

# Institutional, legal and administrative procedures

To facilitate compliance with the Bamako Declaration one requires a specific legal regime with specific structures and procedures. This is underscored by paragraph 3A of the Bamako Declaration, which calls upon member states to put in place structures to deal with the problem of SALW at both the national and regional levels.

This chapter examines the extent to which the countries under study have complied with these requirements. We therefore set out to identify institutional and legal frameworks that have facilitated such compliance.

## 2.1 National institutions

In Ethiopia relevant bodies of the government, namely the Security, Immigration and Refugee Affairs Authority (SIRAA), the Federal Police Commission and the Ministry of Foreign Affairs worked together to come up with a common position on how and where to establish a National Focal Point (NFP).<sup>34</sup> They agreed that the Federal Police Commission should take the responsibility of establishing a NFP as a unit within its structure. In October 2003 a co-ordinator, Chief Inspector Yemaneh, was appointed.<sup>35</sup> According to the Inspector, “the government of Ethiopia is looking forward to establishing sub-national Focal Points in all federal states.”<sup>36</sup>

As a precursor to the establishment of a full National Commission, Ghana has appointed a National Task Force on Small Arms and

34 W Beyene, “Brief Information of the Ethiopian Situation on Efforts Made on the Issue”, a paper presented at the workshop on the Establishment of Focal Point of Small Arms and Light Weapons, held in Addis Ababa, 25 September 2002.

35 Accessed from a letter written to the Ministry of Foreign Affairs by the Federal Police Commission on the assignment of Chief Inspector Yemaneh as NFP Co-ordinator.

36 Interview with Chief Inspector Yemaneh, the Co-ordinator of the Ethiopian National Focal Point, 24 January 2004.

Ammunition.<sup>37</sup> A three-people task force is charged with the responsibility of defining the mandate of the Commission over and above that prescribed in the ECOWAS Moratorium and the UN Plan of Action (UNPoA).<sup>38</sup> It has appointed a liaison person who provides linkage with the rest of the ECOWAS states, National Commissions and other relevant international bodies. Because of the centrality of SALW in official programming in Ghana, work plans have been developed focusing on four areas:

- Capacity building of members of the National Small Arms Commission (NSAC) to be informed of international and regional norms and standards, to enable members to engage on the issue of SALW in Ghana and at the international level;
- Capacity building of regional and district co-ordinating bodies by the members of the NSAC through workshop and focused group meetings;
- A national consultative process initiated by the NSAC, to be organised to review the draft legislation on firearms control and determine its appropriateness for Ghana and the sub-region; and
- Consideration by the UNDP and the Bureau for Conflict Prevention and Resolution (BCPR) participation of the NSAC in its capacity-building programmes with representatives of other National Commissions.

Kenya has established a national co-ordinating agency, referred to as the Kenya National Focal Point (KNFP). The functions and responsibilities of the National Focal Point as stated in the Implementation Plan of the Co-ordinated Agenda for Action on the Problem of the Proliferation of SALW in the Great Lakes Region and the Horn of Africa include:

<sup>37</sup> Members of this Task Force include such institutions as the Ministry of Interior, Justice and Attorney-General's Office, National Security Council, Ghana Armed Forces, Criminal Investigation Department, Foreign Ministry (External Intelligence), Ghana Immigration, Customs & Excise and Preventive Service (CEPS), and the Inspector-General of Police (IGP) representative and two representatives of civil society organisations.

<sup>38</sup> This group is made up of members from the National Security Co-ordinator's Office, Attorney-General and Ministry of Justice and a civil society organisation (CSO) representative.

- Co-ordinating with the Nairobi Secretariat in the implementation of the Agenda for Action;
- Co-ordinating and interacting with other National Focal Points;
- Co-ordinating and interacting with civil society;
- Facilitating the exchange and dissemination of information;
- Conducting and facilitating research;
- Identifying and applying lessons learned; and
- Building the capacity for sustainable approach to the problem of small arms and light weapons.

In Kenya, the National Focal Point draws its membership from the Office of the President (OP), the Department of Defence (DoD), the Police, the Ministries of Foreign Affairs, Information and Tourism, Education, Home Affairs (Immigration Department) and Finance (the Kenya Revenue Authority, Customs and Excise Department). Others are the Office of the Attorney-General and civil society.

