portfolio 2012-2015*. Retrieved on August 19, 2015 at 3:30pm from www.unrec.org/docs/portfolio.pdf

Transfers, Manufacture, Transparency and information exchange, Operational Mechanisms, Institutional Arrangements and Sanctions. At the end of the exercise, recommendations for harmonization were made in respect of the seven thematic areas identified.

(d) The enhancement of border controls:

Cooperation between States must help curb the uncontrolled flow of cross-border traffic of SALW. In this regard, the Convention in Article 22 requires mainly that each State:

- a. accepts, under the control of the ECOWAS Commission, strengthened sub-regional cooperation between its defence and security forces, its intelligence services, its customs and border control services and their counterparts in other States Parties;
- b. builds, with the assistance of the ECOWAS Commission, adequate institutional, technical and logistical capacities for its forces for a more professional surveillance of the cross-border traffic. The Guide recognizes that Trans-border cooperation in matter exchange of information, marking and tracing as well among customs officials is of capital importance in this area.

Methods of implementing the above-mentioned measures are beyond the scope of the legislation and falls within the purview of the regional authority. However, Member States are required to at least establish relevant parameters at the national level. In this regard, the Guide provided administrative Recommendations on harmonization of strengthening border controls that the competent national authorities of Member States

shall adopt measures at the national level to intensify trans-border cooperation in order to combat the illicit circulation of SALW.

(e) **Arms collection and destruction:**

By the provisions of Article 17(1), States are required to do two distinct things: 1. collect and 2. destroy surplus, seized, unmarked, illegally possessed and collected SALW (during a peacekeeping operation or when weapons are voluntarily handed in). Although the Convention does not offer any common definition of the characteristics of obsolete or surplus weapons (“surplus to the national needs”), and although States are responsible for adopting their own definitions and criteria in this regard, States have committed themselves not to store indefinitely such SALW in their national stockpiles or their territories. They have committed themselves to destroy them. In this regard, the Convention establishes a common procedure for the handling of “collected” SALW (Article 17[2]). Consequently, States cannot provide otherwise in their national legislations.

Finally, Article 17 Paragraph 3 can be easily understood if we consider that the primary objective of the Convention is “to prevent and combat the excessive and destabilizing accumulation of small arms and light weapons within ECOWAS” (Article 2[1]). Indeed, States are required to develop and implement voluntary handing-in programmes. It is to be noted that the details of such programmes and the implementation strategy are left to the creativity of the States in the elaboration of national action plans.

The UNREC Guide²⁵⁷ for the Harmonisation of National Laws went on to provide the following legislative and administrative Recommendations for harmonization on the collection and destruction of small arms and light weapons:

Recommendations relating to legislative measures:

National legislations prescribe the collection, registration, safe storage and destruction of:

- a. - arms which are in surplus to the national needs or have become obsolete;
- b. - weapons seized and impounded through final decision in law;
- c. - unmarked weapons; and
- d. - illicitly held weapons.

Recommendations relating to administrative and other measures:

The competent national authorities of Member States shall appoint the national institution mandated to collect register, safely store and destroy:

- a. the arms which are surplus to the national needs or have become obsolete;
- b. unmarked weapons;
- c. illicitly held weapons (Article 17[1]);
- d. seized weapons subject to be recorded, stored and secured until their final impounding by final decision in law and destroyed.

²⁵⁷ UNREC (2010) *Guide for The Harmonization of National SALW Legislations in West Africa. Op cit*

(f) Manufacture of SALW (Chapter III):

Articles 7 and 8 set out the principle of strict controls on the manufacture of SALW. Member states shall undertake to control the manufacture of small arms and light weapons within their national territories; shall regulate the activities of local small arms and light weapons manufacturers; and shall undertake to adopt strategies and policies regarding the reduction and/or limitation of the manufacture of small arms and light weapons so as to control their local manufacture, as well as their marketing in the ECOWAS region (Articles 7 and 8). The Moratorium on the other hand prohibits local manufacture. However, it became evident that in practice this prohibition was impossible to check. The provision therefore risked pushing the activities of local manufacturers underground. By subjecting the activity to State control, a number of manufacturers would become known and it would be possible to follow their activities in accordance with the requirements stipulated in the Convention (Article 8). Data is to be collected at the National level and transmitted to the ECOWAS Executive Secretariat. In practice however, this is not complied with. However, the Guide²⁵⁸ laid the following recommendations to harmonise the National Laws with a view to achieve compliance:

a) prescribe the principle of prior authorization from national competent authority for any SALW manufacture within their territory;

b) prescribe measures for the control of the manufacture of small arms and light weapons on their territory and regulate the activities of local manufacturers; they particularly prescribe the establishment of an exhaustive list of local manufacturers of

²⁵⁸ UNREC (2010) *Guide for The Harmonization of National SALW Legislations in West Africa. Op cit*

arms, and their recording in the national arms register, in addition to periodic review of authorizations for manufacture. (Article 7 Paragraphs 2 and 3);

c) state that a request for manufacture of small arms and light weapons shall not be granted, where the applicant fails to provide information on: details of the arms to be manufactured (the quantity, exact type and kind of arms using the ECOWAS classification system), including all serial numbers and other markings; and the procedure for marking; the procedure for entering details of each small arm and light weapon into the national small arms and light weapons register; information on the storage and management of the weapons after manufacture.(Article 8[1]).

d) prescribe compliance with existing standards and procedures for stockpile management, storage and security of small arms and light weapons. (Article 16[3]); define penalties for all the criteria laid down in Articles 7 and 8 of the Convention. The competent national authorities should take the appropriate measures to: promote dialogue with local manufacturers; and forward data on their annual weapons production to the President of the ECOWAS Commission, specifying the types of weapons and their quantity.

(g) Transfers of SALW:

Article 3 establish basic principles on SALW transfers in a very comprehensive way that moves towards an almost total ban, States undertake to prohibit the transfer of Small Arms and Light Weapons and their manufacturing materials into their National territory or from and through their National territory. Armed groups have contributed to destabilising West Africa, and this ban on transfers of SALW to Non-State Actors

reflects the particular concerns of the region. This provision of the Convention is unique, and not found in any other International Agreement on preventing armed violence²⁵⁹.

Garcia²⁶⁰ posits that this is a breakthrough contribution by the convention in spurring efforts at the international level, as it inaugurates language not only prohibiting the transfer to non-state actors, but also requiring authorisation by the importing state. This is important on several levels. First, the discussion on regulating the ban on the sale of arms to non-state actors is quite controversial and fraught with ethical and moral dilemmas. Second, it is an issue that faces open opposition from the United States, and veiled resistance from many other powerful states. Third, arms transfers to non-state actors usually occur from the major arms producers to Africa, and therefore the inclusion of the condition that authorisation by the importing state is required is key²⁶¹.

However, conditions for exemptions based on legitimate National defense, security, law enforcement needs and State participation in peace support operations are laid down in Article 4 of the Convention. Article 5 describes the procedure for an exemption request and Article 6 provides the ECOWAS Commission with relevant elements to analyse the request for exemption. The Convention requires that conditions upon which exemption request are made must ensure respect for human rights, application of International humanitarian law, embargoes, the UN Charter and all other treaties or decisions to which member states are bound. It goes further and outlines cases for the refusal of exemptions for transfers, which is a significant contribution, in general,

²⁵⁹IANSAs, Interview with Dr Sola Ogunbanwo, *op cit*

²⁶⁰*ibid*

²⁶¹*ibid*

to International Law on controlling small arms. The Convention states that a transfer shall not be authorised if it violates obligations under International Law, including universally accepted principles of International Humanitarian Law and UN Charter obligations (Article 6). According to Garcia²⁶², the most innovative part of this Convention is when it spells out that arms transfers shall not be authorised if the arms are:

- a. To be used for the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purposes of oppression
- b. To be used for the commission of serious violations of international humanitarian law, genocide or crimes against humanity
- c. To be used to worsen the internal situation in the country of final destination
- d. To be used to carry out terrorist acts or support or encourage terrorism
- e. To be used to facilitate the commission of violent or organised crime
- f. To be used to hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the transfer, or
- g. Likely to be diverted within the transit or importing country or re-exported to unauthorised users or into the illicit trade (Article 6).

This part grounds the Convention on International Humanitarian Law, and this is a pioneer contribution in any of the legal and political documents on small arms²⁶³. Importantly, the Convention also enshrines sustainable development in causal connection to arms transfers, which is also groundbreaking. Therefore, states are required to move

²⁶² Garcia , *op cit.*, at P. 84

²⁶³Garcia. *Op cit*

vigorously in adopting legislative measures to establish as criminal offences under their domestic law the illegal manufacture, transfer and possession of small arms and light weapons, which should be enshrined in national penal codes and should include requirements for the observance of International Humanitarian and Human Rights Law²⁶⁴.

In the area of regulations covering arms export authorisations, the most important elements are enshrined in article 6, which overviews the cases for refusal of exemptions for arms transfers. Such transfers shall be refused if the export, even if it is considered a donation, has not been approved by all states directly concerned with the transfer, which reiterates the notion that states in the region are moving towards banning transfers beyond the state-to-state realm. Article 6(5) states that arms transfer cannot be authorised if there is likelihood that they will be diverted to unauthorised uses or fall into the illicit trade. In addition, article 20 provides ample consideration of the process of issuing brokering licence applications for import and export. Contracting parties are bound by the convention to observe their responsibilities under international law, taking into account in particular whether transfers will result in the diversion of resources from sustainable development (Article 6[4])²⁶⁵.

In other to effectively comply with the provisions of Article 3, States are enjoined to harmonise their National Laws. To this end the Guide²⁶⁶ laid the following recommendation:

²⁶⁴ *ibid*

²⁶⁵ *ibid*

²⁶⁶ UNREC (2010) *Guide for The Harmonization of National SALW Legislations in West Africa*

i. prohibit the transfer of small arms and light weapons and equipment for their manufacture on, towards and from their territory, except where the certificate of exemption provided for in Article 6 of the Convention has been granted (Article 3[1]);

ii. prohibit all transfer of small arms and light weapons to Non-State Actors, except with the consent of the importing State and subject to obtaining the certificate of exemption (Article 3[2]);

iii. specify that small arms and light weapons are not considered as goods whose movement is free as stipulated in Article 45 of the ECOWAS Revised Treaty (Article 3[3]);

iv. provide for the compliance with the provisions of Article 3(3) of the Convention, of all laws and regulations relating to small arms and light weapons transfers, custom regulations included;

v. prescribe the appointment of the authorities responsible for the issuance and management of export, import and transit licences or authorizations and define their responsibilities;

vi. try to bring under the same heading entitled “Transfer” all the provisions relating to the import, export, transit, transshipment and any other movement of small arms and light weapons together (Article 4[2]);

vii. provide for establishing and maintaining an effective system of export and import licensing or authorization, as well as of measures on international transit and guaranteeing the reliability and authenticity of licences/authorizations granting procedures (Article 4[3]).

viii. stipulate that requests for exemption shall contain information on the: arms to be transferred (quantity, exact type and kind of arms using the ECOWAS classification system, including all serial numbers and other markings); supplier (name of company and representatives, address, and full contact details) of all companies and individuals involved, including brokers where relevant; supply process (the number and period of shipments, the routes including transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling, details of the storage and management of the weapons whilst being transferred, the period covered by the activity for which the exemption is requested); end-user (name of individual/company/institution and representatives responsible, confirmation from relevant national authority that the end user is authorized to import weapons); and end-use (Article 5[1]); stipulate that the request for export or import authorization shall contain the certificate of exemption and the en-user certificate (Article 5[3])

ix. The competent national authorities of Member States should : take appropriate measures to designate focal points responsible for establishing exemption request files at the national level and/or for replying to exemption requests submitted by other Member States and transmitted for approval by the ECOWAS commission ; take appropriate measures to comply with model exemption request forms as adopted by the ECOWAS commission; institute a system of evaluating requests for exemption from a State other than the requesting State and submitted for approval by the ECOWAS commission.

(h) Civilian Possession:

Article 14 of the Convention imposes controls on the possession of SALW by civilians, by placing on member state responsibility for the regulation of possession, use and sale of small arms by civilians and the incorporation into legislation of criminal sanctions for illicit SALW possession and use. However, despite the principle of prohibition of possession, stockpile, trade, import and export of weapons and war materials prescribed for civilians, almost all legislations of the ECOWAS Member States provide for the possibility of obtaining authorizations, especially for trading activities. The resulting effect is that civilians can have the possibility to possess, use and trade light weapons, contrary to the strict prohibition made in Article 14[1] which does not provide for any exception.

As for the requirement to obtain prior authorization from the national competent authority for possession, use and trade of small arms (for civilian use), all Member States legislations establish the requirement of an authorization from the national competent authority. We note the existence of a large number of institutions competent for granting authorizations and licences, depending on the category of arms involved. Most national legislations impose conditions for the delivery of such licences (minimum age; morality and behaviour investigations, especially investigations related to violent behaviour; absence of criminal record; legitimate reasons to possess and/or bear arms; requirement to have secure stockpiling arrangements, without always specifying the required security standards. The requirement to have a licence for each small arm (Article 14[4]) or limiting the number of small arms included in the licence, as well as those relating to a

‘cooling off ’period of 21 days before an authorisation is granted for a possession made in the Convention is not found in the national legislations. Some legislation provide for a limited period of validity and the potential renewal of permits/authorizations/licences to possess, bear and trade arms and ammunition, but it is not the case for all legislations. However, almost all Member States’ national legislations provide for administrative sanctions (suspension or revoking) and/or penal sanctions, in the cases of illegal possession, use and trade of arms and ammunition. It was thus recommended that²⁶⁷:

a). stipulate that the possession, use, and sale of light weapons, in all its aspects, by civilians, are formally prohibited. (Article 14[1]);

b). institute stringent legal frameworks for the control of possession, use and sale of small arms by civilians (Article 14[2]) stipulating that:

i. the possession, use, and sale of small arms and their ammunitions by civilians, are prohibited, except under prior authorization from the competent national authority;

ii. authorization for possession of a small arm shall not be granted, if the applicant fails to fulfill all the conditions hereunder:

- to be 18 years old at least;
- applicant does not have a criminal record and has been subject to a morality investigation;
- proof of a legitimate reasons to possess, carry or use for each small arm;

²⁶⁷ UNREC (2010) *Guide for The Harmonization of National SALW Legislations in West Africa*

- proof that the prospective owner has undergone safety training and competency training including training in the relevant laws regarding small arms;
- proof that the weapon will be stored in a safe place and separately from its ammunition (Article 14[4]).

c). call for penal and administrative sanctions for offences relating to small arms and light weapons, such as in particular, their illegal possession and use. (Article 14[7]);

d. adopt, in countries where it does not exist, regulations requiring stringent conditions for access, bearing and use of SALW held and used by security forces;

e. stipulate that:

i. licences/authorizations for possession of small arms are subject to a limited validity period and to renewal;

ii. each authorization is issued for a limited number of small arms and each arm possessed by a civilian is subject to a licence;

iii. a “cooling off” period of 21 days is met before an authorization is granted for the possession of each weapon. (Article 14[5])

(i) Management and Security of Stockpiles:

Article 16 of the convention foresees for the first time in an International, legally binding instrument, the control of military weapons. To this end, member states undertake to define effective standards and procedures for the management and storage of National stockpiles, including those of peacekeeping operations, manufacturers and

sellers as well as private individuals and to regularly review their facilities and the conditions of storage of SALW held by their armed forces and security personnel, and other authorised organisations with a view to identifying surplus and obsolete stocks for destruction. The spirit of Article 16(1) reflects the search for a higher standard of effectiveness and security of stockpiles of SALW and of management of national stockpiles. However, specific details of the implementation may be different from one Member State to the other, since it is incumbent upon the States to take the “necessary measures”. They are responsible for determining “the effective standards and procedures.” The States are responsible for defining the effective standards and procedures geared at, at least, three essential aspects of SALW stockpiles, i.e., their management, their storage and their security (Article 16[2]). The need for regular inspections of the stockpiles of SALW, especially those which belong to manufacturers, assembly units, dealers and other individuals must be determined at that level (Article 16[3]).

It should be noted that the stockpiles of SALW “held by their armed and security forces and other authorized bodies” must also be submitted to regular controls (Article 16[4]). It should also be noted that the destruction of obsolete or surplus SALW is an integral part of stockpiles management. In this regard, the inspection of stocks of regular forces is also intended to detect surpluses and obsolete stocks, in order to destroy them (Article 16[4]). Many national legislations are lacking in the area of stockpile management and security. Some laws do not contain any provision on SALW stockpile management and security. Even where national legislations provide for regular control of

arms and ammunitions stockpiles and other related materials of the armed forces, they seldom identify surplus or obsolete weapons. National legislations make no provision for training of the staff that manages weapons stockpiles. Nigeria is however among the Ten states in West Africa that reports that it has a procedure for the management and security of state-held stockpile²⁶⁸.

The Guide²⁶⁹ proffered both Legislative and administrative recommendations for the harmonization of Stockpile management security as follow:

Legislative Measures:

a). establish effective standards and procedures for stockpile management, storage and security, as well as the registration and inventory of national small arms and light weapons stockpiles in the possession of the armed and security forces and other authorized national bodies.

b). prescribe regular inspection of storage installations and conditions of small arms and light weapons stockpiles in the possession of the armed and security forces and other authorized national bodies with a view to identifying and destroying obsolete and/or surplus weapons. (Article 16[4]);

c). recommend sanctions in the event of loss or theft. (Article 16[2]);

d). prescribe compliance with existing standards and procedures for safe storage of small arms and light weapons in the possession of local manufacturers (industrial firms and gunsmiths), sailors and individuals. (Article 16[3]).

²⁶⁸Parker, S & Green K (2012) *A Decade of Implementing the United Nations Programme of Action on Small Arms and Light Weapons*. Retrieved on August 19, 2015 at 4pm from www.smallarmssurvey.org/...publications/SAS-UNIDIR-2012-Decade-of-l...pdf

²⁶⁹ UNREC (2010) *Guide for The Harmonization of National SALW Legislations in West Africa*. Op cit

Recommendations relating to administrative and other measures:

To ensure the management, safe storage and security of small arms and light weapons stockpiles across the nation, the competent national authorities shall take appropriate measures for the:

- a. identification of the appropriate site for weapons storage;
- b. physical security of the means of storage;
- c. inventory management and record-keeping;
- d. training of staff; and
- e. security of SALW during their manufacture and transit.

(j) Marking:

Article 18 of the Convention envisages the appropriate marking of all SALW, including their ammunition and other related equipment. The Convention itself defines the two types of markings that should be put on SALW at the manufacture, their characteristics as well as the places where they must be made: 1. a “classic marking”, and 2. a “security marking“. It is the ECOWAS marking standard as laid out in Article 18(2)a and (2)b. The Convention also defines an ECOWAS standard for the marking of ammunition in Article 18(3). According to a research carried out by United Nations Institute for Disarmament Research²⁷⁰ no West African State currently reports on marking at the time of manufacture,

²⁷⁰Parker, S & Green K (2012). *Op cit*

The Guide made the following recommendations for harmonization on marking as follows:

a. prescribe a unique and specific marking of small arms and light weapons upon manufacture in conformity with the “classic marking”. (Article 18[1]). The classic marking contains: the unique batch lot number; the identification of the manufacturer; the country of manufacture and the year of manufacture. It also includes, where possible: the name of the buyer of the ammunition and the destination country. The classic marking must be expressed in alphanumerical language; legible to the naked eyes; and applied to the maximum number of main parts of the weapon, and at the very least on the part designated by the manufacturer as essential as well as on one other important part of the weapon. (Article 18[2a])

b. recommend that in addition to “classic marking”, a “security marking” shall be applied to small arms and light weapons produced after the entry into force of the Convention. The security marking must be expressed in alphanumeric language; and applied to two important component parts of the weapon that are not easily manipulated after the weapon’s manufacture, and the falsification of which would render the weapon unusable. (Article 18[2b])

c. stipulate that: any imported small arms and light weapons bearing no marking in conformity with the prescribed classic and/or security marking must receive the said marking(s) at the time of their importation. Failing this, the weapons cannot be imported or must be destroyed. (Article 18[2c]); and at the time of importation, the mark of the importing State and the year of importation are marked by a competent institution, where

the importing State and year of importation are not known at the time of importation. Failing this, these weapons cannot be legally imported. (Article 18[2c])

d. prescribe that marking of ammunition should include the unique serial number; the identity number of the manufacturer; the identity number of the country of manufacture, and the year of manufacture. Where these information are known at the time of manufacture, the marking shall also include the name of the buyer of the ammunition and the destination country. The component part or the structure where the marking is to be done is the envelope or wrapping of the ammunition, no matter how small they are.

(k) Tracing:

Article 19 of the Convention envisages a tracing mechanism based on the obligatory exchange of data on SALW between member states. It was inspired by the best practices of the existing international instruments. Under the ECOWAS Convention such cooperation is compulsory. Moreover, the Executive Secretariat coordinates the exchange of data between member states as well as the tracing requests themselves. A member state can therefore initiate a tracing request to the Executive Secretariat if it considers weapons to be illicit, and provides it with the necessary information.

Member States subject to a tracing request must respond in a reliable way within one month of receiving the request.

Recommendations for harmonization on tracing small arms and light weapons were provided as follows:

a. make provision for submitting requests for tracing to the ECOWAS Commission or to any other Member State and competent institution (Interpol) in respect of an illicit small arms and light weapons on their territory (Article 19[4]) ;

b. make provision for responding to tracing requests received from a Member State in respect of small arms and light weapons deemed illicit by this State; in which case the response must be provided within a period of one month effective the date of reception of the said request. (Article 19, Paragraphs 6, 7 and 8);

c. stipulate that requests for assistance in tracing illicit small arms and light weapons will contain sufficient information including, inter alia:

i. the illicit nature of the small arm and light weapon, including the legal justification thereof and circumstances under which the small arm and light weapon was found;

ii. markings, type, caliber and other relevant information;

iii. intended use of the information being sought. (Article 19[5])

Recommendations relating to administrative and other measures:

The competent national authorities of Member States shall:

a). appoint the national institution mandated to deal with processing of requests for tracing sent and/or received;

b). shall take the appropriate measures to promote exchange of information among Member States on:

i. information on small arms and light weapons and the trafficking of such weapons that contravene international law or the internal laws of States in which the

operations take place (condemnation of persons or institution implicated, sanctions, disposal, destruction methods, neutralization) ; (Article 19[1])

ii. information on:

(a) manufacture (the marking system and techniques used, and authorized manufacturers);

(b) transfers (exports to and/or imports from all other States, transits, information available concerning national legislation, existing practices and controls, authorized dealers and brokers);

(c) existing stockpiles (management, inventory, security, surplus, losses, theft, destruction). (Article 19[2])

(1) Brokering:

Article 20 of the convention aims to regulate brokering activities by among other things, imposing the registration of brokers, financial agents, their transporters, obtaining information on transit points and routes, as well as the criminalisation of illicit broking of SALW. The Convention requires that each State:

1. undertakes a compulsory registration of all operators exercising the functions of a broker from its national territory;

2. complies with this registration on the legal requirements for the exercise of these functions from its national territory. Therefore, the citizens and companies working as brokers of SALW will be registered as well as the financial agents and transportation agents ensuring the transfer of these weapons. The Convention defines brokering as the work carried out as an intermediary between the manufacturer, supplier or distributor of

small arms and light weapons and the buyer, or user; this includes the provision of financial support and the transportation of SALW. However, the term “broker” is not defined.

