



UNIVERSITY OF NAMIBIA

THE IMPLEMENTATION OF THE SOUTHERN AFRICA DEVELOPMENT
COMMUNITY (SADC) PROTOCOL ON THE CONTROL OF FIREARMS,
AMMUNITION AND OTHER RELATED MATERIAL: A CASE STUDY OF
NAMIBIA

A THESIS SUBMITTED IN PARTIAL FULFILLMENT
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ABSTRACT

This study explored the question regarding the extent to which Namibia complies with the SADC Protocol on Control of Firearms, Ammunition and Other Related Materials by looking at the possible disparities between the national fire arms control laws and the relevant provisions of this SADC Protocol. Qualitative research design of exploratory nature, were applied in this research, relying primarily on a case study method. The data was collected from books, documents, statutes, official records, previous surveys, journals, newspaper articles, theses, dissertations and key informant interviews. In terms of the findings, this research observed a number of SADC member states which had not yet harmonized their firearms control laws as required by the SADC Protocol. In the specific case of Namibia several policy and programmatic initiatives were undertaken in an attempt to comply with the provision of the SADC Protocol on Control of Firearms. However, there are still disparities between the SADC Protocol and the Namibia Arms and Ammunition Act as the principal legislative instrument, such as; the absence in the Act, of a provision for the mandatory competence testing and training for firearm licence holder applicants. Secondly, the law allows for the possession of the firearms by person other than its legal owner which runs contrary to the requirement of the SADC Protocol. Thirdly, the Act does not provide for the auditing of firearms and ammunition in possession of private citizens as prescribed by the protocol. Therefore, the Arms and Ammunition Act needs some amendments to bring it in full conformity with the SADC Protocol, a process which was described by some of the key informants as being under way at the time this study was undertaken. Meanwhile, the SADC

Protocol on the Control of Firearms, Ammunition and Other Related Materials itself was also found by this research undertaking to be in need of some amendments to make it more effective.

TABLE OF CONTENTS

CONTENTS	PAGES
Research Title.....	i
Abstract.....	ii
Table of Contents.....	iv
Acknowledgement.....	viii
Dedication.....	ix
Declaration.....	x
Acronyms.....	xi
1. CHAPTER 1: Introduction.....	1
1.1 Orientation of the Study	1
1.2 Statement of the Problem	4
1.3 Research Questions	5
1.4 Objective of the Study	5
1.5 Significance of the Study	6
1.6 Limitations of the Study	6

1.7	The Structure of Research.....	8
1.8	Conclusion.....	8
2.	CHAPTER 2: Research methodology.....	10
2.1	Introduction	10
2.2	Research Design.....	11
2.3	Data Collection.....	11
2.4	Sampling	12
2.5	Research Instruments.....	16
2.6	Reliability and Validity of Data.....	16
2.7	Research Procedure.....	17
2.8	Data Analysis.....	18
2.9	Research Ethics.	21
3.	CHAPTER 3: Literature review.....	22
3.1	Introduction	22
3.2	Definition of Key Concepts.....	25

3.3	Origin of Firearms in Southern Africa	28
3.4	Firearms Ownership Trends in Namibia.....	29
3.5	Firearms Control Instruments	31
3.6	Reasons for Firearms Ownership.....	48
3.7	Firearms as a Threat to Public Safety and National Security..	49
3.8	Implementation Frameworks of the SADC Protocol on Control of Firearms.....	53
3.9	Namibia's Implementation of International Policy Instruments on Control of Firearms.....	56
3.10	Conclusion.....	85
4.	CHAPTER 4: Data presentation and analysis.....	86
4.1	Introduction	86
4.2	Namibia's Efforts to Implement the SADC Protocol on Control of Firearms and Other Related materials.....	87
4.3	The Arms and Ammunition Act (Act 7 of 1996).....	99
4.4	The Process of Purchasing Firearms.....	103
4.5	Firearms in Namibia.....	108

4.6	The SADC Protocol on Control of Firearms, Ammunition and Other Related Materials.....	116
4.7	Discussion of Results.....	122
4.8	Conclusion.....	136
5.	CHAPTER 5: Conclusion and recommendations.....	139
5.1	Conclusion.....	139
5.2	Recommendations.....	141
5.3	Topics for further research.....	152
6.	BIBLIOGRAPHY	153
7.	APPENDICES.....	164
	Appendix 1: Questions for Key Informants Interview.....	164
	Appendix 2: Key Informant Interviewees.....	190

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DEDICATION

This work is dedicated to my family; my parents who brought me up in the unfavourable economic situation, my wife Nelago and my children who supported me throughout the course of my study.

DECLARATIONS

I, Iyambo Iyambo, declare hereby that this study is a true reflection of my own research, and that this work, or part thereof has not been submitted for a degree at any other institution of higher education.

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Date.....

Iyambo Iyambo

ACRONYMS:

AU	=	African Union
CAN	=	Constituent Assembly of Namibia
CASA	=	Coordination of Action on Small Arms
CGLRHA	=	Countries of Great Lake Region and the Horn of Africa
CEO	=	Chief Executive Officer
COL	=	Colonel
DRC	=	Democratic Republic of Congo
ECOWAS	=	Economic Community of Western African States
GBW	=	Government of Botswana
GRN	=	Government of the Republic of Namibia
GRSA	=	Government of the Republic of South Africa
GZIM	=	Government of Zimbabwe
IANSA	=	International Action Network on Small Arms
ISS	=	Institute of Security Studies
Lt Col	=	Lieutenant Colonel
MS	=	Member States
NAMPOL	=	Namibian Police

NANGOF	=	Namibian Non- Governmental Organization Forum
NDF	=	Namibian Defence Force
NFP	=	National Focal Point on Small Arms and Light Weapons
NGO	=	Non- Governmental Organization
NMC	=	National Management Committee of Small Arms and Light Weapons
NNAP	=	Namibian National Action Plan on Small Arms and Light Weapons
OAU	=	Organisation of the African Unity
RFP	=	Regional Focal Point
SADC	=	Southern Africa Development Community
SALW		Small Arms and Light Weapons
SARPCCO	=	Southern Africa Regional Police Chiefs Cooperation Organisation
SIPO	=	Strategic Indicative Plan for the Organ
SOP	=	Standard Operating Procedures
UN	=	United Nations

UNAM = University of Namibia

UNGA = United Nations General Assembly

WW II = Second World War

CHAPTER 1

INTRODUCTION

1.1 ORIENTATION OF THE STUDY

There is a debate in Namibia, as well as at the Southern Africa Development Community (SADC) regional and the world stage level, about the challenges inherent in the proliferation of firearms that are in the possession of individual citizens and private entities, as well as the implication that these may hold for public safety and national and global security (Lamb and Coetzee, 2009, p.15). For instance, world leaders started discussing the problem of small arms proliferation in the 1990s at the termination of the Cold War ideological confrontation between the East and the West, as well as the conclusion of the various struggles for decolonization in the remaining Southern African countries. These marked the end of the post WW II international political epoch that came to be dominated by not only this ideological stand-off, but which also triggered a state centred arms race. As stated in Beal (n.d. p.2), during the Cold War, the world leaders were more concerned with the threat of nuclear weapons; and it was only after the events in Somalia and Bosnia in the 1990s, that they started to discuss issues relating to the challenges presented by small arms proliferation. The landmark United Nations (UN) “Conference on the Illicit Trade in Small Arms and Light Weapons” held from 09 to 20 July 2001 in New York mark the beginning of this paradigm shift (UN, 2002, p.1). Since then this issue continues to enjoy tremendous attention at all political levels and instruments have been put in place to regulate the movements of firearms; nationally, regionally and internationally (Lamb and Coetzee 2009, p.15, SADC 2004, p.25 and UN 2002, p.1).

The SADC region was the last region on the African continent to attain full liberation from colonial rule. Hence witnessing armed liberation wars waged in Mozambique and Angola until the mid 1970s, Zimbabwe and Namibia which lasted until 1980 and 1990, respectively; as well as the anti-apartheid resistance in South Africa that only ended in 1994. This situation had attracted the importation of large quantity of firearms to the region. Furthermore, the prolonged civil wars that followed independence in Mozambique (up to 1990), Angola (up to 2002) and the conflict in the DRC (1998 – 2003) further exacerbated this situation. As it was recognised by the meeting of SADC Council of Ministers held in August 1999, “these conflicts led to proliferation of firearms and contributed to an increase in criminal activities such as armed robberies” (Stott, 2003, p.2). After the end of the national liberation and civil wars in the region, the process of demobilization and disarmament did not retrieve all the arms from the former combatants and the general civilian population. Substantial caches of firearms remained in the hands of individuals, while others went into the hands of criminals and vigilante groups. Such situations create threats to public safety and national security in the countries of the region, as such weapons are more often used in committing crimes, robberies, murder, domestic and gender based violence. Furthermore, unregulated use and possession of firearms could be used in armed political insurgence to overthrow legitimate and democratically constituted governments, in cross border crimes, civil wars or internal conflicts, all of which would undermine the legitimately constituted governments (SADC, 2001, p.2).

It was against this background that the SADC Heads of States and Governments adopted a “Protocol on the Control of Firearms, Ammunition and Other Related Material”, on the 14th of August 2001 in Blantyre, Malawi (SADC, 2001, p.2). This process started when the SADC Council of Ministers, at its meeting in Maputo, Mozambique in August 1999 pronounced itself on the matter related to the “prevention and combating of the illicit trafficking in small arms and related crimes” (Stott, 2003, p.2). Furthermore, the SADC Strategic Indicative Plan for the Organ (SIPO) identified the “proliferation of and illicit trafficking in small arms and light weapons” as a challenge to both the national security and public safety sectors of the SADC Organ on Politics, Defence and Security Cooperation (SADC, 2004, p.25, 37). However, the question remains as to whether all member states have signed and ratified the protocol. Moreover, do those that have signed and ratified the protocol implement its provision to the letter, in half or not at all? The Namibian government is one of the SADC states that so far signed and ratified this protocol, notwithstanding three Non- Governmental Organizations (NGO’s), namely the Namibian Non- Governmental Organizations Forum, the International Action Network on Small Arms, and the Gun Free Southern Africa in 2007 called on the Namibian government to urgently review the Firearms and Ammunition Act of 1996 because “gun crime was real in the country and had a negative impact both socially and economically” (Namibian, The, June 14, 2007). The calls by NGOs point to the public perception that the Namibian government was not doing enough to implement the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials. Such calls therefore, represent the outcry from the general public. Hence the need for a study of this nature in order to established whether this protocol was

being implemented and whether it was solving the problem at hand. Therefore, this study focussed on analysing how the protocol was being implemented with the view of establishing Namibia's compliance to its numerous provisions.

1.2 STATEMENT OF THE PROBLEM

Although there are regional and national arms control protocols/laws in place, it seems as if such instruments are not effective or their implementation is not done efficiently. As indicated in the previous section, there is an outcry (great concern) especially in the case of Namibia, over the perceived increase of illegally circulated firearms which are frequently used to commit crimes and contribute to instability, conflicts and social dislocations at various levels (SADC, 2001, p.1). This research explored the question regarding the extent to which Namibia is in compliance with the SADC Protocol on the Control of Firearms by exploring the possible disparities between the National Arms Control Law and the relevant SADC Protocol. Such a research undertaking can make a significant contribution to the existing body of knowledge by providing security agencies and policy makers in Namibia and Southern Africa with relevant information. As this theme has not been adequately researched; in that previous research such as that by Martin Boer (2004) and Lamb and Coetzee (2009) were mostly concerned with firearms related crime statistics and guns acquisition and not the issue of conformity with the SADC Protocol per se. This study looked specifically at the implementation of the SADC Protocol on Control of Firearms and how the Namibian Firearms Control Law conforms to the letter and spirit of this Protocol.

1.3 RESEARCH QUESTIONS

This research endeavoured to answer the following questions:

1.3.1 Main Question. What measures has Namibia put in place to fulfil its obligations towards the SADC protocol on firearms?

1.3.2 Supplementary Questions.

- a. Does the Namibian gun control law adhere to the SADC Protocol on the control of firearms?
- b. To what extent has Namibia's law enforcement agencies gone in the harmonization of the country's firearms control laws and programmes, with the relevant provisions of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials?
- c. Are the measures taken by the Namibian government comparable with those in other SADC countries?
- d. In cases of disparities, why, with what implications and how could these be remedied?

1.4 OBJECTIVES OF THE STUDY

The objectives of this study was to analyse how Namibia has performed with the implementation of the SADC Protocol on the Control of Firearms thereby assessing the country's adherence to this and other related international and regional

agreements/protocols. In addition, the study intended to identify disparities as well as come up with recommendations on how these could be remedied.

1.5 SIGNIFICANCE OF THE STUDY

The purpose of this study was to explore whether the country adheres to the regional firearms control protocol, in particular if the Namibian arms control laws conform to the SADC protocol. A study of this nature was deemed to be highly significant, because it will add to the existing body of knowledge which will be useful to security agencies and policy makers both in Namibia and the region at large.

1.6 LIMITATIONS OF THE STUDY

The research faced the following limitations, because of the sensitivity of the topic towards national security:

- a. Secrecy of some documents such as the records relating to the policies formulation processes for the harmonization of the National Firearms Control Policy Instruments and the relevant requirements of the SADC Protocol.
- b. Inability to interview SADC officials responsible for the implementation of the Protocol on the Control of Firearms, Ammunition and Other Related Materials because of cost limitation.

- c. The number of proposed intended interviewees could not be attained because of their unavailability during the intended time.
- d. Due to limited resources and time constraint the interviews of the Police Officers responsible for firearms registration were confined to the National level and in Khomas Region.

Despite the above limitations, corrective measures were put in place to overcome them. First, assurance was given to the respective interviewers that confidential information would not be published. Secondly, though SADC officials could not be interviewed in a face-to-face setting, information on the implementation of the protocol were obtained through electronic correspondence and by reading through the programmes/documents the organization put in place to facilitate the implementation, such as the Southern African Regional Police Chief Cooperation Organization (SARPCCO) Standard Operating Procedures (SOP) for SADC Protocol on Firearms, the Strategic Indicative Plan for the Organ (SIPO), and various other SADC reports and publications. Thirdly, for the intended number of interviewees to be attained, appointments were made in advance in order to know who will be available at what time, these allowed for the replacement of those informants who happened not to be available or to schedule to alternative time slots at which they could be interviewed. Lastly, a letter was arranged by UNAM; introducing the researcher to the interviewees and to his employer asking for granting of cooperation and assistance to enable the researcher to conduct his research.