Nigeria has established the National Committee (NatCom) on SALW. Natcom is responsible for policy guidance, research and monitoring on all aspects of SALW proliferation, control, circulation, trafficking and reduction. NatCom was inaugurated by the Federal Government in 2001 largely under the ECOWAS Moratorium as an interim measure to control, reduce and manage the trafficking and circulation of SALW.<sup>39</sup> Article 5 of the Code of Conduct of the Moratorium calls specifically for the establishment of a National Commission on small arms.

The mandate of the Committee is to control the import, manufacture, movement and use of legitimate arms stock. Furthermore, it registers, detects and organises the destruction of all illicit and surplus weapons. It

<sup>39</sup> The Committee, as of August 2003, is made up of officials and representatives of the following: (i) Ministry of Defence (MOD); (ii) Ministry of Internal Affairs; (iii) Ministry of Integration and Co-operation in Africa (MICA) Secretariat; (iv) Defence and Industries Corporation of Nigeria (DICON); (v) Nigeria Police; (vi) State Security Services; (vii) National Intelligence Agency; (viii) Nigeria Customs Service; (ix) Nigeria Immigration Service; (x) National Drug Law Enforcement Agency; (xi) National Orientation Agency; (xii) Africa Leadership Forum (civil society); (xiii) Quench Crisis Initiative (civil society); (xiv) Nigerian Council of Women's Societies (NCWS) (civil society); (xv) Shehu Shagari Institute for Peace and Good Government (civil society); (xvi) African Strategic and Peace Research Group (AFSTRAG) (civil society).

grants or permits exemptions to the Moratorium in accordance with strict criteria.

In Senegal, the National Commission on Small Arms serves as the main institution responsible for policy guidance, research and monitoring on all aspects of SALW proliferation, control, circulation, trafficking and reduction. The Ministry of the Interior grants permits for the import, export, transfer, detention and acquisition of some specific types of arms and ammunitions.<sup>40</sup> The security apparatus of the Senegalese government complements the efforts of these institutions, including the Ministry of Justice.

Unlike the others, South Africa has not instituted a national coordinating agency. It maintains that information sharing between government departments and discussions with NGOs occurs naturally and on an ongoing basis.<sup>41</sup> This position was illustrated by the process of drafting the Anti-Personnel Mines Prohibition Act. The South African government's MBT Legislation Drafting Committee was composed of personnel from various government departments and the ICRC.<sup>42</sup>

In June 2001, Mines Action Southern Africa (MASA), the national member of the International Campaign to Ban Landmines (ICBL) was requested by the Drafting Committee to organise a number of workshops to facilitate civil society input into South Africa's domestic legislation. Six workshops were held, including three with the mine clearance community and three with a range of non-governmental organisations. Many of the suggestions that came out of these consultations have been incorporated into the Act. As Ambassador George Nene put it, "This inclusive approach underlines the South African government's approach and proven track-record of consulting civil society and, in this instance, of the partnership that has been forged between government and civil society in the field of mine action, as well as with the industry as a prime stakeholder."<sup>43</sup>

40 C Agboton-Johnson's Mimeo on Arms and Criminality in Senegal, 2003.

41 Interview with Rob Wensley, Department of Foreign Affairs (DFA), South Africa, 23 December 2003.

42 Art. 7 Reports, 1 September 1999.

43 Statement by Ambassador George Nene to the 4th meeting of state parties to the MBT, Geneva, 16 September 2001.

The Ugandan government established a national co-ordination agency that is tasked with carrying to fruition the Bamako commitments. The agency is made up of the National Focal Point Forum (NFPP) and the NFP. The NFPP consists of four members drawn from civil society, representatives from relevant government ministries, and members of the NFP Secretariat.<sup>44</sup> The total membership of the NFPP is twenty. The function of the NFPP, which meets quarterly, is mainly to discuss broad policies in the area of SALW. On the other hand, the NFP is the NFP-Executive and consists of an officer from the President's Office, the Police Department and the Ministries of Defence, Justice, and Foreign Affairs.<sup>45</sup> It plans and performs the day-to-day functions of the NFP. The NFP is currently finalising a draft policy paper on co-operation between civil society organisations and government in fighting the scourge of small arms.<sup>46</sup> Currently, Mr Richard Nabudere, an Assistant Commissioner of Police (ACP), co-ordinates the unit, which is part of the Ministry of Internal Affairs.

