

**IMPLEMENTING PRACTICAL DISARMAMENT MEASURES IN WEST
AFRICA: TECHNICAL SUPPORT TO THE ECOWAS SMALL ARMS UNIT
AND TO ECOSAP**

GUIDE FOR THE HARMONIZATION OF NATIONAL SALW LEGISLATIONS IN WEST AFRICA

**A Project executed for the ECOWAS Commission by United Nations
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LIST OF ACRONYMS

SALW:	<i>Small Arms and Light Weapons</i>
BMS:	<i>Biennial Meeting of States</i>
UNODA:	<i>United Nations Office for Disarmament Affairs</i>
CASA:	<i>Coordinating Action on Small Arms</i>
ECOWAS:	<i>Economic Community of West African States</i>
ICRC:	<i>International Committee of the Red Cross</i>
GGE:	<i>United Nations Group of Governmental Experts</i>
ISACS:	<i>International Small Arms Control Standards</i>
ITI:	<i>International Instrument to Enable States to Identify and Trace in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons</i>
UNO:	<i>United Nations Organization</i>
OSCE:	<i>Organisation for Security and cooperation in Europe</i>
FAP:	<i>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</i>
UNPoA:	<i>United Nations Programme of action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects</i>
UNREC:	<i>United Nations Regional Centre for Peace and Disarmament in Africa</i>

INTRODUCTION

Foundations of the Guide

The ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materails was adopted by ECOWAS Member States on 14 June 2006 and entered into force on 29 September 2009. The adoption of this Convention was the culmination of a process for the conversion into a legally binding instrument of the 31 October 1998 Declaration of the Moratorium which laid down the principles of prohibition of import, export and manufacture of light weapons within the ECOWAS and the 10 December 1999 Code of Conduct organizing the implementation of the Moratorium through supporting administrative, operational and institutional arrangements.

The application of this Convention requires States Parties to review and harmonize national legislation on small arms and light weapons as prescribed in Article 21, paragraph 1:

"Member states undertake to revise and update national legislation to ensure that the provisions of this Convention are minimum standards for small arms and light weapons control and their ammunition as well as other related materials."

The harmonization of national legislation is indispensable given that the Convention adopted key concepts and common mechanisms which need to be incorporated into national legislation for a harmonized implementation. Harmonization is even compulsory as ECOWAS zone is marked by great diversity of legal traditions, culture and languages. Also, existing national legislations often contain provisions that are outdated in relation to current situations. This Guide has been developed in fulfillment of the relevant provisions of the Convention, particularly those provided for in Article 21, paragraph 3, which request ECOWAS Commission to « propose to Member States guidelines for harmonization of legislative provisions. »

Purpose of this Guide

The Guide is designed to assist Member States to conform their national legislation to the provisions prescribed by the Convention, while respecting diversity in national legislations and institutional choices.

It aims to enable them to have a shared understanding of common principles for the control of small arms and light weapons posed by the Convention and to use harmonized language.

The Guide is designed for institutions and officials of Member States who will carry out the harmonization of national legislation in line with the Convention; but also more broadly to those who may need to use it, including the various actors in activities related to SALW.

Methodology adopted to elaborate the Guide

The drafting of the Guide has followed a cooperative research and a multi-step working methodology consisting of:

1. Collection of national and international legal instruments

The following texts have been gathered:

- Existing national legislation on small arms and light weapons in the fifteen ECOWAS Member States;

- United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001) (UN PoA), hereinafter referred to as Programme of Action;
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (2001), hereinafter referred to as the Firearms Protocol ;
- The International Instrument to Enable States to Identify and Trace, in a timely and reliable manner small arms and light weapons (2005), hereinafter referred to as the International Tracing Instrument;
- International standards for management and security of stockpiles as well as works done by the «UN Groups of Governmental Experts» on the problem of ammunition and explosives, brokering and SALW, hereinafter referred GGE on brokering, GGE on ammunition, GGE on SALW.

2. Review and analysis of texts collected

National legislation provisions were analyzed against those of the Convention and the Convention was discussed in comparison with international instruments. The comparative analysis of national legislation has highlighted the complexity of the task of harmonization: ECOWAS Member States have varying linguistic, cultural and legal traditions. They have three distinct official languages: English (The Gambia, Ghana, Liberia, Nigeria and Sierra Leone), French (Benin, Burkina Faso, Côte d'Ivoire, Guinea, Mali, Niger, Senegal and Togo) and Portuguese (Cape Verde and Guinea Bissau). Legal concepts and nomenclatures as well as the institutional organization are reflective of the Romano-Germanic or civil law tradition such as adopted by the French-speaking Member States, and to a large extent by the Portuguese-speaking States, or the Common Law practice of the English-speaking countries.

3. Identification of areas for harmonization and drafting of recommendations for harmonization

- Seven areas were identified for harmonization based on operational issues relating to SALW control as covered by the Convention, including: Definitions, Transfers, Manufacture, Transparency and information exchange, Operational Mechanisms, Institutional Arrangements and Sanctions;
- The different categories of provisions that go into each area of harmonization have recommendations focused on the various functional aspects of controlling activities relating to small arms and light weapons. Each proposed recommendation for harmonization is accompanied by a discussion on the implementation requirements in the section under analysis and comments;
- Concerning the provisions of the Convention, a distinction was made between those falling under the domestic jurisdiction of Member States and which could be incorporated into legislative and administrative or other measures on

the one hand, and those under the regional jurisdiction of the ECOWAS Commission, which are not supposed to be reflected in a national legislation, on the other hand. The Guide therefore covers only issues under the domestic jurisdiction of States, either totally or partially, in cases where the regional jurisdiction of the ECOWAS Commission and the domestic jurisdiction of States may both deal with an issue. In such a case, it is necessary to make a distinction between the respective jurisdictions and responsibilities when making recommendations for harmonization. As an example, on the issue of transfers, prohibition and conditions for exemption, as well as requests for exemption submitted by Member States, are under the domestic jurisdiction of the interested States and are thus covered with a recommendation for harmonization of national legislations. However, there is no recommendation concerning the provisions in respect of processing of requests by the ECOWAS Commission and, particularly, in respect of the application of cases of refusal of exemption set forth in Article 6 of the Convention;

- Recommendations for harmonization were made for legislative and other measures, such as administrative measures, by which States themselves have to assess the types or nature of the concrete measures to be taken;
- The expression “small arms and light weapons” (SALW) is used as a generic term, which covers, except otherwise provided, ammunition and other related materials;
- The Guide focuses on the provisions of the Convention, and also takes into account relevant contributions from international instruments in its analysis and comments.

4. Holding of independent experts meetings

Two meetings of experts were held to discuss the first and second drafts of the Guide submitted by UNREC. The first meeting, with normative orientation, brought together experts mainly international legal and practical disarmament practitioners. The second one focused on the operationalization and brought together experts from the sub-region and composed of actors of implementation at national and sub-regional levels: parliamentarians, members of National Commissions on SALW, academics and officials from ministries of foreign affairs, of justice, of security and defense. Observations and comments from these two meetings strengthened both the orientation and the technical content of the present Guide.

Finalized by UNREC, the Guide was transmitted to the ECOWAS Commission for further review and adoption through its relevant organs, including the Law Commission and the Council of Ministers of ECOWAS.

Framework of the development of the Guide

The Guide for the Harmonization of National SALW Legislations in West Africa is an output of the Project on Implementing Practical Disarmament Measures in West Africa: Technical Support to the ECOWAS Small Arms Unit and ECOSAP, executed by the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC) with the financial support of the Austrian Government. The project aimed at providing technical support to the ECOWAS

Small Arms Unit and the ECOWAS Small Arms Control Programme for the implementation of the ECOWAS Convention on Small Arms.

UNREC is part of and is representing the United Nations Office for Disarmament Affairs (UNODA) in Africa. UNREC coordinates on the continent all UN activities on small arms including the implementation of the United Nations Programme of Action on Small Arms (PoA). In July 2008 at the Third Biennial Meeting of States (BMS3) to examine the implementation of the PoA, States identified the need to update and harmonize national legislations on SALW as a priority, with particular emphasis on a regional approach¹. It was against this backdrop that UNREC provided technical assistance to the ECOWAS Commission in developing this Guide.

¹ A/CONF.192/BMS/2008/3.

First area of harmonization

DEFINITIONS

I. DEFENITIONS

1.1 Contents Analysis and Comments on the Definitions

The meanings of the key concepts in the Convention are defined, in order to help Member States and other users to share a common understanding of those concepts and to use a harmonized terminology.

The definitions adopted by the Convention were drawn from the definitions established by the United Nations Group of Governmental Experts on Small Arms in 1997 and by the International Tracing Instrument, of 2005, as well as the 2001 Firearms Protocol. Other works of experts of the United Nations, such as those of the United Nations Group of Governmental Experts to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, and the United Nations Group of Governmental Experts to consider further steps to enhance cooperation with regard to the issue of conventional ammunition stockpiles were also taken into account.

