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Afe Babalola University, Ado-Ekiti,
K.M. 8.5 Afe Babalola Way, Ado-Ekiti,
Ekiti State, Nigeria,

E-mail: pilaw@abuad.edu.ng

Tel: +234 7033442233

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Tel: +2348168641975, +234806747495991.

Website: www.abuad.edu.ng

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COMBATING FORCED DISPLACEMENT IN SUB-SAHARAN AFRICA: RETHINKING AFRICA'S POSITION ON ILLEGAL TRAFFICKING IN FIREARMS

Deborah D. Adeyemo¹

Abstract

United Nations Refugee Agency (UNHCR) annual global trend study shows that as at the end of 2017, 68.5 million people have been forcefully displaced around the world chiefly as a result of war, violence and persecution. Sub-Saharan Africa hosts the largest states on the African continent beset with displacement of persons across the continent. These displacements have been attributed to internal armed conflicts, poverty, famine, drought among other plaguing issues. This paper examines the problem of insecurity caused by internal armed conflicts as an overarching cause of displacement. Internal armed conflicts are fuelled through the dynamics of arms trafficking. In a bid to curb the growing trend of displacement of persons, there is an urgent need to tackle the issue of proliferation of firearms through illegal trafficking. The weapons in themselves are not the cause of internal armed conflicts but their availability within a polity and easy access to them fuel armed conflicts and discourage peaceful resolution of such conflicts. This paper advocates for multilateral co-operation among African states to place a moratorium on the proliferation of firearms within the continent. States need to be more proactive in their approach to combating illicit trafficking in firearms across their borders and prosecution of perpetrators within and across their territories.

Keywords: Africa, Armed Conflicts, Displacement, Firearms, Sub-Saharan, Trafficking

1.1. INTRODUCTION

Armed conflicts engender insecurity, which forces people to flee war torn zones to places within and across the borders of a state, where there is relative

¹ Lecturer, Department of Public Law, Faculty of Law, University of Ibadan, Ibadan, Oyo State. E-mail Address: deborahdadeyemo@gmail.com.

peace and safety.² The cold war and the post-cold war periods mark significant periods in the history of armed conflicts in sub-Saharan Africa.³ Apart from incidences of post-colonial conflicts in many African countries from the mid-1960s, armed conflicts have been commonplace and a major cause of displacement of persons.⁴ Armed conflicts in sub-Saharan Africa have been characterised more as internal armed conflicts in form of civil wars, insurgency, armed militancy etc. On the other hand, insecurity engendered by armed conflicts could also instigate people to take up arms in self-defence, which further threatens the security within a region or state. While displacement of people remains a serious issue of global concern, one important phenomenon that is usually overlooked in the discourse on displacement of persons, is the proliferation of firearms during situations of armed conflicts and its role in forced displacement.

This paper focuses on forced displacement resulting from internal armed conflicts or situations of generalised violence.⁵ The paper looks at the problem of forced displacement as a direct consequence of insecurity, perpetrated by the availability of arms illegally within a polity especially during armed conflict situations. The thrust of this paper is that in combating forced displacement, emphasis must be placed on such factors as the proliferation of firearms especially Small Arms and Light Weapons (SALWs),⁶ which have

² International Committee of the Red Cross (ICRC), 'Internal Displacement in Armed Conflicts: Facing Up to the Challenges' 2. <https://www.icrc.org/eng/assets/files/other/icrc_002_4014.pdf> Accessed 21 September 2018.

³ Department for International Development (DFID), 'The Causes of Conflict in Sub-Saharan Africa' (2001) 6-7. <<http://web.msu.ac.zw/elearning/material/1237744998conflictsaharanafrica.pdf>> Accessed 21 September 2018; T Farrell and O Schmitt, *The Causes, Character and Conduct of Armed Conflict and the Effect on Civilian Populations 1990-2010* (UNHCR 2012) 1-2; E C Onaedo, S Oni and J V Sejoro, 'An Assessment of the Impact of Internal Displacement on Human Security in Northern Nigeria (2009-2016)' (2017) 10 (1) AUDRI 19, 21. <<http://journals.univ-danubius.ro/index.php/internationalis/article/viewFile/4192/4113>> Accessed 29 September 2018.

⁴ Department for International Development (DFID), 'Conflict Trends in Africa 1946 – 2004: A Macro-Comparative Perspective' 2. <<http://www.systemicpeace.org/africa/AfricaConflictTrendsMGM2005us.pdf>> Accessed 22 September, 2018; T Farrell and O Schmitt, (2012) *op. cit.* 11.

⁵ This is without prejudice to the fact that forced displacement could be the direct result of natural or human-made disasters.

⁶ This study makes no fine distinction between firearms and SALWs. Both terms are used interchangeably in this study without regard to the technical difference in their meanings.

been identified as the weapons of choice in internal armed conflicts.⁷ The dynamics of the proliferation of firearms show that arms are made available through cross-border trafficking and local craft production. This paper suggests that states within sub-Saharan Africa need to move beyond mere 'lip service' and take positive and active steps to place a moratorium on the proliferation of firearms within the region by addressing illicit trafficking of arms across the states of the sub-Sahara.

This paper is divided into five sections. The first part is the introductory section, which briefly highlights the thrust of the paper. Part two gives a brief insight to armed conflict induced displacement in sub-Saharan Africa. Part three attempts to establish the nexus between forced displacement and firearms trafficking. It highlights, from available studies on illegal arms trafficking in sub-Saharan Africa the pattern and recent trend in illicit trafficking of firearms in Sub-Saharan Africa. Part four also examines the legal obligations of states within sub-Sahara Africa in eliminating illegal arms trafficking as a viable panacea for forced displacement in the region. Part five gives the concluding remarks and makes recommendations.

2.1 ARMED CONFLICT AND DISPLACEMENT IN SUB-SAHARAN AFRICA

Displacement describes forced movement of persons from their locality or environment and occupational activities.⁸ Displacements of persons could be internal where they have not crossed international border. Where they have crossed international borders, displaced persons are regarded as refugees. Internally displaced persons (IDPs) are described as:

persons or group of persons who have been forced or obliged to flee or to leave their home or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human made disasters

⁷ A. Boivin 'Complicity and Beyond: International Law and Transfer of Small Arms and Light Weapons' [2005] *ICRC Review* 467.