The mandate of these co-ordinating agencies is broad. It ranges from overseeing the implementation of regional and international instruments on small arms to demystifying the culture of violence. This is particularly true with Kenya and Nigeria. The KNFP is a key component of the National Steering Committee (NSC).<sup>47</sup> It is mandated to consolidate peace-building, conflict management and development programmes among the pastoral communities. It also oversees the implementation of security sector reform efforts to facilitate community policing and police partnership in addressing insecurity.

44 T Weiss, A demand side approach to fighting small arms proliferation, in *Africa Security Review*, 2003, 12,(2) p 5.

45 "Uganda National Focal Point Secretariat Progress Report" presented at the National Focal Point Co-ordinators' Workshop, Nairobi, Kenya, 21–22 October 2003.

46 T Thusi, Assessing small arms control initiatives in East Africa: The Nairobi Declaration, in *Africa Security Review*, 2003, 12(2), p 25.

47 The membership of the NSC consists of the Office of the President (Chair and Secretariat), the Ministry of Foreign Affairs, the Provincial Administration and National Security (security section), the Arid Land Resource Management Project (ALRMP) and the Police Department. Others are civil society organisations, UN agencies and donors.

It is evident that the institutional structures have limited capacity in terms of people and resources. They are still understaffed and underfunded and the majority of them depend on the benevolence of the donors.

**It is evident that the institutional structures are still understaffed and underfunded and the majority of them depend on the benevolence of the donors.**

## 2.2 Regional institutions

Three regions of Africa namely; West Africa, the Great Lakes and the Horn of Africa and Southern African have each established a co-ordinating agency, as it is referred to in the Bamako Declaration.

In the Great Lakes and the Horn of Africa, the regional co-ordination agency based in Nairobi, Kenya is called the Nairobi Secretariat on SALW. The Secretariat serves all the State Parties to the Nairobi Declaration. The broad mandate of the Nairobi Secretariat is to co-ordinate the regional Agenda for Action. Specifically, the Secretariat aims to:

- ensure long-term sustainable commitment towards the achievement of the objectives as enshrined in the Nairobi Declaration;
- develop, implement and sustain a comprehensive strategy to combat the illicit proliferation of small arms and light weapons, taking into account the linkages between arms proliferation and all aspects of human security and the long-term objective of attaining peace, stability and development;
- pursue initiatives for the peaceful resolution of conflicts in the region;
- enhance co-operation and exchange of information among the National Focal Points and other relevant agencies and organisations tasked with addressing the problem of illicit proliferation of small arms and light weapons;
- co-operate with international organisations, regional and sub-regional organisations and civil society in preventing and reducing the problem of the illicit proliferation of small arms and light weapons; and

- co-ordinate international support for the implementation of the regional Agenda for Action.

The Co-ordinator at the Secretariat is Mr Francis Sang, a Kenyan, the Planning and Co-ordination Officer is a Ugandan, and the Information Officer is a Rwandan. At the time of conducting this study, the Secretariat was being housed in rented premises and had four computers, four telephone lines and dial-up Internet services. Since its inauguration, the Secretariat has registered notable progress, including the organisation of planning workshops for the national co-ordinators and development of a work plan, and collaborates with other stakeholders such as the Kenya Action Network on Small Arms (KANSAs), the Uganda Action Network on Small Arms (UANSAs) and the Eastern Africa Network on Small Arms (EAANSAs).

Perhaps the greatest achievement of the Secretariat has been its contribution to the gradual development of the Protocol for the Prevention, Control and Reduction of SALW in the Great Lakes region and the Horn of Africa (EAPCCO Protocol), which the Experts meeting of February 2004 recommended be renamed the Nairobi Protocol. The Protocol sets minimum standards to govern the manufacture, possession, marking, import, export, transit, transfer and stockpiling of SALW, as well as provisions relating to weapons collection and destruction, police co-operation, information exchange and awareness raising.

In Southern Africa, SADC has established a Committee on Small Arms at its Secretariat in Botswana and a Public Security sub-committee that brings together customs, police, immigration and other relevant agencies responsible for border control. A Technical Committee on Small Arms has also been established, whereby member states share best practices and agree on mutual assistance in the management of stockpiles, security and safety measures and cost-effective methods of destroying surplus firearms. The Southern Africa Regional Police Chiefs Co-operation Organisation (SARPCCO) has been delegated responsibility as the implementing agency for activities related to the problem of small arms in the region.