1.1.1 Small Arms and Light Weapons

There is a gap between the system of nomenclature adopted by the Convention—which defines only two categories of arms, i.e., small arms and light weapons—and the classifications indicated in national legislations. This discrepancy is explained by the fact that the Convention defines the weapons according to their nature (light weapons and small arms), whereas most of the national legislations use classifications based on the destination of the weapons and their characteristics.

Very few national legislations of ECOWAS Member States use either the terminology or the classification categories of small arms and light weapons (SALW). All of the national legislations of the Member States have inherited the terminologies and classifications of categories of arms established before independence. These legislations contain such language as “sophisticated” or “unsophisticated arms”, “weapons with unrifled barrels”, “trade weapons” (stone or piston rifle), and “compressed air weapons”. In fact, they do not give any generic definition of firearms. Legislations contain illustrations of examples of firearms. In the English tradition countries, definitions are much shorter and generic. They provide lists of firearms or include traditional arms such as compressed air rifles or pistols. They also mention offensive weapons (explosives, gases, bombs, grenades).

The objective of national legislation is not the same as that of the Convention. National legislations are focused on the distinction between weapons that can be used by civilians, and other weapons, such as weapons of war. Definitions of the various types of weapons have been established in a way that enables to submit them to different legal systems essentially based on the distinction between, on the one hand, combat weapons and materials built and used for war and, on the other hand, those weapons which are not considered to be weapons or ammunition or materials for warfare: individual weapons, defensive weapons, hunting weapons, sports shooting or funfair weapons, collectors or antique weapons, and edged weapons (knives, cutlasses or machetes).

Thus, for example, light weapons as well as small arms are included in the categories of weapons classified by most Member States as “war weapons and materials”. Weapons classified in categories such as defensive weapons, hunting and sports shooting rifles,

collectors or antique weapons and locally-manufactured firearms (rechargeable rifles, weapons with unrifled barrels, flintlock weapons) are considered small arms.

The definition of small arms in the Convention includes: explosive bombs, incendiary bombs or gas bombs, grenades, rocket launchers and mines, defined as weapons and military equipment, in national legislation.

The Convention does not regulate edged weapons (knives, cutlasses or machetes), nor locally manufactured traditional firearms such as rechargeable rifles, weapons with unrifled barrels, flintlock weapons, which are included in all ECOWAS Member States' legislations and regulated by them. Nevertheless, the Convention takes account of the peculiarities of national legislations (nomenclatures and list of weapons), particularly concerning locally manufactured weapons. The use of the expression “including particularly” before the listing of the small arms and light weapons types indicate that the list of definitions is open and not restrictive.

1.1.2 Ammunition

In the Convention, the expression “by means of firearms” means “by means of small arms and light weapons”.

National legislations include varying components classified as ammunition and in some cases, they include spare parts.

Therefore, it is necessary to replace the definitions of ammunition found in the national legislations by those established by the Convention. However, it must be noted that the Convention includes cartridges as part of ammunition.

In the 2001 United Nations Firearms Protocol, components of the cartridge include: “the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm”. It would be useful to specifically mention these elements as reference to the contents of a cartridge.

1.1.3 Other Related Materials

The concept “other related materials” as defined is generic and it includes products (chemicals and other) and parts (spare and replacement) necessary for operating SALW and other products (chemical substance). This definition does not include a comprehensive list of these materials. The expression “any chemical substance serving as active material used as propelling or explosive agent” does not specifically refer to the functioning of a weapon or ammunition. Yet it concerns highly dangerous dual-use substances. In the Convention, it covers any chemical substances necessary for the functioning of a weapon or ammunition.

As for the components and parts, the United Nations Firearms Protocol (Paragraph 3-b.) gives a list for possible consideration: “Parts and components” shall mean any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm”.

1.1.4 Marking

The marking of an arm enables its identification with a view to establishing its origin. The importance of marking is such that several international instruments include provisions relating to its contents, its processes or its recommendation (PoA, II, 7 et 8; ITI, III; GGE ammunition, VII. para.73-76).

There is however no definition of marking in the international instruments, and few existing national legislations of the ECOWAS Member States include a definition of marking. It is necessary to understand that the nature of the embossed inscriptions, which constitute the marking of a weapon, should allow for the unique identification of this weapon, as it is what justifies the definition of marking stipulated in the Convention. The content and the processes and types of marking are dealt with in detail in Article 18 of the Convention, which contains provisions for the marking of weapons, their ammunition and other related materials.

1.1.5 Tracing

In the case of tracing, a comparison of the definitions of tracing in the different international instruments reveals some differences. In the United Nations Firearms Protocol, tracing aims at monitoring the movement of the weapon from the manufacturer to the buyer. The aim of tracing in the Protocol is to control illicit trafficking. The definition of the ECOWAS Convention goes further: here, the aim is to monitor the movement of the arm from manufacturer to end-user. The International Tracing Instrument is more restricted: it does not include ammunition and is limited to the illicit nature of weapons. No national legislation has a provision on tracing.

1.1.6 Brokering

The definition provided by the Convention refers solely to brokering, as work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user. This includes the provision of financial services and the transportation of small arms and light weapons. The term broker is not defined or employed. Conversely, Article 20 of the Convention on brokering aims at controlling brokers, financial agents and armament transportation agents.

As a general rule, the provisions of the Convention on brokering and the regulations on the brokering business are drawn from international instruments such as the United Nations Firearms Protocol (FP, Article 15) and the Programme of Action (PoA, II.3.) and more particularly on the definitions recommended by the Group of Governmental Experts on brokering. The Group's definitions around the concepts of "brokering" have the merit of explaining the existing links between "brokering", "broker" and "brokering-related activities".

Very few national legislations have provisions on brokering. The limited number of legislations which allude to this activity use terms such as "intermediaries" or "commercial agents".

1.1.7 Transfer

The Convention has introduced the concept of "transfers of SALW" which now includes imports and exports as well as transit, transportation, transshipment of SALW and any other movement of SALW. Therefore it leaves the definition of transfers of SALW open in order to retain the possibility of future inclusions of any new aspect of the transnational trafficking in SALW in the ECOWAS zone.

The definition given by the Convention focuses on the physical movements of SALW. It covers only international transfers, as internal transfers (individual transfers) have already been covered by other provisions. However, transfers may go beyond physical movements to include transfer of titles of ownership.

The innovative and complex character of the concept of transfer as adopted by the Convention is reflected in the provisions of Articles 3 to 6 governing the issue of transfers.

1.1.8 Non-State Actors

The Convention does not give a formal definition of the notion of Non-State Actors. The spirit of the Convention is to prohibit all transfers. Hence, the Convention gives a list of examples of Non-State Actors: mercenaries, armed militias, rebel groups, private security companies. The use of the term “includes” suggests that the list is not exhaustive.

The definition established by the Convention lays emphasis on the danger posed by transfers of weapons to individuals or groups of individuals that can be characterized as Non-State Actors. However, it is worth emphasizing that the English version of the Convention on the non-state actors - *"such as any actor other than State Actors, mercenaries, armed militia, armed rebel groups and private security companies"* - is confusing and, and obviously, does not mean the same thing as the French version: *« tous acteurs autres que les Etats et qui comprennent les mercenaires, les milices armées, les groupes armés rebelles et les compagnies privées de sécurité; »*.

1.2 Recommendations for Harmonization on the Definitions

A) Recommendations relating to legislative measures

a. States incorporate the definitions hereunder into their national legislations:

i. Small Arms and Light Weapons

“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. (Article 1, Paragraph 2)

“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. (Article 1, Paragraph 1)

The generic definitions *“small arms”*, *“light weapons”* should be integrated into the classifications of the different categories of weapons adopted by national legislations.

ii. Ammunition

“Ammunition”: Devices destined to be shot or projected through the means of firearms including among others:

- cartridges;
- projectiles and missiles for light weapons;

- mobile containers with missiles or projectiles for anti-aircraft or anti-tank;
- single action systems. (Article 1, Paragraph 3)

iii. Other Related Materials

“Other Related Materials”: All components, parts or spare parts for small arms or light weapons or ammunition necessary for its functioning; or any chemical substance serving as active material used as propelling or explosive agent. (Article 1, Paragraph 4)

iv. Marking

“Marking”: Inscriptions permitting the identification of arms covered by this Convention. (Article 1, Paragraph 6)

v. Tracing

“Tracing”: The systematic monitoring of the movements of small arms and light weapons and their ammunition and other related materials, from the manufacturer until the end user, with a view to helping Member States competent authorities to detect illicit manufacture and trading. (Article 1, Paragraph 7)

vi. Brokering

“Brokering”: Work carried out as an intermediary between any manufacturer, supplier or distributor of small arms and light weapons and any buyer or user; this includes the provision of financial support and the transportation of small arms and light weapons. (Article 1, Paragraph 8)

vii. Transfer

“Transfer”: Import, export, transit, transshipment and transport or any other movement whatsoever of small arms and light weapons, ammunition and other related materials from or through the territory of a State. (Article 1, Paragraph 9)

viii. Non-State Actors

“Non-State Actors”: Any actor other than State Actors, mercenaries, armed militias, armed rebel groups and private security companies. (Article 1, Paragraph 10)

- b.** States review definitions in their national legislation to comply with definitions in Article 1 of the Convention.

