

Legal and Regulatory Challenges for the Proliferation of Small and Light Weapons in Nigeria

Salisu Malami^{a}, Nor Anita Abdullah^b, Zuryati Mohamed Yusoff^b*

^a Aminu Kano College of Islamic and Legal Studies, Kano, Nigeria.

^b School of Law, College of Law, Government and International Studies,
Universiti Utara Malaysia.

Email of corresponding author: smalamilegal@gmail.com

Abstract

The Nigerian security challenges can be significantly ascribed to the proliferation of small and light weapons (SALW). It is a universal phenomenon that causes serious security problems ranging from cattle rustling, armed robbery, assassination, kidnapping, militancy and terrorist attacks. It serves as a main source of obliteration of lives and properties. Controlling the proliferation of SALW is in the interest of government and governed. This paper examines the legal and regulatory challenges curtailing the control of proliferation of SALW in Nigeria. It equally explores and identifies gaps and lacuna in the legal and institutional frameworks. For practical steps towards effective control of proliferation of weapons legal and institutional reforms are suggested. These include the review of the Firearms Act 1959 to include far reaching provisions. The Act should provide for the creation of National Commission on SALW. The research paper is valuable to the policy makers, the security agencies and the entire citizens.

Keywords: Small arms, light weapons, challenges, proliferation, Nigeria.

1. Introduction

The rate of proliferation of small arms and light weapons in Nigeria is endemic.¹ It is one of the major security challenges facing Africa and the rest of the world.² Lack of adequate regulations and strong regulatory mechanisms exacerbate availability of small arms which in turn fuel terrorism, political, ethnic and religious crisis. It also postures serious setback to security and sustainable development.³ The widespread of small arms constitute main source of obliteration to lives and properties.⁴ The issue of SALW Proliferation and the dangers it poses to the security of lives and properties of Nigerians could be attributed to legal and regulatory problems. These problems are what this paper appraised.

1.2 Conceptual Framework/ Clarification

The following provides operational definition of some terms and concepts used in the research paper.

Small arm and Light weapon: The term small arm and light weapon herein after referred to as SALW has been defined by global, regional, sub regional and national legislations. Although there is no universally accepted definition to the term SALW, the report of the United Nations panel of Government Experts on small arms in 1997 considers as those:

Weapons ranging from clubs, knife and machete, to those weapons just below those covered by the United Nations Register of Conventional Arms, for instance, mortars below the caliber of

¹(Osimen Goddy, 2015)

² (Malam, 2014)

³ (Uchenna, 2015)(Thom-Otuya, 2009)

⁴ (Chelule, 2014)

100mm. The small arms are those weapons manufactured to military specification and designed for use by the one person. Whereas light weapons are those weapons used by several persons working as a crew.

1.2.1 *The concept of proliferation*

Proliferation denotes sudden increase in the number or amount of an entity. If used in other framework, it implies rapid expansion, abundance or multiplication. When used in relation to SALW, it connotes the spread of the weapons, mostly, from one state to another or from state to non-state actors.

2. Literature Review

A review of existing literature offers an opening to discover gaps in the current research and through such identification a new area worthy of investigation may be identified.⁵ According to Anyim, several attempts were made by different tiers of government at local, regional and international level to curb the challenges pose by the proliferation of small Arms.⁶In the same line Okoli, opined that the available laws regulating firearms in Nigeria are the Fire Arms Act 1959 and Robbery and Fire Arms Act 1984 to him the laws needs amendment.⁷ Chuma-Okoro, in particular maintained that laws on firearms in Nigeria have some limitations because since their enactment they only experience limited review.⁸ Okoro further argued that the Act is outdated, inadequate in many extent ranging from institutional capacity, enforcement and its ability to serve as deterrence to persons convicted under the Act. According to writers such as Uwa and Anthony, they attributed the lack of strong and effective Legal and Institutional frameworks to regulate proliferation of small and light weapons in Nigeria on government, due to its continues reliance on Firearms Act 1959 despite its shortcomings.⁹

