

IANSA briefing paper
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The Africa Region: Complementarities in Small Arms and Light Weapons Control Instruments



IANSA members from African organisations delivering statements on behalf of civil society during the Eighth Biennial Meeting of States on the UN Programme of Action (BMS8). [June 2022]

Introduction

2001 was a significant year in terms of states collectively agreeing on the need for more cohesive international small arms and light weapons (SALW) controls. The United Nations *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* (Firearms Protocol)¹, as well as the *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (Programme of Action or PoA)² were adopted in 2001.

Concurrently, at the regional level, the member states of the Southern African Development Community adopted the *Protocol on the Control of Firearms, Ammunition, and other Related Materials* (the SADC Firearms Protocol)³. Five years later, in 2006 the member states of the Economic Community of West African States (ECOWAS) adopted its *Convention on Small Arms and Light Weapons, their ammunition and other related materials* (the ECOWAS Convention)⁴. In 2013, the UN General Assembly adopted the text of the *Arms Trade Treaty* (ATT) which provides the 113 states parties (to date) with an overarching normative framework for the international trade in conventional arms.⁵

In July 2022, the participating states at the Biennial Meeting of States to consider the implementation of the PoA (BMS8) agreed to “take into account, where applicable, complementarities between the Programme of Action and the International Tracing Instrument and other relevant instruments to which a State is a Party...” and to “maximize complementarities” at all levels to enhance effectiveness.⁶

The purpose of this briefing paper is to look at these various instruments and highlight some of the shared issues within them to assist states in implementing the relevant provisions at the national level. In particular, after providing a brief overview of the instruments, this paper will focus on the subject matter of each instrument, import requirements and criminal offences. It concludes with some recommendations on policy and legislative choices that states can consider for application at the national level.

Brief overview of the instruments

The 2001 Firearms Protocol is a protocol that accompanies the United Nations Convention against Transnational Organized Crime (UNTOC). The Firearms Protocol is focused on stopping the criminal activities of illicit manufacturing and trafficking. This crime prevention and criminal justice approach supports the broader aims of the UNTOC.

The 2001 PoA is a voluntary framework that sets out measures to be undertaken at the national, regional and global levels. While the PoA is not a legally binding treaty, it is very much a live instrument. Virtually the entire membership of the UN has agreed to participate in its measures, and the PoA is subject to regular reviews at biennial meetings in New York.

¹ Available [here](#).

² Available [here](#).

³ Available [here](#).

⁴ Available [here](#). A detailed comparison of the ECOWAS Convention to other international agreements is available [here](#).

⁵ Available [here](#).

⁶ Available [here](#).

The same year as the agreement on the Firearms Protocol and the PoA, the fourteen member states of the SADC region agreed to the SADC Firearms Protocol. While this Protocol contains many of the same obligations as the Firearms Protocol, the control over the possession of firearms by civilians, and public education and awareness around firearms ownership is also covered.⁷

In the 2006, in addition to a range of control measures, ECOWAS Convention member states agreed to ban the transfer of small arms and light weapons into, from or through their territory with the exception of transfers for legitimate security needs. They are also to ban, without exception, transfers to non-state actors that are not explicitly authorised by the importing member state.

The latest international legal instrument relevant for the control of SALW is the Arms Trade Treaty (ATT), which was agreed upon in 2013, entered into force in 2014 and now has 113 state parties.⁸ It aims to improve the effectiveness of national controls on the 'transfer' – meaning the export, import, transit, transshipment and brokering – of conventional arms including SALW and their ammunition in a more concerted manner. The objective of the transfer controls is to stop arms from reaching those who would misuse them to, *inter alia*, undermine peace and security, violate international human rights and humanitarian law, or divert them into the illicit market or for unauthorized end use.

To achieve this objective, the ATT sets out criteria to determine when the potential consequence of an export would pose an overriding risk. It also lists the circumstances for when a transfer of the items included within the scope of the Treaty (including SALW) must be prohibited, for example if the transfer would violate UN sanctions or if the state knows the arms would be used for international atrocity crimes. The ATT is also the first global treaty on arms control to expressly require state parties to consider the risk of arms exports "being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children."