⁸ United Nations Educational Scientific and Cultural Organisation (UNESCO) 'Glossary of Migration Related Terms.' <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/>> Accessed 6 October 2018.

and who have not crossed an internationally recognised state border.⁹

While displacement may be associated with other causes such as sudden onset natural hazards such as landslides, earthquakes, cyclones, etc., large-scale development projects, conflict-triggered displacement constitute a greater menace to the sub-Saharan region of Africa and is the main concern of this paper.¹⁰

Armed conflicts literally are conflicts, which involve the use of arms. The International Criminal Tribunal for the Former Yugoslavia (ICTY) defined armed conflicts as a situation of conflict where 'there is a resort to armed forces between states or protracted armed violence between governmental authorities and organised armed groups or between such groups within a state.'¹¹ Armed conflict in the context of this paper is limited to internal armed conflicts, which could manifest as insurgency, civil war, militancy, rebel movement and communal clashes etc. Generally, studies on the history, character and dimensions of armed conflicts within and across the African countries show that armed conflicts have primarily been internal in nature and attributed to several causes.¹² Internal armed conflicts in sub-Saharan Africa are perpetuated by the use of firearms especially a class of firearms which

⁹ United Nations Guiding Principles on Internal Displacement E/CN.4/1998/53/Add.2 11. <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement> February 1998.>; A similar definition is provided by Article 1 (K) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

¹⁰ Displacement on its own, constitute a serious security threat and concern. Farrell and Schmitt opine that displacement itself poses security threats, which may further intensify armed conflicts situation or initiate a new one. Farrell T. and Schmitt O., (2012)13.

¹¹ The *Prosecutor v Dusko Tadic* IT/94/AR72, OCT 2, 1995, 35 I.L.M 32 Para. 70 <<https://casebook.icrc.org/case-study/icty-prosecutor-v-tadic>> Accessed 21 September 2018. The International Committee of the Red Cross (ICRC) defines armed conflicts as conflicts, which exists when there is a recourse to armed forces or belligerent occupation between states, in the case of international armed conflicts. It also describes internal armed conflicts as protracted armed violence, which takes place between governmental authorities and organised armed groups or between armed groups within a state. N. Melzer, *International Humanitarian Law: A Comprehensive Introduction* (ICRC, 2016) 50.

¹² K Dupuy et. al., *Trends in Armed Conflict 1946-2016* (PRIO 2017); T Farrell and O Schmitt (2012) *op. cit.* 11; J O Aremu, 'Conflicts in Africa: Meaning Causes Impact and Solution' (2010) 4 (4) African Research Review 549, 550; R. Bowd and A B Chikwanah (eds.), *Understanding Africa's Contemporary Conflicts: Origins Challenge and Peacebuilding* (Institute for Security Studies, 2010); Department for International Development (DFID) 'The Causes of Conflict in Sub-Saharan Africa (2001) 6-7. <<http://web.msu.ac.zw/elearning/material/1237744998conflictsubsaharanafrika.pdf>> Accessed 21 September, 2018.

have been identified and described as Small Arms and Light Weapons (SALWs).¹³

Thus, armed conflicts create a situation of insecurity,¹⁴ which invariably displaces people from their homes. While people move from war torn zones to flee poverty, droughts or famine, the prominent reason of displacement is usually insecurity.¹⁵ Pervasive insecurity both real and perceived outlast period of conflicts and further perpetuates forced displacement.¹⁶ The availability of firearms even in conflict-free societies creates general foreboding fear of insecurity and may instigate a culture of violence in ordinary citizens.¹⁷ There is evidence that arms-related insecurity also threatens and disrupts the pattern of livelihoods of pastoral and agrarian communities.¹⁸

¹³ Report on the Panel of Government Experts on Small Arms Submitted to the United Nations Secretary-General at the 52nd General Assembly on 27th August 1997, UN DOC. A/52/298 para 27. Small arms and light weapons (SALWs) refer to two main classes of weapons – ‘small arms’ and ‘light weapons. There is no universal definition of this class of weapon due to the ever-increasing scope of this category of weapons as a result of constant technological advancement. They broadly refer to weapons designed for individual use (Small Arms) and those designed to be used by several persons working as a team although they may be carried by a single person (Light Weapons). According to Articles 1 and 2 of the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials, (adopted 14 June 2006), ‘Light Weapons’ to include 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 calibre of less than 100 millimetres. ‘Small Arms’ on the other hand include: firearms and other destructive arms or devices such as an exploding bomb, an incendiary bomb or a gas bomb, a grenade, a rocket launcher, a missile, a missile system or a mine, revolvers and pistols with automatic loading, rifles and carbines, machine guns, assault rifles, and light machine guns.

¹⁴ Insecurity, in the context of this paper, is used in a broader sense to include risk of loss of life, property, human dignity, loss means of livelihood etc.

¹⁵ Small Arms Survey asserts that there is evidence that the armed conflicts, criminality and displacement increase where there is abundance of small arms. Small Arms Survey ‘Caught in the Crossfire: The Humanitarian Impact of Small Arms’ in *Counting the Human Cost* (Oxford Press, 2002), 155-201, 171. Available at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2002/en/Small-Arms-Survey-2002-Chapter-04-EN.pdf>> Accessed 20 October, 2018.

¹⁶ Small Arms Survey ‘Caught in the Crossfire: The Humanitarian Impact of Small Arms’ in *Counting the Human Cost* (Oxford University Press, 2002), 155-201, 173-174. Available at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2002/en/Small-Arms-Survey-2002-Chapter-04-EN.pdf>> Accessed 20 October, 2018.

¹⁷ Ibid.

¹⁸ Ibid; This is also evident from recent reports of clashes between Fulani herds men and agrarian farmers in the Benue, Enugu, Niger and Ekiti states in Nigeria.

According to UNHCR, one person is forcibly displaced every two seconds as a result of conflict or persecution.¹⁹ The United Nations Refugee Agency (UNHCR) reports that sub-Saharan Africa hosts more than 26% of the world's refugee population forcefully displaced from different parts of the region due largely to conflict situations in countries such as Central African Republic (CAR), Nigeria, South Sudan, Burundi and Yemen.²⁰

Internal Displacement Monitoring Centre (IDMC) reports that in 2013 there were 12.5 million internally displaced persons (IDPs) in Sub-Saharan Africa, with the largest population being in Nigeria, Democratic Republic of Congo (DRC), Sudan, Somalia and CAR.²¹ UNHCR reports that there has been an increasing growth in the population of forcibly displaced persons over the past two decades. At the end of 2017, 68.5 million people were forcibly displaced out of which 40 million people were internally displaced persons.²² This is reported to be an increase of 16.2 million newly displaced persons in 2017 against the 2016 record of 65.6 million displaced people globally.²³ The growth in the number of forcibly displaced persons globally, in the last five years has been attributed to conflicts in some regions of the Asian continent such as Syria, Yemen and Iraq as well as conflicts situations in Sub-Saharan African countries like Burundi, CAR, DRC, South Sudan and Sudan.²⁴

3.1. FORCED DISPLACEMENT IN SUB-SAHARAN AFRICA: THE ROLE OF FIREARMS TRAFFICKING

3.1.1 Illegal Trafficking of Firearms and Armed Conflicts in Sub-Saharan Africa

The availability and use firearms influence the dynamics of the armed conflicts in sub-Saharan Africa. Firearms, in themselves, are not illegal weapons, they may however, be acquired illegally and used to perpetuate

¹⁹ UNHCR, 'Figures at A Glance' <<http://www.unhcr.org/figures-at-a-glance.html>> Accessed 13 October, 2018.

²⁰ UNHCR, 'Africa' <<http://www.unhcr.org/africa.html>> Accessed 1 October, 2018.

²¹ IDMC, 'Internal Displacement in Sub-Saharan Africa 31 December 2013' <<http://www.internal-displacement.org/sub-saharan-africa/summary/>> Accessed 21 September, 2018.