Similarly, the spread of small arms and light weapons is attributed to lack of strong domestic, regional and international regulations checkmating the activities of producers and dealers.¹⁰ Porous border and insufficient funds to manage same are among the factors that facilitate spread of weapons. In addition to this Kuranti further point out inadequate regulatory structures and corruption as part of the causes of arms proliferation.¹¹ In the same vain Ero and Ndinge corroborated the above assertion and added poor border policing among the factors. In Nigeria, even though small and light weapons generated series of challenges to the life, property and corporate existence of the country, and Nigeria been a signatory to the ECOWAS protocol. It is the only country in the West African sub region that has not establish a national commission against the proliferation of small and light weapons. This in my view demonstrates the lack of legislative instrument and compliance to the regional efforts in curtailing the spread of small and light weapons.

3. Legal and Regulatory Challenges

While analysing the content of some papers and the Acts (the firearms Act 1959 and Robbery

⁵ (Obasi, 1999)

⁶ (Anyim, 2013)

⁷ (Okoli, 2014)

⁸ H., “Proliferation of Small Arms ⁸ (Rundell, 2011) and Light Weapons in Nigeria:Legal Implications in Law and Security of Nigeria.”

⁹ (Osimen Goddy, 2015)16.

¹⁰ (Malam, 2014)

¹¹ Kurantin, “Effects of Proliferation of Small Arms And Light Weapons in Northern Region of Kenya p.179.”

and firearms Act 1984) several legal and institutional challenges surface. These challenges revealed inadequacy of the Firearms Act in the following areas. Adequate regulation in the area to meet global benchmark, the laws serving as deterrence and reviewing penalties especially fines, local manufacturers porous borders, poor security stockpile corruption, institutional capacity, demand

3.1 Nigerian Laws and Regulations

The Firearms Act and the firearms regulations, were enacted many years ago,¹² prior to the adoption of ECOWAS convention and UNPOA benchmarks. These legislations are clearly obsolete and therefore overdue for amendment to modify their provision with current global standards in contending the SALW threats. Many scholars and experts in SALW regulation expressed their concerned over such challenges, calling for review of the legislations. Okoli opines that the available laws on firearms in Nigeria need amendment.¹³ Chuma Okoro maintained that laws on firearms in Nigeria have some limitations because since their enactment they only experience limited review.¹⁴

Adequate marking and tracing is an important mechanism for curtailing illicit proliferation of SALW. The objective seeks to be achieved by the tracing illicit weapon is to identify the moment in which the licit weapon change status and become illicit. Tracing deters legal users from selling weapons into illegal markets for fear that they might be caught and prosecuted. Marking aid, the tracing of the firearm, after diversion to the person, country, and unit accountable for moving them into illegal market. Having this in mind Article 18 of the ECOWAS Convention provided for classic marking to include a unique serial number, the manufacturer's identity, country of manufacture and the year of manufacture. However, Section 13 (1) of the Firearms Act, Sections 7 and 42 of the Firearms Regulation does not require that the year and country of manufacture be marked on SALW as mandated by Article 18. This is a clear challenge to international tracing.

Article 9 ECOWAS Convention mandates member state to establish National Computerised Register and Data base of SALW. This NCRDB will be utilised for proper record keeping of all information concerning SALW. To conform to the above provision the combine effect of section 10 (3) Firearms Act and sections 18, 31 and 43 of the Firearms Regulation does not comply with the requirement of a national computerised database. Comparatively, the sections succeeded in generating a clumsy arrangement with disjointed registers that could create contradiction.

Another fundamental challenge appears in Nigerian legislation as some significant provisions recognised by ECOWAS Convention and other global instruments are totally missing in the Nigerian laws on SALW. Article 17 talked about collection and destruction of SALW that are surplus to the national need or have become obsolete or seized from non-state actors or unmarked and illegally acquired weapons. In January 2017, the sum of 661 Pump Action rifles were intercepted and seized by custom officials for illegal importation of prohibited items.¹⁵ Subsequently, in May another round of 440 guns were also seized by the custom officers.¹⁶ Recently on September 11, and 21st 2017 the sum of 1100 and 470 pump action rifles were

¹² Firearms Act was enacted 47 years ago before the adoption of Ecowas Convention.