B) Recommendations relating to administrative and other measures

- No recommendation.

Second area of harmonization

TRANSFER

II. TRANSFER

2.1 Contents Analysis and Comments on Transfer

2.1.1 Prohibition of Transfer of Small Arms and Light Weapons

The spirit of the Convention is to establish the basic principle of prohibition of any transfer of small arms and light weapons. As far as the Convention is concerned, the concept of international transfer of SALW includes transactions of import, export, transit, transport, transshipment and any other movement whatsoever of small arms and light weapons, their ammunition and other related materials, on / towards and from ECOWAS countries. Transfers include transfers from State to State, from State to private entities (individuals or legal entities) and among private individuals, whether in return for remuneration or free of charge or as donations.

The Convention seems to focus on the physical movements of small arms and light weapons. However transfers may go beyond physical movements to include transfer of titles of ownership.

Transfers constitute an area of double jurisdiction: at the level of the States and the regional level. It is thus worth clarifying the responsibilities by distinguishing those of the State from those of the ECOWAS Commission.

Article 3 relating to prohibition of transfers and Article 4 relating to conditions for exemption fall under the jurisdiction of States.

Internal transfers of titles of ownership on SALW are governed by national provisions relating to individual transfers within a State and are covered by other provisions of the Convention; international transfers of ownership fall under the regional jurisdiction of the ECOWAS Commission.

Transfers of equipments used to manufacture SALW are prohibited, just as weapons, ammunition and other related materials. However, the Convention fails to define the concept of “equipment used to manufacture SALW” and this requires clarification. This issue could be discussed during one of the Review Conferences of the Convention.

Article 3, Paragraph 3 clarifies the status of SALW as against the ECOWAS Treaty, relating to the free movement of goods within the ECOWAS zone in relation, inter alia, to the customs regime.

In specifying that small arms and light weapons are not considered as “goods” in the sense of Article 45 of the revised ECOWAS Treaty, the Convention excludes SALW from the application of the provisions of the Treaty ensuring the free movement of goods across the territories of the Member States, as long as the customs duties are paid. All legislative and regulative texts on SALW transfer, customs laws included, should comply with provisions of Article 3, Paragraph 3 of the Convention.

2.1.2 Conditions of Exemption

The provisions of Article 4 of the Convention set forth the possibility of exemption to the general regime of prohibition of transfer of SALW established in the preceding Article.

Cases of exemptions admitted in Article 4, Paragraph 1 of the Convention are in accordance with the fundamental principles of international law governing individual and collective self-

defence as proclaimed by the Charter of the United Nations and included in regional and sub-regional instruments.

The Convention does not authorize requests for exemptions submitted by individuals; only States may submit such requests to the ECOWAS Commission. Requests from individuals wishing to import firearms and/or ammunition are to be submitted to the competent national authorities and they are processed to be included or not in the requests made by States. However, requests for exemptions made by individuals are restricted by the prohibition enunciated in Article 14, Paragraph 1 of the Convention which strictly prohibits detention, use and trade of light weapons by civilians and by Article 3, Paragraph 2, prohibiting the transfer of SALW, their ammunition, other related materials and equipment used for their manufacturing to Non-State Actors, including private security companies, unless otherwise agreed to by the importing State.

National legislations make no reference to the prior requirement of an ECOWAS exemption certificate, even if almost all of them have established the requirement for a licence or prior authorization from the national authorities competent for import activities. Most of them have also done so for exports, yet very few of them have imposed such restrictions on international transit and transport. Transshipments are not mentioned².

National legislations allow for distinct authorization systems/licences for weapons of war and for other imports. However, sometimes, the relevant provisions are scattered within various different texts.

A review of national legislations also reveals that (in Common Law countries) they also allow individuals to make requests for import or export of weapons falling into the category of “light weapons” as defined by the Convention, through presidential or ministerial (Prime Minister, Defence Minister or Minister responsible for security) exemptions, even though practically all legislations forbid possession, bearing and use of weapons of war by civilians.

Provisions governing national control systems of transfers of SALW in cases where an exemption is granted, as provided for by the Convention (Article 4, Paragraphs 1, 2, 3), are quite similar to the provisions of the United Nations Firearms Protocol (Article 10) concerning the transfer licences or authorization systems. Although the Protocol does not deal with transfers from State to State, it puts in place at least a fairly large number of national control systems in order to avoid the use or transfer of SALW by criminal groups. This is the actual goal of the licensing or granting of authorizations system for import, export, transit and transfer of SALW provided for by the Convention (Article 4, Paragraph 2).

In order to prevent transfers of SALW towards illicit trafficking, the Convention requests Member States to establish and maintain an effective system of export and import licensing or authorization, as well as of measures on international transit. It also requests them to take appropriate verification measures to guarantee the reliability and authenticity of licences/authorizations. In this respect, important efforts must be made to guarantee the reliability and authenticity of licences/authorizations due to the perfunctory nature of legislative instruments and the great number of institutions responsible for delivering import

² Côte d’Ivoire, Art. 234 of Act of 1998. Art. 22, 23 and 24 of Order 1999; Niger, Order of 1963 and Art. 299 of the New Penal Code; Mali, Act of 12 Nov.2004; Senegal, Act of 1966 ; The Gambia, Act of 1924, Section 19 ; Guinea Bissau, Act of 1960. Art. 15 ; Burkina Faso, Order of 2009 abrogating that of 2001 ; Nigeria, importation of all firearms is prohibited unless it has been authorized by the President of the Republic ; Ghana, Weapons and Ammunitions Act of 1962.

and export licences/authorizations whether for war weapons and ammunition or for other imports.

2.1.3 Procedures for Exemption

Article 5 of the Convention establishes criteria for obtaining the exemption certificate and their implementation requires from Member States behavioural changes calling for more rigour and training.

The ECOWAS Commission has already designed exemption request forms for use by Member States. Models of end-user certificates could also be designed for use by the public or private sector.

Institutions tasked by national legislations to screen the authorization/arms import licence procedure are normally the Ministries of Defence or National Security, which essentially adopt a security-centred approach.

The criteria established by the Convention in Article 6 as motives for the refusal of exemption are in line with most recent developments in international humanitarian law and human rights. Consequently, the assessment of these criteria in relation to a request for exemption by a State other than the requesting State submitted by the ECOWAS Commission will thus be made according to an approach based on human rights and international law norms.

It is important to formulate objective indicators for the application of the criteria stipulated in Article 6 of the Convention. To this end, ECOWAS is working in partnership with the ICRC to determine the motives for refusal of exemption, in order for States not to feel treated arbitrarily. The purpose is not to force on States the way of managing exemption requests but to establish a mechanism for institutional accountability.

Exemption requests are subject to two separate actions:

- drawing up of a file by the requesting State for its exemption request;
- reply from a Member State other than the requesting State to exemption requests introduced by other Member States and forwarded by ECOWAS Commission. Lack of reaction to a notification for exemption request is equivalent to a notice of no objection.

2.2 Recommendations for Harmonisation on Transfers

A) Recommendation relating to legislative measures

National legislations:

- a.** prohibit the transfer of small arms and light weapons and equipment for their manufacture on, towards and from their territory, except where the certificate of exemption provided for in Article 6 of the Convention has been granted (Article 3, Paragraph 1);
- b.** prohibit all transfer of small arms and light weapons to Non-State Actors, except with the consent of the importing State and subject to obtaining the certificate of exemption (Article 3, Paragraph 2);

- c. specify that small arms and light weapons are not considered as goods whose movement is free as stipulated in Article 45 of the ECOWAS Revised Treaty (Article 3, Paragraph 3);
- d. provide for the compliance with the provisions of Article 3, Paragraph 3 of the Convention, of all laws and regulations relating to small arms and light weapons transfers, custom regulations included;
- e. prescribe the appointment of the authorities responsible for the issuance and management of export, import and transit licences or authorizations and define their responsibilities;
- f. try to bring under the same heading entitled “Transfer” all the provisions relating to the import, export, transit, transshipment and any other movement of small arms and light weapons together (Article 4, Paragraph 2);
- g. provide for :
 - i. establishing and maintaining an effective system of export and import licensing or authorization, as well as of measures on international transit; and
 - ii. guaranteeing the reliability and authenticity of licences/authorizations granting procedures (Article 4, Paragraph 3).
- h. stipulate that requests for exemption shall contain information on the:
 - i. arms to be transferred (quantity, exact type and kind of arms using the ECOWAS classification system, including all serial numbers and other markings);
 - ii. supplier (name of company and representatives, address, and full contact details) of all companies and individuals involved, including brokers where relevant;
 - iii. supply process (the number and period of shipments, the routes including transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling, details of the storage and management of the weapons whilst being transferred, the period covered by the activity for which the exemption is requested);
 - iv. end-user (name of individual/company/institution and representatives responsible, confirmation from relevant national authority that the end user is authorized to import weapons); and
 - v. end-use (Article 5, Paragraph 1).
- i. stipulate that the request for export or import authorization shall contain the certificate of exemption and the end-user certificate (Article 5, Paragraph 3)

B) Recommendations relating to administrative and other measures

The competent national authorities of Member States:

- a. take appropriate measures to designate focal points responsible for establishing exemption request files at the national level and/or for replying to exemption requests submitted by other Member States and transmitted for approval by the ECOWAS commission ;

- b.** take appropriate measures to
 - i.** comply with model exemption request forms as adopted by the ECOWAS commission;
 - ii.** institute a system of evaluating requests for exemption from a State other than the requesting State and submitted for approval by the ECOWAS commission.

