ABSTRACT
Small Arms and Light Weapons are becoming endemic in Nigeria and the rate of accumulation is increasing with their concomitant destabilizing effect. This article focuses on small arms and light weapons in Nigeria by looking at the intersection that have fuelled the demand for small arms and light weapons in Nigeria within the context of the interplay between the internal governance process and external forces and the legal regime for combating SALW proliferation and on how best to improve same and concludes that a successful resolution of SALW syndrome in Nigeria requires a holistic approach that addresses the underlying factors creating the demands for SALW and the sources of supply, rather than treating the SALW problem as an independent or a compartmentalized issue.

Keywords: small arms and light weapons, Penal and Criminal Codes, human rights, disarmament

INTRODUCTION
This article focuses on contextualizing the proliferation of small arms and light weapons in Nigeria and concluding with recommendations. In Africa, the sources of small arms and light weapons (SALW) proliferation are many and varied1 The then Secretary General of the United Nations (UN), Kofi Anan, in his famous 2000 Millennium Report to the United Nations General Assembly brought the phenomenon of the SALW1 proliferation to the forefront of the UN’s agenda in the following manner:

The death toll from small arms dwarf that of all 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 acerbates armed conflicts. It endangers peacekeepers and

1They amongst others 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 allies to facilitate different inter-state and intra-state piracy wars.

2 The terms „Small arms”, „weapons”, „guns” and firearms are used interchangeably in place of „SALW”. Reference to any of these terms also covers ammunitions. Firearms covers various types of guns as defined in Article 3 of the Protocol against the Illicit Manufacturing and Trafficking in Firearms, their parts and components and ammunitions, adopted by the General Assembly on May 31st 2001 (The UN Illicit Firearms Protocol) See also section 2 of the Nigeria Firearms Act Cap F28 LFN 2004.

Since then, this genre of weapons has continued to agitate the minds of not only members of the international community, but also from nation states because of the multifaceted effects it has on conflict and non-conflict situations.

**History of SALW in Nigeria and the Genesis of Proliferation**

Small arms and light weapons (SALW) proliferation has become one of the most endemic problem(s) of our time and generally accounts for a greater proportion of human mortality in the world.\footnote{Small Arms Survey, Development Denied, Oxford: Oxford University Press, (2003), P. 57.} In addition, there are countless cases of indirect deaths and injuries occurring from increased pervasive security situations; increased discourse morbidity, reduced easy access to health service and malnutrition. In 2003 for instance, it is estimated that more than 639 million of SALW were proliferating in the world out of which 60% of this arsenal was in the possession of the civilian’s population\footnote{Ibid at P. 13.} while a further estimate of between seven and eight million, new weapons are added to the worlds’ stockpile every year. Estimate of illicit SALW in sub-Saharan Africa (SSA) is put at one out of every five on the world. To this end, Bah\footnote{Bah M. S. A, “Micro-disarmament in West Africa, the ECOWAS Moratorium in Small Arms and Light Weapons” African Security Review Vol. 13 No. 3 (2004).} contends that:

“... of the approximately 500 million illicit weapons in circulation worldwide, it is estimated that 100 million of these are in Sub-Saharan Africa with eight to ten million concentration in the West African Sub-region alone.\footnote{Ibid at P. 33.}

Nigeria is one of the third world countries where the proliferation of the arsenal is manifested and its society fully militarized and in-depth in gun violence. The Niger Delta region for instance exhibits this tendency with high degree of intensity where different oil-bearing ethnic minorities groups, through their various social movements, are constantly contesting exploration and as a result oiling their guns as well as gunning for oil in the region and fighting for the soul of the country treasury of natural resources, among the recognized forces viz the Nigerian state (represented by the Federal Government) the global capitalist forces (represented by the various Multinational oil companies (MINOC’s) and the ethnic minority, nationalities (represented by the local leaders and organizations).

The above has led to wide spread and misuse of SALW and coupled with other motivational factors that encourage the use of these weapons. Their use has led to large number of deaths in the hands of state agents, in domestic violence, through accident and in violent crimes.\footnote{Small Arms Surveys, “Profiling the problem”, (Oxford University Press) 2001 P. 59, where the number of death from small arms annually was estimated at 500,000, a figure which include approximately 300,000 killed in armed conflicts and 200,000 killed in peacetime each year. See also Barbara F, “Small Arms, and Light Weapons, the tools used to violate Human Rights” presented at the Disarmament forum on Human Rights, Human Security and Disarmament, UNDIR, 2004 P. 57 in which she cited WHO, Small Arms and Global Health (Geneva, WHO 2001), being a study of 52 high and middle – income countries showing that more than 115,000 people died in those countries from firearms injuries in a one year period in the mid-1990, including 79,000 homicides, 29,000 suicides and 7,000 accidents or undetermined.} Being coercive weapons, SALW are often used in a wide range of crimes which have no connection to conflicts, such as robbery, kidnappings, rape and general ganisterism. They equally have negative impact on the socio-economic development of the entire population as wide spread of and violence inflicts various social and economic costs on individuals and the state including internal displacements of persons, medical treatments and
rehabilitation, refugees flow, destruction of physical infrastructure, loss in productivity and foreign investment, general disruption of economic, social, civil and political activities.