1.7 THE STRUCTURE OF RESEACH

This thesis is structured as follows: Chapter 2 focuses on the methods, procedures and instruments used to collect the data, as well as the handling of the pertinent ethical issues and concerns that arose through the research process. Chapter 3 extensively reviews the academic literature related to the proliferation of firearms; from theoretical as well as national, regional and international political perspectives. It further discusses and analyses the policy and programmatic instruments put in place internationally, continentally, sub-regionally and nationally; to control the increasing proliferation of firearms, ammunitions and other related materials. Chapter 4 encompasses the presentation and analysis of data collected from the literature and key informant sources. In this chapter, the researcher deliberates on the strengths and the weaknesses of the instruments and implementation agencies. Chapter 5 draws relevant conclusions and possible alternative policy recommendation, as well as areas and themes that need further scholarly explorations.

1.8 CONCLUSION

The proliferation of fire-arms particularly the threat it posed to public safety and national security has been discussed nationally, regionally, continentally and globally since the beginning of the 21st century. These discussions resulted in the formulation of protocols, policies and laws at different levels to control the flow of firearms. However, given the severity of the challenges it appeared that these policy

instruments have not yet proven effective or their implementation is not being done efficiently. Hence, this study was looking at how Namibia goes about in implementing the SADC Protocol on Firearms, especially focusing on how the country's laws conform to the protocol.

CHAPTER 2

RESEARCH METHODOLOGY

2.1 INTRODUCTION

This chapter discusses the methodology used in this study. The method used to collect data; the type of data collected, how the data was analysed and the reason why a specific way was chosen are explained in this chapter. This is the part of the paper that outlines and discusses the justifications for the selection of the adopted research strategies (Silverman, 2006, p.341). The choice of the methodology to be used in the research is generally influenced by the topic which is being researched on or the type of research and the results that are expected at the end of the study. If the research is of qualitative nature such as in the case of this study, then the method will be designated to suit that type of research. According Silverman (2006, p.15), “methodology refers to the choices that a researcher makes regarding cases to study, method of data gathering, forms of data analysis, and so forth”. The method used in any research undertaking is important because it guides the researcher to achieve the required results or true conclusion. This chapter will be composed of the following sections: Research design, data collection, sampling technique, research instruments, research reliability and validity, research procedure, data analysis and a research ethics.

2.2 RESEARCH DESIGN

This study adopted exploratory qualitative research method. Exploratory studies are undertaken with the view of gaining some fundamental background understanding about the general nature of the research problem. Qualitative research tries to understand the issues from the viewpoints of the participants in the social process that are subject of the research (Struwig and Stead (2001, p.56). The qualitative research design was chosen because of its relative flexibility, which allowed the researcher to collect data, analyse and get the required result. Besides, the researcher did not want to analyse statistics (numbers) but people's accounts, words/records, views, feelings, impressions, etcetera. In the context of this research a case study approach was used. A case study is undertaken when the researcher wants a better understanding of a particular case (Punch, 1998, p.152).

2.3 DATA COLLECTION

2.3.1 Data were collected from the following documentary sources:

- a. Legal statutes,
- b. Records from the Police Licensing Department,
- c. Published surveys on this and other related topics,
- d. Academic Books and Journals,
- e. Newspaper articles,

- f. Theses and dissertations and
- g. Key informant interviews.

2.4 SAMPLING FOR KEY INFORMANTS INTERVIEWS

This study took the form of a case study based research; which relied primarily on literature review and interviews with some key informants. Therefore, a non-probability sampling method was employed to select the key informant interviewees, combining both convenience and judgemental (purposive) sampling techniques. Those targeted for key informant interviews were mainly drawn from the ranks of the Namibian Police, NDF, Windhoek City Police, registered gun dealers, some private security companies, the Khomas Regional Council and representatives of the Namibian Non-Governmental Organizations Forum (NANGOF) to the National Focal Point on Small Arms and Light Weapons.

The following is the full list of selected key informant interviewees:

2.4.1 Interviewees selected based on the convenience sampling technique from the following mainly in the Khomas Region:

- a. The Governor of Khomas Region,
- b. The Chairperson of the Khomas Regional Council,
- c. The Head of the Namibian Police Armoury,

- d. Four Gun Dealers in Windhoek,
- e. Two members of the NMC,
- e. The Head of Windhoek City Police and
- f. Four of the 20 private security companies in Windhoek.

2.4.2 Interviewees selected based on the Judgemental (Purposive) sampling technique:

- a. The Minister of Safety and Security.
- b. A NANGOF representative to the NFP.
- c. The Chairperson of the National Assembly Standing Committee– Foreign Affairs, Defence and Security.
- d. A member of the National Assembly Standing Committee- Foreign Affairs, Defence and Security (from the political Opposition).
- e. Chairperson of the National Council Standing Committee- Security, Constitutional and Legal Affairs.
- f. The Chairperson of the National Management Committee for Arms Management and Disarmament (Referred the questions to the Co-ordinator of the NFP).
- g. The Co-ordinator of the National Focal Point.

- h. The Head of the Central Firearms Registry.
- i. The NDF member of the NFP.
- j. The Director General of the SADC Organ on Politics, Defence and Security Cooperation.

2.4.3 Names of Key informant interviewees

For the names of people who have been interviewed see Appendix 2 enclosed at the end of this document.

In terms of the original plans twenty-five (25) key informant interviewees were supposed to have been conducted, but because of different reasons only twelve (12) key informants were interviewed. Several attempts were made to set up appointments with the Minister of Safety and Security; the Chairperson of the National Assembly Standing Committee- Foreign Affairs, Defence and Security; the opposition members of the National Assembly Standing Committee-Foreign Affairs, Defence and Security; the Chairperson of the National Council Standing Committee-Security, Constitutional and Legal Affairs. Unfortunately none of these could be realised because all these targeted key informants were either not available or too busy to give an interview. Furthermore, the Chairperson of the National Management Committee for Arms Management and Disarmament (NMC) referred the interview questions to the Co-ordinator of the National Focal Point on Small Arms and Light

Weapons (NFP) who answered all the questions. Besides, the Permanent Secretary of the Ministry of Defence who is also a member of the NMC also referred the questions to his technical staff. However, none of them was able to give answers. Additionally, the NDF member of the NFP was not available for the interview as he was attending a course outside the country, the researcher was able to have access to his reports and documents related to the NFP activities. All Gun Dealers in Windhoek were contacted for the purpose of interview but some were either not willing to be interviewed or they kept postponing the interviews. The researcher also wanted to interview at least four of the eighteen (18) Security Service companies in Windhoek but, only three interviewees were realised.

It is unfortunate that the majority of those missed on being interviewed are the key formal actors in the policy making. This lack of participation may have an influence on the type of data collected for this study, in the sense that most data would be related to policy implementation at the expenses of policy formulation. One of the contributing factors for the lack of participation by policy makers could be the timing of the interviews. However, appointments were requested well in advance and sets of related questions were forwarded to the related offices. The other could be that the subject was perceived by politicians as technical rather than a political issue. This lack of participation may have a negative influence on the validity of the data collected, especially those concerning policy formulation.

2.5 RESEARCH INSTRUMENTS

The study employed semi- structured key informant interviews, using the list of questions cited in Appendix 1 enclosed at the end of this document. The use of semi-structured key informant interviews gave the researcher flexibility to ask additional questions if he is not satisfied with initial answer.

2.6 RELIABILITY AND VALIDITY OF DATA

Reliability of data and methods can be described as “the degree to which the findings of a study are independent of accidental circumstances of their production” (Silverman, 2006, p.282). It is about how the data and method used in the study could be depended/relied upon, and whether if the same study is carried out in the future, it would draw relatively similar conclusions and findings. Struweg and Stead (2001, p.130) define reliability as “the extent to which instruments employed in the study have reliable and valid descriptive information on the researched social phenomenon and whether the research design is valid”.

Validity of findings is “the degree to which we can relay on the concepts, methods, and inferences of a study as the basis for drawing theoretical and empirical conclusions on the social phenomena that are the suspect of the study” (Struwig & Stead 2001, p.143). This therefore refers to the relationship between trial and true product, in order to determine the degree to which a test measures what it is supposed to measure.

2.6.1 Reliability

Reliability in this study is addressed by using standardized methods to record the field notes (using an audio tape recorder) and the preparation of interview transcripts. Furthermore, the study will be compared with the analysis of the related data accessed during the review of existing data. Moreover, making the research process transparent by describing the used data analysis methods sufficiently also enhances reliability. Also using semi-structured questions for the interviews, ensure comparability between the different information sources, which enhances the reliability of data.

2.6.2 Validity

Validity is addressed by comparing the documents relating to the implementation of the SADC Protocol on Control of Firearms, and the interview data to determine whether there are conflicting viewpoints.

2.7 RESEARCH PROCEDURE

The key informant interviews were conducted from December 2011 to 30 February 2012. Permissions to conduct the research were obtained from heads of concerned institutions, offices and individual interviewees. Additional data for this study were collected based on a review and analysing various documentary sources, such as

books, official documents, statutes/policies, reports, academic journals, newspaper articles, theses and dissertations.

This research was of exploratory qualitative nature, aimed at getting the background of firearms proliferations and see how Namibia implements and adheres to the SADC Protocol. The purpose of the study was explained verbally and in writing to people in charge of the concerned institutions and to the interviewees and participation was voluntary. This was done in order to maintain research ethics principles and to assure the interviewees that information collected would not be used for something else rather than for academic purpose. The interviews were structured at first and semi-structured questions were introduced towards the end of the interview if those questions had not been adequately addressed. Interviews were performed individually with each participant and each lasted for about forty (40) minutes.

2.8 DATA ANALYSIS

This refers to the processes that “enable the researcher to organise and bring meaning to large amounts of collected data” (Struwig and Stead, 2001, p.169). According to Stephanus (2009, p.99), “an analysis is a search for meaning in relation to the research purpose or questions”. Qualitative content analysis method was used in this research to bring out the meaning from the content of the data collected from both the literature and key informant sources (Henning, 2004, p.102). Miles and

Huberman (1984, p.21) divide data analysis into three activities which do run concurrently, which are: “data reduction, data display and conclusion drawing”. Data reduction and display entailed the recording and organization of the data derived from books, documents and the interviews, in terms of the questions they intend to answer. Conclusion drawing in the context of this research was realised through the interpretation of qualitative data. This entailed reflecting on possible meaning of the data, the understanding of the situation and the development of various explanations. In a nut shell, the analysis process in this study was in the following phases: First, collected data from both literature and key informant interviews were thoroughly read through. During this process, information was classified and different data connected together. The second stage was to select and organise the data. This course of action involves separating important factors from unimportant one, as well as the clustering of similar factors in same groups/categories. Thirdly, data was displayed/ presented in the way that they were ready for interpretation/to answer the research questions. The final phase was to interpret data and draw a conclusion (findings). The study compared what the SADC Protocol says and what the Namibian law says, as well as what both the documents say and what is happening on the ground.

2.8.1 Theoretical Framework

The implementation of the SADC Protocol would be analyzed using the Syntheses/Hybrid policy implementation theory by Elmore (1985). This theory states that “policy designers need to consider the policy instruments, resources and

incentive structures of the target group as well as implementers' ability" (Peter & Pierre, 2007, p.134). Target group are those who will be affected by the policy such as; private firearms owners, firearms manufacturers, firearms exporters/importers, firearms dealers and so on. Policy implementation encompasses those actions by public and private individuals or groups that are directed at the achievement of objectives set forth in policy decisions (Paudel, 2009, p.37). By employing this theory the researcher would explore if the designers of the SADC Protocol on Control of Firearms, Ammunition and Other Related Materials had considered capacities of the individual member states in terms of: laws, resources, structures as well as the ability of their public servants to implement the Protocol effectively.

Other theories of policy implementation are Forward Mapping (Top- Down approach) theories (Elmore, 1980, p.603) and Backward Mapping (Bottom- Up approach) theories (Peter and Pierre, 2007, p.132). The Forward Mapping theory states that "the analysis starts at the top of the process, with the statement of the policy makers and proceed in sequence of steps to define what is expected of implementers at each level" (Elmore, 1980, p.603). The Forward Mapping theorists put their main emphasis on the ability of policy makers to produce explicit policy objectives and on controlling the implementation stages, but tended to disregard the impact of implementers on policy delivery (Pülzl and Treib, 2010, p.90- 91). They failed to take into account that well defined policy objectives are not enough to guarantee successful implementation of the policy (Pülzl and Treib, 2010, p.93). The Backward Mapping theorists pay special attention at the bottom of the implementation system or at the lowest level of the implementation process (Peter

and Pierre, 2007, p.132). They rejected the idea that policies are defined at the high level and that implementers need to stick to these objectives as neatly as possible (Pülzl and Treib, 2010, p.92). Therefore, this study used the Syntheses/Hybrid theory which is a combination of both the Forward and Backward Mapping theories.

2.9 RESEARCH ETHICS

Proliferation of firearms is a sensitive subject. It concerns public safety and security of the nation. Therefore, this research needs to be handled with care in order not to expose the informants to danger or to jeopardise the national security agenda. Before the commencement of any interview, the consent of interviewees was obtained, by thoroughly explaining the reason for this study to informants and interviewees (especially the gun dealers and private security companies) before any information was solicited, as well as ensuring that they provide whatever information they had at their own free will. Moreover, security related information obtained from actors and agencies in the security sector will not be made public without the authorisation of its custodians, or in a nature that will violate the privacy of the source as well as the confidentiality of the information so provided.

CHAPTER 3

LITERATURE REVIEW

3.1 INTRODUCTION

The literature review provides critical reflections on the existing body of knowledge as construed in the various publications by authors who explored the subject under discussion. By critically examining the works of different authors, it puts the researcher in a position to locate his/her research within the appropriate theoretical and conceptual frameworks for data collection and analysis data. Hart (1998) defines literature review as:

The selection of available documents on the topic, which contain information, ideas, data and evidence written from a particular stand point to fulfil certain aims or express certain views on the nature of the topic and how it is to be investigated, and the effective evaluation of these documents in relation to the research being proposed.(p.13)

There appears to be plenty of relevant documentary sources such as in the forms, books, journal articles and other publications on the proliferation of firearms and measures for the control thereof. Although this study focuses on Namibia, not only literature which is concerning Namibia will be looked at but also those pertaining to the SADC Region, the African continent and the whole world. This is considered as being necessary in order to know how other countries are responding to the proliferation of firearms, so as to compare their control instruments with that of

Namibia. Additionally, Namibia is a member of SADC, African Union and the United Nations, hence the literature related to the control of firearms by these organizations are important for this study, especially when it comes to establishing whether Namibia's firearms control law is in line with that of the SADC, the AU and the UN. The anti-colonial liberation war waged persistently on the continent from 1960s and 1989 and the civil wars that followed especially at Southern Africa, the Horn of Africa, at West Africa and the DRC may have contributed towards these. The reasons for the private ownership of fire-arms vary; from reasons of self protection, protection of properties, hunting to sport, etcetera (Gould and Lamb 2004, p.122-124). Although the number of firearms in private hands and its threat to human and societal security had increased since the arrival of European traders and colonial administration officials on the continent, it was only after the end of the Cold War in 1990 that the world leaders started to express an interest in controlling and regulating their use. As Storey (2008, p.7) puts it, "since 1652 the acquisition of guns played an important role in the extension of settlements and colonial rule in South Africa".