In addition, the SADC-EU Working group on Small Arms meets regularly to work on co-operation between the two regions on small arms

issues. Co-operation exists between the SADC institutions on small arms and various civil society organisations.

In West Africa, the regional institution dealing with SALW is the Economic Community of West African States (ECOWAS). Established in May 1975, ECOWAS's initial interest was in establishing closer economic integration among the 15 member states. However, because of the challenges posed by SALW and political instability, several Protocols dealing specifically with issues of instability were initiated in 1976, 1978, 1981 and 1993. The worsening security situations in West Africa compelled ECOWAS to declare a moratorium. The ECOWAS Moratorium, which provides a regional framework for the implementation of the Bamako Declaration, calls for effective co-ordination and assistance for security and development. The ECOWAS Secretariat's main responsibility in the implementation of the Moratorium is the granting of exemptions to states who apply for exemptions to import arms and ammunitions. Such exemption procedures are under Article 9 of the Code of Conduct, which was adopted in December 1999. Other tasks include:

- overseeing the establishment of a national commission in each member state;
- setting up structures within ECOWAS to support the moratorium;
- monitoring the compliance of member states;
- preparing reports by member states on the ordering or procurement of weapons components and ammunitions covered by the moratorium; and
- developing a regional arms register and database, harmonising of legislation, training security personnel and declaring weapons and ammunitions used for peacekeeping operations.

The composition of ECOWAS staff is regionally distributed. However, since reforms were instituted in 2003, meritocracy is increasingly becoming the key to appointments in ECOWAS. In terms of funding, ECOWAS funds come from subventions from member states and multilateral and bilateral donors. The ECOWAS Moratorium is the

departure point of national and regional initiatives on SALW in West Africa. Initially the Moratorium was for a period of three years but in July 2001 was extended to October 2004.

## 2.3 Legal framework and administrative procedures

All the states examined have at least some form of legislation and/or administrative procedures on the production, export, import, transit, trade and possession of SALW. However, it is also noted that there are considerable variations in the nature and scope of the legal framework and procedures. From the information gathered it is not possible to determine the effectiveness of such measures. For the purpose of this paper, the available evidence merely indicates the existence of laws and procedures and makes no judgment on their effectiveness.

Ethiopia has national laws on the issues of firearms. The Penal Code of the Empire of Ethiopia of 1957 states that whosoever:

- (a) Makes, imports, exports or transports, acquires, receives, stores, or hides, offers for sale, puts into circulation or distributes without especial authorisation or contrary to the law, weapons or munitions of any kind or;
- (b) Without indulging in trafficking, knowingly sells, delivers or hands over arms to suspect or dangerous persons, is punishable with simple imprisonment, without prejudice to the imposition of a fine, where he has acted for gain or has made a profession of such activities, and confiscation of material seized.<sup>48</sup>

In the Revised Special Penal Code proclamation No 214/1981, the act is punishable without prejudice to the confiscation of material seized, with rigorous imprisonment from 5 to 25 years. Where an individual has acted for gain or has made a profession of such activities, a fine up to 15,000 *Birr*

48 Penal Code of the Empire of Ethiopia of 1957, art. 475.

(1,740 US dollars) may be imposed in addition to the penalty prescribed (imprisonment). Moreover, where the commission of the offence is exceptionally grave, the punishment shall be rigorous imprisonment for life, or death.<sup>49</sup>

Proclamation No 6/95 mandates SIRAA to issue licences for the possession or use of SALW, to prescribe conditions under which explosives may be sold and issue permits to individuals who deal with explosives and repair firearms.<sup>50</sup> However, responsibility is delegated to the Federal Police and the Federal State Police Forces. As Chief Inspector Yemaneh noted “delegation was endorsed because the Federal Police and Federal State Police Forces have a better organisational network and have established a working relation with lower level government structures.”<sup>51</sup> Following this, Police Commissioners have developed a registration criterion to legalise the possession of firearms in the country. For instance, an Ethiopian citizen is required to have a Kebele’s<sup>52</sup> identification card to be eligible for registration, while a foreigner must have a passport and legal certificate from SIRAA for possessing firearms.<sup>53</sup>