The ineffective regulation and misuse of SALW has human rights implications that go to the root of the entire gamut of fundamental human rights and freedom of the victim both individually and collectively. These are the 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, these rights include the right to liberty, life, property, security, freedom from inhuman treatment and torture and communal rights like right to development, amongst others.

Recent developments in Nigeria have shown that SALW proliferation has increased the intensity of armed struggles and as a result leads to further arms proliferation with adverse effect on the security situation in the country. Instances of such cases include: the Maitatsine religious crisis in Kano and Bauchi, religious riots in Kaduna, conflicts in Jos, the Zango Kataf crisis, Yoruba – Hausa/Fulani, Ife Modakeke, Aguleri – Umuleri, Tiv – Jukuns, Ijaw – Ilaje crisis, Ijaw – Itsekiri Urhobo – Itsekiri and Ijaw – Urhobo, the Boko Haram crisis in the North and the near perennial environmental crisis in the Niger Delta.

Colonization has a great impact on the possession of guns in Africa. Shortly after the abolition of slave-trade around the late 18th century, European traders in palm oil introduced to Nigeria the use of dangerous weapons. The Niger Delta middlemen used European guns to attack another and wreak havoc on Niger Delta villagers. Therefore, gun possession by civilians in Nigeria is not new as same was used in hunting activities in the rural community. With the passage of time, guns and gun powder became symbols of strength and power and subsequently transformed into ceremonial weapons displayed during death ceremonies and customary festivals across tribes and ethnic groups. They become symbols of individual and ethnic grandeur as they were believed to deter aggressors and invaders. Today however, arising from the lethality, sophistication and motive, they have become more of weapons of criminality and instruments of the underworld than armaments of prestige.

There is evidence that prior to 1967 – 70 civil war, Nigeria had came to worry about SALW proliferation as this concern predates the 1959 Firearms Act. But the phenomenon was aggravated by the civil war

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12 E.g. The Covenant Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment adopted by General Assembly Resolution 48/104 of 20th December 1993.


20 See the Explanatory notes to the Firearms (amendment) Decree No. 31 of 1966 explaining the rationale for the Decree on the “Large number of pistols, revolvers, automatic shotguns and several rounds of ammunitions” and the
which has increased illegal possession owing to the interplay of a number of factors. There is dearth of accurate data on the number of SALW in circulation in Nigeria. According to Hazen and Horner, existing data have not been updated for years. Reports have however, consistently estimated the figures of SALW in Nigeria at between 1 and 3 million since 2002. These figures include arms in possession of members of the armed forces and the police, those in the hands of civilians which is in the majority. As at 2002, 80% of the weapons in civilian population were said to be illegally acquired because of the strict regulation. The outdated state of the data in existence creates the impression that these figures are understated. It is therefore conceivable that these figures have multiplied since 2002 going by reports of rampant illicit firearms interceptions and going by the longevity of firearms, it erodes the likelihood that a greater proportion of the arms making these figures would have become unserviceable and gone out of circulation. The above therefore gives rise to the conclusion that large percentages if not majority of small arms and light weapons in circulation in Nigeria are illicit with their concomitant effects.

**SOURCES OF ILLICIT WEAPONS**

The proliferation of small arms and light weapons in Nigeria has both external and internal sources as follows:

(i) **Internal Manufacturing**

Nigeria has a history of significant local supply of legitimate and illicit SALW through local manufacturers. The Firearms Act prohibits the manufacture of firearms. However the government of Nigeria established the Defence Industries Corporation of Nigeria (DICON). This Corporation is legally empowered to produce arms and ammunitions in the country mainly for use by the military and the police. Given the legal status of its mandate, this does not constitute a significant source of illicit small arms. However, the same cannot be said in respect to cluster of unlicensed local craftsmen spread across different parts of the country who produce on the aggregate a substantial quality of illicit guns in contravention of the firearms Act (Section 22). The clandestine nature of their activities negates due diligence, transparency and regulation as required by international standards. It also makes products difficult to trace and makes the SALW position of Nigeria opaque.

(ii) **Cross – Border Smuggling**

Cross – Border smuggling constitutes a major source of SALW proliferation. Even though Nigeria procures arms from other countries for her legitimate use in connection with state
security obligations, Nigeria is yet vulnerable to illicit SALW infiltration from abroad because of her geographical location. Reportedly, the three most notorious arms smuggling frontiers are Idi Iroko and Seme in the South Western States of Lagos and Ogun; the Niger Delta regions, and the border post in the north – eastern region. Aiding smuggling, are the increased number of potential suppliers arising from the end of cold war, and weak international controls of armament flows. These factors have created opportunities for militant groups and other private actors to access sophisticated SALW previously accessible only by members of the armed forces.