¹³ (Okoli, 2014)p.

¹⁴ (Bah, 2004)p.

¹⁵ (Ibiwoye, 2017)

¹⁶ (Okon, 2017)

seized¹⁷ making a total of 2,671.¹⁸ Here one will wonder as to what will be the fate of the illicit weapons seized since Firearm Act does not provide for their destructions, and they cannot be incorporated into the national stockpile as there is no law in that regard.

In addition to the above Article 20 on controlling the activities of brokers Ecowas Convention and Article 23 that talked about public education and awareness programmes that encourage the promotion of culture of peace and enlighten citizen on the danger of arm proliferation are all missing in our laws.

The Nigerian legal framework does not provide for institutional structure that will oversee and implementation of SALW control measures and provisions of the Firearms Act. Out of the fifteen West African countries it is only Nigeria that has not established a National Commission on SALW. This is a clear contravention of Article 24 ECOWAS Convention¹⁹

Other institutional cum structural challenges include but not limited to the following:

3.1.1 Porous Border: Issue of border porosity is a great challenge in controlling and preventing SALW proliferation.²⁰ This is a global issue but the Nigerian situation appears worrisome. Nigeria is a center of illegal transaction in SALW²¹ in Africa mainly due to porous borders that are either unmanned or seriously unchecked. Nigeria's borders with Benin republic (773 km) and Chad (87km) are relatively short when compared with Niger republic (1499 km) and Cameroon 1690 km). Most of these borders are characterized by either jungle, mountains and porosity.²² The number of customs personnel in the country which stand at 20,000 (twenty thousand) are insufficient to man and police the borders. Recently, the Comptroller General of Customs Colonel Hameed Ali (Retired) sought the assistance of the Nigerian Defence intelligence Agency (DIA) to curb the inflow of firearms across the over 4,000 kilometers' Nigerian borders. There is also poor border control in terms of suitable approach and appropriate apparatus.²³ As there is slight or no synergy in the operation of the main border agencies, particularly as it relates to security of the Nigerian porous borders.

3.1.2 Corruption: Is a universal phenomenon that is not peculiar to any race, belief, political system or location.²⁴ It traces have widespread all over the globe. The root of corruption has been found in ancient civilizations, including the founding fathers of modern democracy.²⁵

This is a serious factor which affects efforts in curbing the spread of illicit arms. Studies undertaken show that corruption substantially contributes to the illicit arms transactions globally.²⁶Corruption in arms trade accounts for almost 50% of all corruption in the global.²⁷ In Nigeria corruption among security agencies such as custom, police and military is a known factor

¹⁷ (Evelyn Usman, 2017)

¹⁸ (Adenubi, 2017)

¹⁹ Member states to the convention *shall* establish through regulation or legislation a National Commission for the fight against the illicit proliferation and circulation of small and light weapons.

²⁰ (Uchenna, 2015)

²¹ (Osimen Goddy, 2015)p. 15

²² (Onuaha, 2013)

²³ (Ewuzie, 2017)

²⁴ (Suleiman & Othman, 2017)

²⁵ (Wells & Hymes, 2012)

²⁶ (Gutterman & Lane, 2017)

²⁷ (Henriksson, 2007)p. 17

that exacerbates proliferation of weapons. Security officials are known to have sold government official firearms to criminal.²⁸ Recently, in December 2016 and May 2017 a report carried out by the office of the Auditor General of the federation reveals that several firearms belonging to the Nigeria police could not be traced. According to Nwanze a security expert there could be a link between disappearances of the police arms and sources of arms used in cattle rustling, armed robbery, and kidnapping.²⁹