The armed liberation struggle waged in the countries located in the southern part of the African continent lasted until the end of the late 1980s, whilst the civil wars that followed independence of Mozambique and Angola, as well as the recent conflict in the DRC lasted until the mid 2000s. Through these, the region became exposed to a large inflow of illegal firearms which continue to threaten public safety and national security. The SADC Heads of States or Governments recognised these threats and adopted the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the region (SADC, 2001). By October 2003, the SADC protocol was

one of a few multilateral legally binding instruments on the control of small arms and light weapons in the world (Stott, 2003 p.1). Furthermore, similar security challenges were also experienced in the SADC Strategic Indicative Plan for the Organ (SIPO) (SADC, 2004), while the Southern African Regional Police Chiefs Cooperation Organization (SARPPCO) produced standardized operating procedures for the implementation of the provision of the protocol (SARPPCO, 2007). The protocol could only be effective if it is ratified by 2/3 of the member states parliaments.

This chapter is structured in the following way: Firstly, the researcher defines and contextualises the relevant concepts and terms that are applicable to this research. The discussion will then look at where the firearms and ammunitions originated from. This is followed by the discussion on the literature related to the acquisition and possession of firearms. The fifth component of the chapter focuses on the legal instruments put in place to control the production, acquisition, trafficking and use of firearms, ammunition and other related materials. The reasons why it was necessary to own a firearm are then discussed in the section that followed. Part seven looks at how firearms could be a threat to public safety and national security which is followed by a discussion on the literature concerning the implementation of the SADC Protocol on Control of Firearms, Ammunitions and Other Related Materials. Section seven is about Namibia's implementation of the international policy instruments on control of firearms. Finally, is a conclusion which includes a summary of major ideas and suggestions on how this study would add to the literature.

3.2 DEFINITION OF KEY CONCEPTS

Before proceeding with the full review of the literature, it is important to define and contextualise relevant concepts and terms that will be used in this thesis. The Oxford Advanced Learners Dictionary (2005, p.1162) defines the term proliferation as “the sudden increase in the number or amount of something”. It can also be described as “a rapid increase in the number of deadly weapons” (Webster- online dictionary). From the perspective of security and strategic studies, the term proliferation gained prominence during the Cold War era when it was mainly used with reference to the production and acquisitions of nuclear weapons by different nations. However, after the end of the Cold War, the term is commonly used by the United Nations and its member states in the context of the discussion on combating the increase of small arms, ammunitions and other related materials (UN, 2002, p.1). In this thesis, the term “Proliferation” refers to the acquisition of fire arms by private organisations and individuals, whether legally or illegally.

GRN (1996, p.4), defines arm as “any firearm other than a canon, a machine gun or a machine rifle”. On its part, SADC (2001, p.3) describes firearm as “a portable lethal weapon that expels, or is designed to expel a shot, bullet or projectile by the action of burning propellant. The Countries of the Great Lake Region and the Horn of Africa (CGLRHA) (2004, p.3) adopted the definition by the UN General Assembly (UNGA, 2001, p.3) which states that; firearms are “any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas”. The word antique is defined as something old and often valuable (Oxford University,

2005, p.55). Antique firearms are those very old fashion firearms which are mostly held as decorations. The US Government Information Title 18, Section 921 (a) (16) defines antique firearms as “any firearm manufactured in or before 1898; and if such replica is not designed for rim-fire or conventional centre fixed ammunition, or uses rim-fire or conventional fixed ammunition” (US Gov Info, n.d. p.1). All the three quoted gun control documents have different definitions of firearms which on the surface and from a lay-person perspective may seem to mean the same thing. However, the SADC definition is more inclusive than the other two. The descriptions by GRN (1996) and CGLRHA (2004) are narrow, because they exclude some arms like grenades, machine guns and rocket propelled grenades which are portable and could be illegally possessed. This study will adopt the SADC definition.

According to ECOWAS (2006, p.3), small arms are “arms that can be operated by one person which includes firearms and other destructive arms or devices”. It is described in the CGLRHA’s Nairobi Protocol (2004, P.3) as “weapons designed for personal use (operated or used by a single person), and includes; light machine guns, sub-machine guns, etcetera”. Furthermore, the SADC Protocol on Control of Firearms defines small arms as “firearms which include; light machine guns, sub-machine guns, machine pistols, full automatic rifles, assault rifles and semi-automatic rifles” (SADC, 2001, p.4). Light machine guns are those machine guns that are designed to be operated by a single person. Assault rifles are guns with a long barrel that are fired from shoulder, for example, the R- 4, AK- 47, FN, and so forth. Sub-machine guns are those rifles that can fire on automatic mode, for example, the AK- 47. Machine pistols are the pistols that can fire on automatic mode.

In general, small arms are guns that are manufactured specifically for personal use (Beal, n.d.p.1). There is no definitive definition of small arms in the Namibian Firearms and Ammunition Act. However, the definition of an arm in the Namibian Act includes all weapons mentioned above as small arms (GRN, 1996, p.4). The fact that the exact term small arm is not defined in the Act does not hold any implication because most (if not all) the basic types of small arms are included in the definition of an arm. The definitions by ECOWAS Convention and the Nairobi Protocol appear to be the same and inclusive. Therefore, this thesis will adopt this definition. Although the thrust of this research is SADC Protocol, however it is preferable to adopt the definition contained in the above mentioned instruments because it is easy to understand and includes all guns referred to as small arms in the SADC Protocol. Therefore, there is no negative implication on adopting this definition.

Whereas the concept of small arms refers to a gun that can generally be handled and used by a single person, on the contrary a “Light Weapon” is an arm that is operated by more than one persons working as a team. As Beal (n.d, p.1) puts it, light weapons are those weapons which are intended to be operated by more then one person working as a team. It is defined in the SADC Protocol, the Nairobi Protocol and ECOWAS Convention as “an arm that is designed for use by several persons serving as a crew; these may include heavy machine gun, automatic cannon, portable anti-aircraft cannons, portable anti- tank cannons”, etcetera. (SADC, 2001, p.3, ECOWAS, 2006, p.3 & CGLRHA, 2004, P.3). The same definition will be adopted and used in this study. In fact, a light weapon can be designed with the purpose of fighting personnel on foot or as an anti-aircraft weapon or an anti- tank gun. Both the

Namibian Firearms Control Law and the SADC Protocol do cover both small arms and light weapons. The definitions of a firearm in both instruments include both small arms and light weapons. However, small arms appear to be the main problem in Namibia, as there are rare reported incidences where light weapons were used. Therefore, this study concentrated mainly on small arms.

3.3 ORIGIN OF FIREARMS IN SOUTHERN AFRICA

The history of acquisition of firearms by private citizens and non- state entities in Africa dates back to the arrival of colonialism on the continent. As discussed by Storey (2008), firearms were used as means of trade between the European traders and Africans in South Africa as far back as the 15th century. Since then, the number of private owned guns on the continent has increased, which necessitated the decisions by African Heads of States and Governments to institute measures for the regulation of their acquisitions and use by private citizens. Storey (2008, p.5) argued that guns and colonialism went hand-in-hand and therefore came to symbolise when the Europeans first came in contact with the Africans especially in the South African context. During that time guns became one of the most important trade commodities. Storey (2008) describes how guns control laws/measures were discriminatory against the blacks during early years of colonialism. For instance; “the South African gun control measures of 1870 denied Africans all rights of citizenship, including the right to own a weapon”. This shows how the Europeans who brought firearms to the continent formulated discriminatory law as a means for acquiring and maintaining control of the African land. Storey’s literature is highly relevant in providing a background to how firearms arrived in Southern Africa as well as the important roles

they played during that time. However, Boer (2004, p.115) identified Angola as the country where most of the illegal firearms which came to Namibia originate from. This, he attributed to the protracted civil war fought in that country for almost two decades and the wide open borders between the two countries (Boer 2004, p.115).

3.4 FIREARMS OWNERSHIP TRENDS IN NAMIBIA

Boer's (2004, p.115) Namibia Country Study examined the nature and extent of firearm ownership in Namibia, as well as the related issues such as firearms statistics, control laws, demand for firearms, and firearm related crimes. Boer (2004, p.115) described Namibia's post-independence period as "having been relatively peaceful, though firearms continued to play an important role in the society". As they are mainly acquired/used for the purpose of hunting, sports shooting and self-protection (Boer, 2004, p.115). The majority of the Namibian population resides in rural areas where rifles and shot guns are acquired for the purpose of hunting and protection of livestock (Boer, 2004, p.122). Although Boer (2004) did not state the proportion of gun ownership in rural areas compared to urban areas, the data presented in the study show/indicate that the regions where there are big cities/towns have more registered fire-arms than those with small towns. For example, Khomas Region alone makes up 43% of the registered firearms in the country, followed by Erongo and Otjozondjupa, while Kavango Region had the least (1.8%). Furthermore, the country is well known for its trophy hunting attractions. Therefore, Namibians are permitted by law to acquire four different types of firearms each; three rifles meant for hunting different sizes of game and one handgun (Boer, 2004, p.117). However, Boer (2004) did not clearly state the negative uses and functions for which guns became infamous for in

Namibia after independence, such as domestic/gender violence, armed robberies, murder, and so on. Gould and Lamb (2004) in their book, "Hide and Seek", presented reports from different Southern African countries on Small Arms and Light Weapons. In Botswana, according to Gould and Lamb, police do not carry firearms while on patrol. This is contrary to the situation in Namibia, where the police members are commonly armed while on patrols. The report furthermore revealed that civilians in Botswana may own up to three firearms, which is different from the Namibia situation where a citizen can own maximum four guns (GRN, 1996, Section 3(7)). Another interesting point that emanated from the Gould and Lamb's (2004, p.35) reports is that, unlike the Namibian case, private security guards are not armed in Botswana. The key informants from the Security companies in Namibia believe that the crime situations in Namibia and Botswana are quite different. Therefore, it is impossible for the security guards in Namibia to be unarmed while on duty. Nevertheless, they all conceded that not all the places need protection by armed guards. The variation between the Namibian and Botswana firearms control laws shows that the gun control in Botswana is tighter than in Namibia. It also indicates that Namibia has more firearms per person in civilians' hands than in Botswana. However, having tough/strict regulations/laws does not mean that firearms control is perfect in Botswana. As Gould and Lamb (2004, p.30) said; "in spite of the severe regulations and control, Botswana was experiencing an increase in the number of firearms related crimes". Although ownerships of hand guns by private citizens in Botswana was banned in 1990, those who had their hand guns licensed before the 1990 Arms and Ammunition Amendment Act still have their hand guns (Gould and Lamb, 2004, p.2).

Furthermore, the Gould and Lamb (2004, p.203) report noted that South Africa had the highest number of licensed firearm owners in the region. This was attributed to the political background of the country, especially the fact that the former apartheid government distributed firearms to former homelands security and members of political parties (Gould & Lamb, 2004, p.135). Most of these guns were not accounted for, after the change of the government in 1994. These two works are significant to this study and will be complemented further upon in the next chapter of this study through appropriate confirmations derived from key informant interviews.

3.5 FIREARMS CONTROL INSTRUMENTS

This section will discuss the various legal instruments and/or policies that were enacted at international, continental, sub-continental and national levels to control the proliferation of firearms in the hands of private citizens. The study examined the implementation of these policies in their quest to regulate the negative use of firearms in violent crimes, domestic violence and other illegal activities that threaten public safety and national security. First, there will be a general discussion on all the above mentioned policies/laws to synthesis the specific obligation that arises for Namibia as a signatory to these treaties. The discussion will then later focus on the specific policies/laws that were enacted to regulate the proliferation of firearms in Namibia.

3.5.1 International and Regional Firearms control initiatives

The interest of the international community during the Cold War according to Beal (n.d, p.2), was more concerned with the reminiscence of the two previous World Wars and the fear of the nuclear weapons since 1945 onwards. Therefore, during that time, there was little international concern with the control of small arms and the threat they posed to international security, as these were in some instances promoted as part of the respective Cold War strategies of both the East and the West. Beal (n.d. p.2) provided a demonstration of why and how the proliferation of small arms was allowed to grow for most part of the 20th century. They mainly focused on “Weapons of Mass Destruction (WMD)” namely: nuclear, chemical and biological weapons (Beal n.d. p.2). As a result to the developed countries, small arms were deemed to be less of a threat compared to these so- called weapons of mass destruction, while to the newly independent states weapons like Ak-47 were regarded as “a powerful cultural symbol of liberation and decolonization” (Beal, n.d. p.2). In the case of the UN for instance, it remained pre-occupied with ideological conflicts between the West and the East. Only after the 1994 Rwanda genocide, the conflicts in Bosnia and Somalia did the UN start to mount various programmes for the combating of the proliferation of small arms.

After the end of the Cold War leaders of states at global, continental, sub-continental and national levels started to pay more attention to the threat posed by these weapons. The world leaders’ main concern was the use of these weapons in internal conflicts and civil wars, which had increased after the end of the Cold War. The end of the Cold War had resulted in the break- up of the Eastern block and the former

Yugoslavia. This break- up was not an easy one as there was big resistance in some countries such as Bosnia, Croatia and Serbia. Furthermore, after the end of the Cold War the support of dictators thinned out, and resulted in them losing support of their subjects in countries like Somalia, Liberia, Sierra Leone and Zaire.

In response to the experience of these conflicts and the general global increase in the trafficking of illegal firearms as well as their use in violent crimes, the UN General Assembly mounted a “Conference on the Illicit Trade in Small Arms and Light Weapons” in June 2001, which adopted a protocol for the control of these practices (UNGA, 2001, p.2). Many conferences and meetings (to mention a few, the 09 – 20 July 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons and the SADC NGOs sponsored Conference on Small Arms and Light Weapons (UN, 2002 and Stott, 2003, p.1) were held, which resulted in agreements and formulation of policies and laws to control the proliferation of firearms.