Recommendations for harmonization on brokering: Legislative measures

a. adopt standards for controlling and regulating brokers, brokering transactions as well as its related activities, particularly:

i. compulsory registration of all operators exercising the functions of a broker of small arms and light weapons, including financial agents and transportation agents ensuring the transfer of these weapons. This registration is one of the legal requirements for the exercise of the functions of broker. (Article 20[1]);

ii. the requirement to obtain a prior explicit authorization for each individual brokering transaction in which the brokers are involved, irrespective of where the arrangements take place. (Article 20[2]);

iii. the need for each request for authorization on a brokering transaction involving small arms and light weapons to attach : import or export authorizations or licences; and relevant documents on the names and places of all brokers and all transportation agents involved in this transaction; as well as the itineraries and transit points of the shipments of SALW.

b. establish illicit brokering as a criminal offence, and sanction illicit brokering of SALW.

Given the rich and adequate provision of the Convention, the region cannot be described as having successfully done well in achieving this goal since the Convention was adopted in June 14, 2006.²⁷¹

3.6.3 Other Measures

The Convention obliges Member states to adopt legislative and other necessary measures to establish as a criminal offence any activity carried out in violation of the provisions of the Convention and any activity carried out in violation of an arms embargo imposed by the United Nations, the African Union or ECOWAS Commission²⁷². It is however reported that only Five states in West Africa report that they have established illegal trade or trafficking in SALW as a criminal offence however no west African state report on taking action against illegal trade²⁷³.

The Convention also spells out the institutional and implementation arrangements and the procedures for complains and enforcement of sanctions. The convention establishes an innovative complaint procedure whereby all concerns relating to the violation of the convention shall be brought to the attention of the ECOWAS executive secretary, who would submit such complaints to the ECOWAS Mediation and Security Council, whereupon the secretariat decides on measures to be taken, such as sanctions, inquiry or study, or would refer the matter to the ECOWAS Court of Justice (article 27). The ECOWAS Executive Secretariat will play an active role in the establishment and implementation of these measures with a view to strengthening Sub-regional cooperation.

²⁷¹GIABA. *Op cit*, p. 41

²⁷²ECOWAS SALW Convention Article 21(2)

²⁷³Parker, S & Green K (2012) *op cit*

With regards to cooperation towards maintaining the security of ports and borders, states commit themselves to strengthen sub-regional cooperation among defence and security forces, intelligence services, and customs and border control officials in combating the illicit circulation of small arms through enhancing the capacity of National defence and security forces and law enforcement and security agencies, including appropriate training in investigative procedures and border control and law enforcement techniques, and the upgrading of equipment and resources (Article 22).

The Convention amongst other items, also points to certain legal instruments within ECOWAS, in particular the ECOWAS Protocol relating to Conflict Prevention, Management and Resolution, Peace-keeping and Security, which provides the basis for ECOWAS policy in the fields of defence, security and peace building.

Public awareness-raising programmes will be developed in collaboration with Civil Society²⁷⁴. It is important to mention at this juncture that most West African States still operate an outdated and obsolete Legislation on SALW dating as far back as 1924²⁷⁵

The Convention authorises the creation of a group of independent experts who will assist the Executive Secretary in monitoring implementation of the Convention. If a Member State is found to be in violation of its obligations, the Convention has provision for imposing sanctions. This was not the case under the previous Moratorium.

²⁷⁴Berkol *op cit.*

²⁷⁵ GIABA *op cit.* p 39

3.6.4 Implementation Challenges

The transformation of the politically binding Moratorium into a legally binding Convention is, in no doubt, a clear demonstration of a strong political will to stem the effects of SALW in the sub-Region and in keeping with international commitments. However, a successful implementation of the convention requires more than a diplomatic chorus. It requires the translation of this strong political will into practical actions on the part of the leadership to achieve the objective. Due to the existence of the UNPoA as well as the Firearms Protocol, a number of building blocks had already been laid for the implementation of the convention. Thus, some progress has been made in implementing it. Like the Moratorium, the implementation of the Convention is bound to face a number of similar challenges.

1. The challenge of lack of capacity: the region is in short supply of skilled personnel required for the effective and efficient implementation of the Convention across the region. Long after its adoption, capacity-building remains an on-going challenge. Inadequate logistics and insufficient staff: As result of poverty, and in some instances due to sheer neglect on the part of governments, National Commissions lack the facilities and personnel needed for their operations. Some NATCOMs are located within dilapidated structures, like Guinea Bissau²⁷⁶.

2. Lack of capacity building: Personnel working with the National Commissions require periodic capacity building for efficient performance. However, the training centres within the ECOWAS region are insufficient for capacity building. The ECOWAS

²⁷⁶ Sosuh, M. *op cit*

Small Arms Control Programme (ECOSAP) in Mali, which trains personnel in ECOWAS member states in SALW-related issues, is no longer in operation as a result of inadequate financial support and improper management²⁷⁷.

3. The technological backwardness of the region. These technological inadequacies have adversely hindered the smooth implementation of the arms databases (both national and regional) proposed by the Convention. Yet, only such information networking system can adequately respond to arms trafficking and money-laundering challenges posed by cross-border and intra-state smugglers. However, there is a dearth of technological equipment needed to combat such proliferation in the sub-region. For instance, metal detectors are either absent or woefully inadequate at points of entry into several countries. Several airports as well as seaports in the sub-region lack scanners, which are essential for the detection of contraband goods, including weapons concealed in luggage. The shortage of equipment is compounded by the lack of spare parts, supporting infrastructure and the dependency²⁷⁸ on external sources of supply. The lack of the appropriate equipment at land and sea ports has meant that law enforcement officers face difficulties in identifying and confiscating illicit weapons. Immigration and customs officials at land borders lack the technology to scan cargoes for the detection of arms, making it challenging to address inter- and intra-country transfers by land. Some border personnel observed that given that large trucks laden with goods criss-cross several countries in the sub-region, it is impractical to expect border personnel to offload each vehicle for

²⁷⁷ *ibid*

²⁷⁸ Darkwa, L (2011) *The Challenge of Sub-Regional Security in West Africa: The case of the 2006 ECOWAS Convention*, www.nai.diva-portal.org/smash/get/diva2:478514/FULLTEXT01.pdf Retrieved on July 24, 2015 at 6:41pm

inspection²⁷⁹. Implementing Article 22 of the convention, which aims at strengthening border controls, is a major prerequisite for detecting and confiscating new entries into the sub-region and in achieving the objectives of the convention.

Apart from the paucity of large cargo scanners, there is also the scarcity of resources for record keeping. Article 9 of the convention stipulates that states establish computerised national databases for the purposes of record keeping. The databases are expected to be compiled using information from the various sectors responsible for small arms control.

The challenge lies in the insufficient investment in information storage and retrieval systems. Computers are a useful first step in record keeping, but also required are adequate storage and retrieval systems designed to protect records against power surges, power outages, fire, floods, cyber-attacks, etc. Unfortunately, the basic backup systems in several offices make it difficult to assure the security of data in the event of such occurrences²⁸⁰.

Linda Dikwa²⁸¹ further observed that there are also other challenges with computer facilities in some countries in the sub-region that put into question the safety and integrity of data. Where computers exist, there are questions about their effective use and maintenance. She cited an instance where her request to visit a registry in Ghana was declined because, according to the officials there, it was impossible to access the computers, whose cables had been destroyed by rats. While this excuse appears

²⁷⁹ Darkwa, L. *op cit*

²⁸⁰ *ibid*

²⁸¹ *ibid*

ludicrous, it did raise fundamental questions about the supervisory mechanisms within states to ensure that databases are protected sufficiently.

ECOSAP Annual Report 2010 reports that financial assistance has been provided to several NATCOMs to enable them to renovate and equip their offices, and even pays members of staff²⁸². Although such activities fall within ECOSAP's mandate, care must be taken to ensure that member states do not shift their responsibilities on to the programme, particularly as ECOSAP is heavily dependent on donor assistance and funding. Although this funding is predictable in the short-to-medium term, it is important to minimise dependency on external sources as such assistance raises questions about autonomy and sustainability²⁸³.

4. The provision of the Convention on dialogue with manufacturers and suppliers has so far yielded no significant result. Because of the negative effects of the commercial interests of some external stake-holders, principally arms-manufacturing states

5. Effective control of the region's porous national borders remains a continuous challenge. And unless this is tackled by member states, "free" movement of arms will continue as an under-current of ECOWAS policy of free movement of persons and goods.

6. The challenge of economic and political stability in each member state is related to the challenge of SALW proliferation in the region. It is also noteworthy that most

²⁸² Darkwa, L. *op cit*

²⁸³ *ibid*

ECOWAS member states face major socioeconomic challenges that impair their capacity to act both nationally and regionally.

In spite of the best intentions of the convention, well-resourced transnational crime networks, corruption and bureaucratic politics within law enforcement agencies and high levels of poverty and youth unemployment in the sub-region, particularly in post-conflict societies, continue to undermine efforts to curb SALW proliferation. These factors explain why certain criminal and corrupt elements are able to exploit every opportunity, gap and weakness in the arms control mechanism and process.

Beyond all these mechanisms, legal and otherwise, is the crying need for good governance and institutional revival across the region. This will make the democratic process inclusive rather than exclusive, foster National unity, decrease armed rebellion, and gradually deliver peace and prosperity to West Africa.

3.6.5 The Relationship between ECOWAS Convention and the ECOWAS Legal Architecture for Peace and Security, Conflict Prevention and Resolution and Good Governance.

Established in 1975 originally as a regional organization to essentially promote the economic integration of the fifteen Member States, the Economic Community of West African States (ECOWAS) has been gradually transformed, under the pressure of political events, into an organization also responsible for finding solutions to armed conflicts exacerbated by trafficking in SALW and other political crisis which were undermining peace and security within the community space.

Since the formation of the Economic Community of West African States (ECOWAS) in 1975²⁸⁴, the West African region has witnessed three waves of insecurity on a scale large enough to prompt bilateral and collective responses by its member states and the intervention of external actors. The first wave started barely a decade and a half after the formation of ECOWAS with the outbreak of civil wars and internal armed conflicts in Liberia (1989), Sierra Leone (1997), Guinea-Bissau (1998) and Côte d'Ivoire (2002). The second wave of insecurity was a direct result of the internal armed conflicts, and may be linked to the failure of disarmament, demobilization, rehabilitation and reintegration processes and poorly conceived and implemented security sector reform (SSR) processes in some states, particularly in the Mano River Union²⁸⁵. Spewing the symptoms of insecurity beyond the affected states, the period witnessed unprecedented proliferation of small arms and light weapons (SALW), which were recycled in different conflict zones, increase in armed robbery and related crimes, and the growth of trans border organized criminal networks. The third wave of insecurity is manifested in further weakening of security governance structures and institutions and the inability of state security agencies to extend their control over large swathes of territory far removed from the centres of government, including arid and difficult terrains, swamps, deltas, coastal areas and archipelagos, territorial waters, airspace and cyberspace. The forms of insecurity which characterize the third wave include terrorism, maritime piracy, drug trafficking, arms transshipment via loosely controlled airports and seaports, money

²⁸⁴ ECOWAS member states are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

²⁸⁵ The Mano River Union comprises Côte d'Ivoire, Guinea, Liberia and Sierra Leone.

laundering and cybercrime. This extends across the Sahelian strip, including northern Mali, the Gulf of Guinea, the coastal areas and archipelagos of Guinea-Bissau and the northeastern and Niger Delta areas of Nigeria, among others²⁸⁶. In addition, periodic elections have proved to be a revolving point of insecurity in West African states. Elections are potential flashpoints in fledgling democracies because they offer the only convenient junctures for filling political offices, political renegotiation of resource control, and power sharing and reconfiguration. Ethnic and religious sentiments which fuel crisis become tools for political negotiation and mobilization. In many parts of West Africa, including Côte d'Ivoire, Niger and Nigeria, election-related violence, a rise in militancy and high crime rates after elections have been linked to the patronage and arming of supporters and protection groups by political actors desperate to capture power²⁸⁷.

In light of the rapidly changing and evolving security situation in West Africa and in response to emerging security challenges in the region, the ECOWAS security portfolio has developed progressive additions to the original ECOWAS treaty. Article 58 of the ECOWAS Revised Treaty of 1993 and the subsequent Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of 1999 indicate a shift in emphasis from collective defence to collective security; both instruments enable the regional body to develop political, military and

²⁸⁶ Uzoehina, O (2014) *Security Sector Reform and Governance Processes in West Africa: From Concepts to Reality*. Retrieved on 30 August, 2015 at 4:45pm from

www.mercury.ethz.ch/serviceengine/.../FINAL_binder_PP_35_Okey_Uzoehina_ENG.pdf

²⁸⁷ *ibid*

humanitarian responses better to address internal armed conflicts such as those that happened in Liberia, Sierra Leone and Côte d'Ivoire²⁸⁸.

The transformation of the Executive Secretariat into ECOWAS Commission came into effect in January 2007 and has strengthened the visibility and supranational character of the organization²⁸⁹.

3.6.6 ECOWAS Convention and Protocol on the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security, 1999

The principal objective of the Moratorium now ECOWAS Convention on SALW is to facilitate conflict-sensitive development through preventive disarmament initiatives. Because of distressing events in several of its Member States, ECOWAS soon realised that the case of economic development and progress can only be pursued in an environment of peace and stability. It found that it had to involve itself in conflicts in Member States to ensure that an environment conducive to the implementation of its economic programmes was maintained. The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security (10 December 1999) constitutes the most comprehensive normative framework for confronting the threats to peace and security in the region on a more permanent basis by boosting the conflict prevention capabilities of ECOWAS to pre-empt potential outbreak of violence, resolve conflicts when they occur and to engage more effectively in post-

²⁸⁸ Uzochina.O. *Op cit*

²⁸⁹ Yabi, G. O (2010) *The Role of ECOWAS in Managing Political Crisis and Conflict: The Cases of Guinea and Guinea-Bissau*. Retrieved on 30 August, 2015 at 4:38pm from www.library.fes.de/pdf-files/bueros/Nigeria/07448.pdf

conflict reconstruction in places, where peace has been restored²⁹⁰. Article 2 of Protocol Relating To The Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security states ‘...the economic and social development and the security of peoples and States are inextricably linked;...’²⁹¹, and tasks ECOWAS Member States with the responsibility to manage and resolve internal and inter-State conflicts [Article 3(a)]²⁹², as well as manage humanitarian, natural and environmental crises. Finally, the Mechanism identifies the institutions and supporting organs responsible for implementing its provisions and sets out the procedures in this regard²⁹³.

Officials of the Economic Community of West African States (ECOWAS) have demonstrated a real political will to rely on the Protocol on the Mechanism for Conflict Prevention, Management and Resolution, Peacekeeping and Security adopted in December, 1999. Since its adoption in 1999, the Protocol has served as the pivot for the evolution of a body of normative instruments and structures which, taken together, has come to form the ECOWAS security architecture²⁹⁴. For the first time in West Africa, the Mechanism for Conflict Prevention gave due emphasis to addressing regional security challenges such as control of trans border crime, control of SALW and anti-money-

²⁹⁰Zuneidu, S. O (2011) *A Look at The Efforts of The ECOWAS Sub-Region Towards Combating The Proliferation of SALW*.(Thesis, United Nations Peace Operations Training Institute). Retrieved on 31July, 2013 at 4:15pm from www.cdn.peaceopstraining.org/theses/zuneidu.pdf . P 103

²⁹¹*ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security* , December, 1999 p 5

²⁹²*Ibid*, p 5

²⁹³*Ibid*

²⁹⁴ Uzoechina, O. *op cit*

laundering measures. It also laid the foundation for further development of the ECOWAS humanitarian assistance, election monitoring and observation structures²⁹⁵.

According to the Protocol²⁹⁶ “the Assembly of Heads of States shall be the highest decision making body on issues relating to conflict prevention, management and resolution, peacekeeping and security, humanitarian support, peace building, control of cross-border crime, proliferation of small arms as well as other issues covered by the provisions of the Mechanism”. But the Assembly shall delegate to the Mediation and Security Council the power to take on its behalf decision for the appropriate implementation of the provisions of the Mechanism”. The Mediation and Security Council (MSC) comprises nine Member States with seven elected by the Assembly, and the two other members being the current chairperson and the immediate past chairman. Members of the MSC can serve for a two-year renewable term. According to the Protocol²⁹⁷ the MSC shall take decisions and implement policies on issues of conflict prevention, management, resolution, peacekeeping and security; authorize all forms of intervention and decide among others on the deployment of political and military missions; approve the mandate and terms of reference of these missions; revise periodically these mandates and terms of reference in accordance with developments; and upon the recommendation of the Executive Secretary of ECOWAS (now called President of the ECOWAS Commission), nominate the Special Representative of the Executive Secretary and the Commander of the Force (in case of deployment of a military mission

²⁹⁵ *ibid*

²⁹⁶ *ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, 1999 Chapter II Article 6 and 7*

²⁹⁷ *ECOWAS Protocol Chapter II Article 10*

in a Member State). In accordance with the Protocol²⁹⁸, the Executive Secretary has the power to take measures “which can take the form of fact finding missions, mediation, facilitation, negotiation and reconciliation of parties to the conflict”.

3.6.7 ECOWAS Convention and Supplementary Protocol on Democracy and Good Governance, 2001

ECOWAS has shown its determination to increasingly guide its Member States through new political and institutional standards aimed at promoting peace, security and stability in the region by formulating the “Supplementary Protocol on Democracy and Good Governance to the Mechanism for Conflict Prevention, Management and Resolution of Conflicts, Peacekeeping and Security”. The Supplementary Protocol was adopted to reinforce the Declaration of Political Principles and the Mechanism²⁹⁹. Adopted by the Heads of States and Government on 21st December 2001, the Supplementary Protocol is meant to complement that of 20th December 1999 on “internal crisis prevention, democracy, good governance, rule of law and individual rights” and bring the necessary improvements to the Mechanism³⁰⁰. It sets out the constitutional convergence principles commonly applicable to ECOWAS member states based on the principles of good governance, including respect for the rule of law and human rights, separation of powers, strengthening of parliaments, independence of the judiciary, promotion of a non-partisan and responsible press, freedom of association, non-discrimination on ethnic, racial, religious or regional basis, popular participation in

²⁹⁸ Chapter II, Article 15 of ECOWAS Protocol.

²⁹⁹ Zuneidu. *Op cit p 104*

³⁰⁰ Yabi, *op cit*

decision-making and civilian democratic control of the armed forces³⁰¹. Further, Section IV (Articles 19–24) of the supplementary protocol emphasizes democratic control of the armed forces, the police and the security forces. The protocol also prescribes that the police and other security agencies are to be under the control of legally constituted civilian authorities, and that armed forces are citizens in uniform who are entitled to the rights set out in their national constitutions except as otherwise stated in their service regulations³⁰². In a bid to keep the armed forces and security services from encroaching into the political arena, the supplementary protocol shields them from participation in politics, trade union activities and propaganda³⁰³. This Protocol establishes therefore a clear and direct link between the observance of democratic and good governance standards in Member States and peace as well as security prospects, which is undeniably an improvement in the security culture within the West African community space³⁰⁴. The Supplementary Protocol also defines a series of principles concerning elections in Member States as well as the observation and support role of ECOWAS during elections. For example, it provides that “no substantial modification shall be made to electoral laws in the last six months before elections, except with the consent of a majority of Political Actors”; and that “bodies responsible for organizing elections shall be independent and/or neutral and shall have the confidence of all political actors”³⁰⁵.

³⁰¹Uzoehina. *Op cit*

³⁰²Articles 20(1) and 21

³⁰³Article 22(1)–(2)

³⁰⁴Yabi. *Op cit*

³⁰⁵*Supplementary Protocol 2001*Articles 2 and 3

The Supplementary Protocol also aims at setting community standards concerning the role of armed and security forces within a democratic framework. It reaffirms among others that “the army and public security forces shall be under the command of a legally constituted civilian authority”, prohibits “the use of arms to disperse nonviolent meetings or demonstrations”, authorises “the recourse to the use of minimal or proportionate force in case violent demonstrations and prohibits “in any case the recourse to cruel, inhuman and degrading treatment”³⁰⁶. It indicates that “personnel of armed forces and those of public security forces, as part of their training, shall receive instructions on their Constitution, principles and rules of ECOWAS, human rights; humanitarian law and democratic principles”³⁰⁷.

3.6.8 ECOWAS Convention and the ECOWAS Conflict Prevention Framework

Pursuant of the peace and security objective, Members of the Mediation and Security Council of ECOWAS acting on the recommendation of the meeting of the Committee of Experts on Political Affairs, Peace and Security in Ouagadougou on the 14th and 15th of January 2008, came out with the ECOWAS Conflict Prevention Framework document [(ECPF) 2008]. The ECPF is designed as “a comprehensive operational conflict prevention and peace-building strategy that enables the ECOWAS system and Member States to draw on human and financial resources at the regional (including civil society and the private sector) and international levels in their efforts to creatively transform conflicts”, “a guide for enhancing cohesion and synergy between

³⁰⁶ *Supplementary Protocol 2001 s. IV*

³⁰⁷ *ibid*

relevant ECOWAS departments on conflict prevention initiatives...” and “a reference for developing process-based cooperation with regional and international stakeholders, including the private sector, civil society, African RECs, the AU and UN systems, as well as development partners, on conflict prevention and peace-building around concrete interventions³⁰⁸. Divided into fifteen components one of which is Practical Disarmament, the ECPF is now the main document on which the Commission relies for the mobilisation of assistance from external partners in the area of peace and security. The other components of the ECPF are: early warning; preventive diplomacy; human rights and the rule of law; democracy and political governance; natural resource governance; cross-border initiatives; security governance; the media; women, peace and security; youth empowerment; the ECOWAS Standby Force; humanitarian assistance; peace education (the culture of peace); and implementation mechanism³⁰⁹.