²² UNHCR, 'Global Trends Report: Forced Displacement in 2017' <<http://www.unhcr.org/uk/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>> Accessed 1 October, 2018.

²³ UNHCR Global Trends Report: Forced Displacement in 2016. <<http://www.unhcr.org/globaltrends2016/>> Accessed 1 October, 2018.

²⁴ UNHCR, 'Global Trends Report: Forced Displacement in 2017' <<http://www.unhcr.org/uk/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>> Accessed 1 October, 2018.

systematic and widespread violation of human rights in armed conflict situations²⁵ and conventional and organised crimes in non-conflict situation.²⁶ Generally, firearms may be acquired for both legitimate and illegitimate purposes by; non-state actors for local and personal reasons such as recreational, hunting expedition and safety purposes and; state actors for national security and defensive purposes.

Usually, arms are legitimately procured from formal market which is supplied either from licensed local production by designated state or private corporation or licensed import by respective state authorities. International and regional regulations stipulate that states must establish a system of firearms import and export licensing or authorisation to cover for international transfer.²⁷ International trade conducted under respective state authorisations are regarded as legal, thus, unauthorised transfer within or across borders are regarded as illegal.²⁸ Many states in sub-Saharan Africa have domestic laws which make explicit provisions regulating the acquisition and possession of firearms by individuals within the state.²⁹ Typically, such laws generally subject individual acquisition and possession of firearms by civilians or citizens to licensing regulations and laws.

Thus, illicit trafficking in firearms involves the unauthorised manufacture and illegal distribution of firearms.³⁰ The Firearms Protocol defines illicit trafficking in arms in terms of cross border trafficking as:

²⁵ O H Banko, 'Global Trends in Arms Proliferation in Third World Countries and The Impending Apocalypse of the Human Race: A Case Study of Arms Race and Security Challenges in Nigeria' (2016) 5 (9) *International Journal of Innovative Research and Development* 196; Berman 2007; A. Boivin 'Complicity and Beyond: International Law and Transfer of Small Arms and Light Weapons' [2005] *ICRC Review* 467.

²⁶ O H Banko (2016) *ibid*.

²⁷ Article 8 of the Firearms Protocol.

²⁸ Article 5 of the Firearms Protocol makes provision that state parties should criminalise unauthorised cross border transfer of firearms.

²⁹ According to GunPolicy.org which provides a database of country regulations on the private possession and use of firearms across the states of sub-Saharan Africa, all the countries in sub-Saharan Africa have at least one, legislation regulating possession of firearms by non-state actors. <<https://www.gunpolicy.org/firearms/region/nigeria>> Accessed 22 October 2018. In Nigeria, the provisions of the Firearms Act Cap F 28 LFN 2004, Robbery and Firearms (Special Provision) Act Cap R 11 LFN 2004 among other legislations chiefly prohibit production, acquisition and possession of firearms by private individuals and non-state actors.

³⁰ Article 3 (d) of the Firearms Protocol; E. Salcedo-Albarán and D. Santos, 'Introduction to Firearms Trafficking' *UNHCR Global Trends: Forced Displacement* 6. <https://www.researchgate.net/publication/322340845_Introduction_to_Firearms_Trafficking> Accessed 12 October 2018.

... the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components, and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with [the Protocol].³¹

This definition excludes illicit domestic transfer of firearms within a state. However, studies establish that arms are equally trafficked within a state.³² Thus, illicit trafficking in arms may be carried out through cross border smuggling or unauthorised local craft production.³³

Illegal trafficking may also imply illegal diversion of arms illegally acquired from state armouries to non-state actors.³⁴ The two main forms of illicit trafficking involve both internal and cross border trafficking. Oftentimes, illegal arms trafficking involves a long chain of syndicates (which may include both state and non-state actors) both within and across the borders of a state.³⁵ Illicit trafficking may occur on a small scale involving transfer via land route or large scale involving shipments of firearms across sea, land, air and mail routes.³⁶ Studies show that the global trend in international illegal

³¹ Article 3 (e) of the Firearms Protocol. This definition is similar to the definitions provided by the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region (2001) and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2000).

³² N. Florquin and E. G. Berman (eds.) *Armed and Aimless: Armed Groups Guns and Human Security in the ECOWAS Region* (Small Arms Survey, 2005) Available at <<http://www.smallarmssurvey.org/fileadmin/docs/D-Book-series/book-01-Armed-and-Aimless/SAS-Armed-Aimless-1-Full-manuscript.pdf>> Accessed 21 October, 2018.

³³ J. M. Hazen and J. Horner *Small Arms Armed Violence and Insecurity in Nigeria: The Niger Delta in Perspective* (Small Arms Survey, 2007) 23. Florquin and Berman (2005) *ibid.* Arms survey identifies the two main sources of trafficked arms as local craft production and imports from global arms brokers/traders.

³⁴ UNODC, 'UNODC Study on Firearms 2015' <https://www.unodc.org/documents/firearms-protocol/UNODC_Study_on_Firearms_WEB.pdf> Accessed 30 September 2018.

³⁵ UNODC, 'Transnational Organised Crime in West Africa Firearms' <https://www.unodc.org/document/s/toe/Reports/TOCTAWestAfrica/West_Africa_TOE_FIREARMS.pdf> Accessed 12 October, 2018; C. Ayuba and G. Okafor, 'The Role of Small Arms and Light Weapons Proliferation in African Conflicts' *African journal of political science and International Relations* 9 3 (2015) 76.

³⁶ UNODC, 'UNODC Study on Firearms 2015' <https://www.unodc.org/documents/firearms-protocol/UNOD_C_Study_on_Firearms_WEB.pdf> Accessed 30 September 2018; M.

trafficking in arms flows from developed countries to developing or underdeveloped countries.³⁷ The most recent data estimates that about 1 billion firearms are in circulation globally out of which 875 million (which is about 85%) are in the hands of non-state actors.³⁸ A similar data shows that in 2005, more than eight million arms were in circulation in the West African region most of which, were illegally possessed by armed groups and non-state actors.³⁹

Historically, the proliferation of firearms in sub-Saharan Africa may not be easily traced to a particular origin however, links between slave trade and arms proliferation have been established.⁴⁰ The exchange of antique weapons such as guns, gunpowder etc. for African slaves opened the routes for arms trade and consequently proliferation of SAWs in the continent generally.⁴¹ The rapid increase in the availability and circulations of firearms across the African continent was heightened during the cold war and the post - cold war period.⁴² Some studies have argued that the East-West dichotomy during the cold war period produced alliances with either sides of the divide by many states on the African continent.⁴³ The superpowers on either side of the East-West dichotomy influenced and maintained substantial military powers across

Schroeder and G. Lamb, 'The Illicit Trade in Africa: A Global Enterprise' [2006] *African Analyst Third Quarterly* 69, 71. <<https://fas.org/asmp/library/articles/SchroederLamb.pdf>>

³⁷ O H Banko, 'Global Trends in Arms Proliferation in Third World Countries and The Impending Apocalypse of the Human Race: A Case Study of Arms Race and Security Challenges in Nigeria' (2016) 5 (9) *International Journal of Innovative Research and Development* 192; Salcedo- Albarán, E. and Santos D. p.6.