CONFIDENTIAL

Third area of harmonization

MANUFACTURE

III. MANUFACTURE

3.1 Contents Analysis and Comments on Manufacture of SALW

3.1.1 Control of the Manufacture of Small Arms and Light Weapons

The Convention opted for controlling local manufacture of small arms and light weapons instead of its prohibition. However, it is important to refer to international standards as SALW manufacture is concerned.

3.1.2 Measures of Control for Small Arms and Light Weapons Manufacture

The Convention provides no criterion to operate as local manufacturer of small arms and light weapons, but, in its Article 8, Paragraph 1, it specifically mentions the possibility for States to take additional measures to ensure the effective control over the manufacture of SALW on their national territory. It therefore gives the States the possibility of integrating their specificity, while still respecting the Convention.

3.2 Recommendations for harmonization on manufacture

A) Recommendations relating to legislative measures

National legislations:

- a. prescribe the principle of prior authorization from national competent authority for any SALW manufacture within their territory;
- b. prescribe measures for the control of the manufacture of small arms and light weapons on their territory and regulate the activities of local manufacturers; they particularly prescribe the establishment of an exhaustive list of local manufacturers of arms, and their recording in the national arms register, in addition to periodic review of authorizations for manufacture. (Article 7, Paragraphs 2 and 3);
- c. state that a request for manufacture of small arms and light weapons shall not be granted, where the applicant fails to provide information on:
 - i. details of the arms to be manufactured (the quantity, exact type and kind of arms using the ECOWAS classification system), including all serial numbers and other markings; and
 - ii. the procedure for marking; the procedure for entering details of each small arm and light weapon into the national small arms and light weapons register; information on the storage and management of the weapons after manufacture.(Article 8, Paragraph 1).
- d. prescribe compliance with existing standards and procedures for stockpile management, storage and security of small arms and light weapons. (Article 16, Paragraph 3);
- e. define penalties for all the criteria laid down in Articles 7 and 8 of the Convention.

B) Recommendations relating to the administrative and other measures

The competent national authorities should take the appropriate measures to:

- a.** promote dialogue with local manufacturers; and
- b.** forward data on their annual weapons production to the President of the ECOWAS Commission, specifying the types of weapons and their quantity.

CONFIDENTIAL

Fourth area of harmonization

TRANSPARENCY AND EXCHANGE OF INFORMATION

IV. TRANSPARENCY AND EXCHANGE OF INFORMATION

4.1 Contents Analysis and Comments on Transparency and Exchange of Information

The Convention emphasizes the importance of transparency and exchange of information as a crosscutting concern. Its Article 10, Paragraph 2 allows States to decide on what information to share with ECOWAS. Exchange of information between States is left to regional jurisdiction. At national level, which is only included in the Guide, the Convention calls for the strengthening of information exchange on SALW among different in-country State departments.

4.1.1 National Registers and Databases

The Convention laid emphasis on the establishment and regular updating of the national computerized and centralized registers and databases for permanently gathering and keeping all specific information on small arms and light weapons.

The United Nations Firearms Protocol (2001) and the International Tracing Instrument (2005) also stressed the importance of transparency and exchange of information in combating the illicit proliferation of small arms and light weapons.

The register may be a national register on specific data on SALW. In fact, the Convention provides for the establishment of various national registers, such as:

- the register of local manufacturers (Article 7, Paragraph 3) and the register of locally manufactured SALW (Article 8b) ;
- the register of the SALW stockpiled or commercialized by civilians (Article 14, Paragraphs 2 and 6) ;
- the register of temporary import certificates (Article 15, Paragraph 4) ;
- the register of obsolete and/or surplus weapons, of weapons seized; of unmarked weapons; and of illicitly held weapons (Article 17 Paragraph 1) ; and
- the register of brokers (Article 20, Paragraph 1).

The Convention does not explicitly provide for the establishment of special registers for transfers (imports, transit, exports, transshipments), but Article 14, paragraphs 1 and 6 deals with the registration of stockpiling and trade operations carried out by civilians.

The computerized and centralized database is a unique system which centralizes nationally, all specific information on SALW which are available. In fact, this is in compliance with the recommendations of the International Tracing Instrument³.

Existing national legislations controlling civilian arms and ammunitions have set up various kinds of registers designed to collect data on firearms and ammunition. These registers collect essentially information on arms and ammunitions stockpiled by civilians who have been allowed, by the competent authorities, to acquire, stockpile and bear firearms. They also keep data on sellers, traders, warehouses and private stores registered by the responsible authorities to trade and stockpile arms and ammunitions. These registers are sometimes kept by individuals within the same departments (such as central arms bureau). They may be

³ The International Tracing Instrument requests Member States to establish "accurate and comprehensive records for all marked small arms and light weapons within their territory [...] in order to enable their competent national authorities to trace illicit small arms and light weapons in a timely and reliable manner."

centralized and, in some cases, they may be under the control of various administrations and police services.

As for the registers on arms and ammunitions stockpiled by traders and private warehouses, they are just kept locally, by the traders. There is no centralized national register. Details of the information that should be collected by these registers vary from country to country.

However, none of the national legislation includes provisions for the establishment of a centralized computerized database which will regroup nationally, all information on SALW in the national territory, as provided by Article 9 of the Convention.

4.1.2 Prevention of and the fight against corruption

The Convention recognizes the existence, at the national level, of corruption associated with the illicit manufacturing of, trafficking in, illicit possession and use of small arms and light weapons.

Also, it requests Member States to institute appropriate and effective measures for cooperation between administrative departments concerned and law enforcement agencies to curb corruption associated with small arms and light weapons.

4.2 Recommendations for the harmonization on transparency and exchange of information

4.2.1. Recommendations for the harmonization on national databases and registers on small arms and light weapons

A) Recommendations relating to legislative measures

National legislations:

- a.** provide for the establishment of the national register stipulated by the Convention for:
 - i.** local manufacturers (Article 7, Paragraph 3) and the register of locally manufactured SALW (Article 8b);
 - ii.** small arms held and detained in a personal capacity by civilians (Article 14, Paragraph 2 and 6)
 - iii.** stockpiled or commercialized SALW by civilians (Article 14, Paragraphs 2);
 - iv.** temporary import certificates (Article 15, Paragraph 4) ;
 - v.** obsolete weapons and/or surplus weapons, seized weapons; unmarked weapons; illicitly held weapons (Article 17 Paragraph 1) ; and
 - vi.** brokers (Article 20, Paragraph 1).
- b.** provide for the establishment of a computerized and centralized database to collect, at the national level, all the information on small arms and light weapons. (Article 9, Paragraph 1);
- c.** specify that the information hereunder shall be permanently entered and kept in the national register:
 - i.** description of the product (type or model, caliber) and quantity (if it concerns a batch);
 - ii.** the content of the marking;

- iii. the names and addresses of the former and current owners and, when possible, successive owners;
- iv. the date of registration;
- v. information concerning each transaction including:
 - the name and address of the shipper, the intermediary (where applicable), the consignee and the user indicated on the end-user certificate;
 - the point of departure, transit and destination, as well as the customs references and the dates of departure, transit and delivery to the end-user;
 - the export, transit and import licence (quantities and batches corresponding to the same licence as well as the validity of the licence);
 - full details concerning the method of transport and transporter(s);
 - the controlling agency or agencies (at the point of departure, transit and entry);
 - the nature of the transaction (commercial, non-commercial, private or national, conversion, repair);
 - where applicable, the insurer and/or the financial institution intervening in the transaction.

B) Recommendations relating to administrative and other measures

- No recommendation.

4.2.2 Recommendations for harmonization on the prevention of and the fight against corruption

A) Recommendations relating to legislative measures

- No recommendation.