The objectives of the security governance component of the ECPF are to among others eliminate threats to individual and group rights, safety, life, livelihoods and property, and to protect the institutions and values of democratic governance, human rights and the rule of law under a human security umbrella and to facilitate the implementation of the relevant provisions of Article 58 of the Revised ECOWAS Treaty, relevant provisions of the Mechanism for Conflict Prevention and the Protocol on Free Movement, and Articles 1(C, E) and 19–24 of the Supplementary Protocol on Democracy and Good Governance. Capacity needs prescribed to meet the objectives of security

³⁰⁸ ECOWAS *Conflict Prevention Framework 2008 Article 7*

³⁰⁹ Uzoehina. *Op cit*

governance include recruitment and training of experts on disarmament, demobilization and reintegration (DDR) among others, to build expertise within the ECOWAS Commission, technical and equipment support to build a database of SSR resources, and provision of a package of resource materials and tools to accompany SSR and DDR initiatives³¹⁰.

3.6.9 Supplementary Act on the Code of Conduct for the Armed Forces and Security Services of ECOWAS, 2011

Embedded in an Act supplementary to the ECOWAS Revised Treaty of 1993, this code of conduct (CoC) aims to establish common standards in the conduct and democratic governance of uniformed personnel in West African states, improving relations between and among them, the political leadership and the civilian population³¹¹. The Supplementary Act on the CoC seeks to promote the integration of democratic norms into the behaviour of the armed forces and security services in ECOWAS states. It reiterates universally acceptable standards of conduct and democratic principles, human rights and international humanitarian law. The CoC is not limited to addressing the high incidence of coups d'état in the region, but more broadly it seeks to promote conditions that deter unconstitutional changes of government and strengthen democratic civilian control and governance of the security sector³¹². Its adoption by the ECOWAS Council of Ministers in Abuja on 17–18 August 2011 was a demonstration of political will to

³¹⁰Uzoehina. *Op cit*

³¹¹*ibid*

³¹²*ibid*

achieve the objectives of a worthy instrument. The CoC reaffirms the subjection of the armed forces and security services to democratically elected constitutional authority³¹³.

The CoC is groundbreaking in several respects. Signifying its importance in promoting SSR and governance, the fact of embedding the CoC in a supplementary Act annexed to the ECOWAS Revised Treaty raises it to the highest political status possible in ECOWAS and makes it legally binding upon entry into force³¹⁴. It is also noteworthy that, unlike other ECOWAS security instruments which enter into force upon ratification by a specified number of member states, by the provisions of Article 36 of the Supplementary Act on the CoC, it is billed to enter into force upon its publication by the ECOWAS Commission in the ECOWAS official journal and by member states in their national gazettes. This provision gives effect to the supranational nature of ECOWAS, by virtue of which ECOWAS decisions and instruments apply to member states without the need for ratification by national executives and domestication by national legislatures.

3.6.10 ECOWAS Counter-Terrorism Strategy and Implementation Plan, 2013

The ECOWAS heads of state adopted the Political Declaration and Common Position against Terrorism in February 2013. Annexed to that declaration is the ECOWAS Counter-Terrorism Strategy and Implementation Plan. The ECOWAS Political Declaration unequivocally condemns terrorism in all its forms and manifestations, including kidnapping, hijacking, hostage taking, demand and payment of

³¹³ *Supplementary Act on the Code of Conduct for the Armed Forces and Security Services of ECOWAS, 2011, Articles 1–3*

³¹⁴ Article 37

ransom, bombing of public and private property and critical infrastructure, acts of sabotage and the desecration of religious and other cultural sacred places³¹⁵.

Adopting the Counter-Terrorism Strategy and Implementation Plan, the heads of state approved the establishment of the ECOWAS Counter-Terrorism Coordination Unit, an ECOWAS arrest warrant and a blacklist of terrorist and criminal networks³¹⁶. The purpose of the ECOWAS Counter-Terrorism Strategy is to give effect to regional, continental and international counterterrorism instruments and provide a common operational framework for action to prevent and eradicate terrorism and related criminal acts within the region. The implementation structures include a national task force, the ECOWAS Commission and Court of Justice, the West African Police Chiefs Committee, the ECOWAS Warning and Response Network, the Intergovernmental Action Group against Money Laundering in West Africa, the West African Economic Monetary Union, civil society organizations (CSOs) and media networks. The implementation plan enumerates necessary actions based on the three pillars of prevent, pursue and reconstruct, responsibility for implementation of the actions and relevant partners.

3.7 Other Instruments on Small Arms Light Weapons Control

West African states are State Parties and or signatories to global instruments such as the UN Protocol against the Illicit Manufacture of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organised Crime (UN Firearms Protocol) and the UNPoA.

³¹⁵ Uzochina *op cit*

³¹⁶ *ibid*

3.7.1 Bamako Declaration of the African Union

The Bamako Declaration evolved out of the need for a common African approach at the UN Small Arms Conference of 2001. Following a Ministerial Conference in Bamako from 30 November - 1 December 2000, it was recommended that the following actions should be undertaken at the National level:

- a. Creation of National Coordination Agencies for small arms;
- b. Enhancement of the capacity of National Law Enforcement and Security Agencies and Officials, including training and upgrading of equipment and resources;
- c. Destruction of surplus and confiscated weapons;
- d. Development and implementation of public awareness programmes; and
- e. Conclusion of bilateral arrangements for small arms control in common frontier zones.

In addition to the Bamako Declaration, the African Union (OAU/AU) created on 9 July 2002, the Peace and Security Council of the African Union. The Protocol Relating to the Establishment of the Peace and Security Council of the African Union reiterates the growing concern about the impact of illicit proliferation, circulation and trafficking of SALW on Africa's peace and security as well as on its economic and social development. It therefore emphasises the need for a well-resolved and coordinated framework of cooperation to tackle this problem³¹⁷.

³¹⁷*Protocol Relating to the Establishment of the Peace and Security Council of the Africa Union*. Retrieved on 19 March, 2013 at 10:37am from http://www.africaunion.org/root/au/Documents/Treaties/Text/Protocol_peace%20and%20security.pdf

3.7.2 The United Nations Firearms Protocol

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition (Firearms Protocol) is the first global agreement dealing with SALW. It is a legally binding agreement that was negotiated as a supplement to the UN Convention on Transnational Organized Crime based on the growing recognition of the role of illegal firearms in facilitating organized crime. It was agreed in May 2001 but entered into force in July 2005 following the deposit of the 40th instrument of ratification by Zambia. Mali was the first ECOWAS country to sign the Protocol and became a member on 3 May, 2002. Members of the ECOWAS community are all State parties. Nigeria became a State party on 3 March, 2006³¹⁸.

The Protocol is mutually reinforcing with the PoA. The Protocol requires states to introduce legislation that criminalizes the illegal production of firearms, to strengthen national gun licensing procedures and to establish effective marking and tracing measures to prevent and reduce the diversion of these weapons into the black market. However, the Firearms Protocol is limited in scope and content, as it narrowly defines the term of “firearms”, and excludes explosives and explosive devices as well as state-to-state transactions. The Protocol only focuses on a few areas, where it sets out standards for national systems and brings a certain level of harmonisation between states in the areas it covers³¹⁹. The UN Firearms Protocol does not attempt to limit civilian possession of guns

³¹⁸ United Nations Treaties (n.d). Retrieved on 19 August, 2015 at 2:04 am from www.treaties.un.org/pages/viewdetails.aspx

³¹⁹Ebo, A, & Mazal, L (2003) Small Arms Control in West Africa. Monitoring The Implementation of Small Arms Controls (MISAC), *West Africa Series No.1, International Alert*. P. 14.Retrieved on 10 March, 2013 at 1:37pm from www.international.alert.org/pdf/pubsec/MISAC_west_africa_english.pdf

nor Government-to-Government transfers of weapons. Rather, it commits states to establish National regulations, which prevent the use of guns in crime. It does not deal with the global SALW trade nor the use and impact of guns in inter- or intrastate conflict. While it calls for the marking and tracing of firearms, the Protocol only includes a limited commitment to maintain these records for 10 years, which is significantly shorter than the life span of most SALW.

3.7.3 UN Programme of Action (PoA)

The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) is the first international agreement that deals with the problem of SALW more comprehensively. Agreed in 2001, the UN PoA thus provided the framework for the regional implementation of measures to curtail the proliferation of small arms and light weapons. It has six identified areas as the basis for policy-making on SALW control: regulating trade; marking and tracing; brokering; destruction and reduction of surplus stocks; stockpile; security and information exchange and transparency³²⁰. It also recognizes the need for a multi-level approach to SALW control by calling on states to take action at the national, regional, and international levels. The UNPoA calls for a biennial meeting of states to monitor progress and identify needs and challenges in implementing the

³²⁰Malam, B. (2014) Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security, *International Journal of Humanities and Social Science*. *Op cit*

agreement. Reporting to the Biennial Meetings has been disappointing.³²¹ However, to date, implementation has been inconsistent both within and across states and requires continued will and political engagement. In spite of that, UN PoA has contributed to greater awareness, understanding and policymaking on SALW control and has led to the formation of other global initiatives, such as the UN Marking & Tracing Instrument and the promotion of the global arms trade treaty³²². It is not a legally binding document. Its effectiveness and impact on the ground therefore depends on the political will of states to fulfill its commitments. The UNPoA is significant because it gave leeway for countries to explore ways to combat the problem of arms proliferation³²³.

In 2005, African representatives met in Namibia for the Second Continental Conference of African Government Experts on Illicit Trade in Small Arms and Light Weapons and produced the African Common Position to the Review Conference on the Progress Made in the Implementation of UNPoA (African Common Position). This document, endorsed by the Executive Council of the African Union in January 2006, reaffirms the 2000 Bamako Declaration, and identifies the priority issues for African states at the national, regional, and global levels.³²⁴

³²¹ AEFJN (2012) *Control of Small Arms and Light Weapons (SALW)*. Retrieved on 30 August, 2015 at 3:47pm from http://www.AEFJN/manual/vol2_CH5.pdf Retrieved on 30 August, 2015 at 3:47pm

³²² *ibid*

³²³ Badmus, I.A (2009) *Managing Arms in Peace Processes: ECOWAS and the West African Civil Conflicts*. Retrieved on 22 August, 2015 at 12:17pm from www.africanos.eu/ceaup/uploads/WP_2009_01.pdf

³²⁴ Decision on a Common African Position on the UN Review Process On The Plan of Action on Small Arms And Light Weapons (*DOC.EX.CL/215 (VIII)*), African Union, *Eighth Ordinary Session*. 16-21 January 2006. Khartoum, Sudan. Retrieved on 13 March, 2015 at 1:37pm from http://www.africaunion.org/root/au/Documents/Decisions/com/AU6th_ord_Council_Decisions_Jan2006_Khartoum.pdf

3.7.4 The Arms Trade Treaty

The Arms Trade Treaty (ATT) refers to the legally binding international standards for the import, export, and transfer of conventional weapons, as established by the United Nations General Assembly (UNGA). Despite a state's right to acquire arms for self-defence, the poor management and transfer of conventional arms can have potentially negative effects on the peaceful social and economic development of countries. The proposal for an ATT arose from a perceived need for common international rules and regulations for this trade in order to promote stability and focus resource on human development and the attainment of the MDGs. The 'Illicit Arms Trade' was defined by the UN General Assembly (UNGA) to cover "that international trade in conventional arms, which is contrary to the laws of states and/or international law"³²⁵. The lack of common international import and export standards of arms makes it possible for arms merchants to exploit gaps and loopholes in the different domestic systems³²⁶. Many now feel that the global trade of conventional arms should be subject to common international rules and regulations as is the case for the global trade in other commodities³²⁷.

The roots of what is known today as the Arms Trade Treaty (ATT) can be traced back to the late 1990s, when civil society actors and Nobel Peace Prize Laureates voiced their concerns about the unregulated nature of the global arms trade and its impact on

³²⁵Casey-Malsen, S. Giacca, G.& Vestner, T. (2013).*The Arms Trade Treaty* (Report No. 3).*Academy of International Humanitarian Law and Human Rights*. Geneva

³²⁶ Mahmoud, D. (2012) A Short Guide to the Arms Trade Treaty. *Advocates For International Development*. Retrieved on 13 March, 2013 at 1:47pm from www.a-short-guide-to-the-arms-trade-treaty/a4ID.pdf

³²⁷*ibid*

human security³²⁸. They advocated the adoption of an international code of conduct on arms transfers to be adopted by all arms-selling nations; since then it has become increasingly recognised that to safeguard peace and security, there is an urgent need to further address the conventional arms trade³²⁹.

The idea of an ATT was first officially introduced in 2006 when the UNGA requested that the UN Secretary General (UNSG) seek the views of member states on the feasibility, scope and parameters in establishing legally binding international standards for the import, export, and transfer of conventional weapons³³⁰. On 6 December 2006, UNGA passed Resolution 61/89, “Towards an Arms Trade Treaty (ATT),” in a majority vote of 139 states in favour, one against (the United States), and 24 abstentions (UNGA 2006). The UN Resolution 61/89 reaffirmed the inherent right of all states to self-defense under Article 51 of the UN Charter and acknowledged that states can manufacture, import, export, transfer and retain conventional arms for their legitimate self-defense and security needs. The Resolution recognized that arms control, disarmament and non-proliferation are essential elements of maintaining international peace and security, and that with the rights to sell, acquire and possess weapons come the responsibilities and legal obligations that derive from the UN Charter and international law, including international human rights law, international humanitarian law and arms embargoes mandated by the UN Security Council.³³¹ The Resolution recognised that the absence of ‘common international standards on the import, export and transfer of

³²⁸ Mahmoud, D. (2012) A Short Guide to the Arms Trade Treaty. *Op cit*

³²⁹ *ibid*

³³⁰ Casey-Malsen, S. Giacca, G. & Vestner, T. (2013). *Op cit*

³³¹ Amnesty International (2007). *A Global Arms Trade Treaty: What States Want*. p. 2: Author

conventional arms...is a contributory factor to conflict, the displacement of people, crime and terrorism’ and undermines, among others, peace, security, and sustainable development.³³²The Resolution also acknowledged the existence of different initiatives at international, regional and sub-regional levels ‘to enhance co-operation, improve information exchange and transparency and implement confidence-building measures’ with regard to the international arms trade – but the Resolution also noted the growing support across all regions for the conclusion of a legally-binding instrument with ‘common international standards for the import, export and transfer of conventional arms’. In addition, the role played by NGOs and civil society towards a responsible arms trade was recognised.³³³

On 2 December 2009, by another majority vote and with the support of the United States, the UNGA adopted Resolution 64/48, whereby member states agreed “to convene a UN Conference on the Arms Trade Treaty” in 2012 to negotiate a “legally binding instrument on the highest possible common international standards for the transfer of conventional arms.”³³⁴The resolution was adopted by 151 votes to 1 with 20 abstentions.³³⁵ In accordance with Resolution 64/48, four preparatory committee meetings were held between 2010 and February 2012.³³⁶ The resolution specified that the UN Conference on the Arms Trade Treaty would be ‘undertaken in an open and transparent manner, on the basis of consensus, to achieve a strong and robust

³³² *ibid*

³³³ Amnesty International (2007). *A Global Arms Trade Treaty: What States Want. Op cit* p.3

³³⁴ Casey-Malsen, S. Giacca, G. & Vestner, T. (2013). *Op cit*

³³⁵ *ibid*

³³⁶ *ibid.*

treaty'.³³⁷ On 24 December 2012, by 133 votes to nil with 17 abstentions, the UN General Assembly adopted Resolution 67/234, in which the Assembly decided to convene another diplomatic conference 'in order to finalize the elaboration of the Arms Trade Treaty'. In accordance with the resolution, the Final United Nations Conference on the Arms Trade Treaty was convened at UN Headquarters in New York from 18 to 28 March 2013. The Conference was opened by the UN High Representative for Disarmament Affairs. On 2 April 2013, the text of the Arms Trade Treaty, Resolution 67/234B was formally adopted by the UN General Assembly by an overwhelming margin, by a recorded vote of 154 in favour to 3 against, with 23 abstentions³³⁸, thereby becoming the latest treaty to be added to the corpus of international weapons law.

In accordance with its Article 21, the ATT was opened for signature at the UN in New York on 3 June 2013. A formal signing ceremony was held that day in the Trusteeship Council Chamber at 10.30 am. More than 60 States have so far signed the ATT. Nigeria became the first African country to sign and ratify the ATT on 12 August, 2013, while Ghana, Cape Verde, Guinea Bissau and Sierra Leone also signed and ratified in September of same Year³³⁹.

Though the ATT will not control the domestic weapons use once ratified, it will require states to establish national regulations to control the transfer of conventional arms and regulate arms brokers, among other objectives.

³³⁷*ibid*

³³⁸.Casey-Malsen, S. Giacca, G.& Vestner, T. (2013).*Op cit*

³³⁹*Multiple West African States Sign the ATT during UNGA High Level Week* (2013). Retrieved on 19 August, 2015 at 1:37am from www.controlarms.org/.../west_african_states_sign_the_att

1) States' views on the need for an ATT

One of the main reasons behind the call for the ATT is to strengthen international control over the global proliferation of small arms and light weapons (SALW) through regulation of or restraint over the legal SALW trade and to eliminate or prevent their illicit trade. SALW kill between 500,000 and 750,000 people annually and are a “contributory factor to armed conflict, the displacement of people, organized crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development”.³⁴⁰

States' submissions reinforced the importance of securing the ATT. An overwhelming number of states expressed their support for the development of a comprehensive, legally binding instrument aimed at the establishment of common international standards for the export, import and transfer of conventional arms.³⁴¹ A number of states reiterated their view as to the pressing need for an ATT by pointing to the role of the irresponsible trade in arms in fuelling conflict, causing violations of human rights and international humanitarian law, and impeding economic and social development opportunities. Austria's views, which reflect a majority of submissions, expressed this near global sentiment:

“Every year, hundreds of thousands of people are killed because of the uncontrolled proliferation of arms. It is undisputed that the irresponsible trade in arms fuels human rights violations, destabilisation, crime, terrorism and conflict – with all its multifaceted consequences such as displacement, violations of international humanitarian law and poverty – thus being one of the

³⁴⁰ Sears, N.A (2012) Controlling Small Arms and Light Weapons Proliferation: The Potential of the Arms Trade Treaty *Paterson Review of International Affairs* (2012) 12: 35–59.

³⁴¹ Amnesty International 2007. *Op cit* p. 4

biggest barriers to millions of people achieving their human rights and development opportunities in peace and security.”³⁴²

2) The need to close existing gaps and loopholes

Many states are cognisant of the enormous steps taken at the national, regional and multilateral level since the early 1990’s towards creating guidelines and principles on transfers of conventional arms.³⁴³ For example, Spain noted that “...components are produced and assembled in different countries and the final manufacture is frequently delocalized. However the diversity of control levels makes it difficult to comprehensively address illicit and irresponsible transfers globally³⁴⁴.”

For many states, the absence of commonly agreed laws to regulate the international conventional arms trade and the existence of inconsistencies and exploitable loopholes are key reasons for an ATT. Closing these loopholes and ensuring that all legitimate transfers are carried out from the same standard elaborated in a comprehensive legally binding instrument is expressed as being in the interest of all states.³⁴⁵ It is contended that the gap between irresponsible and illegal transfers of conventional arms should be closed so that all irresponsible transfers are prohibited by states.³⁴⁶

3.7.5 High Light of Some Key Legal Issues of the ATT

(a) The Principles of the ATT

The inherent Right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations; No State or group of States

³⁴²*Ibid*.p. 5

³⁴³Amnesty International 2007. *Op cit*

³⁴⁴*ibid*

³⁴⁵*ibid*

³⁴⁶*ibid*

has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements are in violation of International law.³⁴⁷ In light of this, the transfer of arms to a non-state armed group in another state could amount to a violation of the non-intervention rule. This issue was addressed by the ICJ in the 1986 Nicaragua case.³⁴⁸ The Court concluded that the USA had violated the customary international law rule on non-intervention by ‘training, arming, equipping, financing and supplying the contra forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua’.³⁴⁹

To ensure that violations of humanitarian law are not facilitated by unregulated access to arms and ammunition, arms transfer decisions should include a consideration of whether the recipient is likely to respect this law.³⁵⁰

(b) Article 1. Object and Purpose

The object of the Arms Trade Treaty is to establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms; Prevent and eradicate the illicit trade in conventional arms and prevent their diversion; for the purpose of Contributing to international and regional peace, security and stability; Reducing human suffering; Promoting cooperation,

³⁴⁷Casey-Malsen, S. Giacca, G.& Vestner, T. (2013).*Op cit p 14*

³⁴⁸ *ibid*

³⁴⁹ *ibid*

³⁵⁰ *ibid*

transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

(c) Article 2. Scope

This Treaty shall apply to all conventional arms including Small arms and light weapons. The scope of the treaty was a central focus of the negotiations, along with prohibitions and criteria for denying authorisation to transfer. The General Assembly Resolution establishing the negotiations had called for the treaty simply to cover ‘the transfer of conventional arms’³⁵¹.

(d) Article 3. Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

The issue of whether the ATT would cover ammunition was highly contentious. The USA in particular was strongly opposed to their inclusion, whereas many states considered it was essential if the purpose of reducing human suffering were to be achieved.

(e) Article 4. Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability

³⁵¹Casey-Malsen, S. Giacca, G.& Vestner, T. (2013).*Op cit*

to assemble the Conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components. Article 4 applies to any export of parts and components ‘where the export is in a form that provides the capability to assemble the Conventional arms covered under Article 2(1). The general obligation of states parties to any international treaty to implement that treaty in good faith³⁵² prevents a state party to the ATT from circumventing its international legal obligations by sending a number of separate shipments of parts and components for a conventional weapon falling under Article 2.

(f) Article 5. General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.

This provision, requiring state parties to implement the ATT in a ‘consistent, objective and non-discriminatory manner’, reiterates the injunction to avoid politics in arms transfer decisions.