Currently, a committee from the Federal Police and SIRAA finalised the preparation of all inclusive firearms legislation by updating and revising the older one.<sup>54</sup> As Chief Inspector Yemaneh noted, in the near future the finalised draft will be presented to the Council of Ministers and the House of People’s Representative for endorsement.<sup>55</sup>

In Ghana, the major legislation governing arms is the Arms and Ammunition Act, 1962 (Act 118). This is a comprehensive Act that regulates the possession and use of arms and ammunition in Ghana. It has

49 Revised Special Penal Code Proclamation No 214/1981.

50 Federal Negarit Gazeta, Security, Immigration and Refugee Affairs Authority Establishment Proclamation No 6/1995.

51 *Op cit*, Interview with Chief Inspector Yemaneh, Gesesew, 24 January 2004.

52 The lower government structure in Ethiopia.

53 *Op cit*, Interview with Chief Inspector Yemaneh, Gesesew, 15 February 2004.

54 *Op cit*, W Beyene, p 3.

55 *Op cit*, Interview with Chief Inspector Yemaneh Gesesew, 24 January 2004.

five parts and 26 subsections which seek to “consolidate enactment regulating the trade in arms and ammunition” in Ghana:<sup>56</sup>

- Part I Export of Arms and Ammunition
- Part II Import of Arms and Ammunition and Supervision of Land
- Part III Maritime Supervision
- Part IV Miscellaneous Provisions
- Part V Regulations

Another useful piece of legislation is the Arms and Ammunitions Decree, the 1972 National Redemption Council Decree (NRCD 9), which not only improves the registration process but also continues to abolish the local manufacture of arms. Interestingly, while the law allows blacksmiths to repair imported guns that get damaged in Ghana the same law forbids them to manufacture weapons. This situation can complicate law enforcement. The two key laws are the Locksmiths Act of 1994 (Act 488) and the Arms and Ammunition (Amendment) Act, 1996 (Act 519). There seems to be some legal obfuscation about the law in terms of permitting blacksmiths to manufacture guns. While one interpretation suggests that manufacturing is totally banned, another one suggests the Minister of the Interior can give dispensations for such manufacture to go on although the conditions and modalities for the issuance of such permission are not spelt out. Since September 2003, the country has been reviewing the SALW regulations in order to conform to international norms. Ghana is the only country that has legislation relating to the local production of arms and ammunition.

In Kenya the Kenya Firearms Act Cap 114 (Section 2) defines arms as, “All artillery or all kinds of projectiles, explosives or gas diffusing flame throwers, grenades, bombs, machine guns and rifled small bore breach loading weapons.” The Act does not make a distinction between small arms, light weapons and “big arms”. But one can see that the definition is quite broad and encompasses what contemporary researchers call SALW.

It is an Act of Parliament for regulating, licensing and controlling the manufacture, import, export, transport, sale, repair, storage, possession

<sup>56</sup> Government of Ghana, *The Arms and Ammunition Act, 1962*, GPCA/1344/1,020/5/70, Ghana Publishing Corporation, Accra-Tema.

and use of firearms, ammunition, air-guns and destructive devices such as grenades.

The Act has provisions relating to certain types of weapons and ammunition pertaining to use, places of acquisition, restrictions on carriage and transit through Kenya. Furthermore, there are provisions on possession of firearms and ammunition in regard to age, penalty for use, possession or imitation of firearms in certain cases. Finally, the Act provides for appeals in case of conviction.

The management of stockpiles within the Armed Forces is covered in the following regulations: The Armed Forces Standing Orders, the Armed Forces Security Standing Orders and the Equipment Regulations. The Defence HQ (DHQ) maintains an inventory of firearms held in the armed forces, where the manufacturer's registration number and the butt number given at the unit level identify each weapon. Kenya does not have explicit laws on brokerage and stockpiling and the process of revising the current legislation to incorporate such components is yet to start.

Nigeria's main legal instrument for controlling and regulating the production, use, import and export of SALW is the Firearms Act (1959). The Act was amended in 1966 and, among other things, it made the punishment firearms-related offences more severe. Section 3(1) of the Robbery and Firearms (Special Provision Decree) No 5 of 1984 increased it from a fine of N400 or 12 months imprisonment or both to N20,000 (US\$138) or a minimum of 10 years or both if a person is found guilty of the illegal possession of firearms. Section 1(2) of the decree specifies punishment by death in the case of robbery, while an attempted armed robbery under Section 2(2) is punishable by life imprisonment.