B) Recommendations relating to administrative and other measures

The competent national authorities of the Member States shall institute appropriate and effective measures for cooperation between administrative departments concerned and law enforcement agencies to curb corruption associated with small arms and light weapons.

Fifth area of harmonization

OPERATIONAL MECHANISM

V. OPERATIONAL MECHANISM

5.1 Control of Possession of Small Arms and Light Weapons by Civilians

5.1.1 Contents analysis and comments on the control of possession

Here, it is important to note the separate treatment of “small arms” and “light weapons”, which actually cover two different realities in the first definitions and categorizations of the Convention in Article 1, Paragraphs 1 and 2. The International Tracing Instrument emphasizes the same distinctions (ITI, II. 4a and 4b). The principle established by the Convention is clear: access to “light weapons” (stockpiling, usage and trade) is strictly forbidden for civilians (Article 14, Paragraph 1). Yet, access to “small arms” (possession, use and trade) is permitted for civilians, but it is subjected to regulations in each State Party (Article 14, Paragraph 2).

As far as civilian possession of small arms is concerned, the States Parties to the Convention have opted for a control system in the form of prior authorizations given by the competent authorities (Article 14, Paragraph 3). In this regard, States may initiate other more restrictive control measures, such as focusing in particular on the state of mental and physical health of the applicant (medical and psychological expertise) if they wish to do so, but these cannot be less stringent than the conditions imposed by the “strict control regime for civilian possession of small arms” (Article 14, Paragraph 4).

States Parties must penalize illegal possession and use of SALW, but the Convention does not impose any specific sanction (Article 14, Paragraph 7). Therefore, sanctions may vary depending on social context and national legal systems. However, the Convention requires that violations of the rules on private possession of small arms be first sanctioned by “seizing” and “revoking” authorizations and permits, then by imposing other “adequate sanctions including penalties applied” (Article 14, Paragraph 5).

An analysis of the existing national legislations of the Member States enables one to make the following observations regarding the provisions in Article 14, Paragraph 1 of the Convention. All national legislations establish a fundamental distinction between weapons and materials of war, on the one hand, and other firearms, on the other hand, to determine the legal regime governing their possession, use and trade by civilians. It is important to emphasize that the term “civilian” is used by all national legislations of the Member States and that the conditions imposed are different from those indicated in the legal regime governing weapons and ammunition possessed by defence and security forces as well as any other forces responsible for public security.

Some legislations formally exclude from their scope weapons and ammunition used by the armed forces, the police and other public forces. Whereas others stipulate that combat weapons and ammunition are reserved for armed and security forces and are prohibited for civilians. Finally, others deal with weapons in a single text, without establishing any formal distinction between civilian and military weapons.

However, despite the principle of prohibition of possession, stockpile, trade, import and export of weapons and war materials prescribed for civilians, almost all legislations of the ECOWAS Member States provide for the possibility of obtaining authorizations, especially

for trading activities. The resulting effect is that civilians can have the possibility to possess, use and trade light weapons, contrary to the strict prohibition made in Article 14, Paragraph 1 which does not provide for any exception.

As for the requirement to obtain prior authorization from the national competent authority for possession, use and trade of small arms (for civilian use), all Member States legislations establish the requirement of an authorization from the national competent authority. We note the existence of a large number of institutions competent for granting authorizations and licences, depending on the category of arms involved.

Most national legislations impose conditions for the delivery of such licences (minimum age; morality and behaviour investigations, especially investigations related to violent behaviour; absence of criminal record; legitimate reasons to possess and/or bear arms; requirement to have secure stockpiling arrangements, without always specifying the required security standards.

The requirement to have a licence for each small arm (Article 14, Paragraph 4) or limiting the number of small arms included in the licence, as well as those relating to a ‘cooling off’ period of 21 days before an authorisation is granted for a possession made in the Convention is not found in the national legislations.

Some legislation provide for a limited period of validity and the potential renewal of permits/authorizations/licences to possess, bear and trade arms and ammunition, but it is not the case for all legislations.

However, almost all Member States’ national legislations provide for administrative sanctions (suspension or revoking) and/or penal sanctions, in the cases of illegal possession, use and trade of arms and ammunition.

5.1.2 Recommendations for harmonization on control of possession of small arms and light weapons by civilians

A) Recommendations relating to legislative measures

National legislations:

- a. stipulate that the possession, use, and sale of light weapons, in all its aspects, by civilians, are formally prohibited. (Article 14, Paragraph 1);
- b. institute stringent legal frameworks for the control of possession, use and sale of small arms by civilians (Article 14, Paragraph 2) stipulating that:
 - i. the possession, use, and sale of small arms and their ammunitions by civilians, are prohibited, except under prior authorization from the competent national authority;
 - ii. authorization for possession of a small arm shall not be granted, if the applicant fails to fulfill all the conditions hereunder:
 - to be 18 years old at least;
 - applicant does not have a criminal record and has been subject to a morality investigation;
 - proof of a legitimate reasons to possess, carry or use for each small arm;
 - proof that the prospective owner has undergone safety training and competency training including training in the relevant laws regarding small arms;
 - proof that the weapon will be stored in a safe place and separately from its ammunition. (Article 14, Paragraph 4).

- c. call for penal and administrative sanctions for offences relating to small arms and light weapons, such as in particular, their illegal possession and use. (Article 14, Paragraph 7);
- d. adopt, in countries where it does not exist, regulations requiring stringent conditions for access, bearing and use of SALW held and used by security forces;
- e. stipulate that:
 - i. licences/authorizations for possession of small arms are subject to a limited validity period and to renewal;
 - ii. each authorization is issued for a limited number of small arms and each arm possessed by a civilian is subject to a licence;
 - iii. a “cooling off” period of 21 days is met before an authorization is granted for the possession of each weapon. (Article 14, Paragraph 5)

B) Recommendations relating to administrative and other measures

Countries where access, bearing and use of SALW held and used by the security forces are regulated, competent national authorities shall take appropriate measures to ensure strict compliance with regulations.

5.2 Visitors' Certificates

5.2.1 Contents analysis and comments

This provision regulates temporary imports. These temporary imports, especially for tourist hunters, exist in most legislations, but the conditions imposed are generally less strict than the provisions in Article 15 of the Convention. The principle of the prohibition of transfers found in the Convention reinforces the necessity of a strict regulation. Hence the need for visitors' certificates according to the standards imposed by Article 15 of the Convention.

In this area, the national jurisdiction of the Member States and the regional jurisdiction of the ECOWAS Commission shall come to bear. Any visitor who possesses one or more small arm(s) must first request and obtain from the competent State authorities a “temporary import certificate” for his/her weapon(s). However, Article 15, Paragraph 2 of the Convention stipulates that it is the ECOWAS Commission that shall define the appropriate procedure and communicate same to the competent authority.

5.2.2 Recommendations for harmonization on the visitor's certificates

A) Recommendations relating to legislative measures

- No recommendation

B) Recommendations relating to administrative and other measures

The competent national authority of member States shall take measures to:

- a. appoint the competent national institution with the mandate to receive requests for the temporary import of small arms on the national territory and to issue visitors' certificates as well as exit declaration (Article 15, Paragraph 1);

- b. implement the procedures established by the ECOWAS Commission in respect of visitor's certificates. (Article 15, Paragraph 2); and
- c. register the temporary importation certificates in the national arms register.

5.3 Management and Security of Stockpiles

5.3.1 Contents analysis and comments

The spirit of Article 16, Paragraph 1 reflects the search for a higher standard of effectiveness and security of stockpiles of SALW and of management of national stockpiles. However, specific details of the implementation may be different from one Member State to the other, since it is incumbent upon the States to take the “necessary measures”. They are responsible for determining “the effective standards and procedures.”

The States are responsible for defining the effective standards and procedures geared at, at least, three essential aspects of SALW stockpiles, i.e., their management, their storage and their security (Article 16, Paragraph 2). The need for regular inspections of the stockpiles of SALW, especially those which belong to manufacturers, assembly units, dealers and other individuals must be determined at that level (Article 16, Paragraph 3).

It should be noted that the stockpiles of SALW “held by their armed and security forces and other authorized bodies” must also be submitted to regular controls (Article 16, Paragraph 4).

It should also be noted that the destruction of obsolete or surplus SALW is an integral part of stockpiles management. In this regard, the inspection of stocks of regular forces is also intended to detect surpluses and obsolete stocks, in order to destroy them (Article 16, Paragraph 4).

Many national legislations are lacking in the area of stockpile management and security. Some laws do not contain any provision on SALW stockpile management and security. Even where national legislations provide for regular control of arms and ammunitions stockpiles and other related materials of the armed forces, they seldom identify surplus or obsolete weapons. National legislations make no provision for training of the staff that manages weapons stockpiles.