2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.

Paragraph 2 is a core provision of the ATT. It requires each state party to ‘establish and maintain a national control system’ to give effect to the treaty’s obligations. Such a control system is essential if a state party is to apply effectively the prohibitions and authorization denials specified under Articles 6 and 7.

³⁵²This obligation, known as *pacta sunt servanda*, is codified in Article 26 of the 1969 Vienna Convention on the Law of Treaties, and is customary law binding on all states.

(g) Article 6. Prohibitions

1. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.

A number of states have called this article the ‘heart’ of the treaty. It prohibits any transfer of conventional arms — or their ammunition/munitions, parts or components — if the transfer would violate a state party’s obligations with regard to Security Council arms embargoes, or obligations under treaties to which it is a party, or if the state party ‘has knowledge at the time of authorization’ that the arms or items would be used to commit genocide, crimes against humanity, or certain war crimes. Since each UN member state is already required to respect a Security Council embargo, this provision reiterates an existing obligation. As of May 2013, Chapter VII arms embargoes were in force against a number of countries including Cote d’Ivoire, DR Congo and Liberia; and against some associated individuals and entities like al-Qaeda and the Taliban.³⁵³

(h) Article 7. Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its

³⁵³Stockholm International Peace Research Institute, *Arms Embargoes Database*. Retrieved on 18 April, 2014 at 1:37pm from <http://www.sipri.org/databases/embargoes>.

national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:

(a) would contribute to or undermine peace and security;

(b) could be used to:

(i) commit or facilitate a serious violation of international humanitarian law;

(ii) commit or facilitate a serious violation of international human rights law;

(iii) commit or facilitate an act constituting an offence under international conventions or relating to terrorism to which the exporting State is a Party; or

(iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.

Along with Article 6, this provision forms the centre piece of the treaty. If an export is not prohibited under Article 6, an exporting state party must, before deciding whether or not to authorize a proposed export of conventional arms (or ammunition/munitions, parts or components), assess the risk that the export concerned would undermine peace and security or be used to commit or facilitate a serious violation of international humanitarian or human rights law, or acts constituting terrorism or a transnational organized crime. The provision states that an exporting state shall refuse authorization if its assessment concludes that the risk of negative consequences (as listed in the ATT) is 'overriding'.

As noted above, whether ‘export’ covers gifts or free loans was left deliberately ambiguous. On the basis of *pacta sunt servanda* (the duty to apply and implement a treaty in good faith), it is nevertheless clear that no state party could simply avoid its obligations under the treaty by listing all its transfers of conventional arms as ‘gifts’.

(i) Article 9. Transit or transshipment

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.

Today, many states do not control transits and trans-shipments (hereafter, referred to collectively as transits) of conventional arms, although the international flow of arms is tremendously significant. Article 9 reflects the principle that exporting states are primarily responsible for the assessment of arms transfers, but highlights nonetheless that transiting states too have international legal responsibilities.

(j) Article 11 Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion. By the provisions of Article 1, an objective of the ATT is to prevent and eradicate the illicit trade in conventional arms and prevent their diversion. Since diversion of arms to unintended end users endangers international peace, security, and stability and leads to (preventable) human suffering, the ATT contains a separate provision that establishes ways and means to prevent and react to diversion, while avoiding the highly controversial concept of unauthorized non-state

actors and leaving room for end user and end use control. The provision reflects the reality that all states parties are concerned by diversion, whether of exports, imports, or transit shipments, and consequently seek to address and prevent it.

In this area, cooperation among states is of utmost importance. States parties involved in an arms transfer (export, import, and transits) must take appropriate measures to prevent diversion. There is no international legal definition of diversion. The Small Arms Survey has described the concept as follows: The term ‘diversion’ refers to a breakdown in the transfer control chain such that, either before or after arriving at their intended destination, exported weapons are transferred to unauthorized end-users or used in violation of commitments made by end users prior to export³⁵⁴.

Diversion therefore occurs when arms are transferred to third states, foreign entities, or internal actors without the consent of the exporting state, for whatever reason. Measures by importing states to prevent diversion may include: effective export controls to avoid re-export; stringent supervision of state authorities that hold arms, and private entities and persons that hold arms; effective physical security and stockpile management; and requests for international assistance in capacity-building according to Article 16(1).

3.8 Weaknesses of the Existing International System of SALW Control

Existing instruments of SALW control have focused on criminalizing illicit transfers, marking and record keeping, stockpile security and reductions, international co-operation and assistance, transparency and information exchange, and transfer controls.

³⁵⁴Casey-Malsen, S. Giacca, G.& Vestner, T. (2013).*Op cit.*, at pp 33

However, transparency and transfer controls remain relatively weak³⁵⁵. Moreover, significant areas of SALW control have been ignored at the international level. The intransigence of a few states in the 2001 Small Arms Conference, most notably the United States, prevented agreement on the regulation of civilian firearms and the ban of transfers to non-state actors in the UN PoA.³⁵⁶

The so-called “politically binding,” rather than legally binding, nature of several key instruments, including the Register and PoA, is another weakness of international SALW control since these documents are unable to compel compliance³⁵⁷. Arguably, a greater problem is the weakness of monitoring, verification, and compliance systems. The PoA does not have a mandate for monitoring and verification. Instead, assessments of implementation are done through a combination of biennial meetings, five-year review conferences, and the work of NGOs and the UN PoA Implementation Support System, which provides information on states’ implementation efforts³⁵⁸. The PoA Implementation Support System falls far short of the arms control standards set by the International Atomic Energy Agency and the Organization for the Prohibition of Chemical Weapons, which have mandates for inspections of states’ nuclear and chemical facilities.

A final problem is the narrow framing of the international SALW control agenda as the control of “illicit” SALW through preventing SALW diversion, defined as the

³⁵⁵Sears.*op cit*

³⁵⁶*Ibid*

³⁵⁷Parker, S(2011). *Improving the Effectiveness of the Programme of Action on Small Arms: Implementation Challenges and Opportunities*. Geneva: United Nations Institute for Disarmament Research. P 32

³⁵⁸United Nations(2012) *Programme of Action Implementation Support System: PoA-ISS*. Retrieved on 18 April, 2014 at 1:57pm from <http://www.poa-iss.org/poa/poa.aspx>.

movement of SALW from legal control by states and state-sanctioned owners to illicit control by non-state-sanctioned owners³⁵⁹. The distinction between licit and illicit SALW is often blurred. The current framework does not sufficiently address the fact that SALW almost always originate in legal possession before being diverted to illicit possession, hence controlling illicit SALW requires control of legal SALW as well.³⁶⁰ Similarly, the focal role of states in legal SALW regulation has limited the reach of international regulations in the critical areas of state-to-state transfers and civilian firearms possession.

Lastly, the narrow association of illicit SALW with non-sanctioned non-state actors fails to address the illegitimate use of SALW by state actors. Mike Bourne³⁶¹ notes that the separation of legal and illicit SALW “bears only limited and partial relationships to the potential use of weapons in violence,” and “de-emphasizes the violence that is often conducted with legally held and traded weapons.” Control-averse states have thus succeeded in having international SALW control instruments reaffirm their “legitimate rights” to use, produce, and transfer SALW.

³⁵⁹Sears, A. N *Paterson Review of International Affairs* (2012) 12, p 41

³⁶⁰*Ibid* at p 8

³⁶¹Bourne, M (2011) Controlling the Shadow Trade. *Contemporary Security Policy* 32 (1) p 216

Chapter Four

COMBATTING PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS IN NIGERIA

4.0 Introduction

Nigeria is both a producer and consumer of SALWs in the West African sub-region. The Defence Industries Corporation of Nigeria, DICON, is the only legal small arms producer in Nigeria³⁶².

Out of an estimated 640 million SALW in circulation world-wide, 100 million are estimated to be in Africa, about 30 million in sub-Saharan Africa and between eight³⁶³ to 10 million in West Africa alone³⁶⁴, regrettably, about 79% of these SALWs are in the hands of non-state actors and criminal groups³⁶⁵. Although it is difficult to determine the exact quantity of illegal SALWs circulating within or penetrating into Nigeria, one estimate puts it at over 70% of about eight to 10 million illegal weapons in West Africa are in Nigeria³⁶⁶ while the other puts it to be between three million to six million small arms and light weapons in circulation in Nigeria³⁶⁷. According to a study carried out by

³⁶²NISAT Database: Nigeria: *Small Arms Production*. Retrieved on December 28, 2013 at 3:06pm from http://www.nisat.org/publications.nigeria_small_arms_production.pdf

³⁶³Ikelegbe, A (2014) Routes and Illegal Arm Caches Between Ghana, Togo, Benin and Nigeria. In Asoba, S. & Glokpor, R. (Eds.) *Trafficking of Small Arms and Light Weapons (SALW) in West Africa: Routes and Illegal Arm Caches Between Ghana, Togo, Benin and Nigeria*.

³⁶⁴Osimen, G. U, & Akintunde B. A (2015) Small Arms and Light Weapons (SALW) Proliferation and Problem of National Security in Nigeria *International Affairs and Global Strategy* vol. 29. Op cit

³⁶⁵Okeke, V.O.S (2014) The Nigerian State and the Proliferation Small Arm and Light Weapons in the Northern Part of Nigeria. *Journal of Educational and Social Research* 4(1). 415-428. Doi:10.5901/jesr.2014.v4n1p415

³⁶⁶Illoani, F.A & Echewofun, S (2016, March 12) Illegal Guns Flooding Nigeria, Fuelling Violence. *Daily Trust* vol. 18. No. 90 pp.5 and Bello, A (2010, November 29) 70% of Illegal Arms in West Africa are in Nigeria – NATFORCE Boss. *Daily Trust*. Retrieved on October 10, 2013 at 3:05pm from www.dailytrustnig.org/

³⁶⁷Ikelegbe, A (2014). *Op cit*

International Alert, the failure of Nigeria's Government to implement disarmament or arms control programs after the civil war of 1967-70 and after other violent conflicts within the country thereafter is at the source of the country's SALW proliferation problem³⁶⁸. This has been further fuelled by ethno-religious conflicts, armed robbery, and leakages from Government armories.

Nigeria, West Africa's most populous country, is beset by widespread and recurrent ethnic and religious tensions and hostilities. More than half of Nigeria's 36 States have suffered violence owing to the activities of various militias, resulting in thousands of deaths and the displacement of tens of thousands of people. The ready availability of small arms and light weapons contributes significantly to outbursts of violence while the central Government's efforts to restore order are woefully ineffectual.

4.1 History of SALW in Nigeria and the Genesis of Proliferation

Gun possession by civilians in Nigeria is not new. A plethora of Literature sources indicate that guns were first introduced by the European slave traders, colonial merchants and explorers and have for long been used as part of tradition and in hunting activities in the rural community.³⁶⁹ 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

³⁶⁸Osimen. *Op cit*

³⁶⁹Zebulon, T (2004, October 1)Small Arms Proliferation Poses Challenges in West Africa *Focus on Arms in Africa*, Vol. 3, issue 1, p 7.Retrieved on March 1, 2013, at 5:30pm from http://www.iss.org.za/pubs/Newsletters/Focus/Vol3No1_04/Takwa.pdf

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.³⁷⁰ 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 Act³⁷¹. The phenomenon was however, aggravated by the civil war and has steadily increased owing to the interplay of a number of factors.³⁷²

4.2 The proliferation and Misuse of Small Arms in Nigeria

With an estimated three million to six million³⁷³ small arms and light weapons in circulation in Nigeria, these weapons pose a significant challenge to law and order and a high risk to personal security. The majority of these Small Arms are illegally possessed, due to highly restrictive National laws on possession. While this does not necessarily indicate intent to use these weapons in an illegal fashion, as self-defence is a primary motive for possession in some cases, it does mean that there are few records of the number of weapons in the country and ineffective means of controlling the importation

³⁷⁰ Chuma-Okoro, Helen (2011). *Op cit*

³⁷¹ *ibid*

³⁷² Agboton-Johnson, C. Ebo, A. & Mazal, L. (2004). Small Arms Control in Ghana, Nigeria and Senegal. *International Alert West Africa Series No. 2*. London. Retrieved on March 18, 2013 at 1:25pm from http://www.smallarmssurvey.org/files/portal/spotlight/country/afr_pdf/africa-ghan-nigeria-sen-2003.pdf

³⁷³ Ikelegbe, A (2014). *Op cit*

and distribution of small arms in Nigeria. The military and police are increasing their stocks of weapons in an effort to modernize their forces and to combat rising armed violence in the country, while illegal civilian importation is also continuing. The security forces are importing weapons in order to meet the demands of their role in securing the country. Individuals and groups are importing and purchasing small arms as a result of the failure of the security forces to provide security and, in some cases, due to the draw of rich profits from the use of small arms in illegal activities. The problem is one of demand³⁷⁴. According to Prof. M. T. Ladan³⁷⁵, addressing the underlying root causes of the demand for and proliferation of SALW is necessary, because in the Nigerian context, the proliferation of SALW is a correlation of two major and mutually supportive factors:-

- a) The demand for SALW and
- b) The supply or sources

The high rate of illegal procurement and use of SALWs in Nigeria is indexed by the intermittent seizure of SALWs by security and border control officers, the frequency of deployment of these arms in conflict and crime scenes, and the level of human casualty and material damage recorded in the aftermath of its use in the country. For instance, the quantity of arms surrendered during the Disarmament and Demobilisation (DD) phase of the Amnesty programme for the Niger Delta militants in 2009 gave an idea of the quantum of SALWs proliferation in the country. The Amnesty initiative saw over 15 000

³⁷⁴ Hazen, J.M & Horner, J. (2007) *Small Arms, Armed Violence, and Insecurity in Nigeria: The Niger Delta in Perspective*. Small Arms Survey(Occasional Paper 20). Geneva. Retrieved on October 10, 2013, at 6:30pm from www.smallarmssurvey.org/occasional_paper_20

³⁷⁵ Ladan, M. T (2013, June 4). Combating the Proliferation of Small Arms in West Africa. *Daily Trust*. Retrieved on October 10, 2013 at 6:46pm from www.dailytrust.com.ng/daily/old/index.php/law/55960-combating

militants surrender arms at the expiration of the DD phase of the Amnesty. Weapons recovered during the disarmament process included 2,760 assorted guns, 287,445 ammunitions of different calibre, 18 gun-boats, 763 dynamite sticks, 1,090 dynamite caps, 3,155 magazines and several other military accessories, such as dynamite cables, bulletproof jackets and jack-knives. It is widely believed that militants only surrendered a small fraction of their arms, as most of them doubted the Government's genuine commitment to the amnesty³⁷⁶.

The regular interception of illegal arms trafficking within and across the borders by security agencies also reveals the worrisome dimension that arms proliferation has recently assumed in the country. The media is awash with frightening reports of sophisticated SALWs being seized by security operatives either at ports, borders, highways or crime and conflict scenes. The Nigerian government has recovered tens of thousands of weapons and hundreds of thousands of ammunition over the years from armed groups and criminal elements operating in the country. In 2002, the Nigerian Customs Service reported it had intercepted arms and ammunition worth USD 34 million at border posts during a six-month period³⁷⁷. Moreover, in 2003 during an unusually large seizure it intercepted 170,000 rounds of ammunition in a single haul³⁷⁸. During the first four months of 2004, the Nigerian Government reported collecting 112,000 illegal

³⁷⁶ Onuoha, F.C: (2012) Small Arms and Light Weapons Proliferation and Human Security in Nigeria. *Conflict Trends*. Retrieved on February 26, 2014 at 9pm from www.accorg.org.za

³⁷⁷ Flourquin, N. & Berman E.G (Eds.), (2005). *Armed and Aimless: Armed Groups, Guns and Human Security in the ECOWAS Region*. Geneva: Small Arms Survey. Retrieved on March 17, 2013, at 9:30pm http://www.smallarmssurvey.org/files/sas/publications/b_series1.html

³⁷⁸ *ibid*

firearms³⁷⁹. In June 2004 in Warri, the Government undertook Operation Restore Hope, which through cordon-and-search operations netted 42 rifles, 1,500 rounds of ammunition, and several locally made mortar rounds and similarly, the emergency Plateau state administration collected some 300 weapons over a 30-day amnesty period during the 2004 state of emergency³⁸⁰.

In recognition of the growing problem of the proliferation of illicit arms and the growing fears surrounding armed criminality and violence, former President Obasanjo established in March 2004 the National Committee on the Destruction of Illegal Arms and Ammunition. In its first year of operation, the Committee conducted four destruction exercises. All told, some 3,000 firearms and 2,500 rounds of ammunition were destroyed³⁸¹.

In August 2010, security agents in Maiduguri arrested a commercial driver carrying 25 AK-47 rifles and hundreds of rounds of ammunition in a Peugeot 504 vehicle³⁸². These arms, allegedly smuggled into the country from Cameroon, were destined for Jos – where cascading ethno-religious violence has caused serious devastation in human and material terms. In November 2010, a woman was intercepted at Dabar Masara, Borno State, trying to smuggle 10 AK-47 rifles from Chad Republic into Nigeria³⁸³. Around the same period, the police in Ibadan, Oyo State, intercepted a large

³⁷⁹*ibid*

³⁸⁰Flourquin, N. & Berman E.G. *Op cit* at pp 344

³⁸¹*ibid*

³⁸²Gusau, I. (2010, August 17.) Jos-bound Men with 27 Guns Arrested. *Daily Trust*. Retrieved on October 8, 2013 2:38pm from <http://www.dailytrust.com.ng/index>

³⁸³Olugbode, M. (2010, November 10.) Mother of Seven Arrested with 10 AK47s. *Thisday*. Retrieved on October 8, 2013 at 2: 58pm www.thisdaylive

cache of SALW from a suspected bank robbery squad. The seized weapons included 47 rifles, 103 AK-47 rifle magazines, one assault rifle magazine, 2,540 AK-47 rounds of ammunition, 727 General Purpose Machine Gun (GPMG) rounds of ammunition, three chain bullets, explosive materials, two GPMGs and one chisel (a tool with a characteristically shaped cutting edge)³⁸⁴. A high-profile interdict was recorded in October 2010 when a combined team of security agents impounded 13 containers loaded with various sizes of grenades, rocket launchers, explosives, assault rifles, heavy machine guns and ammunition at Apapa Wharf in Lagos, Nigeria. The containers were aboard a vessel – MV CMA-CGM Everest – from Iran and were destined for The Gambia in West Africa³⁸⁵. This discovery came a few weeks after the National Task Force to Combat Illegal Importation of Goods, Small Arms, Ammunition and Light Weapons (NATFORCE) had, on 18 October 2010, impounded a lorry load of SALW in Onitsha, Anambra State. In 2011, three Ghanaians and two Nigerians were arrested in the suburbs of Accra with a truck load of SALW allegedly en-route to Nigeria³⁸⁶. Similarly in March 2011, the Nigerian security agents seized a truck loaded with bomb making material in Jos en-route to Kaduna. The truck contained fuses, detonators, and large amounts of ammonium nitrate fertilizer which are used in making Improvised Explosive Devices³⁸⁷. In June, a Customs comptroller was reportedly implicated alongside two police officers

³⁸⁴Bamidele, Y. (2010, November 9.) Police Intercept Weapons in Oyo.*Daily Trust*. Retrieved on October 8, 2013 at 3:35pm from <http://www.dailytrust.com.ng/index>

³⁸⁵Ohia, P. (2010, November 23.) Gambia Cuts Ties with Iran over Nigeria's Arm Seizure. *Thisday*. Retrieved on October 8, 2013 at 3: 50pm from www.thisdaylive

³⁸⁶Ekemenah, A. (2013, March 25) National Security and the Menace of Weapon Proliferation in Nigeria, *BusinessWorld Interview*. Retrieved on October 8, 2013 at 4pm from www.businessworldng.com/web/authors/12/alex-ekemenah

³⁸⁷*ibid*

in connection with the constant disappearance of ammunition from the police armory in Niger State³⁸⁸. Finally, in July, security agents intercepted a large consignment of SALW, which included rocket launchers and grenades, at the Nigeria-Chad border in Borno State³⁸⁹. The recent discovery and confiscation of cache of SALW in Maiduguri on March 9, was simply mind-boggling. Some of the arms recovered according to JTF include anti-aircraft guns, 10 rocket-propelled grenade tubes, three general purpose machine gun (GPMG), 17 AK-47 rifles, 3 G3 rifles, 1 pistol (Lama), 20 RPG bombs, 12 RPG chargers, 1x36 hand-held grenade, 1 teargas rifle, 33 AK-47 magazines, 11 FN magazines, 3 G3 magazines and 11,068 assorted ammunitions.³⁹⁰ All the major newspapers in the country reported this discovery on March 10, 2013. This was apart from the illegal armoury discovered by the Nigerian Arm on March 7, 2013, a short distance away from the 1st Mechanized Division Headquarters, Kaduna the same week following a tip-off from members of the public. The armoury was discovered in a house allegedly owned by an Abuja-based politician. Weapons recovered from the illegal armoury include 6 AK-47 rifles, 1 light machine gun, 27 assorted loaded guns, 17 empty AK-47 magazines and 58 rounds of 9mm ammunition. It also include 275 rounds of 7.62mm NATO ammunition, 1 loaded machine gun, 9 prepared cans of IEDs, 1 reel of firing cord and 125 detonators³⁹¹. Several bomb-making factories, too numerous to catalogue; have also been discovered and destroyed by security agents in the past across the Northern states of the country. In April 2012, security agents uncovered and smashed

³⁸⁸Ekemenah, A. (2013, March 25), *op cit*

³⁸⁹*ibid*

³⁹⁰*ibid*

³⁹¹*ibid*

a factory in Yola, Adamawa State³⁹². Another was discovered in Hotoro ward of Kano, Kano State in September 2013. Between December 2011 and July 2012, four factories were discovered and smashed in Okehi, Lokoja, Okene and Adavi in Kogi State³⁹³. Another was discovered at Rigasa suburb of Kaduna in late December 2013. Suleja in Niger State was not also left out³⁹⁴.