(iii) **Security Black – Racketeering**
A large number of illicit firearms consist of leakages from members of the armed forces and the police both serving and retired. This includes the remnants from the Nigerian Civil War and leakages from returnees of peacekeeping operations. This brings us to the impact of small arms and light weapons in Nigeria.

**IMPACTS OF SMALL ARMS AND LIGHT WEAPONS PROLIFERATION IN NIGERIA**

Intermittently, this article has mentioned in passing the impact of SALW generally in terms of loss of lives even though the impacts of SALW is not limited to homicides and injuries, deaths and injuries arising from the use of SALW appears to be the most visible impacts. In its broadest sense however, proliferation and misuse of SALW has pernicious effects on the entirety of the principle of rule of law and human rights which is manifested in various ways. The deployment of illicit small arms in conflicts prone areas aggravates their intensity and gruesomeness and their impacts are felt not only by the victims but by the society as a whole. Possession of firearms can provoke the temptation to commit heinous crimes such as rape, robbery and culpable homicide thereby increasing the scale of premeditated violence through the use of firearms. It is in this respect that it is opined that proliferation of SALW contributes to the rate of crimes and violence in Nigeria. The activities perpetrated through the use of SALW are criminalized under Nigerian statutes. Both the Penal and Criminal Codes criminalize the following acts, membership of unlawful societies such as secret cults, murder or culpable homicides, intentionally causing grievous harm, kidnappings, and robbery with firearms. The Criminal Code specifically criminalizes the following acts: promoting inter-communal war, going armed so as to cause fear or terror in the public, threatening violence with loaded firearms and illegal possession of firearms.

31 She shares a long stretch of border with the Republic of Niger and Chad in the North, Benin Republic in the West and Cameroon in the East, in addition to a long stretch of Atlantic coastline. Each of these frontiers provides entry points for systematic smuggling of arms into the country. See Agboton J. op cit at P. 21.
38 Section 316 of the Criminal Code Act, Cap C38 LFN 2004. Section 221 of the Penal Code.
41 Section 401 of the Criminal Code Act, Cap C38 LFN 2004. Section 298(c) of the Penal Code; Sections 1, 2 & 3 of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004.
43 Section 80, Ibid.
Therefore, the proliferation of illicit SALW increases the incidence of these crimes and further criminalizes the society in the absence of effective deterrence measures. The overall effects of this are breakdown of law and order and undermining the rule of law in all its ramifications. State actors or law enforcement agents are in Nigeria today routinely armed without proper orientation and training on the rules regarding the use of firearms against civilians and this has the effect of increasing the chances of engaging in extra-judicial killings by gun shots, accidental discharges or stray bullets. The application of kangaroo or vigilante justice grossly undermines the rule of law which recognizes only the police as responsible for the internal security of Nigeria and the securities of lives and property 46 as well as the rights of fair hearing, right to life and right to dignity of the human persons recognized in the Constitution. Studies have shown that high rates of gun ownership are related to increases in the incidence of arms related violence 47. The long standing tradition by virtue of the Constitution of the Federal Republic of Nigeria is that it seeks to protect human rights 48. Human rights in this context include the rights which, though not so guaranteed, are nevertheless inherent in every human being. Eso JSC in the case of Olufumilayo Ransome Kuti & Ors Vs Attorney General of the Federation 49 examined the nature of fundamental rights when he said;

_There is no doubt a right guaranteed to everyone including the appellants by the constitution. But what is the nature of a fundamental right? It is a right which stands above the ordinary laws of the land and which infact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution, since independence starting with the independence constitution that is, the Nigeria (constitution) order in council 1960, up to the present constitution, that is, the constitution of the Federal Republic of Nigeria 1979 (the latter does not infact apply to this case; it is in the the 1963 constitution that applies) is to have these rights enshrined in the constitution so that the rights could be “immutable” to the extent of the “non-immutability of the constitution itself”._

Since the constitution specifically provides for “fundamental rights” 51, Nigerian courts have found it expedient to draw a line of dichotomy between “Human rights” and “fundamental rights”. Thus, in Uzoukwu & Ors Vs Ezeomu II & Ors 52, the Court of Appeal per Nasir PCA said:

_Due to the development of constitutional law in this field distinct difference has emerged between “fundamental rights” and “Human rights”. It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. They were termed human rights, when the United Nations made it’s declaration it was in respect of Human Rights as it was envisaged that certain

44 Section 86, Ibid.
46 See Frey, “Small Arms and Light Weapons”, op cit, at P. 41.
48 (1985) 6SC 245: (1985) 5 NWLR (PT 10) P. 211.
49 Ibid at Pp. 276-277.
50 Ibid at Pp. 276-277.
52 (1991) 6 NWLR (PT 200) 708.
rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of international law. Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law of the country that is by the Constitution. On the authority of Abacha Vs Fawehinmi, Nigeria is bound under the various international treaties and the jus cogens of international human rights to protect these rights. While the bulk of the socio-economic rights and freedoms of persons are stated in aspirational principles, the 1999 Constitution guarantees to some extent the fundamental rights and freedom of persons.