Scope of the items covered by the instruments

The first issue to discuss regarding these various instruments is the subject matter that is being regulated. In this regard, there are both complementarities and divergences. The instruments distinguish between firearms and small arms and light weapons. Understanding what the subject matter is for each of the instruments is important as it will lead to different approaches in application at the national level.

Virtually all states have obligations that pertain to small arms and light weapons through their participation in the PoA or under a regional instrument such as the ECOWAS Convention. States that are party to the Firearms Protocol have obligations that pertain solely to firearms, plus their parts, components and ammunition, whereas states parties to the ATT are obligated to regulate all conventional arms, including SALW, and their parts, components and ammunition. Applying these instruments at the national level in a way that meets these varying obligations can be challenging. However, all the instruments reviewed in this brief address firearms. They also provide lists of items that would be considered either small arms or light weapons. This can assist states in distinguishing what subject matter should be in an Act addressing firearms and what should be in an Act addressing

⁷ In August 2020, the governments of all SADC member states renewed their commitment to controlling firearms by approving the amended SADC Firearms Protocol. However, for the drafting of this brief it was not possible to find a publicly available copy of the amendments.

⁸ In addition to the 113 states that have become parties to the ATT, another 28 states have become signatories signalling their intent to support the aims and objectives of the treaty. See [here](#).

conventional arms more broadly.

In the Firearms Protocol, the key components of the definition of a firearm are:

- It is portable;
- It is designed to expel a bullet. This means that if a firearm is damaged or broken and unable to expel a bullet it should still be considered a firearm because it was designed to do so;
- It can be converted to expel a bullet. This means, for example, an air weapon that can be converted to expel a bullet should be considered a firearm.

The PoA refers to “small arms and light weapons” but does not provide a definition. However, the International Tracing Instrument which was agreed under the auspices of the PoA defines “small arms and light weapons” in a manner nearly identical to the Firearms Protocol. The ATT also recommends that states follow this definition as a minimum.

The ECOWAS Convention includes definitions for “small arms” and “light weapons”, distinguishing “small arms” as “arms used by one person” and “light weapons” as “portable arms designed to be used by several persons working together in a team”. For the purposes of the Convention, it is stated that SALW also includes ammunition and other related materials. This is a broad definition that could create challenges for application.

The SADC Protocol has a definition for “firearm” which to some degree reflects the definition in the Firearms Protocol but it also includes “small arms and light weapons” within that definition. Further, the SADC Protocol provides useful guidance in that it states that legislation should be clear that civilians are not to possess light weapons of any form (Article 4). Any Firearms Act, in addition to address the import, export and transit of firearms, will focus largely on the possession of firearms by civilians. Having legislation that clearly sets out what types of firearms are allowed for civilian possession and which ones are prohibited can greatly enhance the effectiveness and clarity of the law.

Firearms Protocol	Article 3(a) of the Protocol defines firearms as: “any portable barreled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas”.
PoA	PoA contains no definitions but its subject matter is SALW. ITI defines “ small arms and light weapons ” as: “any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive.”
Arms Trade Treaty	Article 5(3) of the ATT requires that for the national regulation of SALW: “...national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.”

ECOWAS Convention	“small arms”: Arms used by one person and which include notably: • 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 landmine; • revolvers and pistols with automatic loading; • rifles and carbines; • machine guns; • assault rifles; • light machine guns. “light weapons”: Portable arms designed to be used by several persons working together in a team and which include notably: • 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 and light weapons”: In this Convention, this shall be deemed to include ammunition and other related materials.
SADC Protocol	“firearm” means: (a) any portable lethal weapon that expels, or is designed to expel, a shot, bullet, or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorisation in the respective State Parties; (b) any device which may be readily converted into a weapon referred to in paragraph (a); (c) any Small Arm as defined in this article; or (d) any Light Weapon as defined in this article.

Import requirements

Under all international and regional agreements on firearms and/or SALW controls, including the ATT, states parties are required to establish or maintain an effective system of export and import licensing or authorization and international transit for the transfer of firearms/SALW, their parts and components and ammunition. The Firearms Protocol sets the international standard for the minimum requirements for imports. This includes requiring that the importing state has issued the appropriate authorisations prior to permitting an export to occur. Furthermore, the Firearms Protocol sets out the information that must be included in import documentation including the markings applied to the firearms, the place and date of issuance of the licence, the countries of import and export, the final recipient, the description and quantity of the firearms, their parts, components, and ammunition to be transferred under the licence and, where applicable, the country of transit.