4.3 Sources of Supply

In the words of Prof. M. T. Ladan³⁹⁵, the sources of illicit weapons used by armed robbers, political thugs, criminal gangs, insurgents or terrorists groups are both external and internal which must both be plugged. Sources of small arms include purchases from International and National arms dealers, sales and rentals by serving and retired security personnel, sales by returning peacekeepers (a number of small arms originate from other war-ravaged parts of the West African sub-region, particularly Sierra Leone and Liberia. Members of the Nigerian military have reportedly brought back arms from Sierra Leone, where they took part in ECOWAS Monitoring Group (ECOMOG) for resale after being redeployed back into the State)³⁹⁶, sales of recycled weapons from decommissioning exercises, oil-for-arms exchanges in the Delta region, and purchases of locally produced craft weapons especially by unlicensed local craftsmen who produce in contravention of section 22 of the Nigeria Firearms Act, 1959. The lack of due diligence, transparency and

³⁹²Ekemenah, A. (2013, March 25), *op cit*

³⁹³*ibid*

³⁹⁴*ibid*

³⁹⁵ Ladan, M.T. *op cit*

³⁹⁶Musah, A. & Niobe T. (Eds.)(1999).*Over a Barrel: Light Weapons and Human Rights in the Commonwealth. India: Commonwealth Human Rights Initiative*. Retrieved on March 17, 2013 at 6pm from http://www.humanrightsinitiative.org/publications/chogm/over_a_barrel/over_a_barrel.zip

regulation of their activities as required by international standards, makes their products difficult to trace and the SALW position of Nigeria opaque, says Prof. M.T. Ladan³⁹⁷. Illegal weapons are also obtained through thefts from dealers, armouries, and residences; seizures from security officials during robberies; and in clashes with other armed groups³⁹⁸. Weapons have also made their way southwards from conflicts in Chad and Niger over the last decade and some have also come from the West through the Lagos-Benin coastal axis from as far off as Sierra Leone and Liberia. It has been suggested that weapons from Libya and the Arab Spring have also found their way into Nigeria through her porous borders³⁹⁹. However, the three most notorious entry ports of illicit SALW according to the International Alert study are the South-West (Idi-Iroko and Seme in Ogun State), the Port city of Warri in Delta State, and the North-Eastern border with Niger and Cameroon (Adamawa, Borno and Yobe States)⁴⁰⁰.

In addition to weapons smuggled into the country, Nigeria also has its own SALW industry, the Defence Industries Corporation of Nigeria (DICON), which is the only legal producer of arms and ammunition in the country. Its products are destined mainly for police use, and do not represent a significant source of proliferation⁴⁰¹.

Guns have also been produced locally by illegal craft gunsmiths but there is hardly any information on the type, quality and scale of craft production. Professor Aloysius Okolie, the South-East Coordinator on House Survey of the Presidential Committee on

³⁹⁷ Ladan, M. T. *op cit*

³⁹⁸ Hazen, J.M & Horner, J. *op cit* pp 35

³⁹⁹ Illoani, F.A & Echewofun, S (2016, March 12) *op cit*

⁴⁰⁰ Agboton-Johnson, C; Ebo, A. & Mazal. L. *Op cit* at pp 22

⁴⁰¹ *ibid*

SALW (PRESCOM) is reported to have recently said that 60 percent of the illegal guns in circulation in the South-East zone is locally fabricated.⁴⁰² There are a number of well-known craft production centres in Nigeria, are Asaba, Benin City, Warri, Aba, Onitsha, Enugu, Owerri, Awka, and Port Harcourt including Katsina, Kaduna, Calabar⁴⁰³. Sporadic raids against craft producers and seizures of guns produced by them often appear in Nigerian newspapers underlining the threat posed by illegal gun production. With this kind of businesses operating, it is thus difficult to ascertain the real number of arms circulating and how their proliferation and misuse could be curbed. The fact that oil companies have been allowed to import arms into Nigeria or at least that arms they bought were tolerated into the country has also contributed to the massive proliferation of SALW in the Niger Delta.⁴⁰⁴

Human Right Watch⁴⁰⁵, as well as local Nigerian Newspapers reported on the distribution of guns by politicians for coercion and intimidation of opponents and of the electorate during election times Professor Okolie is reported to have said that 40 percent of the illicit SAL in the South East zone are imported by politicians⁴⁰⁶. This constitutes an important source of SALW in Nigeria since politicians mainly arm unemployed youths to work for them as bodyguards during election periods. Nobody knows what happens to the weapons after elections are over.

⁴⁰² Illoani, F.A & Echewofun, S. *op cit*

⁴⁰³ Ikelegbe, A *op cit*

⁴⁰⁴ Greenpeace, (2006), *Shell admits importing guns for Nigerian police*. Retrieved on March 18, 2013 at 1: 25pm from <http://archive.greenpeace.org/comms/ken/observer.html>

⁴⁰⁵ Human Rights Watch.(2004) *Patterns of Election Violence*. Retrieved on March 18, 2013 at 1: 35pm <http://www.hrw.org/reports/2004/nigeria0604/2.htm>

⁴⁰⁶ Illoani, F.A & Echewofun, S. *Op cit* pp. 4

Finally, corrupt army and police officers constitute a very important source of legal weapons turned illegal. Legal weapons have in fact been taken from the national armory and sold to gangs and to militant groups in the Niger Delta. In December 2002, President Olusegun Obasanjo acknowledged that most of the ammunition circulating illegally had come from state security agencies such as the Military and the Police⁴⁰⁷. In January 2008, the Nigerian newspaper, Vanguard reported the arrest of a Police Superintendent, an Inspector and three other high ranking officers in Jos for supplying AK-47 rifles to a gang of armed robbers⁴⁰⁸. According to the newspaper report, the Superintendent had agreed on an equal split of the booty each time the gang struck. This kind of corrupt practice by people in positions of responsibility exacerbates SALW proliferation.

4.4 Channels of Supply

The exact origins and transit countries of the illicit small arms flows and their ammunition into Nigeria is not known or well documented. While countries like Côte d'Ivoire, Liberia, South Africa, Turkey, Ukraine, Bulgaria, Kosovo and Serbia are often mentioned⁴⁰⁹, analysts point out that smugglers operating from Benin, Cameroon, Niger, Chad, Gabon and Guinea Bissau⁴¹⁰. Since Nigeria has lengthy and porous borders, a number of airports, and numerous ports along the Southern coast, smuggling and cross-border trade are difficult to detect and monitor. Nigeria's Northern border is 1,500 km

⁴⁰⁷Agboton-Johnson, C; Ebo, A. & Mazal.L. (2004). Op cit at p 22

⁴⁰⁸Vanguard, (2008, January 11) *Nigeria: ASP, Inspector, Three Other Cops Arrested for Supplying Guns to Robbers*. Retrieved on February 11, 2014 at 12pm from <http://allafrica.com/stories/200801110506.html>

⁴⁰⁹Hazen, J.M & Horner, J. op cit page 33

⁴¹⁰Ikelegbe supra

long, its western border 1,000 km, its eastern border 1,700km, and its Southern coastal border 700km⁴¹¹. Limited staff, vehicles, and resources make the job of Customs officials, the Police, and the Navy all the more difficult. While many are certain that Small Arms and Light Weapons are coming into the country, as evidenced by the presence of foreign-made weapons in circulation, the exact entrance routes of these weapons are less clear. While source countries are often named, the flows of small arms from source and transit countries are not well documented.

The police have impounded a large quantity of arms and ammunition smuggled through neighbouring countries, with many coming from the Tudu arms market in Ghana and making their way to Nigeria through Togo and Benin⁴¹². This suggests that there are important entry points for small arms into Nigeria. Reportedly, the three most notorious arms smuggling frontiers in Nigeria are in the south-west (Idi-Iroko in Ogun state and Seme in Lagos state), in the south (the port city of Warri in Delta state), and in the north-east at the border with Niger and Cameroon (Adamawa, Borno, and Yobe States)⁴¹³. For rebel groups operating in the Niger Delta such as the Movement for the Emancipation of the Niger Delta (MEND) and Niger Delta People's Volunteer Force (NDPVF) SALW deliveries come in through Nigeria's Atlantic borders. Smugglers, profiting from the lack of effective control of the long maritime borders, use speed boats to obtain guns from

⁴¹¹ibid

⁴¹²Olori, T (2007). *Porous Border Fuelling Gunrunning*. Inter Press Service News Agency. 22 April. Retrieved October 10, 2013 at 3:15pm from <http://ipsnews.net/africa/interna.asp?idnews=23435>

⁴¹³Agboton- Johnson, Ebo, and Mazal, 2004, op cit p. 21

ships far in the high seas.⁴¹⁴ Warri has been referred to as the ‘hub of the gun trade’ in the Niger Delta⁴¹⁵, and its location in the Delta, as well as the demand for small arms in that area of the country, make this a logical place for the reception of shipments. Arms that come into the country through the southern ports may be distributed in this southern region, or they move further North to primary distribution points, and then on to secondary distribution points. Some of these weapons will move farther north, but the north appears to have additional sources of small arms through the borders with Niger and Chad in the North-East. Entry points here include Maigatari, Nguru, and Mallam Malori⁴¹⁶.

4.5 Dimensions and Manifestations of SALW Proliferation

SALW proliferation in Nigeria is not only due to its strained economic and social situation, but also to the high rate of trafficking and smuggling of SALW into the country. The high rate of criminality, the emergence of private security, the growth of ethnic militia and the electoral and political violence demonstrates and also feed the culture of violence which is strongly related to SALW.

One serious but pathetic dimension to the proliferation of small arms in Nigeria is growth of cultism in Nigeria tertiary institutions. The mainstream of who are children of

⁴¹⁴IRIN In-depth (2006, May). *Guns Out of Control: The Continuing Threat of Small Arms*. Retrieved on March 18, 2013 at 1: 45pm from <http://www.irinnews.org/pdf/in-depth/Small-Arms-IRIN-In-Depth.pdf>

⁴¹⁵Ojudu, Babafemi. 2007. ‘Gun Smuggling in the Niger Delta.’ *World Press Review*.7 March. Retrieved on March 18, 2013 at 1:50pm from <http://www.worldpress.org/cover7.htm>>

⁴¹⁶Adejo, P. Y. (2005). Crime and the Cross-border Movement of Weapons: The Case of Nigeria. In Anatole Ayissi and Ibrahima Sall, (Eds). *Combating the Proliferation of Small Arms and Light Weapons in West Africa*. UNIDIR/2005/7. Geneva: UNIDIR. pp93. Retrieved on March 18, 2013 at 2:50pm from www.unidir.org/pdf/articles/pdf-art2832.pdf

wealthy politicians whose parents has inculcated gun culture. Others who are not children of politicians are sponsored by the patrons who use them for their own selfish end⁴¹⁷. According to International Alert, in addition to the terror which they unleash on campuses, they are also known to maintain ties with gangs of armed robbers and other criminals. Thus they represent a major threat to lives and investment, and a glaring manifestation of the criminal dimensions of SALW proliferation in Nigeria⁴¹⁸. A major outcome of this situation is the development of a culture of violence which has manifested itself in significant ways, as demonstrated by ethnic/religious conflicts, armed secret cults in tertiary institutions, armed robberies, armed groups and electoral violence. In addition, the issue of oil related resource distribution is a further cause of tension⁴¹⁹. Insecurity as exemplified in armed crime involving the use of firearms remains one of the greatest challenges for Nigeria on its path to greater development and a more just and equal society. Although the sense of insecurity is endemic, armed violence is particularly rampant in the 70,000 km² Niger Delta, home to some 20 million of Nigerians. Problems of armed violence and insecurity threats in Nigeria are not limited to the private sphere but also exemplify themselves in ethno/tribal and religious clashes which have led to several thousand deaths since the late 90s⁴²⁰.

⁴¹⁷ Adetiba, T C (2012). Socio-Political and Economic Development under Threat: The Proliferation of Small Arms and Light Weapons in Nigeria. *Greener Journal of Social Sciences*, Vol. 2(5) p

⁴¹⁸ Agboton- Johnson, Ebo, and Mazal, 2004, op cit p. 22

⁴¹⁹ ibid

⁴²⁰ Chilaka, F. C. (2010) Nigeria And The ECOWAS Convention On Small Arms And Light Weapons: A Critical Appraisal (Masters Thesis, University of Nigeria Nsukka). Retrieved on September 15, 2016 at 3:07pm from www.unn.edu.ng/introduction/small-arms.PGD/2010.pdf.

a. Ethnic Militias

Nigeria is host to a wide variety of armed groups, including political gangs, ethnic militias, community defence groups, and, allegedly, foreign mercenaries. According to Judith Asuni cited in GIABA's Report, in Nigeria's Niger Delta region alone, about one hundred militant groups existed before the Federal Government's amnesty program⁴²¹. In the north-eastern part of the country, the Boko Haram sect is the major insurgent group fighting against the Nigerian state. Movement for the Emancipation of the Niger Delta (MEND) is a major insurgent group in the Niger Delta that is ostensibly fighting for on behalf of Niger Deltans for a greater share or control over oil and other natural resources in the region. MEND is well-known in West Africa for its involvement in arms trafficking. The group has easy access to heavy weapons, particularly because of its proximity to Nigeria's Atlantic waters and imports some of its weapons from Western, Central and Southern African countries. Accordingly, MEND has attacked several oil installations and government targets, kidnapped foreign oil workers, issues threatening messages, among others, as part of its fighting strategy. The group detonated a bomb near the venue of Nigeria's 50th independence anniversary ceremonies on 1 October 2010, killing twelve civilians and injuring many others⁴²².

Boko Haram, loosely translated to mean 'Western education is a sin' is a violent insurgent group known for its extremist views, particularly its rejection of Western

⁴²¹ GIABA Report (2013). *The Nexus between Small Arms and Light Weapons and Money Laundering and Terrorist Financing in West Africa*. Retrieved on July 30, 2013 at 6: 31pm from www.519_GIABASALWNEXUS-final.pdf

⁴²² The Guardian (2010) Nigerian Authorities Were Warned About Terrorist Attack on Capital *The Guardian*. Retrieved on march 18, 2013 at 1:59pm from <http://www.guardian.co.uk/world/2010/oct/02/nigeria-warned-terrorist-attack>.

education. The group, which operates primarily in north-eastern Nigeria, has conducted several attacks against government, religious, and civilian targets, thereby killing hundreds of people in northern Nigeria. Boko Haram acquires arms from Niger, Chad and Cameroon – countries that share borders with Nigeria at the Northern part of the country. Nigeria’s extensive border with Cameroon, notorious as smuggling routes for illicit SALWs, perfectly serves the purpose of the Boko Haram, especially with the northeast being its primary operational base. With most of its original members hailing from the northeast, the group easily facilitates the flow of illicit SALWs from Chad into Nigeria⁴²³. Indeed, the use of AK-47 rifles to carry out attacks is an indication that most of the arms used by the group were smuggled into the country. For instance, during the April 2011 general elections, the police and other security agencies recovered 3 AK-47 rifles and other arms from Boko Haram in a raid in Maiduguri. The group also uses locally manufactured firearms and produces explosives in one of its hideouts in Bauchi State⁴²⁴.

Since the beginning of the Fourth Republic in May 1999, over 100,000 persons have reportedly been killed in over 50 ethno-religious and religious crises increasingly involving the use of SALW, both imported and locally manufactured⁴²⁵. Security agents from conflict areas have also been known to be suppliers of SALW to their related ethnic militias⁴²⁶.

⁴²³GIABA Report (2013). *Op cit*

⁴²⁴*ibid*

⁴²⁵Agboton- Johnson, Ebo, and Mazal, 2004,*op cit* p. 22

⁴²⁶*ibid*

b. Secret Cults in Tertiary Institutions

The proliferation of SALW in Nigeria has also been associated with a phenomenal explosion in the number, spread, and brutality of secret cults (gangsterism) in Nigerian universities and other tertiary Institutions and in addition⁴²⁷ to the terror which they unleash on campuses, secret cults are also known to maintain ties with gangs of armed robbers and other criminals.

c. Armed Robberies

Criminal manifestations in Nigeria such as armed robbery have only got worse over time. Within the larger Nigerian society, armed robberies involving the use of SALW represent a major threat to lives and investment, and a glaring manifestation of the criminal dimensions of SALW proliferation. Armed robbery has even been described as ‘the country’s most glamorous and fastest growing crime’⁴²⁸. Lagos, the commercial capital of the country, usually bears the brunt and reflects the stark realities of armed robbery in Nigeria. In 2001, there were 196 reported armed robberies, 287 robbers were killed, 372 were arrested, 16 policemen and 70 civilians were killed, while 165 were wounded. In the same year, 337 guns were seized by the police and 3,354 ammunitions recovered⁴²⁹.

⁴²⁷Adekeye, F. (2002) Killers On Campus. *Newswatch*, Lagos, July 29, pp. 20-33.

⁴²⁸Adisa, J, (1994), *Urban Violence In Lagos* IFRA, Institute Of African Studies, *University Of Ibadan. Vol.2 Ibadan: Nigeria.*

⁴²⁹Agboton- Johnson, Ebo, and Mazal, 2004*op cit*, p. 23

d. Vigilante and ethnic groups

While violence has affected all segments of society, the impact on the poor is the most severe⁴³⁰. The wealthier segments of society have turned their homes into fortresses and resorted to the services of private security companies. Research indicates that around 20 private security companies operate in the Northern city of Kaduna⁴³¹. Among the poorer segments of society however, there has been a proliferation of vigilante groups, similar to community guards, and usually comprising of young men from the respective communities who form patrol units, provide security for the community and mete out justice as they deem fit⁴³². Particularly concerning is the increase in the number of militant ethnically-based groups since the return to civil rule. Militant groups are often wider in scope than community guards, and often receive tacit support and/or encouragement from states' governments, such as the O'oduwa Peoples Congress, a Yoruba ethnic militia group in South West Nigeria, the Bakassi Boys in the South Eastern region, and the Egbesu Society, a group of Ijaw youths operating in the Delta, Ondo and Bayelsa States⁴³³. In addition to the flagrant and gross human rights violations which these groups commit, they are not held accountable for their actions⁴³⁴. These groups are often assisted by wealthy kinsmen who illegally import SALW. Where they

⁴³⁰See Adisa, *op cit.*.

⁴³¹ Lombard, L. N; Berman, E. G; Florquin, N & Macdonald, M (2006) Small Arms Survey. Retrieved on March 12, 2015 at 8pm from www.smallarmssurvey.org/fileadmin/SAS-research-findings.doc

⁴³²Agboton- Johnson, Ebo, and Mazal, 2004*op cit*, p. 23

⁴³³The term 'Bakassi Boys' refers to the main vigilante groups operating in the south-eastern cities of Nigeria since 1998. In the three main cities where they currently operate, the Bakassi Boys are now officially called the Abia Vigilante Services, Anambra Vigilante Services, and Imo Vigilante Services, but commonly referred to as the *Bakassi Boys*.

⁴³⁴Agboton- Johnson, Ebo, and Mazal, 2004, *op cit* p. 23

do not import them, they either manufacture them or obtain them from soldiers returning from peacekeeping assignments⁴³⁵.

e. Electoral and Political Violence

Nigeria's political history is riddled with assassinations, military coups, and a lack of faith in the impartiality and transparency of the electoral system due to widespread corruption. One of the legacies of military rule is the lack of an institutionalised peaceful and orderly system of power transfer in Nigeria. Political gangsterism appears to have taken root in Nigeria⁴³⁶. Armed gangs comprising mainly of unemployed youths are in some cases hired by politicians for both offensive and defensive purposes, either to intimidate their opponents and/or to protect themselves against attacks by other opponents⁴³⁷.

4.6 Factors That Reinforce the Proliferation of Small Arms and Light Weapons in Nigeria.

Many factors have contributed to the development of gun culture in Nigeria polity where more individuals and groups as well as politicians are appealing to the instrumentality of SALW in order to achieve their socio-political and economic goals. The proliferation of SALW in Nigeria has many causes; these include among others, trafficking in, and local manufacture of, theft of weapons belonging to individuals or the

⁴³⁵ *ibid*

⁴³⁶ *ibid*

⁴³⁷ *ibid*

authorities. Nigeria society no doubt has become militarized as socio-cultural relationships among the various groups in the country have broken down over decades.

4.6.1 Long Military Rule

A major dynamic in the proliferation of illicit SALW in Nigeria is the legacy of protracted military rule. Until the return to civilian rule in May 1999, the country had been under military rule during 75% of its existence. This led to the entrenchment of a militarised national psyche and a culture of violence. The widespread use of SALW to take over and maintain a grip on power had its own effects on the attitude and perception of Nigerians regarding the role of violence in society in general, and the use of SALW in particular. Following years of protracted transition programmes and worsening civil-military relations, the military lost control of their monopoly over the means of coercion, as various groups within the society increasingly sought military responses to military oppression. This created the impression that political power flowed from the barrel of the gun⁴³⁸.

The complexity of small arms proliferation in Nigeria can be linked to historical socio-political and economic processes that have shaped the country since the flag independence of 1960. On the 15th of January 1966, the first military coup in Nigeria brought General Aguiyi Ironsi to power but his tenure was short lived six months into his government through another coup that eventually brought General Yakubu Gowon to power in July 1966. The expansion of the old Nigeria four regions into twelve in 1967

⁴³⁸Adetiba, T C (2012). Op cit p 184

sparked off the Nigeria civil war that lasted for more than thirty months (1967-1970). During the civil war, heavy weapons were not only used but also small arms. Put in another words during the civil war large numbers of SALW passed into general circulation, hence the militarization of Nigeria society⁴³⁹.

The legacy bequeathed to Nigeria by the thirty month civil war was a protracted military rule. Nigeria society in response to military oppression resulted to violence; the result of which is the uncontrollable proliferation of SALW. Its effect on socio-political and economic development in Nigeria has never been positive but negative⁴⁴⁰.

4.6.2 Political (Electoral) Violence

Nigeria's democracy is today facing a stiff test of its time. Nigeria's political situation appears very problematic with lack of institutionalized peaceful and orderly system of power transfer. According to Onuoha, cited in Malam⁴⁴¹, the crude nature of Nigerian politics is one key factor driving the process of SALWs proliferation. Politics in Nigeria – especially electoral politics – is defined and approached by politicians as a do-or-die affair, or warfare. The stake in Nigerian politics is incredibly high, making politicians desperate in the struggle to win elective positions. As a result, many of them recruit 'specialists of violence' – cultists, gangs and thugs – to attain and retain political power. In essence the militarized nature of politics combined with the prevalence of armed group all over the country has provided an easy leverage between politics and

⁴³⁹John, I. A.; Mohammed, A. Z.; Pinto, A. D and Nkanta, C. A. (2007). Gun Violence in Nigeria: A focus on ethno religious conflict in Kano, *Journal of Public Health Policy* 28, 420-431.