Further proposals were made for the revision of the laws and regulations governing small arms following the adoption of UNPoA. In addition to efforts made by civil society groups in Nigeria to effect the revision of the legislation governing small arms, President Obasanjo, directed the Minister of Justice and the Attorney-General of the Federation to draft a bill setting out more stringent penalties for contravening firearms laws.<sup>57</sup> The President's memo proposed a 10-year

<sup>57</sup> This directive was given in a memo dated 21 September 2001.

jail sentence without the option of a fine for illegal possession of firearms and further proposed a cash reward for information leading to the arrest and prosecution of anyone in illegal possession of firearms.<sup>58</sup> The draft firearms law is yet to be presented to the National Assembly.

Senegal has in place legislation to control and manage small arms. This law, which was inherited from its colonial authorities, was known as the decree of 4 April 1925. This decree regulated arms and ammunition in French West Africa. It was modified by the decrees of 16 June 1931 and 8 October 1938. The decree of 25 May 1912 prevented the carrying of offensive weapons and that of 8 December 1937 regulated the export of weapons in French West Africa. This eventually led to legislation being passed into law (66–03 of 18 January 1966) and a decree for its enforcement (Law 66–887 of 17 November 1966). This law dealt with the general regulation of arms and ammunitions but has become outmoded as a result of the emergence of new forms of crime. No radical changes have taken place since its adoption 37 years ago, in spite of the decree in 1986.

The import, export, transfer, detention and acquisition of arms and ammunition of 2e, 3e, 4e, and 5e categories (typologies of arms) are subject to permit from the Ministry of the Interior. The possession, production, and transfer of SALW is governed by the 1966 law, which has not been reviewed in recent times and does not necessarily offer enough stringent controls to guard against illicit proliferation of arms.<sup>59</sup> The government has proposed among other things to:

- reinforce the regulation on arms transfer and encourage a more transparent trade in arms;
- fight against criminality and banditry;
- consolidate peace through disarmament, demobilisation and reintegration (DDR) programmes;
- ensure international co-operation between producer states and consumer states (demand/supply); and

<sup>58</sup> Vanguard, *Newspaper in Nigeria*, 12 October 2001, p 3.

<sup>59</sup> C Agboton-Johnson, *Mimeo on Arms and Criminality in Senegal*, 2003

- put into place collective regional and national programmes for the destruction of surplus weapons.<sup>60</sup>

In South Africa the new legal controls on civilian possession, use, export and brokering of weapons are contained in the new Firearms Strategy (2001/2002), which is aimed at eradicating the proliferation of firearms for use in crime and violence and confirms a total ban on anti-personnel landmines. The government has also held discussions with all the firearms manufacturers in South Africa with a view to standardising the marking of firearms. South Africa has two pieces of legislation that deal with brokering. The new Firearms Control Act, while prioritising tighter controls on the domestic possession of firearms, does not deal with brokering. Instead brokering is covered by the National Conventional Arms Control Act, 2002 (No 41 of 2002), which regulates the transfer and transit of weapons across state borders and the Regulation of Foreign Military Assistance Act (No 15 of 1998), which regulates military assistance by South Africans to other countries or persons in other states. Both were largely inspired by the past activities of South African citizens and South African private military companies on the African continent, often, although not always, with the tacit support of the previous (apartheid) state.<sup>61</sup>

Key to understanding the legislative framework that reflects South Africa's current policy on landmines is the Anti-Personnel Mines Prohibition Act. In terms of section 231(4) of the South African Constitution, an international agreement needs to be enacted into law through national legislation. South Africa has reported to the United Nations since 1999 that it is in the process of developing such enabling legislation. After a protracted process, the Anti-Personnel Mines Prohibition Act was approved by both Houses of Parliament in 2003 and was gazetted into law on 5 December 2003.

60 This Programme was contained in the statement read at the UN Conference on Illicit Trade in Small Arms in July 2001 by Mr Alioune Diagne, the Head of Senegal Delegation to the UN Conference.