Aspirational principles contained in the 1999 Constitution includes; political rights, economic rights, social rights, and environmental rights. Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 guarantees the right to life; dignity of human person, personal liberty, right of fair hearing by an impartial tribunal and right of presumption of innocence until proven guilty; right of freedom of thought, conscience and religious including freedom to change ones religion or belief, freedom to manifest and propagate ones religion or belief in worship either alone or in the company of others, and forbids membership of secret cults.

From the above, it is apparent that the Constitution does not affirmatively guarantee the right to security; nevertheless, part II of the Constitution recognizes that government has a responsibility to ensure that the citizen feels secured even as it assures socio-economic, political and environmental rights. Thus, the Constitution provides:

“The Federal Government shall be a state based on the principles of democracy and social justice”

It similarly went on to state:

“The Security and welfare of the people shall be the primary purpose of government”

Furthermore, in carrying out the affairs of government, the Constitution provides that it shall be conducted and or carried out in such a manner as to “command loyalty and promote a sense of belonging

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53 Ibid at P. 761.
56 See Chapter IV ibid.
57 Section 15(4) ibid. which provides – “The state shall foster a feeling of belonging and of involvement amongst the various peoples of the federation to the end that loyalty to the nation shall override sectoral loyalties”
58 Section 16, ibid. It declares that government will control national economy in a manner that secures the maximum welfare, freedom, happiness of very citizen on the basis of social justice and equality of status and opportunity; and that government will ensure that suitable and adequate shelter and food is guaranteed and old age care, unemployment and sick benefits and welfare of disabled are provided for all.
59 Section 17, ibid. It affirms that the social order of the state is founded on ideals of freedom, equality and justice and declares that every citizen shall have equality of rights, obligations and opportunities before the law. It also enjoys government to ensure the following; that the sanctity of the human person is recognized and human dignity maintained, governmental actions are humane, exploitation of human and natural resources in any form whatsoever for reasons other than the good of the community is prevented.
60 Section 20, ibid. which provides that the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.
61 Section 34(a) ibid., which provides; “no person shall be subjected to torture or to inhuman or degrading treatment.
62 Section 33, ibid.
63 Section 35, ibid.
64 Section 36(1) & 36(5), ibid.
65 Section 38(1), ibid.
66 Section 38(4), ibid.
67 Section 14(1), ibid.
68 Section 14(2)(b) ibid.
69 Section 14(4), ibid.
and loyalty among all the peoples of the federation”. These are the perceived declaration in the Constitution relating to the responsibility of government to protect the rights of the peoples.

Regrettably however, the proliferation of SALW and the misuse of same by state and non-states actors have created room for the infringement of these rights. For instance, the killing of people by the use of firearms clearly deprives them of their right to life whether at the hands of state agents through extra-judicial killings or excess force, or at the hands of criminals, vigilantes or rioters. Other examples of misuse of SALW by state agents in contravention of the legal obligations imposed by the international community relates to the military tactics to quell civil disturbance or state-sectional violence against the civilian population as was the case in Odi, Bayelsa State in 1999 and replicated against the Tivs of Zaki Biam in Benue State in October 200170.

The crisis in the Niger Delta is a reflection of the blatant failure on the part of the state to guarantee the gamut of human rights and to prevent the misuse of or need for SALW71. This has led to the underdevelopment of the region notwithstanding that the right to development is seen as a core right from which all other rights stem from72.

In the North East of Nigeria, Human Rights Watch has said that the Boko Haram insurgents are responsible for the death of at least 2, 053 Civilians in about 95 attacks in the last Six Months. The rights group said the killings and other abuses were part of widespread attacks on Civilians in over 70 towns and villages in North Eastern Nigeria, in the Federal Capital, Abuja and elsewhere that are crimes against humanity73.

LEGISLATIVE FRAMEWORK FOR REGULATING SMALL ARMS AND LIGHT WEAPONS PROLIFERATION IN NIGERIA

The international community has taken the lead in mapping out strategies geared towards addressing the issue relating to the proliferation of small arms and light weapons which are to be implemented at international, regional and national levels. They have equally formulated specific guidelines and rules to help nation-states develop an effective national framework for addressing this phenomenon. Even where the instruments embodying these bench marks lack legal forces, there is nevertheless a strong moral obligation on state to respect them. The legislative framework to be discussed here only relate to Nigeria and thus we will begin by looking at the Constitution of the Federal Republic of Nigeria 1999 which is the Nigerian Ground norm as this will form the necessary spring board for the consideration of other legislation.