⁴⁴⁰Adetiba *op cit*

⁴⁴¹Malam, B. (2014) Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security, *International Journal of Humanities and Social Science*. Op cit

violence. The International Alert, monitoring the implementation of small arms control in Nigeria, observes that armed groups are in some cases hired by politicians for both offensive and defensive purposes, either to intimidate their political opponents or to protect themselves against attacks by the supposed opponents⁴⁴². The arming of youths or political thugs to win political office has thus led to a larger problem of the proliferation of small arms and the entrenchment of armed groups within the polity. Onigbinde⁴⁴³ comments that politicians who provide these groups with guns promise them jobs especially during elections so that the latter can incite violence and assist them in winning the elections, but after the elections these groups keep the guns and weapons when promises of jobs are unfulfilled. Significantly these ammunitions make them stronger and as well result to organized criminal activities to make money. Politics is extremely competitive and elections are perceived as zero-sum contests. This has led to the increasingly militarized nature of politics, the use of violence as an electoral tool, and the inculcation of a culture of violence in society⁴⁴⁴.

4.6.3 Politicization of Ethno-Religious Differences

Nigeria is geographically a multi-ethnic, multi-religious and multicultural political entity where ethno-religious violence erupts often and often. Clashes are increasingly

⁴⁴²Agboton- Johnson, Ebo, and Mazal, 2004*op cit*, p. 23

⁴⁴³ Onigbinde, D. (2008). *Natural Resources Management and its Implications on National and Sub-Regional Security: The Case of the Niger Delta*. Kofi Anna International Peacekeeping Training Center (KA IPTC) (Occasional Paper No 22), pp. 1-24. Retrieved October 09, 2013 at 5:57PM from [www.smallarmssurvey.org/occasional - paper 22](http://www.smallarmssurvey.org/occasional-paper_22).

⁴⁴⁴Hazen, J.M & Horner, J.*op cit* at pg 3

common and religious ghettos are forming in mixed cities⁴⁴⁵. The sophistication of weapons used in these crises has made them increasingly deadly. Without mincing words this has encouraged the populace to acquire SALW unlawfully on a large scale either for the purpose of protection or revenge. Obi⁴⁴⁶ stated that the last three decades, particularly from 1999 till date, Nigeria has experienced over 50 dangerous scenes of ethno-religious conflicts which have occurred between ethnic groups and religious groups. Ethno-religious groups in their quest for political power and control over “lucrative” socio-political and economic resources unleash terror on each other; this has become a common phenomenon in Nigeria political system, the product of which is the fuelling of corruption as well as political patronage, the end result of which is dangerous conflicts where SALW are used.

4.6.4 The Growth of Ethnic Militia

The most central and perhaps the most important political good that needs and must be delivered by every state is the provision of security. What this translates to is that the citizens depend on the state for security. Rotberg cited in Adetiba⁴⁴⁷ comments that failed States are deeply conflicted, dangerous and bitterly contested by warring factions, the State faces multi-faceted civil unrest, differing degrees of communal discontent, massive deterioration in the standard of living, decay in infrastructure and the greed leaders overwhelms their socio-political responsibilities to better their people and their

⁴⁴⁵ The Economist (2012) *Nigeria's Insurgency, hold your nose and talk*. Retrieved December 30, 2013 at 5:38pm from <http://www.economist.com/node/21563722>

⁴⁴⁶ Obi, A (2010) *Op cit*

⁴⁴⁷ Adetiba, T C (2012), *op cit* at pp 184

surroundings; forcing the people to turn to their ethnic affiliations for safety and protection. Significantly, the failure of the state to contain ethno-communal conflicts has resulted to the formation of ethnic militias in Nigeria which has since been a threat to the sustainability of democratic governance, which actually is seen as a vehicle to development. What this translates to is that the presence of ethnic militias in Nigeria is a threat to development⁴⁴⁸.

According to Adejunosin cited in Adetiba⁴⁴⁹, ethnic militias are youth groups formed to promote and protect the socio-political and economic interest of a specific group. According to Yakubu cited in Adetiba⁴⁵⁰, they are groups of armed individuals operating across and beyond State border. Ethnic militias in the context of this work are not rebel movements; they are not seeking to take over the reins of political power; though they sometimes operates like the terrorist groups, but they serve as pressure group on the Government. They belief in fighting mass misgivings over perceived political marginalization, poverty and unemployment, collapse of social infrastructure and State welfare programmes as well as the perceived inefficient and corrupt state security system⁴⁵¹. They are trained (not formal) and well organized paramilitary groups who are well familiar with the use of SALW. These groups in Nigeria include Oodua People's Congress (OPC), Movement for the Emancipation of the Niger-Delta (MEND), Movement for the Actualization of the Sovereign State of Biafra (MASSOB), the Boko Haram Sect, the Niger Delta Volunteer Force (NDVF) and many other groups operating

⁴⁴⁸*ibid*

⁴⁴⁹*ibid*

⁴⁵⁰*ibid*

⁴⁵¹ Adetiba, T C (2012),*op cit* at pp 184

undercover. Significantly, the explosion of armed ethnic militias as well as some community defense groups since the beginning of the present political dispensation has played a very important role in the proliferation of SALW in Nigeria. Apart from their presumed role of protecting their ethnic groups, they are as well driven by the political class who also double as their patron and supply them with SALW. Some of these groups sometimes undertake independent act of violence to show their displeasure to socio-political and Economic injustices within the polity and eventually capture the attention of any politician who may need their services. What this translates to is that in a situation of almost an absolute state of impunity, a strong market for violence has developed. Thus the unconstitutional rate at which these militias grow in Nigeria is a function of the dysfunctional and unstructured socio-political system in the Country; hence the uncontrolled accessibility to SALW and undeniably “arms against humanity” says Soyinka⁴⁵².

4.6.5 Unemployment and Poverty

Unemployment and poverty is somehow considered to be a major issue in the proliferation of SALW because of its negative impact on the sustainability of development in Nigeria. Economic hardship fuels frustration, which is a fertile ground for provocation⁴⁵³. The spate of crime has equally been tied to Nigeria’s economic adversity. However, rather than merely being seen as a result of poverty, control of small arms

⁴⁵² *ibid*

⁴⁵³ Adetiba, T C (2012), *op cit* at pp 185

proliferation is also persuasively argued to be key to reducing poverty⁴⁵⁴. According to M.T. Ladan⁴⁵⁵, there are about 14 million educated youths who are unemployed. Unemployment brings about youth restiveness and presents them as ready instruments for violent crimes where SALW are the weapons of choice. There are many jobless, poor and disgruntled able bodied young men and women alike who are readily available to be trained and armed to presumably defend the interest of their groups.

The high rate of unemployment and poverty in Nigeria is a contradiction of its status as one of the major exporter of crude oil and the fact that Nigeria is one of the poorest nations in the world⁴⁵⁶. Adetiba⁴⁵⁷ further stated that the standard of living in Nigerian is the 36th lowest in the world in terms of human development indicators. For example the Niger Delta region of Nigeria produces over 80% of total revenue that accrue to the country but the rate of poverty in the area as a result of years of neglect and environmental degradation is a sharp contradiction of the volume of wealth that comes from the area. Poor resource management on the part of the Government where corrupt and repressive Government kept amassing wealth from oil proceeds led the group to seek for redress of injustices and inequalities. The resultant effect of this is the upsurge of militarized and militant poor, unemployed youths which has been associated with conflicts in the region as a result of their knowledge and easy accessibility to SALW.

⁴⁵⁴Okoli, P. (2014) A Legal Inquiry into the Proliferation and Control of Small Arms in Nigeria. *International Journal of Criminology and Sociology*, 3.77-92

⁴⁵⁵M.T, Ladan (2012, August).*Diagnostic Review of Insurgency In Nigeria: - The Legal Dimension*. Paper Presented at the Eminent And Expert Working Group Meeting On National Counter Insurgency Strategy. Organized By: The National Institute For Policy And Strategic Studies, Kuru, Jos, Nigeria

⁴⁵⁶ Adetiba, T. C. *Op cit*

⁴⁵⁷*Ibid*

John et al cited in Adetiba.⁴⁵⁸ comments that poverty and enormous economic disparity between the rich and the poor within the country have been identified as the driving force behind the use of SALW. The precarious high rate of poverty, unemployment and lack of fair distribution and management of the nation's resources as well as the absence of genuine democratic values for people to express their concerns in the country has made it to be of necessity to join one form of ethnically based social group within which they can struggle for their own share of the resources. The lower socio-economic group spread across the country as a result of poverty, unemployment as well as illiteracy. Large numbers of them are found in the urban centers, they are known as "Area boys" in Lagos and Warri. According to International Crisis Group⁴⁵⁹, they are referred to as "Ofio boys" in Port Harcourt, "Omo Ita" renegades in Ife, Osun state, "Agaba boys" in Calabar, "Yandaba" in Kano state. Arguably they are readily available for use by the politicians who recruits and equipped them with small arms to fight their political opponents.

4.6.6 Agitation for Resource Control

It has been argued that the major problem facing Nigeria is mis-governance. Ezirim⁴⁶⁰ opines that governance relates to decisions that define expectations and verify performance in terms of accurate account of accruals from resources, which consist either of a separate process or of a specific part of management or leadership. In essence governance involves the use of socio-political, economic and administrative authority as

⁴⁵⁸ *ibid*

⁴⁵⁹ International Crisis Group (2007). Nigeria's Election: Avoiding a political crisis. *Africa Report No 123-128*. Retrieved on December 30, 2013 at 5:47pm from www.gees.org/documentos/Docummen-02269.pdf

⁴⁶⁰ Ezirim, G. E. (2011). Resource governance and conflict in the Niger Delta: Implications for the Gulf of Guinea Region, *African Journal of Political Science and International Relations*, 5 (2), pp. 61-71.

well as resource of a given state for its sustainability. On the other hand mis-governance involves the misappropriation of resources by government or inability of the government to ensure equitable distribution of resource gains.

One factor that has always led to ceaseless insurgence in the Niger Delta area of Nigeria where SALW is uncontrollably used is the way in which oil resource is managed. Poor resource management has very huge implications for socio-political and economic developments of the country as it create stagnation and breeds violence. Garuba cited in Adetiba⁴⁶¹, notes that the unfettered and unlimited access of the Niger Delta youth militias to stockpiles of highly sophisticated and sturdy weapons; largely small arms suggests their backing by networks of powerful and relatively rich elements. What this suggests is that there is a synergetic linkage between agitation for resource control and the proliferation of SALW.

4.6.7 Profitability

The higher the demand for a particular product the higher the supply; which consistently affect the upward movement of the profits margin. Thus the economic profitability of SALW underpins its extensive proliferation in Nigeria⁴⁶². Arguably, the quest for easy profits has encouraged the growth in the arms market in Nigeria. Those engaged in the production locally have made profits from the business which to them is rewarding. One political factor that has aided the growth of this business in Nigeria is the unstructured and unstable socio-political environments. According to Yacubu cited

⁴⁶¹ Adetiba op cit at pp 186

⁴⁶² ibid

Adetiba⁴⁶³ in price terms, in Nigeria, a double-barrelled shotgun cost between 50,000 and 65,000 naira, a single-barrelled shotgun between 25,000 and 30,000 naira; the price of pistols ranges between 3,000 and 7,000 naira, depending on the model, the seller and the place of sale. Considering the huge profits made from small arms, one might expect the business to continue to thrive. The argument here is that the increase availability of small arms, some of which come through porous borders and their diffusion to non-state actors is as a result of its trade, thus exacerbating the proliferation of SALW in the country. Capitalizing on the precarious socio-political situation in the country and motivated by profits, corrupt political leaders some time engage in this business. This has impacted the socio-political and economic development of the country.

4.6.8 Other Factors

There are also other reasons why they are in such a high demand on the continent. These could be qualified as structural problems which exist due to lack of organizational skills, the necessary infrastructure, funds, failure of state etc. These show the complexity of the SALW problem and suggest that international effort is necessary to overcome it.

a. Porous Borders

Africa is the second largest continent in the world and the second most populated as well. Due to the sheer size of some of its countries, there is the chronic problem of border security. Nigeria, one of its average-sized countries is an example. It has 770 km of shared land border with the Republic of Benin to the west, about 1500 km with Niger

⁴⁶³*ibid*

to the north, 1700 km with Cameroon to the east, 90 km with the Republic of Chad to the north-east and 850 km maritime border on the Atlantic Ocean⁴⁶⁴. Out-stretched these tally up to 4910 km of borders which have to be controlled, the current 20,000 customs personnel is inadequate to police them says Professor Mu'azu of the University of Maiduguri⁴⁶⁵. In Borno State, for instance, because of the porous nature of the border with Cameroon, the border may be crossed at any point by various means of transport during dry season. Ayissi and Sall cited in Ngang⁴⁶⁶ argue that it will be very hard to find any country in the world capable of effectively controlling such extensive borders. Arms traffickers exploit this situation to smuggle SALW into the country. According to Lt Col Sagir the spokesman of JTF in Maiduguri,⁴⁶⁷ despite efforts of security agencies, the “merchants of Death” continue to engage in arms trafficking/trading through covert and deceptive use of porous Nigerian borders of Cameroon, Chad, and Niger. Recently, the Comptroller General of Nigerian Immigration Services stated that the Service has discovered hundreds of illegal routes in Nigeria that link or lead to some neighbouring African countries. Nigeria’s borders are massive with hundreds of footpaths crisscrossing to neighboring countries of Cameroon, Chad and Niger with links to Mali, Libya and Sudan. From conservative estimate by locals, there are well over 250 footpaths from Damaturu/Maiduguri axis that link or lead direct to Cameroon, Chad or Niger. These

⁴⁶⁴ Illoani, F.A & Echewofun, S. *op cit*pp. 4

⁴⁶⁵ *ibid*

⁴⁶⁶ Ngang, C.K(2007). *Small Arms and Light Weapons, Africa’s True WMDs: The Role of SALW in Conflict and Insecurity in Sub-Saharan Africa* (Thesis, European University Center for Peace Studies (EPU), Stadtschlaining, Austria). Retrieved on October 20, 2013 at 6:24pm from <http://www.aspr.ac.at/ePU/research/Che.pdf>

⁴⁶⁷ Lt Col Sagir M. (2013, April 21). BorderSsecurity, Arms Proliferation and Terrorism in Nigeria. *Sunday Trust*. - Retrieved on October 20, 2013 at 3:58pm from www.sundaytrust.com.ng/index.php/comment-debate/12753-Border-security-arms-proliferation-and-terrorism-in-nigeria.

paths are mostly unknown by security agencies, are unmanned, unprotected and thus serve as leaky routes for arms and ammunitions trafficking into Nigeria. It is disheartening and unfortunate that the “merchants of death” have since devised methods use to beat security agencies at the borders and through the footpaths. These methods include the use of camels, donkeys and cows to traffic arms, ammunition and drugs, like cocaine into Nigeria. The fact that the weapons are small, light and collapsible makes it easy to be concealed and moved on camels and donkeys’ back in a specially crafted skin or thatched bags mainly meant for the illegal “expedition” unexpected, unsuspected and therefore undetected. Similarly, some cows and grains merchants in the Northeast region of the country, device means of hiding cache of arms and ammunition in empty fuel tankers, under vehicles’ engines and inside bags of grains mostly undetected by security agencies at the affected border posts. The “grains” are transported in large number via trucks, trailers, Lorries and old model pickup vans and jeeps with little attention given to them by security agents⁴⁶⁸.

It is clear that Nigeria’s borders are too expensive to be effectively policed by the law enforcement agents. The country’s maritime borders cannot be effectively covered or monitored by the Nigerian navy. The combined efforts of the Army, the Police, the Customs and the Immigration Service cannot effectively control the extensive land borders. To this end, the professor suggested using unmanned drones to police the borders.⁴⁶⁹

⁴⁶⁸Lt Col Sagir M. *Op cit*

⁴⁶⁹ Illoani, F.A & Echewofun, S (2016, March 12) supra pp. 5

b. Ineffectiveness to Guarantee Internal Security

The problems of armed violence and small arms proliferation are worsened by the inability of the police to reduce violent crime, ensure law and order, and provide security to the populace. According to Agekame and Alemika cited in Chilaka⁴⁷⁰ failure of the state and its security agencies to guarantee security has transformed security from a public good provided by the government to a private necessity which individuals and groups have to provide for themselves through various means.

None of the security forces currently possesses the training, resources, or personnel to perform effectively⁴⁷¹. There is lack of confidence in security forces, understaffing or sometimes simply the inability of security agencies to carry out their duty effectively. It is commonplace for security forces not to report to crime scenes on time due to lack of personnel or for logistical reasons. Civilians are therefore left with no choice but to arm themselves.

The rise in insecurity in Nigeria also fuels demand for small arms. Individuals use arms as a means of personal defense. One major source of such arm is through the illegal market. For example it can be through the police and military officers who are by one way or the other poorly paid. Most Nigerians living in areas prone to violence seem to be in a permanent state of fear, hence their quest to possess small arms for one thing-

⁴⁷⁰ Chilaka, F. C. (2010). *Op cit*

⁴⁷¹ Okeke, V.O.S (2014)The Nigerian State and the Proliferation Small Arm and Light Weapons in the Northern Part of Nigeria. *Journal of Educational and Social Research* 4(1). 415-428. Doi:10.5901/jesr.2014.v4n1p415

“protection”, thus deepening gun culture in Nigeria. Herdsmen and cattle-rustlers have joined the group of gun wielders.⁴⁷²

Governance failure also manifests in the inability of the Nigerian State to provide public security. In the last decade, the Nigerian State has demonstrated visible weakness in controlling the use of violence within its territory. The police, in spite of whatever efforts made have not been able to have a firm grip on crime. There is no solution yet to continual clashes between communities, which are arguably fuelled by the availability and access to small arms. It is even more disturbing that there is a clear need to curb the misuse of firearms by the police. Therefore violence is not only often exacerbated by the availability and access to small arms but also sometimes caused by the incompetence of the police in reasonably reducing the possession of small arms after conflicts and not being proactive enough to control the circulation of small arms even before conflicts especially in areas with a clear history of communal conflicts⁴⁷³. As a result, its monopoly on the legitimate use of violence is increasingly up for grabs by criminals, militants, warring communities and other forms of Non-State actors. The consequence of the failure of Public Security is the intermittent outbreak of violent conflicts in recent times. The failure of Public Security in Nigeria has led communities to indulge in different forms of ‘self-help’ security measures, ranging from vigilante groups to community-owned arms stockpiling. Having lost confidence in the Nigerian State, parties to some of these conflicts have become entangled in a security dilemma. The quest to procure more arms

⁴⁷² Illoani, F.A & Echewofun, S. *Op cit* pp. 5

⁴⁷³ Okoli, P. (2014). *Op cit* pp 80

to guarantee personal and community protection from perceived and real enemies is fuelling the ‘domestic arms race’. Hence, breaking the chain of SALWs circulation has remained a major challenge to the Nigerian Government. This unfortunate situation, in turn, stokes the demand for more arms by both the Government and Non-State actors (individuals, groups and communities, among others) to maintain security. While the Government increases its stock through importation and local manufacturing at the Defence Industry Corporation of Nigeria (DICON), Non-State actors patronise transnational traffickers and burgeoning unregulated local and artisanal arms manufactures. In November 2010, for instance, the police uncovered arms fabrication outfits in Barkin Ladi and Kuru in the Jos South local Government Area of Plateau State. In the South-Eastern zone of Nigeria, a locally manufactured firearm known as ‘Awka-made’ enjoys patronage from hunters, armed robbers, cultists and kidnappers, among others⁴⁷⁴.

c. Corruption and Low Income

The vicious cycle of low salaries and corruption creates breeding grounds for the proliferation of small arms and light weapons among the civilian population. Corruption has become largely institutionalized in both the public and private sectors in Nigeria, and the security sector has become worse for it. Given widespread poverty and the low wages of security agents, some greedy security personnel are easily corrupted by transnational arms traffickers – or are themselves involved in illegal business. On several occasions,

⁴⁷⁴Onuoha, F.C (2012) *op cit* pp 54

security agents have been found aiding arms trafficking in Nigeria. Customs officers are bribed by weapons dealers, while soldiers, police officers and security forces are known to have sold Government weapons to criminals⁴⁷⁵. For example, a Major and five other soldiers of the Nigerian Army were convicted in November 2008 of selling over 7 000 arms [valued at over 100 million Nigerian naira (₦)] – including AK-47 rifles, rocket launchers and machine guns – to Niger Delta militants between January 2000 and December 2006. These arms were stolen from the depots of the Nigerian Army at the Command and Staff College, Jaji, and the One Base Ordnance, Kaduna⁴⁷⁶. In March, 2016, the Police nabbed a Vigilante Commander in Adamawa State, Young Maurice for allegedly running an Inter-State network of run runners.⁴⁷⁷

d. Customs and Traditions

In many cultures across Nigeria, weapons are used for traditional rites and ceremonies. While the Fulanis in Northern Nigeria make use of swords, arrows and sticks, the communities of traditional hunters of the west and east carry shotguns⁴⁷⁸. In the South West, some type of weapons are used for traditional ceremonies such as coronations and sometimes while welcoming their illustrious sons and daughters back home. In Ekiti, Oyo, Osun, Ondo, Ogun and part of Edo state, Dane guns are used for such occasions⁴⁷⁹. What this means is that attachment of cultural practices to weapons has

⁴⁷⁵ Ngang C K. *op cit* pp 20

⁴⁷⁶ Onuoha, F (2009) Corruption and National Security: The Three Gap-Thesis and the Nigerian Experience. *Nigerian Journal of Economic & Financial Crimes*, 1(2), pp. 1–13.

⁴⁷⁷ Illoani, F.A & Echewofun, S. *Op cit* pp. 4

⁴⁷⁸ Ngang C K. *Op cit*

⁴⁷⁹ Adetiba. *Op cit* at pp 187

encouraged the use and proliferation of locally manufactured small arms, most importantly rural communities where culture and traditions still enjoy great respect. Hence the difficulty in combating arms proliferation.

4.7 The Impact of Small Arms and Light Weapons Proliferation on National Peace and Security

Small arms have continued to play a very important role in armed conflict, crime and thus insecurity in Nigeria. Although Nigeria's problem with SALWs is not new, its increasing availability in the last decade has helped stoke a wave of insurgencies, ethno-religious conflicts, cross-border banditry, kidnapping, armed robbery and other violent crimes. Arms build-up has fuelled violence in different parts of Nigeria – especially communal clashes and ethno-religious conflicts. Between 1999 and April 2010, Nigeria recorded at least 187 ethno-religious conflicts⁴⁸⁰, leading to the death of over 100,000 which have been characterized by an increased involvement of SALW from local and International sources.