61 For case studies of South African involvement in illegal brokering activities, see M Shaw, The middlemen: War supply networks in Sierra Leone and Angola, Netherlands Institute of International Relations "Clingendaal" Conflict Research Unit, *Working Paper No 10*, March 2003.

The key objectives of the Act are to:

- prohibit the use, stockpiling, production and transfer of anti-personnel mines within South Africa;
- address transgressions by South African citizens, permanent residents and juristic persons incorporated into or registered in the Republic outside the borders of the Republic;
- empower the Minister to exempt certain persons from the prohibition, for example for retaining or transferring mines for training or the development of techniques relating to mine-detection, mine-clearance and mine-destruction;
- enable the SADF to participate in operations, exercises or other military activities with the armed forces of a state that is not a party to the Convention, as long as it is not in contravention of the Convention or its involvement amounts to assistance in any activity prohibited by the Convention; and
- compel the Minister of Defence to report on South Africa's compliance to Parliament and, via the Minister of Foreign Affairs, to the Secretary-General of the United Nations.

A person found guilty of an offence under the Act is liable for a fine or imprisonment for a period not exceeding 25 years, or to both a fine and imprisonment. Any juristic person (company) that contravenes the Act can be fined up to R1 million.

Uganda has several domestic laws that regulate the acquisition and use of SALW. These include: the Explosives Act 1936 [Cap 298]; the Firearms Act (1970) [Cap 299], the National Resistance Army statute (NRA) 1992, and the Uganda Police Act 1994 [Cap 303], among others. The Firearms Act of 1970 is the most comprehensive piece of domestic legislation that aims at regulating the acquisition and use of firearms in Uganda. It also covers the areas of import and export of arms to and from Uganda. The Act explicitly spells out the kinds of firearms private individuals can own and how they can register and license them. However, there are no provisions dealing with marking and tracing weapons. The malaise which all these legislations suffer from is that they are out-dated. They need to be revised. According to Nabudere, "all these laws need to be

revised, especially the Firearms Act (1970), in order to reflect current realities and to incorporate the new international initiatives.”<sup>62</sup> The most glaring inadequacy in the law, which must be addressed as a matter of urgency according to Nabudere, is the fact that “it must cover arms transfers between governments.”<sup>63</sup>

Table 2: Summary of legal frameworks and administrative procedures

Country	Manu- facture	Possess- ion	Stock- piling	Trade	Brokering	E, I & Tt	Reviewing
Ethiopia	Yes	Yes	No	Yes	No	Yes	Yes
Ghana	Yes	Yes	No	Yes	No	Yes	Yes
Kenya	Yes	Yes	No	Yes	No	Yes	No
Nigeria	Yes	Yes	No	Yes	No	Yes	Yes
Senegal	Yes	Yes	No	Yes	No	Yes	No
South Africa	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Uganda	Yes	Yes	No	Yes	No	Yes	No

Key: E: Export, I: Import, Tt: Transit

The key institutional and legal arrangements dealing with SALW in the selected countries are similar and were there long before the Bamako Declaration and other regional instruments on small arms. They are in fact the traditional security- and justice-related institutions. These include the disciplined forces: the police and the military and the justice systems. The Ministry of Justice and the Attorney-General’s Office function as the institution that draws up the laws and regulations that control and manage SALW in all aspects. It emerged that within these institutions there are no specific individuals who deal with the problem of SALW, with the exception of the officers in the police department whose function is to register and keep track of firearms in civilian hands. In some countries such as Ghana, the Attorney-General and Justice Department have a few people in the Legal Drafting Department who have specialised in certain aspects of arms and ammunition. The Criminal Investigation Department (CID) also has a

62 Interview with Richard Nabudere, Co-ordinator Uganda NFP, 18 November 2003.

63 Interview with Richard Nabudere, Co-ordinator Uganda NFP, 18 November 2003.

**SALW are still viewed as the preserve of security organs, a focus that partly accounts for the proliferation and misuse of small arms on the continent.**

ballistics division that deals with SALW and has senior officers dedicated to SALW issues. In all seven countries, the location of the co-ordinating agencies and the composition of their membership confirms the view that issues of SALW are still viewed as the preserve of security organs, a focus that partly accounts for the proliferation and misuse of small arms on the continent, though the state's central role in control and management efforts should not, of course, be played down.