The Constitution of the Federal Republic of Nigeria 1999 on the authorities of Ibdokun Vs Adaralode74, and A.G Ondo State Vs A.G. Federation75 is the Ground norm of the Nigerian law. It is the supreme law and it is the yardstick and the cornerstone for measuring the legality of any other law. To that extent any law that comes in conflict with the Constitution, either in its provision, interpretation or application remains null and void to the extent of its inconsistency76.

At present, there is no instrument in Nigeria specifically defining the “firearms” and “light weapons”. However, SALW are regulated as firearms under Nigerian laws. Firearms in Nigeria is a matter under the Exclusive Legislative List in the 1999 Constitution77, implying that only the

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70 Agboton J. *ibid, P. 3.  
74 (2001) 12 NWLR (PT 727) 268 at 312.  
75 (2002) 9 NWLR (PT 772) 222 at 418.  
76 See generally, Section 1(1) and 1(3) of the Constitution of the Federal Republic of Nigeria 1999.  
77 See generally item 2 Part 1 to the Second Schedule of the 1999 Constitution.
Federal Government can make laws regarding its regulation. The Firearms Act is the foremost national legislation regulating SALW, others include; the Robbery and Firearms (Special Provisions) Act, the Defence Industries Corporation of Nigeria Act, the Criminal Code Act, and the Penal Code.

2. The Firearms Act

The Firearms Act came into existence in the year 1959 and since then, it only experienced limited legislative review in 1966. In its amended form, it defines “firearms” 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 the categories referred to in Parts I, II and III respectively of the Schedule hereto and any component part of any such firearms"

Firearms under Parts I, II and III of the schedule includes: artillery, apparatus for the discharge of any explosive or gas diffusing projectile, rocket weapons, bombs and grenades, machine guns and machine pistols, shot guns, sporting rifles, humane killers, flink-lock guns, Dane guns, cap guns and any other firearm not specified in parts II, or Part III. “Ammunitions” is defined simply as “ammunitions” for any firearm and any component part of any such ammunition, but does not include gun powder or trade powder not intended or used as such a component part”.

Possession of firearms and ammunition under the Act is subject to the grant of a license by the relevant authorities. The Act prohibits anyone from selling or transferring ownership of firearms or ammunitions except by registered dealers. Importation or exportation of prohibited firearms and ammunitions are restricted except through designated entry. Importation of firearms by post is prohibited. Thence, the person exporting or importing personal weapons is required to declare same to the relevant officer at the time of importation or exportation.

The production and or manufacture, assembly and repair of any firearm or ammunition is prohibited save at a public armory or at arsenals established for the purpose of the armed forces with the consent of the President. This is however subject to the overriding discretion of the Inspector General of Police who may grant a permit to any person to carry on the business of manufacture, repair of the firearms, referred to in Part III of the Schedule to the Act.

Breaches of the provision of the Act are criminalized and the punishment ranges from 2 years imprisonment without option of fine to 10 years imprisonment or N1,000:00 (One Thousand naira) fine or both. However, members of the armed forces and police are exempted from the provisions, with regard to arms issue to them for official purposes. This in other words, means that the provision relating to transfer, sale and otherwise dealings in arms are not applicable to guns issued to members of the armed forces and the police.

The Firearm Regulations complement the Firearms Act in different ways. It provides for example for the duration of licenses, marking and stamping of firearms, revocation of license application for

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78 The most comprehensive review was the Firearms (amendment) Decree No. 31 of 1966, which increased the penalties for illegal dealings in or possession of firearms.
79 Section 2 of the Firearms Act to be found in the Firearms Arms Act Cap F28 laws of the Federation of Nigeria 2004.
80 Sections, 3, 4, 5 and 8 ibid. However, section 37 and 38 exempt certain persons from the requirement of a license.
81 Section 9, ibid.
82 Sections 17 and 20, ibid.
83 Sections 19 & 21, ibid.
84 Section 22, ibid.
85 This comprises Dane guns, flink lock guns and cap guns.
86 See section 27, ibid.
87 Section 38, ibid.
88 This was made pursuant to Section 32 of the Firearms Act.
89 Section 3 of the Firearms Regulation.
90 Sections 7 and 42, ibid.
91 Section 9, ibid.
registration as a dealer\footnote{Section 12 \textit{Ibid.}}, procedure for the grant of the relevant licenses, sale and transfer of weapons by a registered dealer\footnote{\textit{Ibid.}}. Contravention of the provisions of the regulations is met by penalties\footnote{Section 27 \textit{Ibid.}}.