As it has already been demonstrated, SALW are playing an ever increasing role in fomenting violence and insecurity in Nigeria. They are used for criminal activities ranging from petty crimes, through more serious crimes like armed robbery and hostage taking up to homicide, most especially for politically motivated killings around election periods. The increased use of SALW particularly in the murder of popular figures and in other crime has of course led to an increase in the lethality of attacks and has created an

⁴⁸⁰ Philips, Anza (2010) Jos Crisis is More than Religious. *Newswatch*, 19 April, p. 26

atmosphere of fear and insecurity in Nigeria. The absence of peace and security exacerbated by the proliferation and misuse of SALW impacts negatively on national development. SALW have made armed banditry in Nigeria much easier for the perpetrators, more lethal for the victims and more complicated for law-enforcement officers to apprehend the gangs with devastating effects on the economy, politics and social life.

In a small scale study that was carried out by a group of researchers in a hospital in Kano following the ethno-religious clashes of 2004, it was observed that though the majority of casualties were not due to firearms, the majority of SALW victims (66%), sustained permanent disabilities. The study also revealed that most of the SALW victims were males which would suggest a considerable weakening of economic productivity, since women generally stay at home in Kano⁴⁸¹.

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 conflicts⁴⁸². These weapons helped to prolong conflicts, induced huge internal population displacement, undermined social peace and devastated the economic livelihoods of individuals and communities. SALW raise grave concerns in conflict situations, the most visible of which is the high death toll. This includes deaths directly inflicted by the use of small arms and indirectly resulting from the consequences of armed-conflict situations⁴⁸³. The Fifth Report of the Nigeria Watch Project released early this year indicates that the

⁴⁸¹ Ngang *op cit* pp 74

⁴⁸² Chuma-Okoro, H. *Op cit* at pp 260

⁴⁸³ *ibid*

country attained the climax in terms of number of deaths recorded from violence in the last 10 years in 2014 and 2015, accounting for 24 percent and 18 percent, respectively, of the total deaths of 94, 470 recorded during the period⁴⁸⁴. As a result of recurrent violent conflicts exacerbated by the use of SALW, Nigeria is faced with the Herculean task of responding to a fluctuating but always sizeable number of internally displaced persons (IDPs). Between 2000 and 2002, for instance, an estimated 1.7 million persons were displaced by ethno-religious conflicts and, by June 2010, some 1.6 million Nigerians are estimated to have been internally displaced⁴⁸⁵. 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, negligence, recklessness and in violent crimes and generalised violence and in violent crimes. Hence small arms are often used in a wide range of crimes which have no connection with conflicts, such as rape, robbery, kidnappings, and general gangsterism⁴⁸⁶. 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

⁴⁸⁴ Illoani, F.A & Echewofun, S. *op cit*

⁴⁸⁵ Onuoha, F.C (2012). *Op cit* at pp 55

⁴⁸⁶ Chuma-Okoro. *Op cit*

activities⁴⁸⁷. The impact of Nigeria's SALWs problem on human security is also evident in financial losses induced by conflicts. About 10 major ethno-religious conflicts between 1999 and 2004 cost the Nigerian government over ₦400 million (US\$2.86 million)⁴⁸⁸. In the aftermath of the Jos crisis in early 2010, the federal government assisted the Bauchi State government with ₦135 million (US\$900 000)⁴⁸⁹. These scarce resources could otherwise be used in providing basic services that promote human security and development, such as clean water, education and healthcare, among others.

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, the two human Rights Covenants, many thematic treaties, African Charter on Human and peoples' Rights, and National Statutes. 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. 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

⁴⁸⁷Chuma-Okoro. *Op cit at* pp 262

⁴⁸⁸ Onuoha F.C. *Op cit*

⁴⁸⁹*ibid*

context of a political society like Nigeria⁴⁹⁰. In conclusion, National development, economic growth and human security amongst others can only thrive in an atmosphere of National peace and security.

4.8 Analysis of Legal Regime in Combating the Misuse and Proliferation of Small Arms and Light Weapons in Nigeria

Barbara Frey cited in Chuma-Okoro⁴⁹¹, states that the imperative for regulation is driven by the fact that small arms have legitimate and illegitimate uses, which rules out absolute prohibition. This has been referred to as the paradox of SALW. The paradox is epitomised by the self-defense 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.

The fight against the proliferation and misuse of SALW is a key priority on Nigeria's peace and security agenda. Nigeria has been an active participant in international and regional discussions on small arms proliferation. The country has signed on to a number of International measures pertaining to Small Arms and Light Weapons. It supported the adoption in 2005 of the International Instrument to Enable States to Identify and Trace Illicit Small Arms and Light Weapons, and has argued that this political document needs to be transformed into a legally binding Instrument in order to control effectively and

⁴⁹⁰ Chuma Okoro *Op cit* at pp 264

⁴⁹¹ *Ibid* at pp 266

criminalize the illicit movement of small arms⁴⁹². Nigeria has also recommended consideration of sanctions for those found diverting arms into illegal networks, the establishment of a common international standard for regulating the activities of arms brokers, integrating small arms measures into comprehensive national development strategies, and the establishment of a common standard for end-user certification and stockpile management⁴⁹³. In addition, Nigeria has supported West African regional measures aimed at reducing the proliferation of small arms and light weapons.

At the National level, Nigeria continues to rely on the National Firearms Act of 1959 as the Legal Instrument Governing Small Arms possession, manufacture, and use in the country. The act has been amended and complemented by additional legislation since its introduction. On paper, the National legislation provides clear indications of what is legal and illegal, and all weapons without proper licensing are illegal. However, the legislation has been inadequately implemented and enforced. In addition, many fines imposed for breaches of the legislation are relatively minor, leading some to claim that the law is not strong enough to constitute a deterrent to the nefarious activities of such criminals⁴⁹⁴. Proposals were made that the laws be revised and updated following the UN Programme of Action in 2001. The Presidential Committee on SALW (PRESCOM) set up by former President Goodluck and headed by Ambassador Emmanuel Imohe

⁴⁹²Adekanye, S. (2006, 28 June). Statement of the Permanent Mission of Nigeria to the United Nations UN Conference to *Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. Retrieved on March 20, 2013 at 1:35pm <http://www.un.org/events/smallarms2006/pdf/arms060629nigeriaeng.pdf>

⁴⁹³*ibid*

⁴⁹⁴ Senator Iroegbu (2014). Terrorism: Presidency Moves to Amend Colonial Firearms Act. *Thisday*. Retrieved on October 9, 2015 at 4:56pm from www.thisdaylive.com/2014/10/terrorism-presidency-moves-to-amend-colonial-firearms-act/

organized a roundtable to examine the administrative mechanisms and laws controlling the proliferation of SALW in Nigeria, the adequacy of the Firearms Act, the Enforcement Mechanisms established therein for the control of the flow of SALW and to make recommendations for the harmonization of the Act with the ECOWAS Convention. However, the proposed amendment to the National legislation on small arms carried out by PRESCOM in conjunction with the Federal Ministry of Justice, ECOWAS Commission, ICRC, UNREC amongst others is yet to yield result.

4.8.1 Review of Nigeria's Compliance to the ECOWAS Convention on SALW

The analysis focuses on articles 4, 13 and 7 of the ECOWAS Convention, which deal with the creation of national commissions, collection and destruction programmes, and the harmonisation of legislation respectively, with a view to highlighting the level of compliance or non-compliance by Nigeria.

(a) Article 4: National Commissions

Article 4 of the Code of Conduct states that: In order to promote and ensure co-ordination of concrete measures for effective implementation of the Moratorium at the national level, Member States shall establish National Commissions, made up of representatives of the relevant authorities and civil society. The ECOWAS Executive Secretariat shall prepare guidelines to assist the Member States in the establishment of their National Commissions. National commissions (Natcoms) are meant to serve as the

hub around which national and regional initiatives will revolve⁴⁹⁵. Their main functions, amongst others, are:

- (i) formulation of strategies, policies and programmes against the proliferation of small arms;
- (ii) sensitisation of the public on the need to hand in to the police illegally held weapons;
- (iii) update of arms registers and transmission to the ECOWAS Secretariat;

National SALW Commissions are needed to act as coordinating bodies. The establishment of an effective National SALW Commission is a crucial first step to develop and implement national SALW control strategies that effectively address small arms proliferation. In complying with this requirement, in 2013 by an Act of the National Assembly, Nigeria established a National commission known as Nigeria National Commission against the Proliferation of Small Arms and Light Weapons and it is located in the Ministry of Foreign Affairs.

(b) Article 13: Arms Collection and Destruction Programmes

The presence of illicit weapons constitutes a major threat to human security in the sub-region. Consequently, reducing and eventually eliminating illicit weapons from the sub-region is seen as a *sine qua non* for socioeconomic development in West Africa. The link between socio-economic development and a stable weapons-free environment was captured by UN Research Centre for Peace and Disarmament in Africa (UNRCPDA)

⁴⁹⁵ Bah, M.S (2004) Micro-disarmament in West Africa: the ECOWAS Moratorium on Small Arms and Light Weapons. *African Security Review* 13(3).

Director Ivor Richard Fung cited in Bah⁴⁹⁶:

If countries in Africa are to have a chance of realising sustainable socio-economic development, they must first collect and destroy excess weapons not wanted at peace time and curb the flow and proliferation of small arms. Whilst light weapons remain in circulation, the potential for conflicts erupting or resuming will remain very high.

If not destroyed, excess weapons in government armouries are likely to enter the illicit weapons market and exacerbate the conflict cycle in the region⁴⁹⁷. Article 13 of the Code of Conduct therefore calls for the “collection, registration and destruction of all weapons, ammunition and components covered by the Convention...”.

The collection and destruction programme will focus on:

- (i) Surplus to national security requirements— the determination of arms that are ‘surplus to national security requirements’ remains essentially the prerogative of the member state;
- (ii) Seizures from illegal possession; and
- (iii) Weapons and ammunitions collected following peace accords and upon completion of peace operations.

Since 2006 that the ECOWAS Convention on SALW came into being, Nigeria has organized just one illegal arms collection programme. That is, the recent Amnesty programmes organized by the Yar’Adua administration to pardon militants in the Niger

⁴⁹⁶ Bah, M.S (2004). *Op cit pp 39*

⁴⁹⁷ *ibid*

Delta and have them submit their arms. Organizing just one arms collection programme since 2006, is not impressive for a country that records armed violence in torrents.

(c) Article 7: Review and Harmonization of Legislation and Administrative Measures

One of the enduring consequences of colonialism is the emergence of different legal frameworks reflecting the legal systems of the former colonial power. The diverse cultural background of peoples in the sub-region also accounts for differences in customary law, which affects the nature of firearms legislation across the sub-region⁴⁹⁸. It is in recognition of this need that article 7 of the Code of Conduct calls on members to “harmonise and adopt the regulatory and administrative measures necessary for exercising control of cross-border transaction with regard to light weapons, components and ammunition relating to them”. It calls on member states to:

- (i) review, update and harmonise national legislation and regulations on light weapons bearing on civilian possession, use and transfer;
- (ii) apply legal instruments, such as export and import permits and end-user certificates; And
- (iii) harmonise different national legislation with a view to developing a regional convention on light weapons that would relate to control and reduction, as well as to humanitarian law issues.

⁴⁹⁸Bah, M.S (2004). *Op cit p 41*

The harmonisation of legislation is aimed at producing a comprehensive regional convention that will reflect the new aspects of collective security in the sub-region and the enhancement of security in general. Current legislation regulating the possession of firearms in nearly all member states does not reflect the contemporary security landscape in the sub-region⁴⁹⁹ and Nigeria in particular.

4.8.2 National Framework: Analysis of the Relevant Statutes

(a) The Nigeria Firearms Act 1959:

The Firearms Act 1959⁵⁰⁰ is the foremost National legislation regulating SALW. 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 Defense Industries Corporation of Nigeria Act, the Criminal Code Act and the Penal Code. 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);

⁴⁹⁹Bah, M.S (2004). *Op cit pp 42*

⁵⁰⁰Firearms Act Chapter F28, LFN, 2004

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 dealer⁵⁰¹. Section 27 criminalises acts contravening certain provisions of the Regulations and provides penalties accordingly. The Robbery and Firearms (Special Provisions) Act also deals with firearms possession and provides sanctions for gun-related offences. Under the Act, illegal possession of firearms attracts a fine of N20, 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.⁵⁰² The Act subjects the possession of firearms and ammunitions to the grant of a license by the relevant authorities save for certain persons⁵⁰³. It also prohibits anyone from selling or transferring ownership of firearms or ammunitions except by registered dealers⁵⁰⁴. Other important provisions are sections 17 and 20, which restrict the importation or exportation of prohibited firearms and ammunitions except through designated entry⁵⁰⁵. However, generally, Nigerian statutes concerning small arms appear to be inadequate and certainly poorly enforced in view of modern complexities.

The Firearms Act defines firearms in section 2 as “any lethal barreled 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

⁵⁰¹Section 12 Firearms Regulation

⁵⁰² *Robbery and Firearms (Special Provisions) Act 1984 ss 1- 3*

⁵⁰³ *Nigeria Firearms Act 1959 ss 3, 4, 5 and 8. Ss 37 and 38 exempt certain persons from the requirement of a license.*

⁵⁰⁴ *Firearms Act s.9*

⁵⁰⁵ *Ibid*, Ss.19 and 21, *ibid*. See also section 20, which prohibits importation of firearms by post.

the categories referred to in parts I, II and III respectively of the schedule hereto, and any component part of any such firearm”. In *Olatunji v State*⁵⁰⁶, the Nigerian Supreme Court reproduced the definition of “firearm” under section 2 of the Firearms Act. This definition does not adequately reflect the special attention which prevention of small arms proliferation requires. For example, it would mean that rocket weapons, bombs, grenades artillery and gas diffusing projectiles would not be placed on the same level with pistols. It may, however, also be persuasively argued that some of these weapons or sometimes the locally made weapons with similar effects are increasingly being used by militia groups and fundamentalist sects. Even though the definition of “firearms” attempts to factor in some elements of small arms and light weapons, it fails to do so definitively especially in the case of the latter.

The exemption of air guns is provided for under Section 51 of the Firearms Regulations. That is, they are not subject to any of the provisions of the Firearms Act or the Firearms Regulations. It is difficult to appreciate the rationale behind this apparently deliberate lacuna. First, air guns are certainly personal firearms as provided in Part II of the Schedule to the Firearms Act, Second, air guns are capable if misused, of causing injury from which death might result. Whereas section 51 of the Firearms Regulations has a discriminatory application to air rifles and air pistols on the one hand, and air guns on the other—the latter not being subject to any provisions of the Act or Regulations. Yet, air guns, air-rifles or air-pistols are clearly classified as firearms under the Firearms

⁵⁰⁶(2003) 14 NWLR (Pt. 839) 138 at pp 165-166,

Act as provided in Part II of the Schedule to the Firearms Act. This confusion and inconsistency, like some others already noted, can only accentuate proliferation.

In section 6(2)(a) of Firearms Act, the minimum age for applying for a licence or permit is 17, this age requirement bespeaks of any deterrence to proliferation and exacerbates misuse given the fact that such a person may well be in Secondary school with all the effects of peer pressure.

Under section 7(2) of the Firearms Act, the owner of a firearm has 14 days to notify the authority who has issued the licence of loss, theft or destruction of such firearm—this is arguably too long for notification especially as being proactive can be a useful tool in the control of small arms. Section 7 generally shares a similar problem with section 10(3). Under this section, a registered firearms dealer has 7 days to report loss, theft or destruction.

By Section 12 of the 1959 Firearms Act it is illegal to sell or transfer any firearm unless it is permanently marked, or stamped, with the maker's name and number, or other prescribed identifier, unless this information is specified on the purchaser's licence or permit. Currently, craft weapons are not marked with individual identifiers. There have been recent proposals and discussions within the police force to try to implement a system of marking craft weapons by local producers, but to date this initiative has not moved forward. The police have yet to devise a strategy for implementation, due in large part to the belief that craft producers would be unlikely to obtain the necessary equipment

for marking due to its high costs⁵⁰⁷. Thus, the initiative remains an idea on the drawing board. More recent attempts to bring craft weapons in Nigeria under the legal framework have been partly successful, with many of these weapons provided with ad hoc serial numbers and their owners licensed.

Section 22 of the Firearms Act which ostensibly bans manufacture of firearms by local craftsmen provides that ‘no person shall manufacture, assemble or repair any firearms or ammunition except at a public armoury or at arsenals established for the purposes of the armed forces with the consent of the President’ can be described as a toothless bulldog as most craft producers have continued to operate without authorization, and without being under threat of prosecution. Rather than out rightly banning production by local craftsmen, a system of regulation should be established to introduce transparency in the production and sale of arms.

The penalties for offences under the relevant laws are generally reflective of a weak approach to the proliferation of small arms. Section 27 of the Firearms Act, which generally provides for penalties, thus requires close attention. For example, the practical implication of section 27(1)(b)(iv) is that a violation of Section 19 (which restricts the importation of personal firearms) merely attracts a term not exceeding five years imprisonment, is arguably inappropriate or inadequate, especially in a country where there is so much desperation as exemplified by concealing small arms in bags of rice⁵⁰⁸. It is contended that this undermines any reasonable effort at combating the scourge of

⁵⁰⁷ Chuma Okoro *Op cit* at pp 41

⁵⁰⁸ Okoli, P. (2014). *Op cit* pp 80

proliferation of small arms. Ambassador Imohe stated that the penalties contained in the existing Act are weak; consequently, offenders continue to get away with light sentences and then return to jeer at the system and to resume their nefarious business⁵⁰⁹.

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 purposes are not apparent. Moreover, the right of self-defense is tacitly recognized 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 defense of property. Self-defense is also codified in the Criminal Code Act and the Penal Code. 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-defense is recognized in Nigeria. However, even if this is not the case, argues Helen Chuma-Okoro⁵¹⁰, 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-defense and to accordingly legislate comprehensive due diligent 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 patronize black-markets; thereby facilitating proper record keeping of arms ownership and transfer in Nigeria, and engendering an

⁵⁰⁹ Senator Iroegbu (2014). *Op cit*

⁵¹⁰ Chuma-Okoro. *Op cit*

atmosphere of transparency and accountability in accordance with international standards.

In conclusion, the Nigeria Firearms 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 very important by the international community in combating and preventing illicit arms proliferation. According to Imohe, the Act is obsolete, weak and does not reflect the realities and challenges associated with armed violence and SALW proliferation and therefore inadequate for dealing with the modern, sophisticated trends in weapons trafficking and allied offences. He stated further that the existing Act lacks the bite to hand commensurate sanctions to culprits or breaches of the law⁵¹¹. There is therefore a need to do a major overhaul of the Firearms Act.

4.8.3 Institutional and Policy Framework: National Commission

The institutional framework for regulating SALW comprises mainly of the National Commission against the Proliferation of Small Arms and Light Weapons (NATCOM), the Police as the main body responsible for law enforcement, and the courts.

⁵¹¹ Senator Iroegbu (2014). *Op cit*

In July 2000, the Government established a National Committee on the Proliferation and Illicit Trafficking in Small Arms and Light Weapons (NCPTAW) to respond to the growing crime in the country and the proliferation of small arms. The purpose of the committee was to determine the sourcing of illegal small arms and collect information on small arms proliferation in Nigeria and recommending appropriate measures to deal with this challenge. The NCPTAW has had limited impact⁵¹².

In May 2001 the Government established a second committee known then as National Committee against the Proliferation of Small Arms and Light Weapons aimed at implementing the 1998 ECOWAS Moratorium. The NATCOM (then National Committee) 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 Moratorium⁵¹³. 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.⁵¹⁴ These two committees were later merged into a single committee after determining that redundancy in efforts made two committees superfluous. The committee has accomplished very little. In large part, this is the result of a lack of political will, financial support, technical expertise, and capacity. Rather than being established as an independent commission, the committee has been placed within

⁵¹²Okeke, V.O.S (2014)The Nigerian State and the Proliferation Small Arm and Light Weapons in the Northern Part of Nigeria. *Journal of Educational and Social Research* 4(1). 415-428. Doi:10.5901/jesr.2014.v4n1p423

⁵¹³Hazen and Horner, op cit, p 93.

⁵¹⁴Chuma-Okoro. *Op cit*

the Ministry of Foreign Affairs. Staffing of the committee is not permanent, but, rather, individuals with other full-time posts are asked to serve on the committee. The committee did produce an ambitious work plan in 2003, but has been unable to implement these activities. Originally conceived of as a primary documentation centre on small arms and light weapons, the committee has not yet demonstrated its capacity to act in this role⁵¹⁵.

The reconstituted NATCOM, which should be the epicentre for the control of illegal flow of SALW, is however incapacitated by several factors. These include underfunding, 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 Committee⁵¹⁶.

There were renewed efforts in 2007 to revive the activities of the committee, and in 2013 by an Act of the National Assembly, the committee was established as a National commission known as Nigeria National Commission against the Proliferation of Small Arms and Light Weapons and it is located in the Ministry of Foreign Affairs.

4.8.4 Issues, Challenges and Prospects

The fundamental challenge facing the National Commission is its seeming lack of autonomy and funds, which severely hampers its implementation capacities. The following needs have been identified by the National Commission⁵¹⁷:

⁵¹⁵Horner & Hazen. *Op cit* at pp 93

⁵¹⁶*Ibid*

⁵¹⁷Chilaka, F. C. (2010) Nigeria And The ECOWAS Convention On Small Arms And Light Weapons: A Critical Appraisal (Masters Thesis, University of Nigeria Nsukka). Retrieved on September 15, 2016 at 3:07pm from www.unn.edu.ng/introduction/small-arms.PGD/2010.pdf. P 92

- a. Equipment for destruction of illicit/recovered arms;
- b. Equipment for arms register and Databank;
- c. Resources to execute arms for development projects;
- d. Training of Secretariat staff on arms registration; and
- e. Institutional support to border operatives to enhance surveillance and detection of SALW trafficking at the border post.

The National Commission displays considerable lack of institutional capacity relative to both the level of illicit SALW proliferation and its planned activities. The major challenges of illicit SALW control in Nigeria reside in addressing the conditions leading to the demand for illicit SALW, and in enhancing the National Commission's capacity to collect, document, destroy, and campaign against SALW proliferation. Adequate financing, staffing, and training of both National Commission and security officials are of particular relevance to this matter.

