

# Regional Regulation of Small Arms and Light Weapons in the Democratic Republic of the Congo

Sadiki Nyembo Lucien

PhD student in the Department of International Relations, the University of Lubumbashi, DR Congo and Head of Works

**Abstract:** *The proliferation of firearms is not new in the Democratic Republic of Congo. However, the movement has been taken huge scale with rebellion wars that this country has known and the combination of several factors: banditry, armed groups activities Congolese and foreign, ethnic, predatory and illegal exploitation of natural resources, spiraling poverty and inequality that generates misery and despair. But the illicit circulation of small arms and light weapons is a major problem that causes enormous consequences, namely: serious violations of human rights (rape, robbery, extortion, destruction of infrastructure, massacres, mutilation of body, moving people ...) and mortgage sustainable human development. This reflection has thus to drive the work of research on the issue of demand, possession, distribution, use, perception and the impact of small arms and light weapons in DR Congo. This article sheds light on the demands and unexpected challenges and critical to the success of the reduction of armed violence, which involves regulation of small arms and light weapons, to the Democratic Republic of Congo in the regional context.*

**Keywords:** Small arms and light weapons, Traffic, conflicts, proliferation, Democratic Republic of Congo

## 1. Introduction

The speed movement of small arms and its consequences of long-term human security throughout the world are becoming more difficult to identify. However small arms become available in an area for legitimate and legal reasons related to national security, peacekeeping or enforcement. In reality, most of the arms trade are legitimated and recognized, to the extent that the movement can be seen as institutionalized whereby this is an area of well-established and prosperous business. Like other sectors, it has become increasingly globalized. Most weapons are now assembled from components from many countries.

The result of this rapid global expansion is that the weapons, their components and ammunition are more easily diverted from their intended destination. They may eventually be found in countries that have little control over how they are used. The surplus military weapons or insufficiently monitored find markets in countries ravaged by war or post-conflict situation or they are stolen and end up in the hands of non-state armed groups or terrorists. Illegal arms dealers are able to manipulate the inconsistencies and loopholes that exist in national laws concerning the arms trade. Small arms can spend more time in the hands of state holders and those of private holders

Once weapons enter an area, they can stay there for many years. The firearms, in particular, have a functional lifespan of several decades. Small arms instantly change the dynamics of a conflict. They are lethal and are intended to kill. They can turn a simple argument in a tragedy, and can be used against civilians seeking to protect themselves. In some countries considered to be at peace, the level of violence caused by small arms can be as high as in war zones, and their presence is a recognized means by which occurs domestic violence.

The small arms and light weapons are responsible for the majority of deaths during the conflict, an estimated 60 to 90 percent of all direct conflict victims are killed by firearms.

Number of men, women, elderly and children die because of indirect effects of armed conflict on the economy, and irreparable damage to the health and safety of infrastructure, disease and famine. In addition, many other people become refugees or displaced within the country, injured or abused. The weapons fuel conflict. Conflicts fueling their levels of instability and poverty (AyamouPlacide, 2004).

The proliferation of small arms is particularly devastating in Africa, where the machine guns, rifles, grenades, pistols and other small arms have killed and displaced many civilians throughout the continent.

These weapons were used in deadly conflict in Sudan, Uganda, Sierra Leone, Rwanda, Angola, the Democratic Republic of Congo, Somalia and other African countries. They are often recycled from country to country, and possession is transferred between combatants, members of the security forces and war profiteers. In Central Africa and East Africa, many lives were lost due to conflict and its related consequences. The frequent irregular warfare in this region over the past decades are further fueled by the kind of weapons. They are available and sometimes cheaper than food (Patrice Emery Bakong and Kristiana Powell, 2004: 99-124).

The Democratic Republic of Congo, with an area of 2.345 million square kilometers and more than 60 million people, has 9600 km border it shares with nine neighboring countries, namely the Republic of Congo, Central African Republic, South Sudan, Uganda, Rwanda, Burundi, Tanzania, Angola and Zambia. The Democratic Republic of Congo is a vast country has been ravaged by armed violence in the context of one of the deadliest ever known African conflicts.

In this context, our primary concern will revolve around the question: Is it necessary to establish a national implementation strategy for a national action plan aimed at effective control of small arms and light weapons, by

regulation of circulation taking into account the international obligations of the DRC? ; This is the main mission of this thinking in terms of the National Commission for control of small arms and light weapons and the reduction of armed violence (CNC-SALW) when created on May 30, 2008.

#### **a) The proliferation of small arms in Central Africa and the DRC**

Central Africa is one of the most affected sub-regions by the uncontrolled proliferation and circulation of small arms and light weapons (Abbreviated light small arms or SALW). In this region where armed groups are many, abundance of small arms fosters violence and prolongs conflict, increasing insecurity in the population. The porous borders make it difficult to control the trade of SALW trafficking.