When they develop or revise “effective standards and procedures” regarding the various components of the management of stockpiles of SALW, States can, for example, make use of the International Small Arms Control Standards (ISACS) being developed by the United Nations in the area of SALW⁴, namely such as:

05.20 – weapons stockpile management

05.21 – ammunitions stockpile management

⁴ These are the ISACS drafted under CASA (Coordinating Action on Small Arms). Indeed, these standards take into account the storage capacity of depots on the basis of three criteria: 1. Depots must contain important quantities; 2. the buildings must allow for the discrimination between stocks and to separate chemically incompatible ammunition from each other; 3. the buildings must be designed so as to afford the highest degree of protection, including against fire.

- 05.30 – record-keeping
- 05.50 – destruction of weapons
- 05.51 – destruction of ammunitions

They may also make use of the OSCE Handbook of Best Practices on Conventional Ammunition.

5.3.2 Recommendations for harmonization on stockpiles management and security

A) Recommendations relating to legislative measures

National legislations:

- a. establish effective standards and procedures for stockpile management, storage and security, as well as the registration and inventory of national small arms and light weapons stockpiles in the possession of the armed and security forces and other authorized national bodies. (Article 16, Paragraph 1);
- b. prescribe regular inspection of storage installations and conditions of small arms and light weapons stockpiles in the possession of the armed and security forces and other authorized national bodies with a view to identifying and destroying obsolete and/or surplus weapons. (Article 16, Paragraph 4);
- c. recommend sanctions in the event of loss or theft. (Article 16, Paragraph 2);
- d. prescribe compliance with existing standards and procedures for safe storage of small arms and light weapons in the possession of local manufacturers (industrial firms and gunsmiths), salors and individuals. (Article 16, Paragraph 3).

B) Recommendations relating to administrative and other measures

To ensure the management, safe storage and security of small arms and light weapons stockpiles across the nation, the competent national authorities shall take appropriate measures for the:

- a. identification of the appropriate site for weapons storage;
- b. physical security of the means of storage;
- c. inventory management and record-keeping;
- d. training of staff; and
- e. security of SALW during their manufacture and transit. (Article 16, Paragraph 2)

5.4 Collection and Destruction of Small Arms and Light Weapons

5.4.1 Contents analysis and comments

States are required to do two distinct things: 1. collect and 2. destroy surplus, seized, unmarked, illegally possessed and collected SALW (during a peacekeeping operation or when weapons are voluntarily handed in) (Article 17, Paragraph 1). Although the Convention does not offer any common definition of the characteristics of obsolete or surplus weapons (“surplus to the national needs”), and although States are responsible for adopting their own definitions and criteria in this regard, States have committed themselves not to store

indefinitely such SALW in their national stockpiles or their territories. They have committed themselves to destroy them (Article 17, Paragraph 2).

In this regard, the Convention establishes a common procedure for the handling of “collected” SALW (Article 17, Paragraph 2). Consequently, States cannot provide otherwise in their national legislations.

Finally, Article 17, Paragraph 3 can be easily understood if we consider that the primary objective of the Convention is “to prevent and combat the excessive and destabilizing accumulation of small arms and light weapons within ECOWAS” (Article 2, Paragraph 1). Indeed, States are required to develop and implement voluntary handing-in programmes. It is to be noted that the details of such programmes and the implementation strategy are left to the creativity of the States in the elaboration of national action plans.

States may make use of the standard international norms and procedures drafted by the United Nations on the collection and the destruction of small arms and light weapons.

5.4.2 Recommendations for harmonization on the collection and destruction of small arms and light weapons

A) Recommendations relating to legislative measures

National legislations prescribe the collection, registration, safe storage and destruction of:

- a. - arms which are in surplus to the national needs or have become obsolete;
- b. - weapons seized and impounded through final decision in law;
- c. - unmarked weapons; and
- d. - illicitly held weapons. (Article 17, Paragraph 1)

B) Recommendations relating to administrative and other measures

The competent national authorities of Member States shall appoint the national institution mandated to collect register, safely store and destroy:

- a. the arms which are surplus to the national needs or have become obsolete;
- b. unmarked weapons;
- c. illicitly held weapons (Article 17, Paragraph 1);
- d. seized weapons subject to be recorded, stored and secured until their final impounding by final decision in law and destroyed.

5.5 Marking

5.5.1 Contents analysis and comments

Marking is essential for registration and tracing. The Convention establishes as a rule the compulsory nature of the marking of SALW (Article 18, Paragraph 1), while indicating at least three important aspects of this operation which must be considered (Article 18, Paragraph 2). They are the uniqueness and specificity of the marking; the objects which must be marked (SALW, ammunition and other materials deemed essential by the manufacturer);

and finally, the time of the marking (during their manufacturing or at the time they were imported).

Based on this rule, two SALW, even if they are completely identical, cannot and should not have identical markings, and this, even at the time of their manufacturing.

The Convention itself defines the two types of markings that should be put on SALW at the manufacture, their characteristics as well as the places where they must be made: 1. a “classic marking”, and 2. a “security marking”. It is the ECOWAS marking standard (Article 18, Paragraphs 2-a and 2-b). In the national implementation of these provisions, it will be necessary to consider the following two (2) factors: vast majority of States Parties to the Convention are not “manufacturers” in the industrial sense of the word, but generally they are importers; and most, if not all States Parties, still have local or craft production capacities of SALW.

Also, it is worth noting the two distinct natures of the contents of “classic marking” (Article 18, Paragraph 2-a): some prescriptions are mandatory and others are optional.

The three (3) compulsory characteristics of “classic marking” are: alphanumerical language; visibility and legibility with the naked eye; and put at least on two (2) main component parts of the SALW, one recognized as an essential component and the other one as an important one. Several other important component parts can bear this marking.

The four (4) compulsory information of “classic marking” at the time of manufacture are:

- the unique serial number;
- the identity number of the manufacturer;
- the identity number of the country of manufacture; and
- the year of manufacture.

The implementation of Article 18, Paragraph 2-b regarding security marking should apply only after the Convention has entered into force, i.e., after 29 September 2009. “Security marking” then becomes compulsory for each weapon manufactured after this date. In this regard, it should be noted that “security marking” does not give any other additional information than those given by “classic marking”, but it must be a summary or a condensed version of the latter which enables to identify the SALW when the classic marking is altered. Here, the emphasis is on the sustainability, the impossibility to erase or tamper with the marking which must be ensured by applying it on a key component part (frame, receiver, etc.) of the SALW so that if it were tampered with or destroyed, it would definitely become impossible to use or repair the SALW (Article 18, Paragraph 2-b).

The Convention also determines conditions for the import, by States, of SALW which do not bear the compulsory “classic” and “security” markings: it is the principle of the marking upon arriving in the import country (Article 18, Paragraph 2-c). However, the Convention does not cover the marking of weapons of the State transferred to civilians, which may suggest that weapons in the State’s possession do not need to be marked. Moreover, the Convention is against such transfers and provides that such surplus weapons should be destroyed.

In the International Tracing Instrument import marking measures do not apply to temporary import of small arms. The Convention makes no provision for such an exception.

The Convention also defines an ECOWAS standard for the marking of ammunition (Article 18, Paragraph 3). Three key elements must be noted:

- the type of compulsory information that the marking must indicate;
- the type of conditional information (if they are known at the time of manufacture); and
- the structural key component on which the marking must be made.

This standard for marking ammunition must be common to all national legislations. Some States may add even more precise information, but none of them should be below the standard set by the four compulsory and the two conditional information which are required.

The four (4) compulsory information are:

- the unique batch lot number;
- the identifying number of the manufacturer;
- the country of manufacture;
- the year of manufacture.

The two (2) conditional information are:

- the name of the buyer of the ammunition;
- the destination country.

The component part or the structure where the marking is to be done is the envelope or wrapping of the ammunition, no matter how small they are. Finally, the Convention states that the markings must be made in « alphanumerical language » (Article 18, Paragraph 2-a).

La fabrication artisanale des armes légères et munitions doit respecter les mêmes règles de marquage que les productions industrielles, même si des adaptations temporaires peuvent être faites.

Artisanal manufacturing in small arms and ammunition should comply with the same marking standard as well as industrial productions, even if temporary adjustments can be made.

The relevant international instruments coincide, for the most part, with the spirit of the Convention in regards to marking at the time of manufacture. Whether we consider the International Tracing Instrument, the United Nations Firearms Protocol or the United Nations Programme of Action, all recommend marking at the time of manufacture, the use of a unique marking that cannot be tampered with (ITI, III.8.a; FP, Article 8.a; PoA, II.7), and the use of geometric symbols and alphanumerical language (FP, Article 8-b), etc. In particular, the Protocol insists on import marking (Article. 8-c), i.e. marking of the weapon whenever there is a transaction involving a transfer from one country to the other.

Taking into account international standard norms and procedures drafted by the United Nations would be highly useful.

The ECOWAS Commission is required to assist Member States to manage this complex problem of marking, particularly the drafting of a technical guide.