³⁸ A. Karp 'Estimating Global Civilian-Held Firearms Numbers' (Small Arms Survey, June 2018) <<http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>> Accessed 29 September, 2018.

³⁹ Nicolas Florquin and Eric G. Berman (Eds.) *Armed and Aimless: Armed Groups, Guns and Human Security in the ECOWAS Region 2005* (Small Arms Survey, 2005) Foreword xiv Available at <<http://www.smallarmssurvey.org/fileadmin/docs/D-Book-series/book-01-Armed-and-Aimless/SAS-Armed-Aimless-1-Full-manuscript.pdf>> Accessed 21 October, 2018.

⁴⁰ O H Banko (2016) *op. cit.* 194

⁴¹ V. O. S. Okeke and R. O. Orji, 'The Nigerian State and The Proliferation of Small Arms and Light weapons in the Northern Part of Nigeria' (2014) 4, 1 *Journal of Educational and Social Research*, 421.

⁴² E. Conteh-Morgan 'Conflict and Militarisation in Africa: Past Trends and New Scenarios' [1993] *Conflict Quarterly* 27.

<<https://journals.lib.unb.ca/index.php/JCS/article/viewFile/15094/16163>> Accessed 29 September 2018; D. C. Thomas and A.A. Mazrui, 'Africa's Post-Cold War Demilitarisation: Domestic and Global Causes' (1992) 46, 1 *Journal of International Affairs* 157.

⁴³ Department for International Development (DFID), 'The Causes of Conflict in Sub-Saharan Africa' (2001) 6-7.

<<http://web.msu.ac.zw/elearning/material/1237744998conflictsaharanafrica.pdf>> Accessed 21 September 2018, 6.

the continent and this in turn increased arms flow into the continent.⁴⁴ The interest of the two blocs fuelled some of the conflicts in states such as Angola,⁴⁵ the Republic of Chad and the Somalian-Ethiopian war.⁴⁶

Apart from the massive inflow of legacy firearms into the African continent at the end of the cold war period,⁴⁷ the nature of armed conflicts changed on the continent and conflicts within the region were mainly characterised as internal armed conflicts, consequently, the demand for and use of firearms also increased.⁴⁸ Some authors have also argued that the failure to effectively execute disarmament programmes in many of the African countries post-conflict periods have contributed to the availability of illicit arms within and across the countries.⁴⁹ The availability of firearms, especially SALWs, is inextricably linked to armed conflicts, not necessarily as a cause but as fuel to the initiation and protraction of armed conflicts.⁵⁰ Illicit arms may originate as legacy weapons from past conflicts; weapons from recent conflicts in

⁴⁴ DFID (2001) *op. cit.* 6; B. Malam, 'Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security' (2014) 4(8) *International Journal of Humanities and Social Sciences* 260, 261; N. J. Nna, B. G. Pabon and F. Nkoro, 'Arms Proliferation and Conflicts in Africa: The Sudan Experience' (2012) 4, 4 *Journal of Humanities and Social Science* 31 <https://pdfs.semanticscholar.org/e0f2/b0932a15ee000ccac66594c7b3a873452a7a.pdf>.

⁴⁵ DFID (2001) *op. cit.* p.7.

⁴⁶ DFID (2001) *Ibid* p.7; E. Conteh-Morgan 'Conflict and Militarisation in Africa: Past Trends and New Scenarios' [1993] *Conflict Quarterly* 27, 32. <https://journals.lib.unb.ca/index.php/JCS/article/viewFile/1509_4/16163> Accessed 29 September 2018.

⁴⁷ B. Malam, 'Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security' (2014) 4(8) *International Journal of Humanities and Social Sciences* 260, 261; UNODC, 'Transnational Organised Crime in West Africa Firearms' <<https://www.unodc.org/documents/toc/Reports/T>

OCTAWestAfrica/West Africa_TOC_FIREARMS.pdf> Accessed 12 October, 2018. M. Schroeder and G. Lamb, 'The Illicit Trade in Africa: A Global Enterprise' [2006] *African Analyst Third Quarterly* 69, 71. <<https://fas.org/asmp/library/articles/SchroederLamb.pdf>>

⁴⁸ DFID (2001) *op. cit.*; O. H. Banko (2016) *op. cit.*

⁴⁹ Small Arms Survey 'Managing 'Post-Conflict' Zone DDR and Weapons Reduction' in *Weapons at War* (Oxford University Press, 2005) 267-301. Available at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2005/en/Small-Arms-Survey-2005-Chapter-10-EN.pdf>> Accessed 20 October, 2018.

⁵⁰ M. Schroeder and G. Lamb, 'The Illicit Trade in Africa: A Global Enterprise' [2006] *African Analyst Third Quarterly* 73. <<https://fas.org/asmp/library/articles/SchroederLamb.pdf>>; Small Arms Survey, 'Illicit Trafficking' <<http://www.smallarmssurvey.org/de/weapons-and-markets/transfers/illicit-trafficking.html>>; O. H. Banko, (2016) *op. cit.*

countries in the region; firearms sold or rented from corrupt state actors and officials and transfer from foreign countries or import.⁵¹

During armed conflicts, there may be legal acquisition of firearms by state actors and this significantly contributes to the proliferation of arms within a state. In armed conflicts situations, civilians and other non-state actors, in the need for self-defence, are predisposed to taking up arms and this has contributed to the exponential increase in the number and calibre of firearms available within the sub-Saharan region of Africa. The demand for firearms during conflict situations is usually heightened thus, illegal trafficking in arms is not an unusual phenomenon in conflict-ridden societies. Proliferation of firearms makes its increasingly easier to access and make use of them and this in turn, exacerbate armed conflicts rather than peaceful resolution. Thus, while the availability of firearms may not necessarily initiate armed conflicts, it may increase the intensity and duration of armed conflicts.⁵² Studies show that the availability of SALWs in some sub-Saharan African countries such as Cote d' Ivoire, Liberia, Sierra-Leone, Mali, Nigeria, DRC, South Sudan, etc. have fuelled conflicts within the countries.⁵³ Liberalisation of firearms regulations and laws for civilian protection, distribution of arms to paramilitary groups by state governments to fight rebel groups during civil war in Cote d' Ivoire, Liberia and Sierra- Leone contributed to the proliferation of arms during conflicts.⁵⁴

Even in post-conflict situations, there is the problem of arms related inhibition to sustainable repatriation or resettlement of displaced persons.⁵⁵ In post conflict situations, the failure to successfully implement disarmament, demobilisation and reintegration (DDR) programmes creates a precarious condition, which renders the state more susceptible to a fresh bout of armed

⁵¹ UNODC, 'Transnational Organised Crime in West Africa Firearms' <https://www.unodc.org/documents/toc/Reports/TOCTAWestAfrica/West_Africa_TOC_FIREARMS.pdf> 35 Accessed 12 October, 2018.