3. The Robbery and Firearms (Special Provisions) Act

The Robbery and Firearms (Special Provisions) Act was initially promulgated as the Robbery and Firearms (Special Provision) Decree\footnote{No. 5 of 1984.}. It essentially deals with possession of firearms and provides for sanctions for gun-related offences. Under the Act, illegal possession of firearms attracts a fine of N20, 000; 00 (twenty thousand naira) or a minimum of ten years imprisonment, or both. Death penalty by hanging or firing squad as punishment for robberies with firearms, and life imprisonment for attempted robbery involving the use of firearms are imposed for those found guilty\footnote{Sections 1 – 3 of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004.}.

The main statutory provisions on firearms are elastic enough to cover the types of weapons referred to as SALW. The Act is however inadequate in several aspects and fall short of the present day bench marks on regulating and deterring proliferation of illicit arms. The penalties for instance for infringement are inadequate particularly as it relates to imprisonment of fines while corruption coupled with inadequate institutional capacity prosecuted cases involving persons caught with illicit weapons, have curtailed the enforcement of the provisions of the laws regulating firearms.

INSTITUTIONAL FRAMEWORK FOR REGULATING SMALL ARMS AND LIGHT WEAPONS PROLIFERATION IN NIGERIA

The main institutions enforcing and or implementing the provisions and or legislations relating to SALW are the National Committee on the proliferation and illicit Trafficking in Small Arms and Light Weapons (NATCOM)\footnote{NATCOM which is an acronym, was inaugurated in 2001 by the Attorney - General of the Federation and the Minister of Justice at Abuja - Nigeria.}, the police and courts. The police are largely responsible for law enforcement. NATCOM is responsible for the following:

(i) Regulating the importation and exportation of SALW,
(ii) Registration and control of SALW,
(iii) Detection and destruction of illicit SALW,
(iv) Granting permits for exceptions under the ECOWAS moratorium\footnote{Hazen and Horner, \textit{op cit}, P. 93.}.

NATCOM which is supposed to be at the epicenter for the control of illegal flow of SALW, is however incapacitated due to several factors as follows:

(i) Under funding,
(ii) Lack of technical expertise,
(iii) Corruption on the part of law enforcement agencies and
(iv) Generally, lack of political will to ensure its success, depicted by the lack of an independent status as prescribed by the convention generally hampers the effectiveness of the committee\footnote{\textit{Ibid, op cit,} at P. 93.}.

The Nigeria Police Force is the primary law enforcement agency responsible for maintaining law and order in the country. It plays the primary role in ensuring internal security, while the armed forces are responsible for security from external threats\footnote{\textit{Ibid, op cit,} at P. 31.}.

The Nigeria Police Force has grown in size since the return of democracy in 1999 from 160,000 to over 300,000 officers in 2007\footnote{\textit{Ibid.}}. The government of Nigeria has taken steps to increase the resources available to the police, but still falls short of meeting the needs identified by the force. The police, arguing that “crime fighting involves the use of arms and ammunition as sophisticated or even more than
the ones used by the hoodlums, complain that they possess insufficient number of small arms to perform their role of enforcing law and order, especially in areas with high level of armed crime\textsuperscript{102}.

In a submission by the Nigeria Police Force to the Presidential Committee on Police Reform in 2006, the Police indicated that they would need over 500,000 small arms and over 5 million rounds of ammunition in the coming 5 years to fulfill their needs. This is illustrated by the table herein below as follows:

**Table 1: Showing 5 years projections of the Nigeria Police Force Small arms and ammunition demands.**

<table>
<thead>
<tr>
<th>Types of arms</th>
<th>Present holdings</th>
<th>Estimated additional requirements over next five years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rifles (various models): K2, FWC: SMG Model 12; SMG Beretta; Sterling Beretta; Pump-action shotgun, sub-machine gun, AK-47</td>
<td>65,000</td>
<td>510,500</td>
</tr>
<tr>
<td>Pistols (various models)</td>
<td>8,524</td>
<td>20,000</td>
</tr>
<tr>
<td>Revolvers 38mm, revolver Chief special shot, Browning 9mm, Revolver 38mm, Chief long, Browning DA, Browning 32mm, Beretta 9mm</td>
<td>8,524</td>
<td>20,000</td>
</tr>
<tr>
<td>Ammunition</td>
<td>(Rounds)</td>
<td>(Rounds)</td>
</tr>
<tr>
<td>5.56mm for rifles</td>
<td>650,000</td>
<td>5,000,000</td>
</tr>
<tr>
<td>9mm for rifles</td>
<td>434,000</td>
<td>100,000</td>
</tr>
</tbody>
</table>


The government purchased 80,000 assault rifles in 2006, about one-sixth of what the police claim they need. These weapons were requested five years previously, but were purchased in 2006\textsuperscript{103}. The police claim they need the new weapons or arms to combat crime\textsuperscript{104}. However, the purchase of 40,000 AK-47 assault rifles, 30,000 K2 assault rifles, and 10,000 pistols has raised concerns among Nigerians who think the police need to be better trained, not better armed and that assault rifles are not the best option for a police force struggling to reform its reputation for brutality\textsuperscript{105}. The implication of the above table clearly shows high demand of weapons and a case of proliferation. While the role of the police which is directly responsible for enforcing the laws against illicit weapons alongside the courts cannot be overrated, these institutions however have been weighed down by inherent weakness and extraneous factors which substantially inhibit the effective performance of their roles\textsuperscript{106}.

