

FROM ARMS TRANSFER TO FIREARMS TRAFFICKING: APPLICATION OF THE FIREARMS PROTOCOL IN CONTEXT OF DIVERSION ; NIGERIA AND SUB-SAHARAN PERSPECTIVE

Introduction

The Firearm Protocol recognizes firearm control and trafficking as twin issues of significant concern for global peace and security. The protocol seeks to curb illicit arms flow by criminalizing the illicit manufacture and trafficking of arms and diversion into unauthorized hands. The protocol further seeks to facilitate proper record keeping of weapons and arms stockpiles. Notably, the protocol invests in states on the responsibility for establishing and implementing national control systems for the regulation of conventional arms transfer within national boundaries¹. Accordingly, States are expected among other requirements to: adopt necessary measures to prevent the illicit manufacture and trafficking of firearm, parts and ammunition (Article 6), ensure the maintenance of records pertaining to firearms, their parts, components and ammunition (Article 7) and oversee the appropriate identification and tracking of firearms (Article 8). Regardless of these provisions, the control of firearms flows and trafficking has remained particularly difficult for various states, Nigeria, the Lake Chad and West African region inclusive. In that regard, arms diversion, illicit trafficking and production remain keenly disturbing issues of monumental concern to national security.

Arms Diversion

¹ Adeniyi, A. (2017). The human cost of uncontrolled arms in Africa. Oxfam Research Reports.

The diversion of arms occurs in several forms. Prominent among these include deliberate armed attacks by criminal elements on national stockpiles especially the increased attacks by Boko Haram Terrorist and ISWAP element on security bases and installations, in Nigeria, the Sahel and some parts of the Lake Chad region. Another means especially within Sahel and the Lake Chad Regions involve diversion of national stockpile by rogue officials especially in crises ridden countries like Libya and Mali with sole intent of gun running and trading across conflict areas. These were also evidences of diversion by arms dealers and other collaborators in West Africa using forge End User Certificate documents and certification to evade inspections. This has in the past led to a large cache of arms purportedly destined for Nigeria but diverted to Republic of Cote d'ivoir and Liberia. And also cases of diversion through transshipment especially across the strategic maritime routes of the Gulf of Guinea by rogues shipping companies and agents. Equally, of note are violent armed groups who deliberately diverted weapons through the looting of armouries and seizures during raids on security bases and clashes with security forces². Boko Haram and ISWAP is known to attack military bases with sole intent of restocking their weapon holding³.

Illicit Trafficking and Production

Illicit firearms flows are complex and do not necessarily follow laid down procedures. Hence, the country of manufacture of firearms and the country where diversions and seizure occurs mostly do not overlap. Evidence abound

² Campbell, J. (2018). Boko Haram overruns outgunned Nigerian military base. www.cfr.org/blog/boko-haram-overruns-outgunned-nigerian-military-base

³ Haruna, A. (2015). Boko Haram overruns Nigerian military base. <https://www.voanews.com/africa/boko-haram-overruns-nigerian-military-base>

shows that most firearms seizures are made within national territories; seizures at borders on average account for less than 10 per cent of all interception⁴. Of significant concern is the illicit trade in and manufacture of locally made arms, which is prevalent in Nigeria and pervasive in the West Africa sub-region. These locally-made firearms include handguns, shotguns, imitation sub-machine guns and assault rifles, and muzzle loaders⁵. It is also essential to state that these firearms are distinguished by ease of access and price as well as their clandestine mode of production. It is estimated that 7.5 percent of Africa's illegal arms and 70 percent of over 10 million illegal weapons in circulation in West Africa, 90 per cent of which are in the hands of non-state actors, are in Nigeria⁶. Although there are scanty data to prove that despite of the embolden insecurities and violent crimes, manufacture and or transfer diversion and embargo violation are predominant in the case of Nigeria, West African sub-region and other forms of illicit flows have been prominent. At the centre of the illicit trafficking and production in Nigeria and also the countries of Lake Chad region is the challenge of porous borders and weak border security mechanisms.

Over time, majority of illicit arms in circulation in Nigeria and across the Sahel and Lake Chad region come into the country through weak and illegal porous border routes. The porous nature of borders have been identified as a major

⁴ UNODC (2020) Global Study on Firearms Trafficking 2020.