⁵² Report on the Panel of Government Experts on Small Arms (n 87) para 38.

⁵³ I Abdullahi, 'The State of the Proliferation of Small Arms and Light Weapons in Sub-Saharan Africa: Regional State and Local Causes' (2016) 4 (3) *International Journal of Business and Law Research* 22, 26.

⁵⁴ I Abdullahi *ibid* 26; B. Malam, 'Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security' (2014) 4(8) *International Journal of Humanities and Social Sciences* 260, 262.

⁵⁵ Small Arms Survey 'Caught in the Crossfire: The Humanitarian Impact of Small Arms' in *Counting the Human Cost* (Oxford University Press, 2002), 155-201, 171. Available at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2002/en/Small-Arms-Survey-2002-Chapter-04-EN.pdf>> Accessed 20 October, 2018.

conflicts.⁵⁶ Non-state actors and civilians may take up arms, which were not recalled from circulation after armed conflict, thus perpetuating a continuous situation of armed conflict.

The availability of firearms within a polity poses serious threat to breaking the cyclical relationship between armed conflicts and proliferation of firearms. Apart from State regulations and laws regarding the production and distribution of firearms generally, the economic interest attached to the illegal trafficking also contributes to the proliferation of firearms. The economic impact of illegal trafficking in arms is a significant factor, which contributes to the growing dimension of the proliferation of firearms.⁵⁷ Andvig posits that the prices of firearms in countries undergoing conflicts are relatively lower than in conflict-free countries and this may likely impact the incidence and duration of armed conflicts.⁵⁸

Generally, there is no recent data on the overall scale of illicit trafficking in sub-Saharan Africa because of its clandestine nature. However, various studies of specific country and regional cases and examples have established the forms and trend of illegal arms trafficking in sub-Saharan Africa. Despite the difficulty in reporting illegal trafficking in arms, many of these studies show an estimated volume from national and regional reports on nabbed and intercepted illicit flow and circulation of arms.⁵⁹

Though the increasing rate of illegal trafficking in arms across the sub-Sahara has blurred the line between legal accountable transfer of arms and illegal trafficking, these studies show two main dimensions of arms trafficking among many states in sub-Saharan Africa. Illegal trafficking in arms in sub-Saharan Africa has both regional and international dimensions and it is usually large scale and systematic. In armed conflicts situations, arms may be transferred from neighbouring countries within the region or locally crafted.

⁵⁶ Small Arms Survey 'Managing 'Post-Conflict' Zone DDR and Weapons Reduction' in *Weapons at War* (Oxford University Press, 2005) 267-301. Available at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2005/en/Small-Arms-Survey-2005-Chapter-10-EN.pdf>> Accessed 20 October, 2018. Small Arms Survey 'Changing attitudes: weapons Collection and Destruction' in *Counting the Human Cost* (Oxford University Press, 2002), 279-321. Available at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2002/en/Small-Arms-Survey-2002-Chapter-07-EN.pdf> Accessed 20 October, 2018.

⁵⁷ O. H. Banko, (2016) 192,194.

⁵⁸ Andvig C. J. Corruption and Armed Conflicts: Some Stirring Around in the Governance Soup Economic Discussion Papers 6 February, 2008

⁵⁹ O. H. Banko (2016) *ibid.* 192, 198.

3.2 DIMENSIONS OF FIREARMS TRAFFICKING

3.2.1 Cross Border Smuggling

Cross border smuggling describes unauthorised movement or transfer of firearms from one state to another state. It simply means illegal trafficking of arms across borders. The United Nations Convention Against Transnational Organised Crime lists illegal trafficking in arms as one of categories of transnational crime and offences.⁶⁰ Thus, illegal arms trafficking is intrinsically linked with other forms of transnational crimes such as human and drug trafficking.⁶¹ Firearms are transferred illegally to 'black' or 'grey' market through corruption, seizure, theft and loss.⁶² A recent study shows that arms are smuggled across borders, largely, through the same routes used to smuggle drugs and by the same actors involved in smuggling other illicit goods or even human persons.⁶³ Smuggled firearms are usually concealed in shipments, cargos, vehicles, along sea and land routes.⁶⁴ Non-state actors such as *militias* rebel groups reportedly exchange stolen crude oil⁶⁵ or other natural resources consumer goods or agricultural products for firearms.⁶⁶ The supply chain of arms to armed groups in Sudan, Sierra Leone, Liberia, DRC, Somalia include source countries such as the America and European countries such as

⁶⁰ Adopted by United Nations General Assembly Resolution A/55/25 on 15 November 2000. Illegal trafficking in firearms is specifically criminalised by 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 adopted by the General Assembly resolution 55/255 of 31 May 2001.

⁶¹ UNODC, 'UNODC Study on Firearms 2015' <https://www.unodc.org/documents/firearms-protocol/UNODC_Study_on_Firearms_WEB.pdf> Accessed 30 September 2018.

⁶² Hazen and Horner J. M. Hazen and J. Horner *Small Arms Armed Violence and Insecurity in Nigeria: The Niger Delta in Perspective* (Small Arms Survey, 2007) 35.

⁶³ UNODC, 'UNODC Study on Firearms 2015' <https://www.unodc.org/documents/firearms-protocol/UNODC_Study_on_Firearms_WEB.pdf> 55 Accessed 30 September 2018.

⁶⁴ *Ibid*, Ayuba and Okafor, 83; UNODC, 'Transnational Organised Crime in West Africa Firearms'

<https://www.unodc.org/documents/toc/Reports/TOCTAWestAfrica/West_Africa_TOC_FIR_EARMS.pdf> 36 Accessed 12 October, 2018; Nicolas Florquin and Eric G. Berman (Eds.) *Armed and Aimless: Armed Groups, Guns and Human Security in the ECOWAS Region* (Small Arms Survey, 2005).

⁶⁵ Banko reports that Niger Delta Militants in the South-South region of Nigeria and illegal arms dealers in other parts of the country are well-known to trading stolen natural resources for legally acquired firearms from unscrupulous government officials. O. H. Banko (2016).

⁶⁶ Small Arms Survey 'The Legal-Ilicit Link: Global Small Arms Transfer' in *Counting the Human Cost* (Oxford University Press, 2002), 155-201, 171. Available at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2002/en/Small-Arms-Survey-2002-Chapter-03-EN.pdf>> Accessed 20 October, 2018.

Belgium⁶⁷ Germany⁶⁸ Czech Republic, Serbia, Russia, China and Israel.⁶⁹ The illegal transfer and sale of arms across the region have reportedly fuelled armed conflicts in areas such as Ghana, Sierra-Leone, Liberia⁷⁰ and Nigeria. Studies also identify some supply routes of illicit arms via sea and air to many African countries and notorious illicit arms dealers across these routes.⁷¹ The supply chain of illicit arms also includes arms corruptly diverted by state actors and corrupt government officials from the state armouries to the hands of non-state actors.⁷² Porous and poorly manned land borders and corrupt government officials aid cross border smuggling. Burkina Faso and east African countries such as Kenya, Uganda, Tanzania and have been identified as major points of transshipments of arms to other parts of Africa.⁷³

3.2.2 Local Craft Production

Even though some states in sub-Saharan Africa such as Kenya, Uganda, Nigeria and South Africa have domestic production capacities, locally crafted firearms are also sources of trafficked arms. Craft or rudimentary firearms are usually illegal as they are manufactured without licensing.⁷⁴ Stocker reports that the competitive nature of the locally crafted SALWs in informal markets in the sub-Saharan has attracted illegal sales and transfer beyond the African

⁶⁷ O H Banko (2016) *ibid*.