The end of the Cold War has given world leaders a breathing space to consider other security issues which confront the world, such as the Proliferation in the Illicit Trade in Firearms (Pearson, 1994, p.1). They recognised the problem caused by the illicit trade in firearms. It is against this background that the United Nations General Assembly, during its 53rd session in December 1998 agreed on the creation of an inter- governmental ad hoc committee tasked with the formulation of a global policy framework for addressing the problems of organised crimes, human trafficking and the proliferation of and illicit trade in firearms (UN, 2001). All these social phenomena are interlinked and destroy the livelihoods of the people in the world.

According to the UN Office on Drugs and Crime (UNODC, n.d., p.1), “Transnational organized crime is considered as one of the major threats to human security, impeding the social, economic and cultural development of societies worldwide” (UNODC, n.d. p.1). It encompasses among others; drug trafficking, human trafficking, trafficking in firearms, smuggling of migrants, money laundering, etcetera (UNODC, n.d. p.1). The deliberation of this committee culminated in the adoption in June 2001 of the UN General Assembly “Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, as supplement to the United Nations Convention Against Transnational Organized Crime” (UN, 2001, p.1). The purpose of this policy was “to promote, facilitate and strengthen cooperation among state parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition” (UN, 2001, p.3). Illicit manufacturing of firearms is defined as “the manufacturing or assembly of firearms their, parts and components or ammunition without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place” UNGA, 2001, p.3-4). According to UNGA (2001), illicit trafficking in firearms is defined as:

The import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it.(p.4)

The Protocol obliges each member state to put in place laws and instruments required to “criminalise the illicit manufacturing, trafficking of firearms as well as the

ratification of the markings on firearms as required by the protocol” (UN, 2001, p.4). The implementation of this UN policy could only be possible if it is ratified by the required number of member countries (40 countries) and the states integrate it in their national laws. It “should enter into force on the 90th day after the date of deposit of 40th instrument of ratification, acceptance, approval or accession” (UN, 2001, p.10). Article 13 of the protocol compels member states to cooperate at all levels (bilateral, regional and international) to avert, fight and eliminate the illegal proliferation of firearms and establish national bodies to liaise with other states. However, the Protocol does not provide for punitive remedies in event of non-compliance by a state party.

Beal (n.d., p.4) chronicled the events that culminated in the UN Conference on Illicit Trade in Small Arms and Light Weapons starting with:

1995, the UN commissioned a panel of government experts on small arms to address the issue of small arms and to provide practical policy options, which in 1997, recommended that “the UN should consider the possibility of convening an International Conference on the Illicit Arms Trade in all Aspects”.

August 1998, the UN Department of Disarmament Affairs established a mechanism for Coordination of Actions on Small Arms (CASA) to coordinate inter- agency small arms efforts at the UN, and in 2001 CASA eventually convened a UN Conference on Illicit Trade in Small Arms and Light Weapons.

According to Beal (n.d. p.1) the 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons had failed to adopt binding international control, apart from agreement by delegates to meet again at some future point. Since then, UN member states have gathered several times to consider the implementation of the Programme of Action, notably in 2003, 2005, 2008 and 2010 as well as held a review conference in 2006 (UN, 2010, p.1). At the fourth meeting in 2010, several representatives expressed disappointment that the 2006 review conference on progress made in implementing the Programme of Action had not agreed on a final document (UN, 2010, p.1). Nevertheless from 2001 to June 2010, considerable advancements had been attained in the execution of the Programme of Action. These include “strengthening of relevant legislation by member states to uproot the illicit proliferation of firearms at national level, development of Disarmament Demobilization and Reintegration (DDR) programmes and integrating small arms action plans into national development strategies” (UN, 2010, p.3).

After the end of the Cold War, the former Soviet Union and Yugoslavia started disintegrating, and the former Communist Countries in Eastern Europe went through the process of democratisation. The end of the Cold War resulted in the withdrawal of foreign sponsorship for both insurgents and governments (Ross, 2005, p.10). With the loss of the Super Powers’ support, dictators in the so called third world also found it difficult to maintain their grip on power as people were demanding political change. This change was not an easy one, hence it brought with internal conflicts and civil wars in those countries. The last president of the Soviet Union, Michael Gorbachev resigned on 25 December 1991 the decision which brought the end of the

Soviet Union existence, and all its former dependent republics proclaimed their independence (President Profiles, n.d. p.5). In the same year, in Yugoslavia, “political leaders of different republics could not agree on how to keep the country together as ethnic violence broke out” (President Profiles, n.d, p.6). The African continent was not spared from this effect as most of the conflicts that occurred during this time took place on the African continent. As Anyanwu (2004, p.2) stated; “since the end of the Cold War, civil war has become the predominant form of violence globally”. He cited the evidence example that “of the 25 major armed conflicts listed by the Stockholm International Peace Research Institute (SIPRI) in 2000, all except two were internal”, and Africa was the most affected continent with 11 armed conflicts. The two interstate armed conflicts were that between Eritrea and Ethiopia as well as the one between India and Pakistan.

By the end of the 1990s the continental leaders had already recognised the problem caused by the spread of firearms. Therefore, the Organization of the African Unity (African Union’s predecessor) heads of states and government at their 35th Ordinary Assembly Session in July 1999 deliberated on the possible courses of action and decided to set up a programme for combating the proliferation and proliferation of firearms on the continent (OAU,2000, p.1). This decision and the subsequent ministerial meetings led to the adoption of a continental policy framework on combating the proliferation of illegal firearms in 2000 – “the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light weapons” (OAU, 2000, p.1). This declaration did not only signify the concerns of the African leaders with regard to the danger posed by the

illegal arms, but also their collective resolution to deal with this problem (OAU, 2000, p.4). This step by the OAU may have been influenced by the activities at the UN, which commenced in 1995.

The Declaration put up forth a number of recommendations on how the member states should approach and solve the problem at both national and regional levels. At national level, states were required to create coordination mechanisms as well as to codify and harmonize their relevant policies, to build up their law enforcement capacity in order to confront the problem of illegal firearms, and to criminalise the illicit proliferation of guns in their countries (OAU, 2000, p.4). Furthermore, states are expected to educate the public about the danger of these weapons and to promote participation of Non-Governmental Organizations (NGOs). In addition, individual countries need to enact necessary laws required to enforce international arms embargoes, and to sign obligatory accords with their neighbours in the fight against the arms problem (OAU, 2000, p.4). Examples of the arms embargoes are the UN Arms Embargoes on Liberia through the UN Security Council Resolution 1521 (from 2003 – 2011) (UNSC, 2003) and the DRC UN Security Council Resolution 1533 (from 2004 – still in force) (UNSC, 2004), which were imposed during the civil wars in these countries. Obligatory accords are agreements between two or more neighbouring countries, in which they agree to cooperate in the fight against the proliferation of firearms.

The two documents (the UN Protocol on Firearms and the OAU Declaration) are related to this study because they formed a base of the SADC Protocol on Control of

Firearms, Ammunition and Other Related Material. Both the AU and UN firearms control instruments call for action by all regional economic bodies including SADC. In the specific case of the Bamako Declaration through its Section 3 B which impressed upon regional economic blocs to create firearms control instruments and coordination mechanism if they are not already there, in order to address the problem (OAU, 2000, p.4). The UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms is open for accession by regional economic communities as long as the members of that organization have signed this protocol (UNGA, 2001, p.10). In the SADC Firearms Protocol (Article 4), the member states agreed to accede to the existing international instruments on the control of firearms, ammunition and other related materials and to implement such instruments in their respective countries (SADC, 2001, p.4).

As pointed out above, the OAU Bamako Declaration on Combating the Illicit Proliferation, Circulation and Trafficking of Small Arms called upon states parties to strengthen their respective sub-continental collaborations especially among law enforcement institutions, as well as to ensure that the violators of the global and continental regulations on these issues are penalized (OAU, 2000, p.2-3). This declaration had prompted the Southern African Development Community (SADC) to formulate and adopt its firearms control instrument; the “Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) Region” (SADC, 2001, p.1) in 2001. This Protocol is a Sub-continental agreement which was formulated and adopted by the regional leaders in accordance with Articles 5, 21 and 22 of the SADC Treaty

(SADC, 2001, p.1). Article 5 provides for “promotion and defence of peace and security” as some of the objective of the Treaty, Article 21 provides for areas of cooperation, while Article 22 provides for “conclusion of protocols which may be necessary in agreed areas of cooperation” (SADC, 2001. p.1). The Protocol on the control of firearms was adopted on the fourteen (14) August 2001 at Blantyre, Malawi and was signed by thirteen (13) of the SADC member states representatives on that day. Only Angola did not sign, while Madagascar was not a member by then (SADC, 2001, p.16).

The SADC Protocol’s main objectives are to facilitate cooperation at the regional level with the view to prevent, fight and eradicate the illegal production, transportation, possession and use of firearms in the region (SADC, 2001). The SADC member states further committed themselves to be parties to UN and AU initiatives in this regard. They also undertook to “enact necessary legislations and take other measures to criminalise all the relevant offences under their national laws, to prevent, combat and eradicate the illegal firearms problem” (SADC, 2001. p.5). At operational level (implementation level), the SADC member states have also committed themselves “to improve the capacities of their respective police, customs, boarder guard, military, judicial and other relevant agencies for the effective implementation of the protocol (SADC, 2001, p.6). Moreover, the SADC protocol has gone further than the continental and global initiatives, by undertaking to put up measures for regulating firearms that are legally in the hands of civilians. The above commitments were strengthened by the Southern African Regional Police Chiefs Cooperation Organization (SARPCCO) which in July 2007 came up with Standard

Operating Procedures (SOP) in the implementation of the SADC Protocol on Firearms (SARPCCO, 2007). The SADC Protocol may only become effective if it is ratified by all member states.

The SADC Firearms Protocol, according to Lamb and Coetzee (2009) became the first firearms control mechanism on the African continent to assume binding status. After being ratified by two thirds of the SADC member states, the Protocol become obligatory to all member states and they are all expected to obey it, for the common good of regulating the spread of firearms in the sub- region. The Protocol further services to promote facilitate cooperation and the exchange of information in the fight against the proliferations of firearms at the regional and international levels (SADC, 2001). The Protocol requires the member states to enact the necessary laws that would help eradicate the illicit manufacturing of firearms and ammunitions (Article 5). South Africa was the only SADC country officially recognized as a small arms and light weapons producer in 2004 (Gould and Lamb, 2004, p.324). According to the SADC HQ key informant, until February 2012 Angola, Madagascar and DRC have not yet ratified the protocol. Since the adoption of the SADC Protocol on Control of Firearms in 2001, two other protocols have come into effect on the continent, these are: “The Nairobi Protocol for Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes and the Horn of Africa regions (2004)” and “The Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Ammunitions and Other Related Materials (2006)” (Lamb and Coetzee, 2009, p. 15).

The study by Lamb and Coetzee (2009) looked at the general progress made to address the firearms problem in the continent namely: paying particular attention to firearms control instruments in Africa by three regional economic communities as well as efforts made towards the implementation of the SADC Protocol on Firearms, Ammunition and Other Related Materials. These protocols would only become effective if the relevant member states make concerted efforts to integrate them in their respective national laws. In this regard SADC thus orchestrated the creation of the Southern African Regional Police Chiefs Cooperation Organisation (SARPPCO) (Lamb and Coetzee, 2009, p.15).

The Protocol was necessitated by the fact that “illegal firearms were mostly used in perpetration of crimes, whilst equally contributing toward instability, extended conflicts, violence and social dislocation which is evident in the region” (SADC, 2001, p1). According to Stott (2003, p.5), the Protocol would only enter into force when two third of the member states ratify and deposit their instruments of ratification with SADC Executive Secretary. Before coming up with the Protocol, a number of activities aimed at addressing the issue of fire-arms had occurred in the region. Stott (2003, p.2) listed the following as the approaches by SADC member countries, which led to the adoption of the Protocol:

- a. In May 1998 NGOs sponsored conference adopted an Action Programme on Light Arms and Illicit Arms Trafficking.
- b. In August 1999 SADC Council of Ministers meeting in Maputo made first statement on the issue of prevention and combating of the illicit trafficking of small arms, and related crimes. The Council mandated

SADC to establish a regional policy for the control of SALW and identified SARPCCO as the implementation agency.

- c. In 1999 SARPCCO established a firearms desk and appointed an officer to oversee the implementation of the SADC programmes on small arms issues, and to act as liaison between member states and the SADC Secretariat.
- d. In 1999 a working group composed of representative from five (5) SADC member states namely; Mozambique, South Africa, Swaziland, Zambia and Zimbabwe and the SADC secretariat was appointed to develop the SADC policy on small arms, which lead to the adoption of the SADC Protocol by August 2001.

Stott (2003, p.6) identified the following potential challenges to the smooth implementation of the SADC Protocol:

- a. It was not clear as to which organization had the ultimate authority in the steering of the SADC Protocol implementation – SADC or SARPCCO.
- b. There was no formal agreement between SADC and SARPCCO on the implementation of the protocol.
- c. The memberships of SARPCCO and SADC were different, for example, DRC only belonged to SADC but not to SARPCCO.
- d. The content of the SADC Protocol is long and complex and may therefore prove to be difficult for member states to implement.

3.5.2 National instruments

Although the SADC Protocol calls on member states to harmonize their firearms control instruments, there are however numerous variations between SADC member states firearms control laws (SADC, 2001, p.6). South Africa, Botswana and Zimbabwe have similar laws. However, it has been observed that there are differences in contents and the way these control instruments are implemented as it illustrated in Table 3.1. In this section firearms control laws of Namibia, Botswana, South Africa and Zimbabwe are systematically analysed. The results have shown that there is no uniformity in the firearms control instruments of the SADC member states.

According to Safer Africa and Safer World (cited in Boer, 2004, p.116), “The Firearms Control Law has been in place in Namibia since 1938” Some of these are: the Arms and Ammunition Act, 1969; the Arms and Ammunition Amendment Act, 1973; the Arms and Ammunition Amendment Act, 1978; the Arms and Ammunition Amendment Act, 1981 and the Arms and Ammunition Amendment Act, 1988. This shows that even the colonial regimes had recognised the danger posed by the citizens’ unregulated access to firearms, especially the threat it poses to societal safety and the regime security. The Arms and Ammunitions Act 7 of 1996 for Namibia “provides a framework for regulating possession of arms and ammunitions; by focussing on the dealership in, importation, exportation and manufacture of arms and ammunition” (GRN, 1996, p.2).

The Act entrusts the Inspector General of the Namibian Police with the responsibility of awarding firearm licenses (GRN, 1996, p.6). In Botswana, the discretion to awarding of permission to own a firearm is vested in an Arms Quota Board, in accordance with a set of pre-determined guidelines (part 1 section 4) leaving the Minister responsible for police with the responsibility of setting the quotas of guns to be imported per year (GBW, 1981, p.2). In both South Africa and Zimbabwe, the National Commissioners of Police is in charge of granting licences (GRSA, 2000, p.43 and GZIM, 1956, p.34). The Commissioners of Police are equivalent to the Inspector General of Police in Namibia.