**DISARMAMENT DEMOBILIZATION AND REINTEGRATION PROCESS**

In view of the carnage caused by small arms and light weapons, disarmament became imperative and have been a great concern to the international community generally and individual nations – Nigeria not been an exception. Disarmaments efforts have however been left to poor countries with little assistance from international government or agencies\textsuperscript{107}. One of the reasons for this inactivity by some of the

\textsuperscript{103} Hazen and Horner, \textit{op cit}, at P. 32.
\textsuperscript{105} Hazen and Horner, \textit{op cit}, at P. 32.
\textsuperscript{107} Obuoforibo C, \textit{op cit}, at P. 18.
world’s wealthiest state is domestic politics and economic self-interest. On the political arena, not all governments are in a position to donate funds towards eradicating the menace of SALW or its control, recognize civilian ownership and or possession of arms as a problem. On the economic front, a number of governments are also relevant to be involved in initiatives which seek to reduce armed violence by restraining local market in small arms.

The UN Conference on the illicit trade in small arms and light weapons in all its aspect was held in New York in 2001. The result from this conference was the Programme of Action to prevent and eradicate the illicit trade in small arms and light weapons in all its aspects. This normative document has emerged as the only consensus authoritative international statement of the nature of the problem and the proposed solution. It is seen as a politically binding document which has become the central global instrument for preventing and reducing trafficking and proliferation of SALW. While this is a welcome development, this Programme of action focuses only in illegal trade in small arms and despite the fact that most illegally sold arms initially came from legal sources. This is in addition to the fact that despite the official proclamations, governments have undermined the efficacy of the moratorium by working against it. Thousands of weapons have been collected and destroyed by government policies, but statistics are silent on how many weapons remain in illegal hands. Yet, ex-combatants and criminals also take advantage of the lack of effective and functional security institutions to perpetrate crime and reprisal attacks. The result is a vicious cycle of violence which poses a challenge to most building peace process.

The challenges posed by small arms to peace building in Nigeria are complicated by fragmentation of political authority on the emergence of new action in small arms issue. The state has become an increasing insufficient although crucial factor in addressing small arms proliferation, particularly after conflict when the state capacity is weak. The challenge of addressing proliferation after conflict is therefore one of governance rather than government, reflecting a multiplicity of actors, levels and mechanism.

In Nigeria, disarmament, demobilization and reintegration efforts were not a full success because so many factors were not taken into consideration. For instance, in September, 2004, when the Niger Delta crisis reached its peak, certain measures aimed at disarmament, demobilization and reintegration were carried out by President Olusegun Obasanjo and former Rivers State Governor Peter Odili. Talks were held with Tom Ateke and Alhaji Dokubo as warring factions. The outcome of the peace talks were the disarmament, demobilization and reintegration of the warring groups. Over 3000 weapons were handed over by the militants who were publicly destroyed. The repented militants attended a thanksgiving church service asking for God’s forgiveness. They openly embraced each other as a mark of a new beginning on the entire society. Camps were opened for their training and at least 200 youths were given technical skills even though they were not given jobs. The argument has always been, even if they were given jobs, considering what they were gaining from oil bunkering activities they would have still resorted to violence for the fact that government has really failed to address the factors that necessitated the violent struggle in the first place.

The Joint Task Force (JTF) has further complicated the whole issue. Of great concern is the bureaucratic ineptitude and complicity of the military personnel constituting the Joint Task Force (JTF) in the disarmament exercise in the Niger Delta. Allegations of complicity were leveled at the JTF by the Director General and Commandant of Nigerian Merchant Navy Sea Farers Maritime and Petroleum Security and Safety Corps, Commando, Allen Benson Elema when he remarked thus:

108 Ibid.
109 Ebo A, op cit, at P. 142.
110 Oboforibo C, op cit, at P 18.
111 Ebo A, op cit, p. 137.
114 Ibid.
“Many people were feeding from the Niger Delta crisis, and do not want a resolution of it. Today, based on the crisis in the Niger Delta which a lot of them have been involved in escalating it, they don’t want the President to find lasting solution because they all dine with the militants and are supporting them115. The JTF has been accused of their involvement in illegal activities in the Creeks such as oil bunkering and acting as conduit pipes for illegal transfer of arms across the Niger Delta region and unleash terror and mayhem on innocent citizens in the arena116. To them, everybody in the Niger Delta have to be treated either as a militant or a criminal in disguise. Fishermen, market women and people generally moving from either Port-Harcourt or Yenagoa to their communities have to raise their hands several kilometers before getting to where this military occupation forces are stationed. The slightest provocation is met with brutality117. This explains why Tony Uranta, a local facilitator of the Commission of Nobel Laureates to the Niger Delta and member of the Technical Committee on the Niger Delta said:

One of the ways government can improve the quality of lives of the Niger Delta people is to withdraw the JTF back to the barracks as a standby force to be deployed only in an emergency ... This should go hand in hand with visible efforts on the part of the Federal Government to develop the Niger Delta Region. Whatever steps are taken, the parties involved should take into consideration the ordinary people in the region118.