3.1.3 Local Manufacturing: Firearms in Nigeria in the late 70s and early 80s did not receive adequate attention. This is because most of the local arms productions are specifically meant for hunting and other cultural festivities. With the rise in demand of firearms by non-state actors for crime, locally produced arms become a complete and inexpensive substitute to imported firearms. Section 22 of the firearms Act prohibits the manufacture of firearms or ammunition except at a public armory or at arsenals established for the purpose. In compliance to the above, government established Defence Industries Corporation of Nigeria (DICON) 1964. The industry was empowered to legally manufacture arms and ammunition mainly for the consumption of military and police.

Nigeria is the second after the Republic of South Africa among the few countries in Africa that are capable of manufacturing arms and ammunition, regrettably a lot of them by illegal unregistered manufacturers.³⁰ The activities of those manufacturers exacerbate proliferation, contravene due meticulousness, transparency, ethics and regulation as required by national and international guidelines.³¹ There are prominent markets in Nigeria known for local production of arms. These markets are situated at Calabar, Katsina, Kaduna³² and recently in Borno and Yobe with the Boko Haram locally producing bombs.³³ The most notorious center for the production is in Awka, Anambra state. History has shown that Awka has been a center for craft production since late 1960s.³⁴

3.1.4 Ineffectiveness to Guarantee Internal Security

The inability of the government to guarantee security of life and property has necessitated citizens to feel a strong need to acquire arms to protect themselves and their property from armed attack³⁵. This happens mostly in situations where security agencies are under staff or where they lack equipment to discharge their functions, or they lack confidence to confront armed criminals.

3.1.5 Unsecured Stockpiles: Poorly constructed armory and untrained persons³⁶ to manage same is another chronic challenge to the proliferation of SALW. Countries like Nigeria with underpaid security forces may be unable to properly discharge their function of securing the stockpiles. Poorly paid security personnel may resort to using the weapons entrusted in their hands for criminal activities or may rent or sale them out to gang of criminal to acquire additional

²⁸ (Ayissi & Sall, 2005)

²⁹ (Nnadozie, 2017)

³⁰ (Florquin, N. and Berman, 2005)

³¹ (H., 2011)

³² (Hazen J.M. and Horner, 2007)p.39

³³ (Okeke & Oji, 2014)

³⁴ Ibid

³⁵ (Che, 2007)

³⁶ Section 16 of the Firearms Act 1959 did not provide for the minimum training requirement of the person to oversee the public armoury. While Article Ecowas convention emphasized the need to ensure that public armories are secured and well-guarded by trained personnel.

income. For example, some Nigerian soldiers were arrested in February 2016 for unlawfully selling weapons to Boko Haram members.³⁷ Weapons also proliferate by means of desertion of security personnel. A number of these licit weapons diverted, later find their way into the hands of non-state actors through illicit market.

4. Conclusion

Proliferation of small and light weapons is a major security challenge facing West African sub region, Africa, and the world at large. Nigerian case is peculiar due to numerous challenges summarized by Uwa and Anthony as “lack of legal and institutional frameworks” to regulate the proliferation. Nigerian security challenges can only be addressed were those problems leading to the proliferation of SALW are adequately solved.

4.1 Recommendations

1. The Federal legislators should accelerate the review of the firearms Act to curtail the current challenges associated with SALW proliferation. The stakeholders should ensure the review covers adequate laws pertaining adequate making and tracing, controlling the activities of brokers, public enlightenment on the dangers pose by SALW and establishment of the National computerized data base register for firearms.
2. The review of the Act should contain provision for the establishment of National Commission for control of small and light weapons with full structure and budget from the federal government.
3. The Act should review the existing penalties with the view to provide stiffer punishment for violators and to ensure that, fines are in line with the current economic reality.
4. There is need to domesticate into national laws, the global instruments that have been signed by Nigeria to correspond more with the international best practices in controlling the spread of SALW.

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³⁷ (Adeniyi, 2017)

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