The duration of the firearms licences according to section 5 of the Namibian Firearms Act has no limit, unless in instances where “it has been transferred, or the holder is declared unfit to possess a firearm or the arm is forfeited to the state by order of court” (GRN, 1996, p.14). This can be considered a major loophole because the personality/characteristics of the licence holder are dynamic and may change in over time. However, the licence to deal in arms and ammunitions according to the Namibian Act has duration of three years. This provision is good, unlike that of the possession of firearms licence which does not expire.

In contrast, Botswana’s Arms and Ammunition Regulation limit the duration of an individual’s arms licence to five (5) years, and that of firearms dealers to three (3) years (GBW, 1981, p.5 & 6). Similarly in the South Africa licence for hand gun last for five (5) years, for hunting guns ten (10) years while that of dealers has duration of one year (GRSA, 2000, p.17). In the case of the Firearms Act of Zimbabwe the

permits given to an individual to acquire/obtain a firearm is three (3) years and one year licence for firearms dealers (GZIM, 1956, p.6 & 17). Section 8 (1) of the Namibian law which allows for the possession of a firearm(s) by a person other than the legally licensed owner, but with the consent of the licensed holder can also be exploited, because the fitness of such a person to possess and operate such a firearm have not been tested. This contrast with the SARPPCO Standard Operating Procedures as well as Chapter 7, Section 2 of the SADC Protocol on firearms which states that “borrowing of firearm from another person is not allowed”.

The Namibian Arms and Ammunitions Act and the firearms laws in both South Africa and Zimbabwe permit private citizens to own hand guns (pistols). However, the Botswana Arms and Ammunitions Regulation as per the 1990 amendment has banned ownership of hand guns by private citizens, although some individuals still own handguns that were licensed before the amendment (Gould and Lamb, 2004, p.28; GRSA, 2000, p.13; GZIM, 1956, p.4). As Chief Abraham Kanime the key informant from the Windhoek City Police said; hand guns (pistols) in civilian hands are very difficult to control by law enforcement agencies, as they are not always visible. It would be understandable if somebody acquires a rifle to guard a cattle post or to protect a business premise, but to possess a hand gun for what reason, he doubted. Meanwhile, SARPPCO Standard Operating Procedures for SADC Protocol on Control of Firearms has listed three types of firearms that can not be used, owned or possessed by civilians, which are; “fully automatic firearms, firearms with a calibre exceeding 12.7mm, and any light weapon” (Chapter 7, Section 2). These categories of guns do not include shot guns and hand guns. Since the region is

in the process of integration, it would be in the good interest of the SADC citizens if the firearms control laws of the member states could be harmonised.

Table 3.1 shows the area of differences in the four SADC countries' firearms control laws.

TABLE 3.1: Areas of differences in the four countries' firearms control laws

S/NO	AREAS OF DEFERENCE	NAMIBIA	BOTSWA NA	SOUTH AFRICA	ZIMBABWE
1	Who Approves Firearm Licences	The Inspector General of Police	The Fire-arms Quota Board	National Commission of Police, but has Appeal Board	The Controller appointed by the Commissioner of Police
2	Duration of Firearm Licences	Indefinite	5 years	5 years for hand gun 10 years for hunting rifle	3 years
3	Permission for Security Guards to carry firearm	Permitted	Not Permitted	Permitted	Permitted
4	Duration of a Licence to deal in arms and ammunition	3 years	3 years	1 year	1 year
5	Authorised number of firearms per person	4 firearms	3 firearms	4 firearms	-

6	Ownership of Handguns by private citizens	Yes	No	Yes	Yes
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Source: Botswana, Namibian, South African and Zimbabwe Firearms Control Laws

3.6 REASONS FOR FIREARMS OWNERSHIP

Gould and Lamb (2004) examined the main reasons for legally acquiring firearms in both South Africa and Namibia which included hunting, sport and self- protection. Rifles are traditionally acquired for the reason of hunting, while handguns (pistols/revolvers) are meant for self-protection. However, with the increase of crimes in both South Africa and Namibia, rifles are now also used for property protection especially by private security guards as well as for the protection of wildlife against poaching. During the colonial time in Namibia, rifles such as R- 1, 303, etcetera were distributed to tribal leaders for self-protection against the then perceived threat posed by the combatants of the People's Liberation Army of Namibia (PLAN) the military wing of the liberation movement SWAPO. After independence, most of these weapons were not withdrawn by the post-colonial government. However, the key informant from the Namibian Police informed this researcher that these firearms were in the process of being withdrawn by the Namibian Police. Boer (2004, p.123) stated that the reasons of "self-protection were cited as strong motivation for acquiring a firearm than hunting, sport and protection of properties and livestock".

3.7 FIREARMS AS A THREAT TO PUBLIC SAFETY AND NATIONAL SECURITY

Public safety is different from national security. The Oxford Advanced Learners Dictionary defines safety as “the state of being safe and protected from danger or harm” (2005, p.1289). According to the US Legal (n.d, p.1) definition, Public Safety refers to the welfare and protection of the general public or the residents of a specific country. Buzan, Waever & de Wilde (1998, p.21) describe national security as being about state survival, according to traditional military and political understanding of security. “It is when an issue is presented as posing an existential threat to a designated referent object, especially in the form of state (Buzan, Weaver and de Wilde, 1998, p.21). In this study, national security means protection or safe guard or absence of existential physical threat to a state. Therefore, national security refers to the security of the state or the maintenance of the survival of the state. Therefore, public safety is concerned with the safety and protection of the population, while on the other hand national security is about protection of the state survival.

The proliferation of firearms does pose threats to both national security as well as to public safety. In the first instance they may be used to undermine or overthrow legitimate and democratically constituted governments. This has been proved by the histories of coup d'état and internal conflicts in Africa and beyond.

Most people believe that owning a firearm can provide safety and security. For instance, many fire-arm license applicants cited this argument as a reason to acquire guns (Gould and Lamb, 2004). However, the opposite have in many instance proven

to be true, in fact the proliferation of firearms constitute one of the foremost threats to public safety. Firearms are used in committing crimes, robberies, suicides, murders, domestic violence such as in the form of gender based violence committed against women and children, and so forth. In a study conducted in the USA regarding the relationship between guns and crimes, Lott, JR cited in University of Chicago Press (1998, p.1) concluded that “states with the largest increase in gun ownership also have largest drops in violent crimes. It means that there is a negative relationship between the two (gun ownership and crime rate), the more citizens are acquiring firearms legally, the lower the crime rate. Meanwhile, another study by Larosa (2002, p.1) concluded that in the USA there were two equal opposing views about the proliferation of firearms and the control thereof. One group believed that disarming the citizens can prevent and reduce crime, while the other group believed that gun control is ineffective crime fighting tool. The gun control advocates believe that guns are too readily available, and they pointed to “the statistics that indicate that violent crime was down since the Handgun Violence Protection Act (February 1994) (also known as Brady Hand Gun Violence Protection Act) and the assault-weapon ban (September 1994)” (Larosa 2002, p.1). The law is named after the former US president Reagan’s Press Secretary James Brady, who was shot and wounded in a 1981 assassination attempt on President Reagan (Brady Campaign, n.d. p.1). Since that incident, Brady had started a campaign against gun violence which resulted in the enactment of the Hand Gun Violence Protection Act in February 1994 (Brady Campaign, n.d. p.1). The Gun-rights advocates on the other hand pointed out that “crime began declining two years before the Brady and Assault-Weapon Laws went

into effect, because of increased imprisonment rates of offenders and improved prosecution” (Larosa 2002, p.2).

Although historically the threats presented by the phenomenon of the proliferation of firearms were mostly associated with civil wars and ethnic conflicts, the trend now shows that guns are used to settle disputes within families. Women are being shot by their partners (husbands or boyfriends) though there are isolated cases where female partners are perpetrators. One example of such isolated case is the 26 year old woman who was reported to have shot and killed her 52 year old boyfriend in Windhoek on 14 May 2011 after an argument early in the day at their residence (Namibian Sun, 16 May 2011, p.1).

Studies conducted by Gun Free South Africa, (cited in International Action Network on Small Arms (IANSA News,2010) showed “that almost half of the women murdered in South Africa are killed by intimate partners, more than a quarter of them with guns”. This indicates that; not only illegally acquired firearms are threat to public safety, but also those which are legally owned. The greatest risk of gun violence to women is no longer on the streets or the battle field, but in their own homes (IANSA, 2010). This was noted by Hemenway (2011, p.2- 5) that gun accidents, suicides, assaults, homicides and intimidation are some of the risks of keeping a gun at home, while the benefits of keeping a gun are crime deterrence and crime prevention. According to Hemenway (2011, p.4), the presence of a gun in the home can make domestic quarrels, disputes, assaults and robberies more deadly. This specific argument reflects the reality of the situation in Namibia where incidences of

domestic violence involving firearms are reported on a daily basis. All the cited risk factors are identical to the practical situation in Namibia. Handguns are commonly used in domestic and gender violence in Namibia now. Here are some examples of media reports which were picked up randomly among other reports, to substantiate it:

- a. Mr. Pieter Farmer appeared in the Windhoek High Court accused of killing his girlfriend with a pistol at Keetmanshoop on 12 November 2005 (Namibian, 20 July 2005, p.3).
- b. On 19 January 2008 a 21 year old Romeo Schiefer was arrested for being accused of shooting and killed his parents in Khomasdal on 18 January 2008 (Namibian 19/01/2008, p.1).
- c. On 23 August 2010, Mr Lazarus Shaduka was found guilty of culpable homicide in connection with the gunshot death of his wife in their home in Windhoek on 13 July 2008, but was acquitted on the murder charge (Namibian, 24 August 2010, p.1)
- d. A woman was shot by her fiancée who then killed himself with a pistol (Informante, 09 – 15 September 2010, p.11).
- e. The Namibian of 21 July 2011 reported that a 17- year old boy, Curtis Bok committed suicide by allegedly shot himself in the mouth with his father's gun on 19 July 2011 (p.3).
- f. A 40 year old tax driver was reported to be in critical condition at the Katutura Hospital after allegedly shooting and killing his girlfriend and then shooting himself on 30 July 2011 (Namibian, 08 August 2011, p.5).

- g. A female Prison Officer was reported to have been shot and killed by her boyfriend on 10 September 2011 in front of her two children (Namibian Sun, 12 September 2011, p.1).

3.8 IMPLEMENTATION FRAMEWORKS OF THE SADC PROTOCOL ON CONTROL OF FIREARMS

The term implementation refers to the activities that are conducted to perform, complete, fulfil, or to execute a given assignment (Paudel, 2009, p.36). Policy implementation is defined by Pressman and Wilddavsky (cited in Paudel, 2009, p.36-37), “as a process of interaction between the setting of goals and actions geared to achieve them”. It is the fulfilment of a policy decision, which could be either a law, an executive directive or a court ruling (Mazmanian and Sabatier, as cited in Paudel 2009, p.37). In this thesis, implementation means, to do and complete the various tasks related to the fulfilment of the provision of the SADC Protocol on Control of Firearms.

There are three critical stages to the implementation of any interstate protocol and/or treaty, including the SADC Protocol on the Control of Firearms. Firstly, it has to be signed by the required number of Heads of States and Government. Secondly, it has to be ratified by the required number of legislative organs of member states for it to come into force. Thirdly, after ratification each member state should work towards the integration of the provision of the protocol/treaty into their respective national laws. The protocol could only enter into force “if two thirds of member states ratify and deposit their instrument of ratification with SADC Executive Secretary” (Stott,

2003, p.5). By 08 November 2003 according to Lamb and Coetzee (2009), only Angola and DRC had not yet ratified the SADC protocol. Madagascar was not a member of SADC then. In the next sections of this chapter a systematic analysis of how different countries have gone about with the harmonisation of their respective national laws to bring them in line with the provision of this protocol will be presented. The analysis in the next chapter will focus mainly on the presentation of feedback from interviews conducted within various Namibian stakeholders.

Based on the provision of the protocol, states parties undertook to enact necessary legislations, as well as other necessary measures in line with the protocol requirements (SADC, 2001). They further undertook to incorporate elements of the protocol in their national laws, in order to implement the protocol within their countries. Stott (2003, p.1) identified the “out dated national legislations, obsolete regulatory measures, precarious peace processes, pervious borders and the lack of capacity” as some of the challenges that confront the implementation of this protocol.

The SADC Strategic Indicative Plan for the Organ (SIPO) provides additional guidelines for the implementation of this Protocol in the context of the operational frameworks of the SADC Organ on Politics, Defence and Security Cooperation. In this Indicative Plan, the proliferation of and trafficking in small arms and light weapons was identified as both defence and public security challenge (SADC, 2004). SIPO identified the elements of political commitment by member states as being essential in the successful and effective implementation of the Protocol on the Control of Firearms in the region (SADC, 2004, p.43-44). Therefore, emphasising

the fact that the successful implementation of the Firearms Protocol depends on the willingness of the political leaders of the various SADC member states.

After the adoption of the Firearms Protocol, SADC Council of Ministers tasked The Southern Africa Regional Police Chiefs Cooperation Organization (SARPCCO) as the lead implementation agency at the regional level (Stott, 2003, p.2). Following which the SARPCCO established a firearms desk and appointed an officer whose role is to oversee implementation of the SADC Protocol and act as a liaison between member states and SADC Secretariat (Stott, 2003, p.2). In 2007 SARPCCO put in place standard operating procedures for the effective implementation of this protocol. These have since become standard procedures to be followed by member states when it comes to: the manufacturing and marking of firearms; importation and exportation of firearms and ammunition; firearms and ammunition in transit; recordkeeping; licensing of civilian firearms; storage and control over the use of firearms and monitoring of licenses. According to Stott (2003, p.5), “a number of states have already started to implement provisions for SADC Protocol at national level, whilst at regional level some of the workshops identified in the SARPCCO Action Plan were already completed in 2003”. The question however remains as to what extent SADC member states are following the SADC Protocol on Control of Firearms as well as the SARPCCO standard operating procedures.

The implementation of the SADC Protocol by SARPCCO faces many challenges. First, SARPCCO and SADC are separate entities/structures and there is no formal agreement between the two organisations for this cooperation (Stott, 2003, p.6).