Therefore, getting people involved in post amnesty peace building process would make it more effective and if not, then any relative peace that may be seen to exist is only an uneasy calm and that may fail if what is expected is not done.

CONCLUSION

Small Arms and Light Weapons are becoming endemic in Nigeria and the rate of accumulation is increasing with their concomitant destabilizing effect. Therefore a successful resolution of SALW syndrome in Nigeria requires a holistic approach that addresses the underlying factors creating the demands for SALW and the sources of supply, rather than treating the SALW problem as an independent or a compartmentalized issue. 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 demand end may create a situation where arms become more expensive to acquire without necessarily proscribing 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 for illegal oil bunkering activities and those sponsored by politicians and other influential 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. There exists lack of capacity strong and effective legal and institutional frameworks to regulate SALW and combat the phenomenon of SALW proliferation with the consequence of human rights abuses and undermining of the rule of law in Nigeria and with the ultimate consequence that weapons continue to proliferate in Nigeria. The Fire Arms Act and the Fire Arms Regulations which were enacted before the ECOWAS Moratorium and the Convention, as well as the UNPOA benchmarks, are obviously outdated and therefore long overdue for review for the purposes of synchronizing their provisions with current international standards in combating the SALW scourge. The ECOWAS Convention, being the sub – regional benchmark for the control of SALW, is the most relevant to Nigeria. In the case of Nigeria

115 The Hard Truth, June 18 – 24, 2009 P. 3
117 Ibid.
118 The Hard Truth, March 5 – 11, 2009 P. 3.
however, Article 14 on National Computerized Database and Register of Small Arms and Light Weapons is not captured as the said provisions is absent from the Fire Arms Act and thus requiring amendment of the Act. The Fire Arms Act and the Fire Arms Regulations provides a number of instances requiring keeping of records, but this does not satisfy the requirement of a national computerized database. It is necessary that the Fire Arms Act be amended to ensure the defect by providing for a centralized and computerized database capable of affording a clear indication of the status of Small Arms and Light Weapons accumulation and possession in the country at any point in time. Section 12 of the Fire Arms Act and sections 7 and 42 of the Fire Arms Regulation should be amended to specifically require that the year and country of manufacture be marked on the firearms as stipulated by Article 18 of the ECOWAS Convention. The purpose of Article 18 is to facilitate the easy tracing of weapons internationally and the relevant section in Nigeria’s laws, in their present form do not specifically mandate that such marking be made. Article 10 on visitor’s certificate, Article 15 on collection and destruction of firearms, Articles 19 on regulating the activities of brokers and marketers and Article 23 on public education are not explained in the Nigeria Statutes. These are very fundamental provisions recognized not only in the ECOWAS Convention, but also in other multilateral instruments directed towards preventing accumulation of small arms and light weapons beyond the legitimate needs of the state. The Firearms Act should be amended to meet these Articles of the ECOWAS Convention.

The penalties for unlawful possession of firearms are particularly inadequate and should be reviewed upwards along with other penalties for illicit possession. Further, penalties should cover acts in breach of the objectives and provision of Article 12 of the ECOWAS Convention with respect to arms embargoes placed by the UN, the African Union and ECOWAS. The penalties provided for under section 48 of the regulation are also inadequate to effectively deter infringement. There is the need to streamline the penalties provided under the different statutes to achieve common standard, unlike the present situation where different penalties apply in the various states.

The enforcement mechanisms for the control of illegal circulation of small arms and light weapons in Nigeria should be streamlined in line with the due diligence responsibility imposed on member states as member of the community of nations. This entails strengthening of the rule of law; abhorrence and penalization of impunity; an efficient criminal justice system to ensure the successful detection and prosecution of unlawful acts relating to small arms and light weapons. Relevant institutions like the Court, Police and other regulatory bodies should be reformed. An effective approach requires a coordinated and sustained legislative, administrative and judicial strategy that addresses the factors encouraging demand for arms and concurrently blocks the outlets through which illicit arms are proliferated. The strategies should go beyond national level because of the cross-border implications of SALW.

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119 See section 9(3), ibid, on register of firearms dealers and section 10, ibid, on register to be kept by registered armories dealers; see sections 18, 31 and 43 of the regulation on register to be kept by public armories, repairs and manufacturers.

120 Section 100 of the South Africa Firearm Control Act, which obligates the Registrar to establish and maintain a central official institution firearms database.

121 See Article 19 part II of the UNPOA.