The experts established by the UN group to monitor the implementation of sanctions against certain states in the region, including the DRC, have also highlighted the links between proliferation or illicit arms trafficking light and exploitation or illicit trade in natural resources. The independent UN expert group on the DRC and had reported in 2001 that armed groups were financing their armies and military operations by the control and exploitation of natural resources ((S / 2001/49) of 16 January 2001).

The consequences of the proliferation of SALW on development are disastrous. It is estimated that since 1990, about 300 billion dollars were lost by a score of African countries, including nearly half are located in Central Africa, because of the armed conflict (Briefing Paper, October 2006). In 2010, the majority of Central African States still knew very low human development rates. Thus, seven of these countries are in the bottom of the ranking prepared by UNDP on the basis of the index of human development, with a "low human development" (Human Development Report 2010, UNDP). The DRC listed in 168th of the 169 countries ranked. Despite the arms embargo on DRC in 2003 and restricted to non-governmental forces in March 2008, the smuggling of military equipment and light weapons continues. The latest report of the UN panel reported that the weapons acquired by Congolese armed groups came from particular members of the Congolese security forces (United Nations Security Council (S / 2010/596) November 29, 2010).

#### **b) Legal instruments to fight against the proliferation of small arms**

The proliferation of SALW and ammunition has become a global source of concern since the mid-1990s. In 2001, the UN adopted a Program of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All its Aspects (PoA). This document remains the main international instrument against the proliferation of SALW. Besides national and international measures, it emphasizes the importance of action at the regional level, because the problem of traffic and the availability of small arms can then be discussed with the measures best suited to each region (ElliKytömäki, 2005: 59). A State cannot fight alone against cross-border trafficking of SALW.

Recently, Central Africa has its own legal small arms control instrument: the "Central African Convention for the control

of small arms and light weapons, their ammunition and all parts and components that can be used to manufacture, repair and assembly, "also known as the Kinshasa Convention. His signature on 19 November 2010 in Brazzaville, has filled the void that made this sub-region one of the few in Africa that does not have a legal instrument of small arms control (cf. the SADC protocol, 2001 Nairobi Protocol, 2004 and the ECOWAS Convention, 2006). This is an ambitious text that takes into account regional realities in SALW.

In addition to the Kinshasa Convention it signed but not yet ratified, the DRC is linked to two other sub-regional legal instruments: the SADC Protocol, signed in 2001 and not yet ratified by the DRC, especially the Protocol Nairobi, signed in 2004 and ratified in 2005 by Kinshasa. It is therefore legally bound to take them into account in its legislation.

These regional SALW control instruments have been developed relatively independently. Generally, they provide a framework to States Parties to strengthen and harmonize their national regulations and practices in various areas of the fight against the flow and availability of SALW and ammunition, possession by civilians, their international transfers, manufacture and marketing. They also encourage the cooperation and the strengthening of trust between States parties.

By adhering to these legal instruments, states have pledged to revise, update and harmonize their national legislation with its provisions. However, the implementation of these instruments is limited. Few States parties to these texts were formally adopted or amended their regulations on the control of small arms since the entry into force of the Protocols of Nairobi and SADC. The main obstacle mentioned is the lack of resources, but political will was also often inadequate to address effectively the problem of small arms. By binding to three legal instruments, DRC encounters a particular difficulty in their implementation because it will have to adapt its regulations to differences residing in its instruments.

#### **c) An incomplete regulation and inappropriate to the context of conflict**

Congolese law regulating international arms transfers and its retention and acquisition by civilians was adopted in 1985 (Ordinance-Law No. 85-035 of 3 September 1985 on weapons and ammunition regime and Order No. 85- 212 of 3 September 1985 laying down implementing measures). In a context of peace and many years before the advent of multiple international and regional initiatives aimed to fight against the proliferation of small arms and imposing common standards. The national laws of the DRC are therefore not only unsuitable to international and regional standards but also to the contemporary context of conflict of Congo (IlhanBerkol and Peter Huybrechts, 2005: 8).

For several years, the conflicts in the country and the region have promoted traffic and uncontrolled availability of small arms within the Congolese population. Only in the eastern part of the country, plagued by a conflict that has lasted more than fifteen years, it is estimated that more than 300 000 civilians have at least one weapon (GRIP / BICC, April

2010). These weapons are mostly military weapons like assault rifles acquired on the black market, with members of Congolese security forces in countries neighboring DRC. The country is so affected by international arms flows, particularly favored by porous borders, and domestic flows, notably fueled by public officials, including members of the Congolese Armed Forces (FARDC).