Some members of SADC are not members of SARPCCO for example; the DRC was only a member of SADC and not of SARPCCO (Stott, 2003, p.6). Besides, the lack of capacity and resources to develop a necessary system by member countries is hampering the implementation of the Protocol (Stott, 2003, p.7). This state of the two organisations operating from two different structures had caused some inconveniences and delays in implementing the SADC Protocol on Control of Firearms. However, according to the key informant from SADC HQ, SADC and SARPCCO have already integrated in 2009 after the amendments of the SADC Treaty, SADC Protocol on Organ on Politics, Defence and Security Co-operation and SARPCCO Constitution. Furthermore, the fact that each SADC member state has different needs and challenges is also hampering the uniform implementation of the Protocol. What may be a priority to one country may not be a priority to the other. This influences the allocation of resources to the implementation of the Protocol.

3.9 NAMIBIA'S IMPLEMENTATION OF THE INTERNATIONAL POLICY INSTRUMENTS ON THE CONTROL OF FIREARMS

3.9.1 International instruments on the proliferation of firearms

This section will discuss Namibia's implementation of international, continental, sub-continental and national legal instruments and/or policies that were enacted to control the proliferation of firearms in the hands of private citizens. These include "the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition adopted on 08 June 2001, which supplemented the United Nations Convention against Transnational Organized Crime" (UN, 2001, p.1). Before the UN came up with this Protocol, the Organization

of African Unity had already taken its own initiative in December 2000, by adopting a continental policy on firearms control, which became known as; “the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons” (OAU, 2000, p.1). Moreover, at the Southern African Region at a sub continental level, the Southern African Development Community (SADC) adopted the SADC “Protocol on Control of Firearms, Ammunitions and Other Related Materials” of 2001. Nationally, Namibia enacted the “Arms and Ammunition Act, 1996 (Act No 7 of 1996)”, to regulate the acquisitions and use of firearms in the country.

It was because of the international obligations that the African Union, the Southern African Development Community (SADC) and the Namibian government have put in place policies on the control of firearms which will be discussed below. Namibia does not manufacture firearms – all guns which are found in the country generally originated from outside the country. The August 26 Company, which is a Namibian Government’s parastatal involved in the defence industry is not yet in the position to produce firearms. It only manufactures combat vehicles, military radios and combat boots. Hence, the effectiveness or ineffectiveness of this Protocol has a significant implication for Namibia’s own policy instruments for regulation of the proliferation of firearms. The SADC Protocol on Firearms, Ammunition and Other Related Materials is meant to control the proliferation of firearms and ammunition in the Southern African Region. If it is effective, the movements of arms into and within the region will be regulated. If the Protocol is not effective or not well implemented the control of firearms movements into and within the region will be weak that even

countries which do not produce arms, like Namibia would not be spared from the problems caused by illegal firearms. Furthermore, if the SADC Protocol is effective, it would force member states to tighten their own policy instruments on the control of firearms.

3.9.2 Implementation of the Continental Instruments

In Namibia, some progress has been made in implementing the Bamako Declaration such as: the creation of the coordination mechanism (the National Focal Point) and the criminalisation of the illicit proliferation of firearms which is provided in the Arms and Ammunition Act of 1996. However, the build up of law enforcement capacity remains one of the challenges on the implementation of the OAU Protocol. Even if the member states can formulate good laws to combat the illicit proliferation of firearms, some African countries are struggling to create the necessary capacity to implement those laws effectively, in terms of human and material resources. Stott (2003, p.7) identified the lack of resources and capacity by SADC member states to develop necessary systems for the full implementation of the SADC Protocol on Firearms, Ammunition and Other Related Materials. There is also a minimum public awareness education about the dangers of firearms. However, civil society participation is there. Examples of these were the joint initiative of the Namibian Non-Governmental Organisations Forum (NANGOF) and the Namibian Police, to organise the First National Conference on Small Arms and Light Weapons in support of the implementation of the SADC Protocol on Firearms and Ammunition in October 2002 (Gamba, 2002, p.7). This conference was considered as a major milestone because it was the first joint effort by the government and civil society in

Namibia to combat the proliferation of firearms and it agreed that “the proliferation and illicit trade in small arms and light weapons poses many serious challenges to the Namibian government and people” (Gamba, 2002, p.8). In addition to that, NANGOF was also represented at the National Focal Point on Small Arms and Light Weapons (Boer, 2004, p.8). Apart from the 2002 Conference, there is no visible public awareness campaign either from the government or from NGOs.

The implementation and effectiveness of the AU policy primarily depend on how individual member states enforce it in their respective countries. At the creation of the African Union (AU), this organisation took over all the responsibilities and obligations of the OAU, including the implementation of the Bamako Declaration.

3.9.3 Protocol on the Control of Firearms, Ammunition and Other Related Materials in the SADC Region

The Protocol on the Control of Firearms, Ammunition and Other Related Materials was adopted on the 14 August 2001, and was signed by thirteen (13) of the SADC member states with the exemption of Angola, while Madagascar was not a member of SADC by then (SADC, 2001, p.16). By the end of 2004 all SADC countries except Angola, Madagascar, Seychelles and DRC had ratified the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, which makes it possible for the protocol to be implemented (SADC Secretariat). Mr Ezekiel Senti (the SADC Secretariat respondent) related in an interview with this researcher that by March 2012 the above four countries had not yet ratified the protocol. Chief Inspector Moses Shaama the NFP respondent confirmed that Namibia signed the

Protocol on 14 August 2001. Furthermore, the ratification of the Protocol was approved by the Namibian parliament on 03 July 2002, and on 08 October 2004, Namibia formally ratified the SADC Protocol (LAC, p.15) after it was formally signed into law by the President. According to Chief Inspector Shaama, the Protocol is already in force. In addition, it was confirmed that no country has refused to ratify the protocol. However, it might be that those countries that did not ratify it did not agree with some of the protocol provisions or may be the protocol was not in light with their laws (SADC Secretariat).

TABLE 4.1: SADC Protocol ratification status (as of 30 July 2003)

COUNTRY	SIGNATURE DATE	RATIFICATION DATE
Angola	-	Not
Botswana	14.08.2001	14.08.2001
DR Congo	14.08.2001	Not
Lesotho	14.08.2001	27.09.2002
Madagascar		Suspended
Malawi	14.08.2001	24.09.2002
Mauritius	14.08.2001	04.01.2002
Mozambique	14.08.2001	20.09.2002
Namibia	14.08.2001	08.10.2004
Seychelles	14.08.2001	Not
South Africa	14.08.2001	27.01.2003

Swaziland	14.08.2001	Ratified
Tanzania	14.08.2001	24.12.2002
Zambia	14.08.2001	Ratified
Zimbabwe	14.08.2001	Ratified
The Protocol entered into force		08.11.2004

Source: SADC Legal Sector, Gaborone, Botswana (Stott, 2003 & LAC, p.15) and SADC Secretariat

The SADC Protocol's is aiming at facilitating cooperation at regional level with the view to prevent, fight and eradicate the illegal production, transportation, possession and use of firearms in the region. However, this study has not obtained any evidence of illegal firearms production in the SADC Region. The member states undertook to promote legal uniformity and minimum standard in respect of the manufacture, control, possession, import, export and transfer of firearms and ammunition (SADC, 2001, p.6). However, when compared the Namibian, Botswana, South African and Zimbabwean firearms control laws it transpired that the legal uniformity has not yet been achieved.

At the adoption of the protocol, SADC and SARPCCO were operating from two separate structures. However, the researcher has learned from Mr. Ezekiel Senti (the SADC Secretariat respondent) that SADC and SARPCCO were integrated in 2009 (SADC Secretariat, 16 March 2012). Amendments were made to the SADC Treaty, the Protocol on Organ on Politics, Defence and security co-operation and the SARPCCO Constitution to effect the integration according to the SADC Secretariat.

It was further noted that all SADC member states are state parties to the UN and AU instruments on control of firearms as per requirement of Article 5 of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials (SADC Secretariat, 16 March 2012). The SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials does not provide for punitive remedies in event of non-compliance by a state party.

Outdated national legislations, obsolete regulatory measures, precarious peace processes, previous (pre- colonial) borders and the lack of capacity were identified by previous studies such as that of Stott (2003, p.1) as some of the challenges in implementing the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials. Mr. Senti has meanwhile identified inadequate (not effective) legislation in the member states, lack of harmonised firearms database, lack of capacity in stockpiling as well as outdated record keeping (manual recording) as some of the challenges to the implementation of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials. Moreover, “inadequate sharing of information” was pointed out as the main sticking point in the promotion of legal uniformity and minimum standard in respect of manufacture, control, possession, import, export and transfer of arms and ammunition.

3.9.3.1 Protocol Content Analysis

The main objectives of the Protocol are:

To prevent, combat and eradicate illicit manufacturing, trafficking, possession and use of firearms, ammunition and other related materials in the

region to promote and facilitate cooperation and exchange of information and experiences in the region to prevent, combat and eradicate illicit proliferation of firearms and ammunition; and to co-operate closely at the regional and international level on this noble course (SADC, 2001, p.3).

In the Protocol, state parties promised to enact the necessary legislation at National level to prevent, combat and eradicate the illicit proliferation of fire-arms (p.5). Since Namibia already had a legal/policy instrument in place to control the illicit Proliferation of fire-arms (the Arms and Ammunition Act, 1996), the country was only expected to amend this Act in order to bring it in line with the requirements of the SADC Protocol. As it stands now, the Arms and Ammunition Act 1996 has some elements which do not fully conform to the SADC Protocol, such as, Section 3 which does not prescribe a mandatory competency testing for a firearm licence holder applicant. Another example is of Section 5 that does not put a time limit on a licence to possessing a firearm. In the SADC Protocol (Article 5 (3) i and j), state parties undertook to incorporate the following elements in their laws (SADC, 2001, p.6):

- a. Provisions that ensure the effective control of firearms including the storage and usage thereof, competency testing of prospective firearms owners.
- b. The monitoring and auditing of licences held in a person's possession and the restriction on the number of firearms that may be owned by any person.

Furthermore, the leaders undertook to incorporate the following elements in their national laws (SADC, 2001, Article 5):

- a. The prohibition of possession of unregistered small arms by civilians (SADC, 2001, p.5). On this promise, the Arms and Ammunition Act of Namibia (Section 2) prohibits the possession of arms without a licence (GRN, 1996, p.6).
- b. The total prohibition of the possession and use of light weapons by civilians (SADC, 2001, p.5). The Arms and Ammunition Act of Namibia (Act 1996, Section 2) regulates the licensing of firearms in private possession. An arm, according to the definition of the Act 1996 is “any fire-arm other than cannon, a machine gun or a machine rifle” (GRN, 1996, p.4).

If we go by this definition, light weapons are excluded from licensing; therefore they are not permitted to be owned by civilians. Furthermore, Section 29 of Act 1996 states that; no person except on behalf of the state, may import, supply or possess any gun other than the defined arm (GRN, 1996, p.18- 19).

- c. The coordination of procedures for import, export and transit of firearms shipment within SADC through the Southern Africa Regional Police Chiefs Cooperation Organisation (SADC, 2001, p.5). The SARPCCO Standard Operating Procedures for the SADC

Protocol on Firearms (Chapters 3 – 5) provide clear scope in this regard (SARPCCO, 2007, p. 7 – 10).

- d. Provision for ensuring the standardised marking and identification of firearms at the time of manufacture, import or export (SADC, 2001, p.6). The Namibian Arms and Ammunition Act 1996, Section 7 prohibits the licensing of an arm without the manufactures serial number (GRN, 1996, p.8). However, this provision only affects legally acquired arms, as illicit acquired firearms do not pass through legal established boarder control.

- e. Provision that adequately provide for the seizure, confiscation, and forfeiture to the state of all firearms manufactured or conveyed in transit without or in contravention of licences permits (SADC, 2001, p.6). Section 38 (5) (a) of the Namibian Arms and Ammunition Act 1996 makes a provision for forfeiture to the state of all articles in respect of which the offence has been committed (GRN, 1996, p.25).

- f. Provisions that ensure the effective control of firearms including the storage and usage, competency testing of prospective firearm owners and restriction on owner's rights to relinquish control, use, and possession of firearms (SADC, 2001, p.6). Although the Arms and Ammunition Act 1996 of Namibia Section 3 (8) requires a firearm licence applicant "to be in possession of or has access to a strong

room or other place of safety for the safe keeping of an arm” (GRN, 1996, p.7), it does not require an applicant to undergo a competency test or training. This is one of the major weaknesses in the Namibian Law. A number of firearm related incidents occurring in the country are caused by negligence or careless handling of firearms by owners. This could be minimised if competency testing and usage training is introduced as a pre-requirement of obtaining a firearm licence.

- g. “The monitoring and auditing of licenses held in a person’s possession and the restriction on the number of firearms that may be owned by any person” (SADC, 2001, p.6). The maximum number of firearms a person can possess in Namibia is four, according to Section 3 (7) of the Arms and Ammunition Act, 1996 (GRN, 1996, p.7). However, the Act is silent about the monitoring and auditing of licenses. The SARPCCO Standard Operating Procedures for the SADC Protocol on Firearms requires relevant authorities to conduct regular inspections on firearms and firearms licenses held by civilians to ensure that the license holders are still complying with the requirements of the law (SARPCCO, 2007, p.13). Practically, this is not currently happening in Namibia. According to Inspector F. P. J. Vilonel the key informant from the Namibian Police Central Firearms Registry, the Arms and Ammunition Act is still need to be amended. As per the current Act, the firearms licence is only terminated when the holder declared unfit by the competent court of law or when the

holder dies. However, Section 9 of the Arms and Ammunition Act of 1996 mandated the Namibian Police to go out and inspect firearms anywhere at any time. This is the same with the firearms control laws of South Africa, Botswana and Zimbabwe. However, these countries' laws limit the duration of firearms licences.

State parties also undertook to coordinate the review of national procedures and criteria for; issuing and withdrawing of firearm licenses as well as establishing and maintaining national electronic databases of licensed firearms within their territories (SADC, 2001, p.6). The coordination of national procedures could be happening through SARPPCO. According the information from the Namibian Police key informant, Namibia has already established a national electronic database.

They have also agreed to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies (SADC, 2001, p.7). The Namibian Act 1996 is more concerned with regulating the manufacturing, dealing in, import, export, use and possession of privately owned firearms and ammunition. Firearms owned by security forces and other state agencies are controlled and regulated by the laws governing those institutions, such as; the Defence Act (Act No.1 of 2002), the Police Act (Act No. 19 of 1990), etcetera. There is nothing in the Arms and Ammunition Act, 1996 concerning inventories for state owned firearms. There is nothing wrong with this arrangement, as long as the issues

of the control of firearms held by the security forces are handled according to the SADC Protocol on Firearms.