⁶⁸ O H Banko (2016) *ibid*.

⁶⁹ S. T. Wezeman, SIPRI 'Israeli Arms Transfer to Sub-Saharan Africa' [2011] <<https://www.sipri.org/sites/default/files/misc/SIPRIBP1110.pdf>> Accessed 22 October 2018.

⁷⁰ 'Sourcing the Tools of war: Small Arms Supplies to Conflict Zones' in in *Weapons at War* (Oxford University Press, 2005) 159-177. Available at <<http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2005/en/Small-Arms-Survey-2005-Chapter-06-EN.pdf>> Accessed 19 October, 2018.

⁷¹ O. H. Banko, (2016) *op. cit.* 192, 194.

⁷² O. H. Banko *op. cit.*, E. G. Berman and L. N. Lombard, *The Central African Republic and Small Arms: A Regional Tinderbox* (Small Arms Survey, 2008). <<http://www.smallarmssurvey.org/fileadmin/docs/D-Book-series/book-07-CAR/SAS-Central-African-Republic-and-Small-Arms.pdf>> Accessed 28 September 2018. There are reports that have alleged bribery of government security officials such as the police, border guards and immigration officers in cross border smuggling.

⁷³ N. J. Nna, B. G. Pabon and F. Nkoro, 'Arms Proliferation and Conflicts in Africa: The Sudan Experience' (2012) 4, 4 *Journal of Humanities and Social Science* 31, 35. <<https://pdfs.semanticscholar.org/e0f2/b0932a15ee00ccac66594c7b3a873452a7a.pdf>> Accessed 15 October 2018.

⁷⁴ This is without prejudice to the fact that a few local craftsmen have proper licenses and are authorised for local production.

continent.⁷⁵ Earnings in foreign currencies by local craftsmen and increasing demand for SALWs across the continent continue to encourage illegal sales and transfer. Stocker reports that firearms such as *Makarov* and *Tokarev* pistols, *Hk G-3* assault rifle and *Ak-47* assault rifles as the commonly replicated sold at relatively cheaper prices compared with the originally designed ones. Locally crafted arms are reportedly cheaper, easy to maintain and durable. Pistols, shotguns and automatic rifles are the most common craft firearms.⁷⁶

In West Africa, it is reported that Northwest Kumasi in Ghana has one of the largest hub for local craftsmen of SALWs⁷⁷ and replete with artisans and blacksmiths who are popular for replicating variants of *AK-47*.⁷⁸ Blacksmiths reportedly make more money from craft production of SALWs than utensils and other metal goods.⁷⁹ There is an alarming number of firearms in the custody of private unauthorised individuals despite occasional seizures by government officials.⁸⁰ Schroeder and Lamb report that a significant number of illegal arms are stolen from state actors or state armouries, corrupt state soldiers and private owners. They also report that peacekeepers find their way into the hand of rebel groups.⁸¹ Apart from the direct consequences of armed conflicts which forcibly displace people, this paper posits that the dimensions of firearms trafficking in conflict situations strongly supports the assertion that people are forcibly displaced by the militarisation of war zones and communities. Illegal trafficking of firearms in conflict situations heightens proliferation of firearms and this in turn exacerbates armed conflicts. While

⁷⁵ J. Stocker 'Artisan Small Arms Production in Sub-Saharan Africa' (FMSO-KU Global Security Studies Internship, 2014) 12-13.

⁷⁶ *ibid.* 8.

⁷⁷ J. Stocker 'Artisan Small Arms Production in Sub-Saharan Africa' (FMSO-KU Global Security Studies Internship, 2014) 11. Stocker identifies Suame Magazine in Ghana is known to hosts a concentration of blacksmith who are engaged in craft production. B. Malam, 'Small Arms and Light Weapons Proliferation and Its Implication for West African Regional Security' (2014) 4(8) *International Journal of Humanities and Social Sciences* 260, 263.

⁷⁸ Stocker (2014) *ibid.* 9. According to Schroeder and Lamb, a study in Ghana shows that the country's unlicensed gunsmiths have the collective capacity to locally craft up to 200, 000 firearms annually, of equal global quality with industrial calibre. M. Schroeder and G. Lamb, 'The Illicit Trade in Africa: A Global Enterprise' [2006] *African Analyst Third Quarterly* 69, 70 <<https://fas.org/asmp/library/articles/SchroederLamb.pdf>> Accessed 22 October, 2018.

⁷⁹ Stocker reports that craft production generally fetches 1000 USD per week to local craftsmen such as blacksmith, metal artisans etc.

⁸⁰ O. H. Banko (2016) *op. cit.*

⁸¹ M. Schroeder and G. Lamb, 'The Illicit Trade in Africa: A Global Enterprise' [2006] *African Analyst Third Quarterly* 69 <<https://fas.org/asmp/library/articles/SchroederLamb.pdf>> Accessed 22 October, 2018.

there is no recent empirical data to show that illicit firearms trafficking directly displaces people, flowing from the foregoing, it is plausible to deduce that illicit firearms trafficking is an underlying cause which ought to be addressed in combating forced displacement.

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4.1. Legal Obligations Towards Curbing Illegal Arms Trafficking in Sub-Saharan Africa

The African Union adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) in 2009 with creates binding obligation on states to prevent displacement.⁸² In realising this, states are obliged to prevent some of the underlying causes of internal displacement⁸³ and also 'prevent and avoid conditions that might lead to arbitrary displacement' among other obligations⁸⁴ This study has established arms trafficking as one of the underlining, indirect causes of forced displacement towards which African state parties have preventive obligations under the Kampala Convention enjoins.

There are a number of international legal instruments which create both binding and non-binding obligations on state parties to regulate the possessions of firearms, criminalise unauthorised use of firearms and enjoins domestic prosecution. Many states of sub-Saharan Africa are parties to the United Nations Small Arms Programme of Action,⁸⁵ United Nations Firearms Protocol⁸⁶ and United Nations Arms Trade Treaty,⁸⁷ among other international instruments. Flowing from the different international instruments which create both binding and non-binding legal obligations, states have obligations towards stockpile management⁸⁸ which involves storage, handling, transportation and disposal of firearms. This means that states must maintain an updated national inventory of its weapons. Stockpiles are susceptible to diversions into the hands of rebel groups and armed non-state actors where stockpiles are not effectively and securely managed. Thus, states must

⁸² The Convention entered into force on 6 December 2012 and as at June 2018 it had been signed by 40 countries and ratified by 27 of those countries. As part of the general obligations laid out in article 3 (1) (a) of the Kampala Convention, states are obliged to 'refrain from, prohibit and prevent arbitrary displacement of populations.'