4.9 Barriers to Combating Illicit Arms Proliferation and Misuse in Nigeria

4.9.1 Political Barrier

In the words of Alex Vines⁵¹⁸, in Nigeria, weapons procurement and illicit oil bunkering seem tied to domestic politics. Fundamental political reform may be the key here, rather than dealing simply with the weapons supply chain. Again, this requires political will. One of the important impediments to managing Small Arms proliferation and armed violence is the tendency of politicians to utilize this violence to their own

⁵¹⁸ Vines, A. *op cit* pp 360

ends, coupled with the financial capacity of politicians to foment violence or buy political victory. Political violence is not, however, limited to election years. High-level political officials have been accused of involvement in oil bunkering, community clashes, and ethnic and religious clashes for personal gain, or accused of complicity by lacking the political will to arrest and detain officials known to be involved in these activities⁵¹⁹.

The strength, level of equipment, and skills demonstrated by armed groups has increased speculation that these groups must have some form of high-level support⁵²⁰, and that they could not have established themselves without help from ‘high-ranking’ politicians who use them for self-interested gains⁵²¹. Those who should be instrumental in pushing for action to limit the use of armed groups by politicians are therefore the same politicians who benefit from their use. One important source of funding for standing politicians to pay for armed groups is the so called ‘security vote’. This is a nebulous allocation in each state and local government budget. The allocation is allegedly intended for ‘the purpose of maintaining peace and security in the local government area’ Human Rights Watch, 2007⁵²². Even though this allocation is often one of the largest single allocations in a state’s budget, there is no clear definition of what qualifies as an activity that maintains peace and security⁵²³.

⁵¹⁹Ikelegbe, A (2005). The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria *Nordic Journal of African Studies*, Vol. 14, No. 2, page 224. Retrieved on July 26, 2013 at 12am from <http://www.njas.helsinki.fi/pdf-files/vol14num2/ikelegbe.pdf>

⁵²⁰*ibid*

⁵²¹Harnischfeger, J(2003). *The Bakassi Boys: Fighting Crime in Nigeria* .*Journal of Modern African Studies*, Vol. 41, No. 1, p 27

⁵²²Hazen and Horner. *op cit* at p 89

⁵²³Hazen and Horner. *op cit*

Furthermore, the use of the allocation remains opaque, and the state government is under no obligation to justify the amount allocated or explain how that money is spent. Observers allege that the security vote allocation is used by many politicians to hire political thugs to carry out political violence on their behalf, while publicly justifying the expense as youth empowerment⁵²⁴.

4.9.2 Security Barrier

Security sector reform remains a difficult task in Nigeria. An important element of addressing insecurity and violence in Nigeria is the strengthening of the National Police Force to enforce the rule of law and to prevent and respond to violence. Police reform has been a slow process in Nigeria. In part, this is the result of the size of the problem and the need for widespread reform. Decades of military rule had produced a militarized police force well known for its authoritarian practices, its political affiliations, and its poor relations with the community, writes Chukwuma, cited in Hazen and Horner⁵²⁵. Reform is also difficult due to the reluctance within the Police Force to implement far-reaching reforms, which often threaten access to resources. Some reforms have, however, been undertaken.⁵²⁶ The United Kingdom has contributed through a community policing programme aimed at improving police capacity and community relations⁵²⁷. Yet the police still suffer from a lack of training, equipment, and incentive to tackle violent

⁵²⁴ Op cit at p 102

⁵²⁵ *ibid*

⁵²⁶ *ibid*

⁵²⁷ Hazen and Horner. *op cit*

crime. Poor salaries, poor training, and poor conditions of service contribute to low morale, inefficiency, and incentives for corruption.

4.9.3 Technical Barrier

The problems of Small Arms proliferation are further exacerbated by the inability of the police to reduce violent crime, ensure law and order, and provide security to the population at large. The ECOWAS Commissioner for Political Affairs, Peace and Security ECOWAS Commission said that the case of the Sahel Region and Northern Nigeria in particular revealed the deficiency in the enforcement capacity of the security forces in the control of illegal movement of arms in Nigeria⁵²⁸. Since the return to democratic rule in 1999, the police are the main security force charged with ensuring law and order. They are assisted by the customs service, the army, the navy, and the Mobile Police Unit, who also patrol the borders and the flow of goods and people into the country. However, none of the security services currently possesses the training, resources, or personnel to do its job effectively. The lengthy and porous nature of the borders contributes to these logistical problems. Poor police capacity has led to the development of a security gap in which communities have often been forced to create their own local security arrangements⁵²⁹. While they appear to have contributed to a reduction in crime levels in some areas, they are not a substitute for an effective police force. In addition to problems with the quality of those recruited, the police also face a

⁵²⁸Akpan, A (2015, June 17) Nigeria Pledges to end Proliferation of Small Arms in West Africa. *The Guardian* . Retrieved on March 10, 2016 at 10pm from

www.guardian.ng/news/Nigeria-pledges-to-end-proliferation-of-small-arms-in-west.africa/

⁵²⁹Okeke, V.O.S (2014). *Op cit p 426*

number of obstacles. There are challenges in training the massive influx of recruits produced by the recruitment programmes. These high numbers stretched the capacity of training facilities and resulted in the sub-standard training of the new recruits⁵³⁰. The police lack sufficient equipment, including communications equipment, vehicles, and small arms. The security vote is an opaque budget line item that provides significant amounts of funding for ‘security-related’ issues, but which remains uncontrolled by requirements for disclosure. At best, this provides an easy source of money for corruption; at worst, it provides politicians with money that allows them to use violence as a tool of political influence and control by purchasing the services of armed thugs⁵³¹.

According to Zeine cited in Onuoha, Freedom⁵³², Governance failure adds another dimension to the proliferation of SALWs. The term ‘governance’ is used here in its generic form to encompass not only how state institutions and structures are managed, but also the processes of decision-making and policy formulation, the capacity to execute these policies, resource allocation, information flow and the efficiency of officials. Governance, therefore, seeks institutions and rules that promote more equitable socioeconomic outcomes and enhances human development. Accordingly, governance failure entails the inability of state actors, institutions and agencies to use public resources and authorities to ensure the protection of lives and properties, as well as the delivering of public goods necessary for the advancement of human security and development. It is a product of gross mismanagement and embezzlement of public

⁵³⁰ Akpan, A. *Op cit* at p 103

⁵³¹ *Ibid* p 4

⁵³² Onuoha, F.C. *Op cit* p 54

resources, resulting in mounting poverty, unemployment and poor/failed delivery of basic services, not least security. Despite enormous oil wealth, over 70% of Nigeria's 150 million people subsist on less than US\$1 per day. Owing to frustration and deprivation, many have taken to criminal activities such as piracy, armed robbery, kidnapping and militancy, which contribute to the demand side of arms penetration and circulation⁵³³.

⁵³³ Onuoha, F.C *Op cit*

Chapter Five

SUMMARY AND CONCLUSION

5.1 Introduction

This chapter is a summary of the entire dissertation. It considers the findings and observations of the research and some recommendations which if implemented could help in the war against the proliferation and misuse of Small Arms and Light Weapons (SALW).

5.2 Summary

This dissertation is aimed at appraising the impact of the ECOWAS Legal Regime on the proliferation and misuse of SALW in the sub-region and Nigeria in particular despite being a signatory to the ECOWAS Legal Regime, the ECOWAS Convention on SALW. Suffice it to say that from the preceding chapters, it is quite clear that leaders of the West African Sub-region and Nigeria in particular have accepted the fact that SALW are indeed the weapons of mass destruction in slow motion and that they have wreaked havoc in the socio-economic and political fibre of the Sub-region. The Leaders have also woken up to the realization that the only way forward is to stop the proliferation and the misuse of these weapons. For the past several years, this is exactly what they have sought to achieve from a politically binding Moratorium to a legally binding Convention on SALW through ECOWAS and her Revised Treaty in the framework of the Protocol Relating to the Mechanism of Conflict Prevention, Management, Resolution, Peace-Keeping and Security. Different levels of commitments from the Nigeria Government to

address SALW issues is reflected in the varying degrees of implementation of the programmes and activities of the SALW control instruments which is reflective of its perceived SALW's threat. However, the lack of political will is one major factor that affected the effective implementation of the Moratorium and same is also affecting the Convention and all other International Instrument on Small Arms and Light Weapons. Adoption and ratification of protocols is not enough. The political will to implement the texts is the final purpose of the Convention. The case studied in this dissertation, Nigeria, revealed that the problem of combating small arms proliferation and misuse results from a combination of large numbers of arms in circulation and a number of incentives for individuals and groups to resort to SALW. This situation is compounded by the inadequacy and incapacity of the security forces and the inability of the government to provide security, maintain structural issues and track the manufacture, possession, licensing and use of small arms. Widespread feelings of insecurity result from the failure of the police to maintain law and order. This feeds the desire for self-defence measures, such as the procurement of small arms and the creation of vigilante groups. This in turn contributes to the cycle of violence, on-going threats to safety and more demands for SALW. It is instructive to mention at this junction that SALW does not just move everywhere, but where they are demanded. Therefore, there are demand factors in the proliferation of SALW. More fundamentally, the Nigerian state is yet to deal with the demand factors of SALW proliferation preferring to dwell on the symptoms rather than the root causes. The demand factors are the root causes of SALW proliferation, for if there is no demand there will not be supply, therefore the demand factors include mass

unemployment, poverty, corruption, excessive militarization, failure of political leadership, bad leadership, poor governance, state violence, insecurity, among others. The Nigerian state has made several efforts to check the proliferation of SALW but not from the demand side, or the root causes. In fact, the Nigerian state has not been able to deal with these demand factors, most of these efforts had been superficial or superfluous. So it is actually a product and a combination of many years of political leadership failure tilting the Nigerian state towards the status of a failed state, a state that is not able to deal with matters or issues of political corruption, poverty, mass unemployment and economic hardship leading to increasing demand for SALW⁵³⁴. Thus, the inability of the government to deal with the demand factors of SALW heightens proliferation of small arms and light weapons (SALW) in Nigeria.

Nigeria is a source, transit and destination of SALW, thus structural issues like the lengthy and porous nature of the borders contributes to logistic problems thus creating many unmanned paths and routes for internal and external movement of SALW. Apart from “craft weapons,” which are produced within the region, SALW are smuggled into West Africa across various land and sea borders, as well as through airports. The country’s maritime borders cannot be effectively covered or monitored by the Nigerian navy. Similarly, the combined efforts of the Army, the Police, the Customs and the Immigration Service cannot effectively control the extensive land borders. Porous ports

⁵³⁴Okeke, V.O.S (2014)The Nigerian State and the Proliferation Small Arm and Light Weapons in the Northern Part of Nigeria. *Journal of Educational and Social Research* 4(1). 415-428. Doi:10.5901/jesr.2014.v4n1p423

encourage smuggling⁵³⁵ through the waterways, so such loopholes must be plugged with efficient maritime security agencies. Clearly, better security at the ports would in turn, cause gun scarcity which would in turn arguably automatically cause an astronomical increase in price for those available.

Trafficking between conflict zones, corruption among security officials and politicians, and the rise of craft production are among the major sources of weapons identified here. The illicit SALW trafficking business involved a wide range of actors, including unregistered arms dealers, politically exposed persons, security agents, and leaders of armed groups, local manufacturers, foreign governments and international syndicates. Thus, it suffices to say that the inability of the law enforcement agencies to check the supply factors of SALW worsens security situations in Nigeria.

The legal and institutional measures against the proliferation and misuse of SALW are weak. In particular, despite being signatories to the ECOWAS Convention on SALW, National firearms laws are mostly out-dated and have weak provisions for regulating SALW. Therefore, as small arms remain and proliferate, development is impeded. If the problems of proliferation in Nigeria are not addressed, the non-state armed groups operating in the country and in the region in general, will undermine the region and plunge it into a dangerous conflict zone where the gangs will rule at the expense of legitimate authority, development, security and progress of all.

⁵³⁵ Ojudu, B (2004). Gun Smuggling in the Niger Delta *World Press Review*, November 16. Retrieved on January 23, 2014 at 11:05pm from <http://www.worldpress.org/cover7.htm>

5.3 Findings

This dissertation was designed to achieve two important objectives amongst others, namely;

(a) To critically ascertain the extent Nigeria has implemented the ECOWAS Convention on SALW, and

(b) To ascertain the extent the Nigerian firearms law has curbed the proliferation of SALW in Nigeria. After a critical analysis of available data the dissertation finds among other things that combating the proliferation of small arms, is a very practical issue. Indeed, Ryan⁵³⁶ made the point pungently:

Tougher measures to curb illicit weapons such as tightly controlling exports and collecting illicit arms are important –but must be seen as only part of the solution. We should also address the reasons why guns end up in the hands of civilians. Experience shows that national measures to control arms need to be twinned with local action to address the demand for weapons.

Findings in this dissertation reveal that Nigeria's internal security environment has deteriorated in the last decade, with the problem of SALW assuming worrisome dimensions, as evidenced in the constant outbreak of ethno/religious conflict where SALW are the weapons of choice in the insurgent activities of Boko Haram and the Niger Delta militants. These internal disturbances have been fuelled by a pool of young people frustrated by a lack of employment prospects and easy access to light weapons. There are many jobless, poor and disgruntled able bodied young men and women alike who are readily available to be trained and armed to presumably defend the interest of their

⁵³⁶Ryan, J(2012). *As the UN's small arms review conference ends, what is needed to reduce violence?* Retrieved January 13, 2014 at 12pm from www.undp.org/content/undp/en/home/ourperspective/ourperspectivearticles/2012/09/10/as-the-un-s-small-armsreview-conference-ends-what-is-needed-to-reduce-violencejordan-ryan.html.

groups. According to the National Bureau of Statistics, more than half of the Nigerian youth are reported to be unemployed.⁵³⁷ John et al.⁵³⁸ comments that poverty and enormous economic disparity between the rich and the poor within the country have been identified as the driving force behind the use of SALW.

From the Legal stand point, It was further revealed that although the provisions of the law are comprehensive in that they clearly spell out what amounts to legal and illegal possession and use of SALW, however a corollary at the core of preventive measures is the need for realistic and modern provisions, especially with respect to fundamentals like definitions, movement of arms, possession and manufacture of arms. The penalties for breaching the law have, particularly in relation to fines, become obsolete, while the enforcement of the law has been constrained by corruption and inadequacy of institutional capacity on the part of the law enforcement agents. Consequently, even though the law can be considered adequate in terms of the production, import, and export of SALW, the penalty is often insufficient to ensure deterrence and enforcement in the event of a breach. Thus, despite being signatories to the ECOWAS Convention on SALW and other International Instruments dealing with illicit SALW trade, the National firearms laws are mostly out-dated and have weak provisions such as provisions for sanctioning violators, consequently, offenders continue to get away with light sentences and then return to jeer at the system and to resume their nefarious business. More worrisome is that it is poorly implemented by the relevant authorities and that is why a lot of illegal

⁵³⁷ *54 Percent of Nigerian Youths Unemployed* (2013). Retrieved on January 23, 2014 at 8:21pm from <http://m.news24.com/nigeria/National/News/54-percent-of-Nigerian-youth-unemployed-official-20131218>

⁵³⁸ John et al. *ibid*

manufacture has gone and is still going on without fear of facing the wrath of the law. Furthermore, none of the security forces currently possesses the training, resources, or personnel to perform effectively to reduce violent crime, ensure law and order, and provide security to the populace.

Further findings also revealed that the ultimate objective of the ECOWAS initiative which seeks to combat the excessive and destabilizing accumulation of SALW within ECOWAS is still a mirage in the sub-region and in Nigeria. This is because there are an estimated seven to ten million illicit small arms and light weapons in West Africa and an estimated three million to six million small arms and light weapons in circulation in Nigeria alone. And this has fuelled countless armed violence in Nigeria. The requirement for compliance with the Provisions of the ECOWAS Convention is rather slow. The dissertation shows that institutional mechanism to curb SALW proliferation as recognized by the ECOWAS Convention has been poorly implemented and NATCOM as revealed by the dissertation lacks autonomy and funds. In fact, the following needs were identified by the National Committee: Equipment for destruction of illicit/recovered arms; Equipment for arms register and Databank; resources to execute arms for development projects; training of Secretariat staff on arms registration; and institutional support to border operatives to enhance surveillance and detection of SALW trafficking at the border post.

5.4 Recommendations

The proliferation of SALWs is posing a grave threat to security and development in Nigeria. These arms should be cleaned up if the country is to achieve a measurable degree of security of life and property. There is, therefore, the need for the Nigerian Government to pursue a robust strategy that encapsulates three broad dimensions of interventions: Governance, Security and Diplomacy (GSD).

Based on the foregoing, the following recommendations are made:

1. Governance

a) There should be significant changes in the National legislation harmonizing same with the ECOWAS Convention because of the minimum standard requirement in article 21 of the Convention. There is the need for a comprehensive, detailed and compact legislation on small arms.

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. 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. 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

b) There is need to amend the Act to reflect Article 21 of the Convention on measures aimed at controlling the manufacture of SALW. Rather than outrightly banning production by local craftsmen, 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.

i. Measures targeting local arms producers should be developed in order to increase their participation in SALW control measures and investing into equally attractive alternative livelihood programmes that could redirect the efforts of the artisans from producing small arms to the production of farm implements and other peaceful tools and equipment.

ii. That in compliance with Article 7 of the ECOWAS Convention on SALW, the NATCOM should establish an Association or Union of Local Arms Manufacturers, with a view to identifying manufacturers, their stock and winning their support in the fight against illicit proliferation and misuse of SALW.

c) 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. The Nigerian Government should deal with the demand factors of SALW that heightens the proliferation of SALW by partnering with the private sector to undertake an aggressive job creation programme for Nigeria's teeming and idle youths. This will usefully engage the youths, thereby reducing their appetite for violent crimes and ultimately there will be a decrease in demand for SALW.

2. Security

a) Enhancement of the capacity of the National Commission on the Control of Small Arms and Light Weapons (NatCom). As regards efficiency, relevant institutions like the courts, police and other security agencies and regulatory bodies are also in need of structural and tactical reform to suit the modern complexities of the proliferation of small arms.

i. Robust funding and provision of equipment such as e-satellite, for security agencies, with a view to strengthening border security arrangements through enhanced intra- and interstate collaboration among security and intelligence agencies in maritime and land border areas, to ensure effective information sharing on activities along the borders, for effective tracking and interdiction of SALWs traffickers. This will enable the agencies check the supply factors of SALW that worsens Security situations in the country.

3. Diplomacy

- a) The Nigerian Government should deepen its partnership with other States at Regional, Continental and International levels to reinvigorate its implementation of the various Instruments on the proliferation and misuse of SALW with a view to regulate, control and monitor illicit trade in SALWs, especially the recent and most current International Instrument, the International Arms Trade Treaty (ATT).
- b) Nigeria, working within the ECOWAS, should push for the implementation of the ECOWAS Convention to regulate arms trade in the West African Sub-Region and encourage member states of ECOWAS to harmonize their national firearms laws with the Convention, and encourage more member states to ratify the Convention.

4. Proposed Amendment:

- a) Section 22 of the Firearms Act should now read: No person shall manufacture, assemble or repair any Small arms or Light weapons except with the consent of the President upon fulfilling the following criteria:
 - i. Details of SALW to be manufactured
 - ii. Marking procedure
 - iii. Information on the storage and management of the weapons after manufacture.
- b) Section 6 (2) should now read: Notwithstanding the provisions of subsection 1 of this section no license or permit under the provisions of this Act shall be granted if there is reason to believe that the applicant or holder of the license:
 - i. Is under the age of twenty-one;

- ii. Is of unsound mind
- iii. Has criminal records
- iv. Has defective eyesight
- v. Is a person of intemperate habits

In addition to the above, applicant must also provide:

- i. Proof of legitimate reasons to possess, carry or use SALW
- ii. Proof that applicant has undergone safety and competency training and training in the relevant laws regarding SALW
- iii. Evidence of safe and separate storage facilities for both the weapons and the ammunition

5.5 Conclusion

All the situations treated in this dissertation namely the insecurity situation in the North-eastern States and the heightened insecurity in the Niger Delta of Nigeria have shown that SALW do indeed play a decisive role in violent conflict and have negative impacts on crime and insecurity in the Country. The ECOWAS Legal Regime which is the ECOWAS Convention on SALW and other Related Materials, being the sub-regional benchmark for the control of SALW is the most relevant to Nigeria.

ECOWAS member states in particular Nigeria, has adopted scores of protocols and agreements but what is lacking is the will to foster the implementation process. Though, SALW control mechanisms are relatively well developed in member states there

is still the lack of autonomy, independent budget lines, office space and equipment and permanent specialize personnel for some NATCOMs.

The process of harmonisation of member states' legislation is very slow. Also, border controls and arms stockpile management is very poor resulting in arms depots explosions and licit arms becoming illicit. Furthermore, the intervention of the security services to maintain law and order sometimes results in the abuse and misuse of small arms and gross violations of human rights. This results in the undermining public confidence in the rule of law. There is also the lack of cross-border cooperation and communication between implementing officials of neighbouring countries.

The lack of financial resources is a serious impediment to the effectiveness and efficiency with which member states roll out the programmes and activities of the Convention. This means the Convention would depend a lot on external assistance to implement its activities just like the Moratorium. Dependence on donors may mean losing the original ideas and buying the donor's agenda. This may jeopardize the cooperation, respect and observance of the principles of the Convention by arms producing and exporting countries (who are largely the donors/financiers of the programme) that is crucial to the success of the Convention.

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.

Combating proliferation and illicit trafficking therefore requires a multi-sectoral approach that provides for a wide variety of measures and approaches, including legislation and regulation, law enforcement, civil society cooperation, stockpile management, collection and destruction and development. Given the array of people and activities involved at the local, national, regional and international levels in combating SALW proliferation, it is crucial that small arms control efforts are coordinated by governments at the national level. Unfortunately, the lack of effective coordination and information sharing between the many government departments and agencies that have a role to play in small arms control is often a significant barrier to tackling small arms-related problems and implementing regional and international small arms agreements⁵³⁹, such as the ECOWAS Convention on SALW.

From the foregoing, it is concluded that the inability of the Nigerian State to deal with the demand factors, heightened the proliferation of SALW in Nigeria and that, the inability of the law enforcement agencies to check the supply factors of SALW, worsened security situations in Nigeria.

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