The SADC Protocol emphasises the standardisation of practices in the SADC region with respect to many aspects of firearm controls. However, it is very vague as to what those standards should be. With respect to imports, states parties are to coordinate their procedures relating to imports.

The ECOWAS Convention regulates imports in a completely different way. Article 3 (1) of the Convention contains a general prohibition of the transfers of SALW and their manufacturing materials into national territory of the Member States or from/through their national territory. Member States can request an exemption from the general ban if the transfer would meet legitimate national defence and security needs (such as to maintain public order or the SALW are to be used in peace support operations). This import authorisation procedure creates responsibilities both at the national and regional level. At the national level, the Member States have the obligation to create the regulatory system for import licensing (as well as exports and transit). However, the importing State cannot decide independently whether a SALW transfer authorisation will be granted. A regional exemption procedure was also being completed (detailed in Articles 5 and 6 of the ECOWAS Convention). An exemption certificate will only be granted if all the Member States to the ECOWAS Convention decide by consensus to grant the authorisation or, if the consensus cannot be reached, the ECOWAS Mediation and Security Council shall grant the authorisation.

Firearms Protocol	• Each State Party shall establish or maintain an effective system of export and import licensing or authorization [...] • Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify: a. That the importing States have issued import licences or authorizations; [...] • The export and import licence shall contain information that, at a minimum, shall include: a. the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit (Art. 10)
	No specific import requirements.
Arms Trade Treaty	• Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation. • Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems. • Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of destination.

ECOWAS Convention	• Members States shall ban the transfer of SALW and their manufacturing materials into their national territory or from/through their national territory (Art. 3). • Member States shall ban, without exception, transfers of SALW to Non-State Actors that are not explicitly authorised by the importing Member (Art. 3). • A Member State can request exemption from the provisions of Article 3(b) in order to meet legitimate national defence and security needs [...] (Art. 4).
SADC Protocol	• States are to coordinate the procedures “for the import, export and transit of firearm shipments”.

Offences

Regardless of which international or regional instruments a state is party to, the offences of illicit manufacturing and trafficking in firearms or SALW should be criminalised. The instruments examined in this brief take varying approaches to offences. However, other than the ECOWAS Convention, all the instruments recognise the need to criminalise these activities. Here, the Firearms Protocol provides the most detail as to what activities would constitute illicit manufacturing or trafficking and provides useful guidance to states to ensure that their offences are complete in national law.

States that are party to the ECOWAS or SADC Conventions that are looking to reinforce or strengthening the criminal offences relating to illicit trafficking and illicit manufacturing can look to the Firearms Protocol for guidance on the different elements of these offences that should be included in national law.

Article 5 of the Firearms Protocol establishes a series of offences relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. Generally, these are intended to ensure that States parties establish a legal framework within which legitimate manufacturing and transfer of firearms can be conducted and which allows illicit transactions to be identified to facilitate the prosecution and punishment of offenders. The Firearms Protocol also requires that state parties criminalise the falsifying or removing or altering markings of a firearm.

As so many of the activities set out in the PoA are meant to prevent illicit manufacturing and trafficking, states are to “establish as criminal offences the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction.” The ATT leaves it open to states parties to establish the appropriate enforcement measures.

The SADC Convention requires state parties to enact legislation that contains offences to address the illicit manufacturing, trafficking, possession, use and excessive and destabilising accumulation that should be established. It does not specifically require state parties to incorporate the offences of illicit manufacturing and illicit trafficking, those these two offences are defined in the Convention.

Under the ECOWAS Convention, Member States are to establish as a criminal offence the illicit brokering of small arms and light weapons. Also, the Convention requires that states introduce minimum penal sanctions for the illicit possession and use of small arms and light weapons and the carrying of unlicensed small arms.