⁸³ Article 3 (1) (b) of the Kampala Convention.

⁸⁴ Article 4 (1) of the Kampala Convention.

⁸⁵ United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects adopted by the General Assembly in 2001.

⁸⁶ Firearms Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Component Parts and Ammunition, Supplementing the United Nations Convention Against Transnational Organised Crime Adopted by resolution 55/255 of 31 May 2001 at the 55th Session of the General Assembly of the United Nations and entered into force on 3 July 2005. Available at: <www.un-documents.net/uncatoc.html> Accessed 8 October 2018.

⁸⁷ A/RES/69/49 adopted on 2 April 2013 by UN General Assembly and entered into force on 24 December 2014.

⁸⁸ Arms Trade Treaty.

establish domestic licensing and authorisation for private manufacture and acquisition of firearms and criminalise unauthorised production or acquisition.

In fulfilling their obligations towards stockpile management, states have the responsibility of marking and keeping record of stockpiles. States also have obligations towards collection and disposal of excess stockpiles or obsolete firearms thereby preventing illegal transfer to non-state armed groups. States have an obligation to mark imported and locally produced firearms for effective tracing and measure against diversion. With respect to tracking illicit firearms, states also have obligations to trace firearms from the point of manufacture or import to the last authorised owner. States are required to adopt policies and procedure which regulate and control import, export, transfer and use of firearms within their territories. States also have the obligation towards disarmament, demobilisation and reintegration (DDR) in post conflict situations. This includes collection, control, storage and destruction of illicit arms which could take the form of amnesty programmes or exchange of incentives for firearms. States also commit themselves to offer mutual assistance and cooperation with other states to effectively combat illicit trafficking of arms.

At the regional and domestic levels there are numerous legal instruments aimed at curbing illicit trafficking of firearms in Africa in line with obligations under the international legal instruments. The Bamako Declaration on Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons⁸⁹ is described as Africa's common position on the trafficking and proliferation of illicit SALWs. The Declaration enjoins State parties to establish specific legal regimes with specific structures and procedures to deal with the problem of SALWs. The Declaration also encourages enhancement of the capacity of national law enforcement and security agencies and officials.⁹⁰ The Bamako Declaration however created no legally binding obligations on states in respect of its provisions.

At the sub-regional levels, the Economic Community of West African States (ECOWAS) adopted the Moratorium on the Importation, Exportation and Manufacture of Light Weapons⁹¹ and later the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials.⁹² The ECOWAS Moratorium was a three-year renewable voluntary ban on the manufacture, import and export of SALWs among member state in

⁸⁹ The Bamako Declaration, adopted by the Ministerial Conference of Member States of the defunct Organisation of African Unity (OAU) on 1 December, 2000.

⁹⁰ Par. 2 of the Bamako Declaration.

⁹¹ Adopted by the ECOWAS countries on 31st October 1998.

⁹² Adopted on 14 June 2006.

West African Sub region. Subsequently, a Code of Conduct for the Implementation of the Moratorium on the Importation, Exportation and Manufacture of Light Weapons in West Africa⁹³. Pursuant to the provisions of the Code of Conduct, national commissions (NATCOM) were established in member states with the responsibility of ensuring and coordinating effective implementation of the Moratorium. Despite the provisions in respect of moratorium and the subsequent renewal for a period of three years,⁹⁴ the moratorium did not make significant impact on arms trafficking because it created non-binding obligations on member states and was largely unenforced by member states.⁹⁵ The subsequent ECOWAS Convention prohibits all international transfers of small arms within the sub-region unless a member state obtains an exemption from the ECOWAS Secretariat.⁹⁶ It makes provision for control of the manufacture of SALWs and measures to support transparency and exchange of information among member states. Its provisions also deal with civilian possession, stockpile, marketing, trading and brokering.

The Southern African Development Community (SADC) adopted the (SADC) adopted the Protocol on the Control of Firearms, Ammunitions and Other Related Materials in SADC.⁹⁷ The aim of the protocol is to prevent, combat and eradicate illicit manufacturing of firearms, ammunition and other related materials within the sub-region.⁹⁸ It also seeks to regulate import and export of legal SALWs within the sub-region.⁹⁹ The Protocol places obligations on member states to ratify relevant international and regional instruments of combating firearms trafficking,¹⁰⁰ criminalisation of illicit trafficking¹⁰¹ and mutual cooperation and legal assistance in respect of enforcement measures.¹⁰²

⁹³ Adopted on 31 October 1998. <<http://www.poa-iss.org/RegionalOrganizations/ECOWAS/Moratorium%20and%20Code%20of%20Conduct.pdf>> Accessed 20 October 2018.

⁹⁴ Moratorium and Decision CAHSG.1/5/01, 'Extending the Moratorium on the Importation, Exportation and Manufacture of Light Weapons in West Africa,' Bamako, Mali, 1 November 2001 where the Moratorium was extended for another period of three years

⁹⁵ Reports show that arms trafficking in Sierra-Leone and Liberia which were undergoing internal armed conflicts during the period continued unabated. UN, 'Illicit Small Arms Fuels Conflict, Contributes to Poverty Stalls Development Says Speakers on Second Day of UN Review Conference' (27 June 2006) <<https://www.un.org/press/en/2006/dc3032.doc.htm>> Accessed 20 October 2018.

⁹⁶ Article 3 of the ECOWAS Convention.

⁹⁷ Adopted in August 2001.

⁹⁸ Article 3 of the SADC Protocol.

⁹⁹ Article 5 of the SADC Protocol.

¹⁰⁰ Article 4 of the SADC Protocol.

¹⁰¹ Article 5 of the SADC Protocol.

¹⁰² Articles 14, 15 and 16 of the SADC Protocol.

The East African region adopted the Nairobi Declaration on Small Arms which later birth the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great lake Region and the Horn of Africa and Bordering States.¹⁰³ The central African region adopted the Central African Convention on the Control of Small Arms and Light Weapons, Their Ammunition, Parts and Components That Can Be Used for Their Manufacture Repair or Assembly (Kinshasa Convention).¹⁰⁴ These sub-regional instruments have similar provisions to the ECOWAS Convention and SADC Protocol in respect of combating illicit arms trafficking.

These sub-regional instruments, with the exception of the ECOWAS Moratorium seek to create regional legally binding obligations on states parties to control arms trafficking within the region. The legal instruments criminalise illicit small arms production and possession and oblige state to destroy stocks of surplus weapons and introduce more effective stockpile and arms transfer control measures. While the sub-regional legal instruments were intended to foster greater solidarity and cooperation among states in the control and eradication of illicit trafficking in arms, this is far from reality. States maintain the primary duty and responsibility to control arms trade and circulation within their territory through their domestic laws and regulations. However, African states within the sub-Sahara cannot effectively combat cross border dimensions of illicit trafficking without respecting and enforcing their obligations both at sub-regional and regional levels.