5.5.2 Recommendations for harmonization on marking

A) Recommendations relating to legislative measures

National legislations:

- a. prescribe a unique and specific marking of small arms and light weapons upon manufacture in conformity with the “classic marking”. (Article 18, Paragraph 1). The classic marking contains: the unique batch lot number; the identification of the manufacturer; the country of manufacture and the year of manufacture. It also includes, where possible: the name of the buyer of the ammunition and the destination country. The classic marking must be expressed in alphanumerical language; legible to the naked eyes; and applied to the maximum number of main parts of the weapon, and at the very least on the part designated by the manufacturer as essential as well as on one other important part of the weapon. (Article 18, Paragraph 2a)
- b. recommend that in addition to “classic marking”, a “security marking” shall be applied to small arms and light weapons produced after the entry into force of the Convention. The security marking must be expressed in alphanumeric language; and applied to two important component parts of the weapon that are not easily manipulated after the weapon’s manufacture, and the falsification of which would render the weapon unusable. (Article 18, Paragraph 2b)
- c. stipulate that:
 - i. any imported small arms and light weapons bearing no marking in conformity with the prescribed classic and/or security marking must receive the said marking(s) at the time of their importation. Failing this, the weapons cannot be imported or must be destroyed. (Article 18, Paragraph 2c);
 - ii. at the time of importation, the mark of the importing State and the year of importation are marked by a competent institution, where the importing State and year of importation are not known at the time of importation. Failing this, these weapons cannot be legally imported. (Article 18, Paragraph 2c)
- d. prescribe that marking of ammunition should include the unique serial number; the identity number of the manufacturer; the identity number of the country of manufacture, and the year of manufacture. Where these information are known at the time of manufacture, the marking shall also include the name of the buyer of the ammunition and the destination country. The component part or the structure where the marking is to be done is the envelope or wrapping of the ammunition, no matter how small they are.

B) Recommendations relating to administrative and other measures

- No recommendation

5.6 Tracing

5.6.1 Contents analysis and comments

The ECOWAS Member States establish and accept the principle of cooperation and exchange of any information involving SALW, in order to trace them in their common geographical zone (Article 19, Paragraph 2). The text specifies that States accept to exchange information on illicit SALW as well as those that are licit and managed as such. But the information on illicit SALW, on seized SALW, on the illicit trafficking of SALW (according to national or international law), on condemnations of individuals involved in illicit activities, on the destruction of SALW, and on methods of destruction of SALW will be shared on a priority basis. Some information regarding licit SALW, more specifically the national procedures, practices and experiences related to the manufacture, transfers and storage should also be shared on a regular basis.

The possibility for a State to inquire directly with the ECOWAS Commission in order to obtain the tracing of an illicit SALW in its territory has also been provided for in the Convention. This inquiry is done through the “tracing request”. However, it should be noted that this recourse is not compulsory for a Member State which, of course, can establish other tracing strategies, in particular, directly seizing one or more Member State(s), without violating the Convention (Article 19, Paragraph 4).

The Convention details key information needed in the tracing request in order to make it useful (Article 19, Paragraph 5). The principle of cooperation and exchange of information for tracing purposes deserves to be mentioned in the national law. The information which needs to be included in the request and the tracing procedures must be determined by the law, in accordance with the Convention (Article 19, Paragraphs 5-a, b and c.). The States may add other information which they consider useful and practical. In fact, marking is not only a means of tracing. The States may use the services of Interpol.

The Convention organizes the reaction or response to a tracing request sought from a Member State: an acknowledgement of receipt is sent quickly, a reliable and comprehensive answer is given within a maximum period of one month, the possibility to request all the specific information that must be found in a request for tracing is given (Article 19, Paragraphs 6, 7, 8 and 9). Detailed steps in the answer procedure and the national institutions involved may vary from a State to another one, but the objective sought must remain the same: obtain a rapid and constructive reaction to the tracing request.

In the area of tracing, the national institutions of the Member States are responsible for the processing of tracing requests that they submit to the ECOWAS Commission or to a Member State, and to all other competent institutions such as Interpol, or which they receive from Member States. The reaction or response of the ECOWAS Commission and regular and/or specific exchange of information on licit and illicit SALW fall within the purview of the regional jurisdiction. However, national authorities come in to take measures to promote cooperation in the area of exchange of information as set forth by the Convention.

5.6.2 Recommendations for harmonization on tracing small arms and light weapons

A) Recommendations relating to the legislative measures

National legislations:

- a. make provision for submitting requests for tracing to the ECOWAS Commission or to any other Member State and competent institution (Interpol) in respect of an illicit small arms and light weapons on their territory (Article 19, Paragraph 4) ;
- b. make provision for responding to tracing requests received from a Member State in respect of small arms and light weapons deemed illicit by this State; in which case the response must be provided within a period of one month effective the date of reception of the said request. (Article 19, Paragraphs 6, 7 and 8);
- c. stipulate that requests for assistance in tracing illicit small arms and light weapons will contain sufficient information including, *inter alia*:
 - i. the illicit nature of the small arm and light weapon, including the legal justification thereof and circumstances under which the small arm and light weapon was found;
 - ii. markings, type, caliber and other relevant information;
 - iii. intended use of the information being sought. (Article 19, Paragraph 5)

B) Recommendations relating to administrative and other measures

The competent national authorities of Member States shall:

- a. appoint the national institution mandated to deal with processing of requests for tracing sent and/or received;
- b. shall take the appropriate measures to promote exchange of information among Member States on:
 - i. information on small arms and light weapons and the trafficking of such weapons that contravene international law or the internal laws of States in which the operations take place (condemnation of persons or institution implicated, sanctions, disposal, destruction methods, neutralization) ; (Article 19, Paragraph 1)
 - ii. information on:
 - manufacture (the marking system and techniques used, and authorized manufacturers);
 - transfers (exports to and/or imports from all other States, transits, information available concerning national legislation, existing practices and controls, authorized dealers and brokers);
 - existing stockpiles (management, inventory, security, surplus, losses, theft, destruction). (Article 19, Paragraph 2)

5.7 Brokering

5.7.1 Contents analysis and comments

Brokering and related activities concerning SALW are regulated in the ECOWAS zone. The States Parties to the Convention have opted for the principle of prohibition of all transfers of SALW, their ammunitions and other related materials from/to/through their territory – unless an exemption is granted (Article 5). Therefore, these weapons are not considered ordinary goods (Article 3). Brokering related to SALW is strictly regulated.

The Convention requires that each State: 1. undertakes a compulsory registration of all operators exercising the functions of a broker from its national territory; 2. complies with this registration on the legal requirements for the exercise of these functions from its national territory. Therefore, the citizens and companies working as brokers of SALW will be registered as well as the financial agents and transportation agents ensuring the transfer of these weapons.

The Convention defines brokering as the work carried out as an intermediary between the manufacturer, supplier or distributor of small arms and light weapons and the buyer, or user; this includes the provision of financial support and the transportation of SALW. However, the term “broker” is not defined.

Article 20 of the Convention seeks to control and regulate the activities of brokers by including financial and transportation agents involved in brokering. However, the term “broker” is not explicitly used. The expressions “brokers”, “brokering” and “activities relating to brokering” are not clearly defined. The Group of Governmental Experts on brokering proposed a more comprehensive definition of brokering of SALW as follows: “ a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise”. (GGE brokering, I.B.8, pp.8-9).

The Convention further requires State Parties to ensure that all SALW brokering transactions are carried out according to the law and that prior explicit authorization is obtained (Article 20, Paragraph 2) for each specific transaction the broker shall apply for and obtain a specific authorization from the Member State. Thus, all registered small arms and light weapons brokering agents in a Member State shall obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place.

The jurisdiction of the State in which the broker is registered takes on an extraterritorial character, as the transactions relating to brokering falls under its control even if they occur outside its territory.

The Convention establishes the minimal supporting documents of a request for authorization of a brokering transaction that the State Party must demand from the brokers (Article 20, Paragraph 3):

- import authorizations or licences ;
- export authorizations or licences ;
- names and places of all brokers involved in this transaction;
- names and places of all transportation agents involved in this transaction; and
- itineraries and transit points of the shipments of SALW.

Finally, as concerns sanctions, the Convention requires that States (Article 20, Paragraph 4):

- establish illicit brokering as a criminal offence, and
- sanction illicit brokering of SALW. However, no standard sanction was defined.