Firearms Protocol	- Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conduct, when committed intentionally - Illicit manufacturing of firearms, their parts and components and ammunition; - Illicit trafficking in firearms, their parts and components and ammunition; - Falsifying or illicitly obliterating, removing or altering the marking (Art. 5). Illicit manufacturing is: - the manufacture or assembly without a licence or authorization from a competent authority; or - the manufacturing or assembling from illicitly trafficked parts and components; or - the manufacture or assembly of firearms that are not marked at the time of manufacturing. Illicit trafficking is: - any transnational transfer without legal authorization; or - any transnational transfer if firearms are not marked.
PoA	To adopt [...] the necessary legislative or other measures to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction, in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes (Part II, para. 3).
Arms Trade Treaty	Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty. (Art. 14)
ECOWAS Convention	Member States shall adopt such legislative and other measures to punish and establish as a criminal offence the illicit brokering of small arms and light weapons (Art. 20(4))
SADC Protocol	State Parties shall enact the necessary legislation and take other measures to establish as criminal offences under their national law to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use (Art. 5(1)).

Recommendations

1. **One of the key ways for states to effectively incorporate the obligations contained in the international instruments is to ensure that national legislation has clear definitions.** It is recommended that definitions in national legislation should be reviewed to both ensure consistency with the international instruments and to update terms. In particular, legislative definitions of the primary term of “firearms” should be reviewed. Countries that have outdated definitions, particularly with respect to “firearms” should consider amendments that reflect more contemporary standards such as the one set out in the Firearms Protocol. Countries that do not have sufficient definitions to enable a comprehensive application of the legislation should also consider adding more definitions for particularly relevant terms in relation to firearm controls. This includes, for example, definitions for the offences of illicit manufacturing and illicit trafficking. The international instruments addressed in this brief can provide useful guidance. In particular, the definitions set out in the Firearms Protocol provide a useful basis to all countries, regardless of whether they are party to the Protocol or not.

While some countries have obligations under the ATT and under their regional instruments to control SALW and their parts, components and ammunition (for example, those countries that are party to the ECOWAS Convention), national legislation should distinguish between the obligations relating to light weapons and those specifically related to small arms and firearms. Legislation should set out clear definitions of what types of firearms are suitable for civilian possession, manufacturing, transit and for activities undertaken by dealers, brokers and gunsmiths. It should also very clearly state what types of SALW and their ammunition are prohibited.

2. **All states import firearms and SALW. Importing states want to control what types of firearms and SALW enter into their territories and who receives and uses them.** At a minimum, all national legislation should prohibit the import of firearms and SALW, including their parts, components and ammunition, without a licence and then clearly set out the procedures to be followed to apply for such a licence, indicating who has the authority to receive applications and decide if the licencing requirements have been met. It should be clear what firearms and SALW can be imported and who can import them.

It is good practice that an application for a licence or permit to import firearms, their parts, components and ammunition is prescribed in a manner that provides sufficient detail for the licencing authority to make a decision. The application should contain, at a minimum, the following information:

- name of importer, address, and telephone number (and registration number if registration as an importer is required)
- the country from which the article(s) is to be imported;
- the name, address and telephone number of the foreign seller and exporter of the firearms and/or parts and components, and/or ammunition including name, address, and telephone number;
- description of the firearms for import including (as applicable); the calibre, gauge, or size, the model, the quantity, the value of the items, and the serial numbers if known;
- as known at the time of application, the name and address of any other party to be involved in the transaction (for example, a broker).

States that are party to the Arms Trade Treaty and the ECOWAS Convention will need to adapt their national laws to comply with the unique approaches to importing under the Treaty and the Convention. Both the importing and exporting states concerned in a transfer should require information on the specific purpose of importation and the name and address of the final recipient. In the case of the ECOWAS Convention such information is required to enable review by the Member States to see if the exemption provision is applicable.

3. **All of the international instruments reviewed in this briefing paper require some level of criminalisation of certain conducts, in particular illicit trafficking and illicit manufacturing.** While many states will have considered how to address trafficking that occurs within their state (often through illegal possession offences), some states have not criminalised the transnational element of trafficking. The Firearms Protocol provides guidance on what elements should be included to fully capture the activities in this offence. Illicit manufacturing is also an important offence because manufacturing can capture a range of activities such as craft production of firearms, assembling of firearm parts, and the conversion of items into firearms. Again, the Firearms Protocol provides useful guidance in this regard as do the definitions of illicit manufacturing as contained in the ECOWAS Convention and SADC Protocol.

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