⁵ Nowak, M. and Gsell, A. (2018). Handmade and deadly: craft production of small arms in Nigeria. *Small Arms Survey Briefing Paper*

⁶ Egbuta, U. (2019). The proliferation of small arms and light weapons. A nexus to asymmetric threats in Nigeria. Retrieved from <https://www.grin.com/document/461497>; Danwanka, S. (2021). "Legislation, institution-building and the control of small arms and light weapons in Africa" in Tar, U. and Onwurah, C. (eds). *The Palgrave Handbook of Small Arms and Conflicts in Africa*. Palgrave MacMillian. Retrieved from https://doi.org/10.1007/978-3-030-62183-4_22

enabler to illegal arms transfer in the sub-region. Specifically, border regions between Cote d'Ivoire, Mali and Burkina Faso for example, constitute a key geographical area for the transport of goods across the Sahel. This area occupies a strategic position as service as a conduit between the Gulf of Guinea coastal countries and the remote Northern Sahel-Sahara region represents an entry point for goods destined for its landlocked northern neighbours of Mali and Burkina Faso.⁷

Nonetheless, Nigeria fully recognised that illicit trafficking represent a major source of weaponry for terrorist and other criminal networks active in the Lake Chad and the Sahel region. Further, It is essential to state that this regional arms pipeline remain a major supply route for Boko Haram weapons holding, which in most cases are traced from locations such as Chad, Mali, Burkina Faso, Libya including Sudan and the regional part of Darfur.⁸ This is possible as a result of the existence of several illegal routes and large expanses of ungoverned space, which is at the moment dominated by several trans Sahara criminal network along the borders regions. A situation, which is exacerbated by prevalence of porous illegal trafficking of arms into the country. For instance, Liberia and its neighbours do not produce arms, however, the major entry points of illicit arms and drugs, were traced and identified to be more than 170 border points along the borders of Liberia, Guinea, Sierra Leone and the Ivory Coast. As a result, small arms and light weapons are spread because of the influx of refugees from in conflict-ridden environment and other neighbouring state,

7. <https://www.nationsonline.org/oneworld/map/west-africa-map.htm>

8. T.M Biodun, *Proliferation of Small Arms and Light Weapons and its Threats to Nigerian Internal Security*, Ibadan: University of Ibadan, Sep 2019.

which suggest that unregulated movement of people also facilitates the circulation of such illegal weapons.

Specifically, it is important to note that Nigeria's problem with illegal arms transfer is not new, its increasing availability in the last decade has helped heighten the wave of terrorism, insurgent, kidnapping and other violent crimes. In many parts of the country, kidnapping have become for otherwise terrorist groups who are in possession of arms is been identifies to support their illegal economic enterprise and also a major source of finding for their nefarious activities. Although, Nigeria's legal system does not encourage possession of firearms by persons other than security operatives and select individuals licensed by police authority. The Firearms Act of 1959 remains a major framework to deal with the issues of proliferation of SALW. Other legislations include Terrorism (Prevention) Act 2011, Criminal Code Act, Robbery and Firearms (Special Provision) Act. Nevertheless, illegal arms possession in the country remain a disturbing issue, which require concerted efforts of the society and government and the expectant needs to review the existing legislation on firearms.

Government Efforts

Nigerian played a prominent role in the adoption of the Declaration of a Moratorium on Importation, Exportation and Manufacture of Light Weapons in West Africa signed on October 31, 1998 in Abuja, Nigeria renewable for a period of 3 years and later extended to 2001. Further to this, Nigerian has also entered into bilateral cooperation with its neighbours, Benin Republic, Niger, Chad and Cameroon for the purpose of multinational cooperation against all forms of transnational organised crime and also as part of measures to enhance border

control. This has unarguably without doubt to boost trans-border cooperation while strengthening the security enforcement instruments at the borders. These measures include the establishment of joint commissions like Chad- Nigeria Joint Commission, Niger-Nigeria Joint Commission, Benin- Nigeria Joint Commission, Cameroon-Nigeria Joint Commission, Lake Chad Basin Commission and joint border patrols between Nigeria and Republic of Benin (Adejo, 2005) and also the ongoing plans for a Joint Border Maritime Patrols between Nigeria and the Republic of Equatorial Guinea. There are also existing Memorandum of Understanding in place for the operationalisation of Multinational Maritime Coordination Centre of Zone E, which is a structure comprising the countries of Nigeria, Benin, Togo, Niger, and Nigeria as part of effective implementation of the Gulf of Guinea Maritime Security Architecture. It is important to state that Nigeria is a signatory to a number of international measures to curb SALW proliferation. 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 political document needs to be transformed into a legally binding instrument in order to control effectively and criminalize the illicit movement of SALW. Furthermore, Nigeria is the first nation to ratify the ATT in Africa; Nigeria therefore, remains committed to the ethos of a world free of unauthorized movement of conventional weapons. At the regional level, Nigeria has supported ECOWAS measures aimed at reducing the proliferation of SALW. At the global level, Nigeria is a signatory to the United Nations (UN) Firearms Protocol on November 13, 2001; which it ratified on July 15, 2004. Nigeria supported the extension of ECOWAS Moratorium in October 2004 for the second time and the agreement to strengthen it by transforming it

into a legally binding convention (Garcia, 2006 and ECOWAS Reports). To further consolidate Nigeria has resend appraisal for the establishment of a national Centre for the Control of Small Arms and Light weapons. Notwithstanding the Nigerian government has currently forwarded a draft Bill for an act to the establishment of the National Centre for the Control of SALW to galvanise more controls on issues of export, import, transfer and possession of firearms. Very important of note to mention is that virtually all the ECOWAS States have already established National Commisions for the control of SALW and this is expected to assist in the mopping of illegal arms in circulation across the region.