Flowing from the provisions of the various legal instrument briefly examined, state obligations are clearly complementary and have no conflicting aims and pursuit. Despite the overwhelming ratifications, it has not translated to effective realisation in combating illicit trafficking of arms in and across the sub-region. Apart from domestic legal provisions and regulation in respect of acquisition and manufacture of firearms, States such as Nigeria, Niger, Mali Kenya, Mozambique and South Africa have conducted open collection and destruction of firearms while other state have granted amnesties for arms submission by non-state actors.¹⁰⁵ However, these provisions have not discharged the states of their obligations towards stockpile management and their recordkeeping and tracing duties. As shown earlier, recent study shows that porous borders, corrupt government officials, unauthorised local craft

¹⁰³ Adopted in 2004 and entered into force 2005.

¹⁰⁴ Adopted in 30 April, 2010 and entered into force on 8 March, 2017.

¹⁰⁵ N. Stott, 'Curbing Small Arms Proliferation: Progress in Africa' (2005) 4, 1 *Focus on Arms in Africa* 1, 3.

<<https://reliefweb.int/sites/reliefweb.int/files/resources/B57F4959095C4DC2C12570520036EDA6-iss-afr-27jul.pdf>> Accessed 22 October 2018.

production and inaccurate or zero record of stockpile are quite evident in many sub-Saharan States.

At the international level, efforts at controlling arms trafficking have been limited and selective. The UN Security Council placed arms embargo on two African states before the Cold War period namely Zimbabwe and South Africa. After the Cold War, embargoes have been placed on more African states such as Somalia, Liberia, Rwanda, Sierra-Leone, Eritrea and Ethiopia, DRC, Cote d'Ivoire and Sudan.¹⁰⁶ While arms embargo can significantly control cross border trafficking of firearms, they have no impacts on stockpile of weapons which have been accumulated before the embargo was placed. There must be prescribed mechanisms to collect and destroy accumulated arms to effectively implement arms embargo.

Following the AU's adoption of the Agenda 2063 and the goal of Silencing the Guns by 2020, states within sub-Sahara Africa must take a more proactive and holistic approach towards combating illicit trafficking of arms in the region. The 'silence the guns' goal aims at driving the agenda to end all forms of armed conflicts and violence on the African continent.¹⁰⁷ This will effectively translate to reducing the rate of forced displacement in Africa. The Peace and Security Council of the AU (PSC) developed an AU Master Roadmap (AUMR) on practical steps towards achieving the Silencing the Guns agenda of the AU.¹⁰⁸

The PSC resolved in 2017 that member states of the African Union should sign, ratify and implement all relevant AU and international instruments relating to "Silencing the Guns" agenda of the AU. It also recommended that state parties should equip law enforcement agencies within their states to effectively contribute to stopping the flow of illicit weapons into Africa and curbing the circulation of illicit weapons within the continent. State parties are obliged to enhance their capacity to identify, seize and destroy illicit weapons. It proposed that May 25, 2018 be declared the African Amnesty Day for

¹⁰⁶ D. Strandow and P. Wallensteen, *United Nations and Arms Embargoes: Their Impacts on Arms Flows and Target Behaviour* (SIPRI, 2007) 10. <https://pcr.uu.se/digitalAssets/653/c_653520-1_1-k_un_embargoes_0711_26.pdf> Accessed 22 October 2018.

¹⁰⁷ About Agenda 2063 Available at <<https://au.int/en/agenda2063/about>> Accessed 28 September 2018.

¹⁰⁸ The African Union Master RoadMap of Practical Steps to Silence the Guns in Africa by Year 2020 (referred to as the Lusaka Master RoadMap) was developed in 2016. The Roadmap had as part of its focal points areas, illicit flows and circulation of weapons in Africa under both political, economic, social and legal aspects of concern. Available at <<https://issafrica.org/pscreport/uploads/AU%20Roadmap%20Silencing%20Guns%2020%20pdf%20en.pdf>> Accessed 25 September 2018.

surrender and collection of illegally owned weapons to designated national law enforcement agencies in each state. The response of member states has however, been, discouraging and far from successful realisation of the 2020 agenda. As at June 2018, only two countries were reported to have taken substantial step towards the implementation of the AUMR on Silencing the Guns agenda.¹⁰⁹ While the 2020 agenda to silence the guns has been criticised as ambitious and unrealistic,¹¹⁰ it is a laudable initiative towards solving the scourge of illegal arms trafficking in Africa. 'Silencing the Guns' programme if successfully implemented together with other regional and sub-regional firearms regulations may stem the tide on the militarisation of civilians by curbing the proliferation and circulation of firearms within African states. This will effectively curb armed conflicts in Africa and consequently reduce forced displacement drastically.

4.1. CONCLUSION

Forced displacement is increasingly becoming a scourge in sub-Saharan Africa. At the current trend, it is projected that a third of the entire population in sub-Saharan Africa might be displaced in the next decade if member states do not adopt an all-encompassing approach. The African Union has designated the theme of its 2019 summit as the 'Year of Refugees, Returnees and Internally Displaced Persons in Africa: Towards Durable Solutions to Forced Displacement'. Forced displacement can only be fully combated with an inclusive and purposeful approach from humanitarian, human rights and criminal law perspectives, which is more proactive than reactive. It is suggested that states within sub-Sahara Africa adopt a proactive approach to combating illicit trafficking of firearms as one of the ways of preventing and addressing forced displacement. First, while is impracticable to impose a long term or permanent moratorium on arms transfer, a short term and legally binding moratorium on arms transfer among states of the sub-Sahara may be an effective way to combat cross border transfer of firearms. The moratorium should be applicable to the entire sub-Saharan region and enforced by each sub region through existing enforcement measures. States must therefore cooperate to enforce such moratorium while also respecting and fulfilling their

¹⁰⁹ At the 31st AU summit in June/July 2018, Zambia and Zimbabwe were recognised as the only two countries which have submitted their written reports on the implementation of the AUMR. - Summary of the Key Decisions and Declarations of 31st African Union Summit. 6 July, 2018. Available at <<https://au.int/en/pressreleases/20180706/summary-key-decisions-and-declarations-31st-african-union-summit>> Accessed 21 September 2018.

¹¹⁰ The Guardian Reporter 'AU Goal of Silencing Guns by 2020 are Unrealistic; 21 February 2017. Available at <<https://www.ippmedia.com/en/safu/au-goal-silencing-guns-2020-unrealistic>> 2 October 2018.

domestic and international obligations under the various legal instruments as highlighted earlier. Second, disarmament programmes must be implemented vis-à-vis reintegration programmes. While disarmament programmes may succeed in retrieving a large number of illicit arms in circulation within a state, they would not stop the foreign inflow of illicit arms into a state or local craft production of illicit firearms whose end users are largely non-state actors. Disarmament programmes can only successfully combat illicit trafficking where armed groups are fully re-integrated into society.

The importance of effective land and sea border management in African states cannot be overemphasised. Illicit trafficking in firearms is largely clandestine in nature and cross border smuggling will be significantly curbed when states honour and fulfil their obligations towards border control and management. Equally, state must also hold relevant officers and apprehended illicit traffickers accountable through genuine prosecution and enforcement of punitive sanctions.