The Protocol was to be ratified by the signatory states in accordance with their constitutional procedures (SADC, 2001, p.14). According to the Namibian Constitution Article 63 (e), one of the functions of the National Assembly is “to agree to the ratification of or accession to international agreements which have been negotiated and signed” (CAN, 1990, p.29).

3.9.4 Regulating and Controlling Firearms Proliferation in Namibia

The Namibian Constitution Article 96 puts as one of the country’s foreign policy objectives as “to foster respect for international laws and treaty obligations” (CAN, 1990, p.42). The SADC Protocol on Control of Firearms is binding to Namibia because the country had signed and ratified the Protocol. As a member of the United Nations (UN), the African Union (AU) and Southern African Development Community (SADC), Namibia is compelled by the its Constitution to fulfil all its commitments with regard to the combating and prevention of the illicit proliferation of firearms. However, in response to these obligations and even before the international agreements came into being, the country had already formulated laws/policies and put up institutional structures to control the illegal proliferation of firearms as well as possession of arms by civilians. The policy that regulates the manufacturing and possession of firearms and ammunition in Namibia is the Arms and Ammunition Act, 1996 (Act No 7 of 1996). However, there are still some

elements of the Act that are not yet in line with the SADC Protocol as have been discussed in other parts of this thesis.

3.9.4.1 Arms and Ammunition Act, 1996 (ACT No 7 of 1996)

The Arms and Ammunition Act, 1996 is an Act of parliament passed in terms of Article 44 of the country's constitution. It was signed into law by the President of the Republic of Namibia in terms of Article 56 of the Namibian Constitution on 11 June 1996. It was published in the Government Gazette on 26 June 1996, which became the day on which it came into force. The aim of this Act is: "To provide for control over the possession of arms and ammunition; to regulate the dealing in, importation, exportation and manufacture of arms and ammunition; and to provide for incidental matters" (GRN, 1996, p.2). It was amended in 2005 by "the General Law Amendment Act, 2005 (Act No 14 of 2005)", by substituting the definition of the term "Minister" with "Minister (of Home Affairs) responsible for policing" (GRN, 2005, p.2). This amendment was necessitated by the fact that in the Arms and Ammunition Act 1996, the definition of the term "Minister" was referring to the Minister of Home Affairs because by that time the Department of Police was under the Ministry of Home Affairs. In 2005, the Police was placed under a different ministry (Ministry of Safety and Security). The policy is being implemented by the Ministry of Safety and Security and the Namibian Police as from the date it was gazetted (26 June 1996).

This section will in this regard analyse the content of the Act, how these provisions are being implemented, as well as the evaluation and monitoring mechanism. The

analysis is needed in order to firstly, gauge the compliance with the existing international legal instruments, and secondly, to see if these policy measures are really regulating the acquisitions, supply and manufacturing of firearms in the country.

3.9.4.1.1 Policy Content Analysis.

As the date of this policy's enactment shows, Namibia had started well before the UN, the AU and the SADC initiatives on the regulation and control of the proliferation of firearms were instituted. This was influenced by the country's political background and the political situation in its northern neighbour (Angola) where the civil war was going on at that time. The Namibian independence was preceded by 23 years of armed liberation struggle, which left many unaccounted firearms, ammunition and explosives in the country. Furthermore, the increase of gun related crimes in the country after independence (as illustrated by reported gun related incidents presented earlier in this thesis) and the call by the civil society for the country to tighten its grip on firearms control have influenced the formulation of the policy. This Act replaced the Arms and Ammunition Act, 1969 and all its Amendment Acts (GRN, 1996, p.31) which was inherited from the apartheid era colonial government. The key informant from the Namibian Police Armoury related to this researcher that the in Arms and Ammunition Act of 1969 were some elements which were not conducive to the current political situation in the country. The Act was enacted during the colonial period, therefore there were some elements in that law which were meant to protect the government of that time.

3.9.4.1.1.1 The Licensing of Firearms

This instrument directs the ownership of firearms and ammunition by individual citizens and private organizations, by setting up procedures for the acquiring and licensing of firearms. The first two chapters of the policy deal with the control over the possession of arms and ammunition. Chapter 1 concerns with issue of firearms licences and permits for the possession of arms and ammunition. The Arms and Ammunition Act, 1996 has many implications to the Namibian nation. First, it gives private citizens the right to legally acquire firearms which they may need to protect themselves and their properties against criminals, as well as to use for hunting or for sport. This provision is deemed essential given the fact that if the citizens are deprived of legal options for obtaining arms, they could resort to getting them illegally. Furthermore, regulating the private citizens' acquisitions of weapons makes it easy for the state to account for all firearms in the country. However, the negative implication is that, the legally obtained weapons could also be used in committing violent crime, either by legally owners or by criminals.

An arm as per definition of this policy is “any firearm other than a cannon or other than machine gun or machine rifle” (GRN, 1996, p.4). As per this definition the owning of cannons, machine guns and machine rifles by private citizens or non-state entities is prohibited under this Act. Meanwhile, to possess a firearm as defined above, a citizen would need to apply to the Inspector General as head of the National Police for a licence, provided that such a person is 18 years or above and has not been declared unfit by a court of law to own an arm. However, the Act does not say anything about the reasons that may be cited as justification for the private

acquisition of a firearm. It appears that the law left it to the approving authority to decide which reasons are valid enough to warrant somebody to possess a private firearm. The Act was supposed to specify possible reasons for somebody to acquire a firearm. Based on the interview with the Namibian Police Officers, it transpires that there are no prescribed/written reasons that can qualify individual citizen to acquire a firearm. However, there are five common reasons always given by firearms licence applicants in Namibia, which are: Hunting, Sports, Self protection, property protection and firearm collection (collectors).

The Inspector General of the Namibian Police is charged with issuing of licences under direct control of the Minister responsible for policing (the Minister of Safety and Security). In the sense that if the Inspector General refuses an application, the law allows the applicant to appeal to the Minister to consider the application. The Act seems to give too much power of dealing with security issues in the hands of one person (Section 2, p.6). It would have been better if the law provides for the establishment of a board or a committee to be responsible for considering licence applications and recommend to the Inspector General. In the current state, the decision rests solely with the Inspector General. The involvement of the Minister only happens if the application is rejected and when the applicant decides to lodge an appeal. Private individuals are permitted to own up to four firearms, according to the Act (Section 3 (7) p.7). This authorised quantity of firearms per a person seems to be high and may help to increase the number of firearms in private hands.

In other SADC countries such as South Africa, Botswana and Zimbabwe there are similar laws. However, there are differences in contents and the way of implementation. Whereas in Namibia the power to grant a firearms licence is vested with the Inspector General, in Botswana permission to own a firearm is given by a firearms quota board, while the Minister responsible for police determines quotas of guns to be imported per year (GBW, 1981). In both South Africa and Zimbabwe, the National Commission of Police is in charge of granting licences (GRSA, 2000 & GZIM, 1956). The SADC Protocol on the Control of Firearms does not prescribe the quantity of firearms an individual may own, but it requires member states to harmonize their firearms control instruments.

Section 3 requires all people who acquired firearms under the dispensation of the repealed 1969 Arms and Ammunition Act, to re-register (re-licence) their firearms in terms of the provision of the 1996 Act. It however, does not say what would happen to those who do not comply with this requirement. Would it be possible to trace these guns? A provision is further made in Section 4 of the Act, for people who have illegal firearms to surrender them (upon the notice and within the time frame given by the minister) without prosecution. This provision is made to encourage those who own illegal arms to hand them over to the authority. However, there are doubts as to whether those who are in possession of illegal firearms with the intention to use them in committing crimes would ever be willing to surrender them. Meanwhile, the validity of licences, authorizations or permits acquired under the repealed laws is not affected by this Act.

Another matter of concern is the duration of firearm licence after it has been issued, which according to Section 5 is indefinite (boundless) unless; “the arm changes ownership or the holder is declared unfit to possess a firearm by a competent court or the gun is forfeited to the state by order of a competent court” (p.8). This section illustrates another weakness in the existing policy framework. This provision can be very risky, because people’s characters do change from time to time and the relevant authority may not be in a position to track the changes in the licence holder’s capacity and condition for requiring and/or owning a firearm, until such a person abuses the weapon. The change of ownership mostly only occurs when the owner of the gun dies and somebody else has to inherit it. What would happen if a firearm licence holder becomes so old that he/she can not guarantee the safety of the weapon? Furthermore, a person can only be declared unfit to possess an arm if that person uses a gun to commit a crime or subject to the issuance of court orders requiring the forfeiture of the firearm to the state. While the duration of firearm possession licence in Namibia is indefinite, the law in South Africa limits the duration of hand gun licence to five (5) years and ten (10) years for that of hunting guns (GRSA, 2000). In neighbouring Botswana, the firearms licence duration is five (5 years), while that of Zimbabwe is three (3) years (Government of Botswana, 1981 & Government of Zimbabwe, 1956). It could be better if the law gives specified limited licence duration, similar to that in neighbouring Botswana and Zimbabwe (Government of Botswana, 1981 & Government of Zimbabwe, 1956). The SADC Protocol on the Control of Firearms does not prescribe the duration of a firearm licence, but the SARPCCO Standard Operating Procedures for the SADC Protocol

on Firearms sets the maximum period of a firearm licence to be not more than five (5) years (SARPCCO, 2007, p.15).

Moreover, any person applying for a firearm licence according to the Act, should have finger-prints taken, if the Inspector General “deems it necessary”. The reason for taking finger-prints is to check if the applicant has any crime record. However, the Act appears not to be strong enough on this point, because it gave the option to the Inspector General to take finger-prints or not.

The law also provides for the possession of the firearms by person other than its legal owner, provided that “a prior consent of the licence holder is given, and that such a person is 18 years or above and is not prohibited by law to handle a gun” (GRN, 1996, p.9). This provision, takes into account the situation of those persons who render security services to others (for example, Security Companies). However, the SARPCCO standard operating procedures for the implementation of the SADC Protocol (Chapter 7, Section 2) prohibits borrowing of firearms from another person. The Namibian law is silent about the capability test of this second person to hold a firearm. The SADC Protocol on Control of Firearms, Article 5 Section 3 (a) requires member states to incorporate in their national laws; “provisions that ensure effective control of firearms including the storage and usage thereof, competency testing of prospective firearm owners” (SADC, 2001, p.6). Although SARPCCO (2007, p.16) prohibits the borrowing of firearms from another person, it categorises security providers as legal entities and therefore are treated differently.

The other shortcoming in the Namibian gun control policy instrument is its silence on the requirements for a person applying for a firearm licence to undergo training on the handling of firearms as a pre-condition for the issuance of a licence. These are some of the requirements for the licensing of civilian use and possession of firearms that were put in place through the SARPPCO standard operating procedure. Training and testing remain very important factors toward ensuring the capability of the applicant to handle a gun before the licence/permit is given. It would limit incidents of people being killed accidentally due to mishandling of legally acquired weapons. As it is now, a person could only be declared unfit to own an arm after recklessly handled it (GRN, 1996, chapter 2 (1) (c)).

The SADC Protocol, Article 5 Section 3 (j) urges member states to incorporate in their national laws; elements of monitoring and auditing of licenses held in a person's possession (SADC, 2001, p.6). This could enable the authority constantly monitor the capacity/status of the licence holder. Furthermore, the SARPPCO standard operating procedures for the implementation of the SADC Protocol (Chapter 7, Section 2) requires relevant authorities to "carry out regular checks on firearms and firearms licenses held in person's possession to make sure that license holders comply with the requirements of the National Fire-arms Control Law" (SARPPCO, 2007, p.16). In Namibia, the time when the authority check for firearms and licenses is when one passes through a police road block. There are no regular checks of firearms and firearm licenses as it is required in the SARPPCO standard operating procedures. These are some of the disparities between the SADC Protocol and the Namibian Firearms and Ammunition Act.

The study on firearms ownership in Namibia by Martin Boer (2004) cited from (Gould and Lamb, 2004) asserted that this policy was criticised by the Geneva based NGO (Small Arms Survey), for not requiring applicants to undergo firearms competency tests (p.127). While the Boer Report identified some problems of inaccurate figures of licensed firearms in the police database, the author believed that this error would be corrected because the new Arms and Ammunitions Act, 1996 calls for all those who acquired arms under the previous law to reregister them. The Namibian Police key informants confided to this researcher that these inaccuracies had been rectified.

3.9.4.1.1.2 Licensing of Dealership, Importation, Exportation and Manufacturing of Firearms

Chapters 3 to 5 deal with the regulation of the dealing in, importation, exportation and manufacturing of arms and ammunition. According to Section 14, any person or entity that deals in arms or ammunition is required by law to have an arms dealer's licence, in addition to the normal trading licences. Unlike the licence to possess a firearm, this licence expires after three years. This provision would allow the authority to monitor the behaviour of firearm dealers. However, like in the case of individual licences most of the shortcoming remains similar. For instance the dealership licence can also be transferred from one person or business to another. This could be necessitated by the change of the business ownership or the death of the dealership licence holder. Secondly, the decision on whether to issue a licence or not, rests with one person (the Inspector General of Police). The Inspector General

may have expertise on security, but not in business. In addition, it would have been better if a board composed of people with the necessary expertise on security and business matters was instituted to advise the Inspector General on the awarding of dealers licences.

Licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time-to-time by members of the Namibian Police (GRN, 1996, p.16). This is a control measure put in place to make sure that weapon or ammunitions are at all times accounted for. The key informants from both the firearms dealers and the Namibian Police confirmed that the dealers do keep updated registers and the police inspect them from time-to-time.

According to the Act the power to issue the import or export permits is vested with the Minister responsible for policing. Therefore, it is an offence to import or export arms or ammunition into/from Namibia without a permit (Section 22). Additionally, the law requires any person intending to manufacture arms or ammunition in the country to apply to the Minister for a permit. Furthermore, the prospective manufacturing factory for arms should be “registered under the Factories, Machinery and Building Work Ordinance, 1952 (Ordinance 34 of 1952)” while that for manufacturing ammunition should be “licensed under the Explosive Act, 1956 (Act 26 of 1956)” (GRN, 1996, p.17-18). However, the Ordinance 34 of 1952 was repealed by the Labour Act 1992 and substituted by Section 101 (Regulations on Health and Safety of employees at work) of the Labour Act 1992, which was later replaced by

the Labour Act, 2007 (Act No. 11 of 2007) and Labour Amendment Act, 2012 (Act No.2 of 2012). The law also makes a provision for the inspection of the factories by police or person authorised by the Minister. Although the Minister may put some conditions or restrictions when approving a permit, no duration of such permit is prescribed in the Act.