State Responses and Legal Frameworks

State responses have been multi-dimensional. However, in spite of Nigeria's national criminal justice responses to the application of criminal offence of illicit firearms diversion, the implementation have not been very effective to secure constant prosecution and deterrence. Obviously, the criminal justice administration system lacks the necessary prosecutorial acumen to effectively discharge its duties considering the fact that the Fire Arm Act of 1959 could also be considered obsolete and requires legislative amendment. While the investigative agencies seem to have been up and doing, there is a disconnect between them and the judicial officials who lack substantial evidence to prosecute complex illicit trafficking and manufacturing of firearms. This is evident in the low conviction rates of offenders. In this regard, Nigeria has forwarded a draft bill that would strengthen legislation on the control of SALW and by implication firearms especially issues of possession, manufacture and

transfer.⁹ Another trend has been the large-scale seizure of weapon stockpiles from illicit possessors and criminal networks for instance; 661 Pump Action rifles (January 2017), 440 guns (May 2017), and 1100 and 470 pump action rifles (September 2017)

Apart from these seizures, there have been instances of interceptions of stockpiles containing 73 locally manufactured guns, 891 cartridges¹⁰ and 5200 ammunition¹¹. Generally, however, state responses have been largely ineffectual due to weak legal and regulatory frameworks. Section 13(1) of the Firearms act, sections 7 and 42 of the firearms regulation, for instance, do not require that the year and country of manufacture be marked on SALW. Moreover, certain local statutes have been shown to be inconsistent with contemporary global provisions by professing non-compliance with “the requirement of a national computerized database” on firearms¹², which the new ongoing draft legislation for the establishment of National Centre for the Control of Small Arms and Light Weapon (NCCSALW) seeks to address. It is on this note that the following recommendations are made to curtail the prevailing incident of illegal arms transfer and diversion.

⁹ Maishanu, A. (2021). Nigerian soldier arrested supplying ammunition, uniforms to bandits-Zamfara govt. Retrieved from <https://www.premiumtimesng.com/regional/nwest/446971-just-in-nigerian-soldier-arrested-supplying-ammunition-uniforms-to-bandits-zamfara-govt.html>; Eze, J. (2021). Nigerian police officer arrested for stealing five AK-47 rifles. <https://www.premiumtimesng.com/news/headlines/447087/nigerian-police-arrested-for-stealing-five-ak-47-rifles.html>; Ayitogo, N. (2021). Exclusive: Nigerian soldier arrested in motor park with 2,000 rounds of ammunition.

¹⁰ Agency Report (2020). Customs intercepts '73 locally manufactured guns, 891 cartridges in Kebbi'. Retrieved from <https://www.premiumtimesng.com/news/more-news/431085/customs-intercepts-73-locally-manufactured-guns-891-cartridges-in-kebbi.html>

¹¹ Onyenucheya, A. (2021). Customs seizes 5,200 ammunition, contrabands worth N386m in Cross River. Retrieved from <https://m.guardian.ng/news/customs-seizes-5200-ammunition-contrabands-worth-n386m-in-cross-river/>

¹² Malami, S., Abdullah, N. and Yusoff, Z. Legal and regulatory challenges for the proliferation of small and light weapons in Nigeria.

Recommendations

1. *Member States should intensify efforts towards strict monitoring and managing of local illicit manufacturing of firearm and SALW in their countries and across their borders including safeguards on states control .*
2. *Member countries should initiate advance and globally consistent methods for effective stockpile and management of armouries especially in developing countries.*
3. *Member state should be encouraged to strengthening of border security and governance regimes mechanism.*
4. *Member States who are members of the ATT should emplace appropriate measures required to domesticate as well as the effective implementation of the ATT protocols especially the strict protocols on End User User documentation.*
5. *Member States in collaboration with Non-signatory states, especially arms-producing countries, should consider acceding to the treaty and ensure that arms procurement and transfer within their jurisdiction are vetted in accordance to global norms and procedures.*
6. *Developing countries especially African states should address the root causes of conflict, which are indeed exacerbated by uncontrolled flow of arms, poverty, social, economic and gender inequality, governance and development deficit, amongst a few countries of the Lake Chad and the Sahel Regions.*
7. *Member States, Donor agencies and multilateral institutes should consider that arms control programming is not a standalone issue but closely linked to poverty reduction, Sustainable Development Goals (SDGs), various*

kinds of inequality, and illicit financial flows. Hence, it is vital to consider arms control issues within the context of comprehensive development programming.