5.7.2 Recommendations for harmonization on brokering.

A) Recommendations relating to legislative measures

National legislations:

- a. adopt standards for controlling and regulating brokers, brokering transactions as well as its related activities, particularly:
 - i. compulsory registration of all operators exercising the functions of a broker of small arms and light weapons, including financial agents and transportation agents ensuring the transfer of these weapons. This registration is one of the legal requirements for the exercise of the functions of broker. (Article 20, Paragraph 1);
 - ii. the requirement to obtain a prior explicit authorization for each individual brokering transaction in which the brokers are involved, irrespective of where the arrangements take place. (Article 20, Paragraph 2);
 - iii. the need for each request for authorization on a brokering transaction involving small arms and light weapons to attach :
 - import or export authorizations or licences;
 - relevant documents on the names and places of all brokers and all transportation agents involved in this transaction; as well as the itineraries and transit points of the shipments of SALW. (Article 20, Paragraph 3).
- b. establish illicit brokering as a criminal offence, and sanction illicit brokering of SALW. (Article 20, Paragraph 4)

B) Recommendations relating to administrative and other measures

The competent national authorities shall appoint the national institution mandated to control brokering activities of SALW.

5.8 Strengthening Border Controls

5.8.1 Contents analysis and comments

Cooperation between States must help curb the uncontrolled flow of cross-border traffic of SALW. In this regard, the Convention (Article 22) requires mainly that each State:

- accepts, under the control of the ECOWAS Commission, strengthened sub-regional cooperation between its defence and security forces, its intelligence services, its customs and border control services and their counterparts in other States Parties;
- builds, with the assistance of the ECOWAS Commission, adequate institutional, technical and logistical capacities for its forces for a more professional surveillance of the cross-border traffic.

Trans-border cooperation in matter exchange of information, marking and tracing as well among customs officials is of capital importance in this area.

Methods of implementing the above-mentioned measures are beyond the scope of the legislation and falls within the purview of the regional authority. However, Member States are required to at least establish relevant parameters at the national level.

It should be noted that the provisions of the Convention regarding border control are validated by other relevant international instruments. The International Tracing Instrument (ITI, VI.25-28) supports cooperation and assistance on a bilateral, multilateral, regional and international basis, in order to contribute to the identification of SALW. The United Nations Firearms Protocol (Article 11.b) recommends that the States take measures “to increase the effectiveness of [...] border controls, and of police and customs transborder cooperation”. The United Nations Programme of Action (PoA, III.7) encourages “training among competent officials, including customs, police, intelligence and arms control officials, at the national, regional and global levels in order to combat the illicit trade in small arms and light weapons in all its aspects”.

5.8.2 Recommendations on harmonization of strengthening border controls

A) Recommendations relating to legislative measures

- No recommendation

B) Recommendations relating to administrative and other measures

The competent national authorities of Member States shall adopt measures at the national level to intensify trans-border cooperation in order to combat the illicit circulation of SALW.

5.9 Public Education and Sensitization

5.9.1 Contents analysis and comments

The implicit objective of the measures planned for at this level is to reduce nationally, the level of civilian demand of SALW and to involve the national community in the fight against the proliferation of SALW. The Convention requires that each State takes practical measures “to promote a culture of peace” (Article 23, Paragraph 1), at the national and regional levels through:

- a national programme of public education ; and
- a national public awareness-raising programme.

The Convention encourages Member States to undertake to develop and/or strengthen their partnership with civil society organizations, including women and the youth, for better information and to raise public awareness on the dangers of the proliferation of small arms and light weapons.

ECOWAS recognizes civil society organizations as strategic partners with a leading role to play in creating awareness and education of the population.

5.9.2 Recommendations for harmonization on public education and sensitization

A) Recommendations relating to legislative measures

- No recommendation

B) Recommendations relating to the administrative and other measures

The competent national authorities of member States in collaboration with civil society organizations shall adopt appropriate measures to:

- a) widely disseminate the legislations governing SALW; and
- b) embark on awareness-raising.

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Sixth area of harmonization

INSTITUTIONAL ARRANGEMENTS

VI. INSTITUTIONAL ARRANGEMENTS

6.1 National Commissions

6.1.1 Contents analysis and comments

Article 24, Paragraph 1 of the Convention requires the creation, by each Member State, of a National Commission as coordinating organ for activities relating to the fight against SALW proliferation, in compliance with the Decision adopted on 10 December 1999 by the Conference of Heads of State and Government of ECOWA and the Article 51 of the 1999 ECOWAS Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. The 10 December 1999-Decision by ECOWAS Heads of State and Government provided guidelines for the establishment of National Commissions.

It was provided that National Commissions were preferably hosted at the highest level of the State (Presidence of the Republic, Vice Presidence, Prime Ministry). The constituency of National Commissions should normally be made around five hard core departements including the Ministry of Foreign Affairs, Ministry of Interior, Ministry of Justice, Ministry of Security and Defence, and lastly representatives of civil society organizations.

National Commissions have a leading role to play as far as national coordination of strategies to curb the proliferation of the SALW and public education and awareness are concerned. They, however, often lack resources. It is thus essential for National Commissions to be allocated a permanent secretariat staff (because staff fom statutory members often change depending on changes within the public service) and a budgetline to enable them to function and discharge their duties efficiently.

6.1.2 Recommendations for harmonization on National Commissions

A) Recommendations relating to legislative measures

Member States create National Commissions in compliance with the Decision adopted on 10 December 1999 by the Conference of Heads of State and Government of ECOWAS and with the Convention (Article 24, Paragraph 1).

B) Recommendations relating to administrative and other measures.

- No recommendation

6.2 Monitoring and Evaluation of the Implementation of the Convention

6.2.1 Contents analysis and comments

Each Member State is required to produce an “Annual Report to the ECOWAS Commission” on the status of the national implementation. This report shall be according to a unique format prepared by the ECOWAS Commission. (Article 28, Paragraph 4)

6.2.2 Recommendations for harmonization on monitoring and evaluation of the implementation of the Convention

A) Recommendations relative to legislative measures

- No recommendation

B) Recommendations relative to administrative measures

Member States shall adopt appropriate measures to submit the annual report on their activities relating to SALW and the implementation of the Convention to the President of the ECOWAS Commission.

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Seventh area of harmonization

SANCTIONS

VII. SANCTIONS

7.1. Content Analysis and Comments on Sanctions

Article 21, Paragraph 2 expressly provides that Member States shall prescribe sanctions for any activity carried out in violation of the provisions of the Convention (Article 21, Paragraph 2 a) and any activity carried out in violation of an arms embargo imposed by United Nations, the African Union or ECOWAS. Article 21 also provides for violations committed by Member States, including the violation of embargoes and leaves the remainder to national legislations.

Other provisions prescribe special penal sanctions for illegal activities of aggravating character for SALW control. For instance, Article 14, Paragraph 7 of the Convention which regulates the possession of small arms and light weapons by civilians requests from Member States to adopt in their legislation penal sanctions for the illicit possession and use of illicit small arms and light weapons. Article 20, Paragraph 4 relating to brokering engages Member States to take legislative and administrative measures to establish and punish as a criminal offence the illicit brokering in SALW.

In short, when it does not provide for peculiar sanctions, the Convention sets the principle of awarding sanctions for violation of national SALW legislation while leaving to States the freedom of choice for sanctions. However it recommends penal sanctions for serious illegal activities related to SALW. But, considering the wide diversity of national legislations as well as the discrepancies in the scale of penalties from one legislation to another, it might be desirable – even necessary – that States harmonize the scale of penalties in order to avoid that for similar offenses, the penalties applied are not too different from one State to country.

7.2. Recommendations for harmonization on sanctions

A) Recommendations relative to legislative measures

Member States:

- a. adopt legislation prescribing sanctions for violation of national SALW legislation where specific sanctions are not imposed by the Convention;
- b. incorporate in national legislation penal sanctions for the illicit possession and use of small arms and light weapons (Article 14, Paragraph 7) and establish as criminal offence the illicit brokering of small arms and light weapons (Article 20, Paragraph 4);
- c. take legislative and administrative measures to harmonize the scale of penalties applicable to similar offenses.

B) Recommendations relative to administrative and other measures

- No recommendation.

CONCLUSION

The present Guide has its legal basis in Article 21, Paragraph 3 of the Convention, which mandates the ECOWAS Commission to elaborate and propose to Member States guidelines for harmonization of legislative provisions. It is intended in priority to national institutions and actors responsible for reviewing, developing, verifying and validating national legislation to control small arms and light weapons.

Their task is made more difficult as they are called to translate into legislative, administrative and/or other measures the commitment made by Member states, not to copy and paste the Convention as is, but to incorporate it into their national legal framework in such way that the provisions in the Convention “are minimum standard for small arms and light weapons control” (Article 21, Paragraph 1). Their task is also difficult because they should avoid amalgams through distinguishing strictly national level competencies from those relevant for regional level.

It is for their convenience that this Guide, drafted on the basis of broad consultations with experts, draws from the Convention the “minimum standard” contained in the seven (7) areas of harmonization as proposed herein. For each area, a clear set of recommendations has been formulated indicating legislative, administrative or other relevant measures to be taken at national level to set a legal foundation for the fight against the anarchical proliferation of small arms and light weapons.

ECOWAS and its partners wish that this Guide be useful to Member States in the task of effectively reviewing and harmonizing national legislations with the Convention.