The DRC does not currently have sufficient and effective ways to cope. If current regulations require permits for the possession of weapons by civilians, it had not anticipated at the time the prohibition of possession of military weapons by civilians. No register of SALW held by civilians or by national authorities exists. Similarly, the provisions relating to the fight against illicit arms trafficking are insufficient. While the involvement of middlemen in the trafficking of arms to the DRC and in violations of the arms embargo has often been demonstrated (see the various reports of the United Nations expert groups monitoring sanctions on the Democratic Republic of Congo). There are no regulations or planned control of arms brokering, or financial agents or weapons carriers. Violations of the arms embargo is not sanctioned by the current law. No mention is made of border control, marking weapons or tracing mechanisms.

#### **d) The regulatory review process on SALW**

Seeing the need for urgent reform of its regulations to deal with the uncontrolled proliferation of SALW situation, the DRC is committed to a process of review and strengthen its regulation in 2004. This positive move was made in part of a process of harmonization of Congolese regulations on SALW with that of two other countries in the region, Burundi and Rwanda, and this in order to reduce the problem of small arms in the region. Although a first bill was the result of this work in April 2005, the political events of recent years have prevented and slowed the adoption of a new law attempts (Saferworld, 2011: 14). The process, however, was revived in 2008 at the initiative of two Congolese parliamentarians. The bill they drafted entitled "Proposed law on the prevention, control and reduction of small arms and light weapons and ammunition in the DRC" was adopted on 10 November 2010 by the National Assembly. She was then sent to the Senate for discussion.

This bill aims to update the Order Law of 3 September 1985 under the Nairobi Protocol. It contains provisions on most small arms control areas, including the prohibition of the detention of military SALW, ammunition and accessories by civilians. Possession, import, export, manufacture and trade of firearms designed for hunting, sport and personal protection are, in turn, subject to prior authorization. The import and transit of weapons are also regulated in accordance with the Nairobi Protocol, as well as arms brokering, manufacturing, marking, registration of weapons and plotting.

However, the current version still has significant gaps in the fight against the illicit trafficking of weapons, which the Senate of the DRC should be careful in its next review of the proposal. Thus, no provision for arms control held by national security and defense forces, which is unfortunate when one considers the role played by members of the FARDC in the uncontrolled circulation of SALW. Similarly,

no provision addresses the question of control and inventory management or border control. If the proposal involves a licensing system for the import, transfer and transit of SALW, no details are given on the procedures and criteria to be followed to authorize transactions.

The regional dimension of the fight against the illicit trafficking of SALW is also missing from the proposal: no reference is made to regional cooperation mechanisms to fight against illicit trafficking. Finally, no mention is made of the Kinshasa Convention, though signed by the DRC and which should therefore be ratified one day soon. While the legislation currently in force is one of the few African legislation to cover all conventional weapons, the new bill is to regulate the only SALW.

Yet the DRC, which is committed alongside the Central African States in favor of the adoption of an international Arms Trade Treaty (Sao Tome Declaration (UNSC / 2011/32/2) mars2011 16) should benefit from the revision of its SALW legislation to revise the regulating conventional arms transfers. Many provisions of the Nairobi Protocol and the Kinshasa Convention are indeed international standards that may apply to the regulation of conventional arms transfers. This is for example the obligation to issue licenses for transfers, the implementation of the transfer evaluation criteria

#### **e) The implementation and enforcement on the ground: an essential step**

If the adoption of legal instruments under regional control of SALW and their transposition into national law is essential, their implementation on the ground is even more so. The texts indeed formalize the commitments of States towards the fight against the proliferation of SALW and to visualize more clearly the action they are on the field. They must also be accompanied by concrete action programs, such as the management and security of stocks, weapons collection and destruction, demobilization, disarmament and reintegration of combatants, the strengthening of the security sector without forgetting the action at the diplomatic level to try to resolve the conflicts and tensions that prevail within states or between states.

## **2. Conclusion**

Now day, we acknowledge and appreciate the adoption of the Kinshasa Convention, the Central African States have their own legal instrument to fight against the proliferation of SALW within their region. The DRC has demonstrated its commitment to the fight against the proliferation of small arms by joining three instruments in regional and initiating a law review process on SALW. His efforts should not stop there. The DRC must ensure that it has planned sufficiently effective and strong control systems in order to better control the flow and availability of SALW in its territory and across its borders. It is then essential that it fits the means and resources to implement on the ground.

Finally, on the international level, the proliferation and illicit circulation of SALW are a problem that must be addressed at the base. So far, the international community applies a policy of reaction when we need to take preventive

measures. Indeed, it is upstream that the international community should act and not downstream. For the circulation of weapons is shrinking, it is essential to reduce production. It is an imperative to the UN to take stringent measures by imposing production quotas to states. It should declare SALW weapons of mass destruction, as well as nuclear weapons, and also create a kind of international agency of small arms and ammunition, which would be the equivalent of the International Atomic Energy Agency. The International Agency of small arms will be responsible to inspect in SALW production plants to see if states comply with international standards and established quotas. Through this way it is possible to achieve an effective fight against the proliferation and illicit circulation of SALW. The global peace and security depend on it.

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