3.9.4.1.1.3 Items Forbidden for Import, Supply and Possession by Private and Corporate Citizens

Chapter 6 of the Act deals with incidental matters (miscellaneous provisions). The powers of the Minister responsible for policing are also stipulated in Section 30. These include the power to prohibit, regulate or restrict; the supply, importation, possession, manufacturing or exportation of certain types of arms or ammunition (p.20). This includes a list of items that may not be imported, supplied or possessed by private or corporate citizens such as any cannon, mortar, machine gun, explosives, etcetera. The policy prohibits the unauthorised supply of arms and ammunition to any person not legally licensed as a dealer or not authorised by the Minister or the Inspector General. Additionally, the law requires that any loss/theft/destruction of a fire-arm should be reported to the police within 7 days. However, the Act does not say anything in the event of loss of ammunition. The law further dictates that when carried in public places, firearms have to be covered. This is done to prevent the weapons from being grabbed by unauthorised persons. On the other hand, nothing is said about taking firearms into public places such as bars and other places/event where liquor is served. Most gun related crimes are normally committed after the consumption of alcohol. For example, a former Katutura Hospital nurse Jeckonia

Hamukoto appeared in the Windhoek High Court on 15 November 2010 accused of killing three people in the shooting at a shebeen in Katutura on 02 February 2007 (Namibian, 2010).

3.9.4.1.1.4 Punitive Measures

Some acts of commission and omission (such as; forgery, making false entry in any register) relating to the application of licences/permits and handling of arms have been identified in this law as offences that are punishable by law. Penalties ranging from 1 to 25 years or N\$4 000 to N\$ 40 000 can be imposed to possible offenders, depending on the severity of the offence. Moreover, some offences may lead to the forfeiture of the arm/ammunition to the state or the cancelation of a private possession and dealership licences upon conviction.

The Minister is authorised by the Act to make regulations regarding firearms and ammunition acquisition, dealing in and storages. Furthermore, a provision is made in the law for delegation of power by the Minister and the Inspector General. The Minister may delegate some powers to the Inspector General, except, “the power to declare an instrument or article to be an arm, as well as to hear an appeal by applicant and to make regulations” (GRN, 1996, p.28). The Inspector General, can also delegate power to his/her subordinates. Besides, any other member of the police to whom power is delegated by the Inspector General, can also pass that power to a subordinate. This arrangement is made to lessen the bureaucracy delays, because the Minister or Inspector General could not be at all the places where people apply for licences or permits. This section of the Act shows where the authorities of

controlling and regulating fire-arms are, and how this way of delegation may weaken the control system. However, Section 44 asserts that, apart from Chapter 2 which deals with declaration of unfitness and Section 42 (Regulation by the Minister), the provision of this Act does not apply to those who handle arms and ammunition for the state. Other countries' firearms control laws such as that of South Africa and Zimbabwe also make provisions for the delegation of power (GRSA, 2000, p.60 and GZIM, 1956, p.34). Both the SADC Protocol on the Control of Firearms and the SARPPCO Standard Operating Procedures for the SADC Protocol on Firearms have not mentioned anything about the delegation of power.

3.9.4.2 The Namibian National Action Plan for Arms Management and Disarmament

In compliance with the global, continental and sub-continental obligations, the Namibian government has taken several initiatives for putting into place of relevant policies, plans and programmes, to control firearms in the country. In 1996, the country enacted a law to regulate and control the acquisitions, manufacturing, importation, exportation and destruction of firearms and ammunition (the Arms and Ammunition Act, 1996). In 2002 a first National Conference on Small Arms and Light Weapons was held which laid a foundation for the formulation of the "Namibian National Action Plan (NNAP) on Small Arms and Light Weapons" in 2005 (GRN, 2006 p.1). Besides, the 2002 National Conference, it is still to be established in next chapter whether there was a proper consultation during the formulation of the Arms and Ammunition Act 1996.

The NNAP is the government programme created to implement the UN, the AU and SADC obligations on combating of the illegal proliferation of firearms. It was created in 2005 to “ensure a proper implementation of the UN, AU, and SADC firearms control policy instruments by enhancing capacity of law enforcement” stated the GRN (2006, p.6). The NNAP implementing structure is composed of a National Management Committee (NMC), a National Focal Point and 13 Regional Focal Points (GRN, 2006, p.33). The main objective of the NNAP is “to ensure the effectiveness and coordination in the implementation of activities towards the combating of the proliferation of small arms and light weapons” in the country (GRN, 2006, p.1).

The National Management Committee (NMC) of the NNAP was tasked with; “conducting a national firearms and ammunition stocktaking, ensuring accurate records keeping of stock, collection and destruction of surplus stock, enhancing existing border control and training of law enforcement officials and others” as well as the formulation of national policies on firearms, ammunition and explosives (GRN, 2006, p.11-13). Nevertheless, this will be analysed in the next chapter. If the NMC had fulfilled the above tasks, Namibia would be on the right track in implementing the SADC Protocol, because those tasks form the key components of the undertakings in the protocol.

The Members of the National Management Committee are:

- a. The Permanent Secretary of the Ministry of Safety and Security, as a chairperson.

- b. Permanent Secretaries of the Ministries of Foreign Affairs, National Planning Commission, Home Affairs, Defence, Finance, Environment and Tourism, Agriculture, Justice and Attorney General and the Director of National Intelligence Agency (GRN, 2006, p.33).

Many of the defects discussed in the previous section were identified in 2006 in the National Action Plan as some of the issues that necessitated the review of the Act (GRN, 2006). The additional matter of concern is the fact that the law permits an individual to own up to four firearms. This amount of firearms per person is very high, and this may undermine the efforts to curb the proliferation of fire-arms in Namibia. A sub-committee composed of government officials and non-governmental organizations was created to review this Act. The researcher was informed by the key informants from both the Namibian Police and the NGOs that the Act was reviewed, but it has not yet been approved by the Parliament.

The National Focal Point (NFP) of the NNAP is responsible for: ensuring an effective implementation of the Arms and Ammunition Act, identifying and implementing lesson learned, as well as the initiation of the Act's review if needs be (GRN, 2006). Furthermore, the NFP has to ensure that the "electronic national database is updated and expanded" (GRN, 2006, p.14). Monitoring, according to GRN (2006) would be done through monthly progress reports from the Regional Focal Points (RFP) to the NFP and from NFP to the National Management Committee (NMC), while the NMC would submit quarterly reports to Cabinet. In addition, the NFP has the power to conduct site visits at places where arms,

ammunition and explosives are stored. The researcher was able to access some reports on the NFP activities and it transpires that despite many identified challenges such as, inadequate funding, lack of understanding of the NNAP by stakeholders and structural problem, the NFP is trying to achieve its objectives.

The functions of the Regional Focal Points are to implement the Namibian National Action Plan on Small Arms and Light Weapons at regional level (GRN, 2006, p.8). The interviews with key informants have shown that some of the RFPs were not functioning. The main problems identified were that there are no permanent structures of the RFP at the regions and there are no people dedicated to this function. Furthermore, the activities of the RFP are not budgeted for. Meanwhile, a final evaluation of NNAP was supposed to be held at the closing stage of the NNAP implementation programme, which was due to end in 2010.

This study has established through the key informants interviews that the NNAP structures were not functioning well. The NMC which was supposed to be a link between the NFP and the political structure is not effective, the researcher was informed. Furthermore, the NFP programmes are not well funded. Therefore, it could not be able to perform the tasks as per schedule.

3.9.4.3 The Explosive Act, 1956 (Act 26 of 1956)

The prospective manufacturing factory for ammunition in Namibia is to be licensed under the Explosive Act, 1956 according to the Arms and Ammunition Act (GRN, 1996). The Explosive Act, 1956 regulates the manufacture, storage, sale, transport,

importation, exportation and the use of explosive, including ammunition (RSA, 1956). The term explosive according to this Act; means “gun powder, any fuse, rocket, cartridge and blasting powder” (RSA, 1956, p.2). Sections 3 and 4 prohibit the “manufacture of unauthorised explosives except in licensed factories or in small quantities for chemical experiment” (p.3- 4). Sections 5 and 6 prohibit the storage and possession of explosives without a licence (p.5- 6). Although this Act is still valid in Namibia, it has been replaced by another one in South Africa.

3.10 CONCLUSION

In conclusion, the increase of illegal firearms in the countries of the region appears to be both national and regional challenges. These challenges have been underscored by the different laws, protocols, agreements and control measures put in place at different levels, as well as by what different authors have written about the easy accessibility to guns. The increased use of firearms in domestic and gender related violence in the world, and in Namibia in particular has shown how these weapons pose a threat to public safety. Although SADC as a regional bloc indicated its commitment towards addressing the problem caused by firearms, by adopting a protocol, it appears that things are not moving fast at the national level. The Namibian Arms and Ammunition Act still does not meet many of the SADC Protocol requirements and the national firearms control instruments of member states are not yet harmonised.

CHAPTER 4

DATA PRESENTATION AND ANALYSIS

4.1 INTRODUCTION

It was established in the previous Chapters of this study that the problem of the proliferation of firearms has been high in the international, continental and regional agendas since the year 2000 when the UN, the OAU and SADC started formulating firearms control mechanisms, legal instruments and/or policies at international, continental and sub-continental levels to control the proliferation of firearms in the hands of private citizens, militia and criminal gangs. These processes resulted in the adoption of the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, as supplement to the United Nations Convention Against Trans National Organized Crime adopted on 08 June 2001, the OAU Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, the SADC “Protocol on Control of Firearms, Ammunitions and Other Related Materials of 2001, and Namibia’s Arms and Ammunition Act, 1996 (Act No 7 of 1996).

As indicated elsewhere in this presentation data was collected from secondary sources comprised of statutes, books, government records and documents, previous published survey on this and other related topics, journals and magazines from libraries and internet, theses and dissertations. Furthermore, primary data were obtained from key informant interviews.

Key informant interviewees, were selected using purposive and convenience sampling techniques, primarily in accordance with their work positions. The convenience sampling was used to get diverse views on the topic. This chapter, therefore deals with the presentation and analysis of this data and the preliminary findings thereof, as well as the synthesis of the concrete discussion of results and conclusions.

The researcher has looked at what Namibia has done to implement the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, the disparity between what the SADC Protocol says and what Namibian laws and policies say, as well as what both the documents state and what is happening on the ground.

4.2 NAMIBIA'S EFFORTS TO IMPLEMENT THE SADC PROTOCOL ON CONTROL OF FIREARMS, AMMUNITION AND OTHER RELATED MATERIALS

Namibia has started to implement provisions of the SADC Protocol at national level by 2004 (Safer Africa, 2005, p.5). In compliance with the global, continental and sub- continental obligations, the Namibian government has taken several initiatives such as holding conferences on firearms and reviewing existing firearms control law to curb illicit proliferations of firearms. These include, putting into place policies and programmes such as the Namibian National Action Plan on Small Arms and Light Weapons (NNAP), to control firearms in the country, particularly enacted a law to regulate and control the acquisitions, manufacturing, import, export and destruction

of firearms and ammunition and held a national conference on small arms and light weapons which laid a foundation for the formulation of the Namibian National Action Plan (NNAP) on Small Arms and Light Weapons in 2005, as a government programme created to implement the UN, the AU and SADC obligations in this sphere (GRN, 2006, p.1, 6). The NNAP implementing structure is composed of a National Management Committee (NMC), a National Focal Point (NFP) and 13 Regional Focal Points (GRN, 2006, p.33).

4.2.1 Namibian National Action Plan on Small Arms and Light Weapons (NNAP)

The NNAP document states that the programme was supposed to end in 2010. However, according to Chief Inspector Moses Shaama (Coordinator of the NFP), the NNAP programme is perpetual and it is still continuing. For the NNAP to be continuous is good as long as it produces good results. However, there are indications from some informants that public awareness campaign in Namibia to educate the civilians on the danger caused by firearms either by the government or the NGOs is minimal.

Despite the lack of resources, the Namibian National Action Plan on Small Arms and Light Weapons has, according to the Chief Inspector Shaama been partially implemented. The NNAP was projected to be financed jointly by the Namibian Government at N\$14,862,590.00 and international donors at N\$8,347,805.00 (September 2006 estimate) and was to run from 01 January 2007 to 31 December 2010 (GRN, 2006, p.ii). One of the failures identified is; lack of implementing

structures, especially at senior management level of the government. This means that the Coordinator of National Focal Point is at junior management level of the government structure stated both Chief Inspector Shaama and Mrs Pauline Dempers the NANGOF Representative to the NFP. Therefore, it appears that the problems regarding the implementation of the firearms control programmes do not receive enough attention at high political level. The NFP should have been headed by somebody from senior management level of government and to have direct access to the Minister of Safety and Security. This view was echoed by Mrs Dempers who stated that the lack of effective link between the NFP and the political leadership has caused some difficulties in implementing the NNAP. Meanwhile, according to the 2010/2011 Calendar for the activities of the NNAP, the “Arms and Ammunition Amendment Bill, 2008 (Regulation on the Arms and Ammunition Act of 1996) was supposed to be finalised in April 2010 (Inspector General Namibian Police, 2010, p.2).

4.2.2 The National Management Committee on Small Arms and Light Weapons (NMC)

The NMC was tasked with keeping political leadership informed of the implementation of the NNAP and providing guidance and direction to the NFP and act as an oversight to the NNAP process (GRN, 2006, p.14), as well as the formulation of national policies on firearms, ammunition and explosives (GRN, 2006, p.9). According to Chief Inspector Moses Shaama, this task has partly been accomplished, though there are still some issues which need to be tackled.

According to Mrs Dempers, the NMC which composed of Permanent Secretaries from Offices, Ministries and Agencies that have a pivotal role to the implementation of the NNAP was supposed to be that link between the NFP and the political leadership but it is “dormant”. It appeared that the NMC was detached from what the NFP was doing. Therefore, they may not see the importance of attending the NMC meetings, she argued. She was of the opinion that it could be better if either the Chairperson of the NFP or the Inspector General of Police chairs the NMC so that the link could work.

4.2.3 The National Focal Point on Small Arms and Light Weapons (NFP)

The National Focal Point (NFP) is responsible for: ensuring an effective implementation of the Arms and Ammunition Act, identifying and implementing lesson learned, as well as the initiation of the Act’s review if needs be (GRN, 2006, p.14). According to the Calendar for the activities of the Namibian National Action Plan on Small Arms and Light Weapons of 2010/2011, the amendment on Arms and Ammunition Act of 1996 (Arms and Ammunition Amendment Bill, 2008: Regulation on Arms and Ammunition Act) was supposed to be finalised in April 2010 (Inspector General Namibian Police, 2010, p.2). However, the study revealed that the amendment bill has not yet passed through the Parliament yet. This was confirmed by both the Chief Inspector Shaama and Inspector F.P.J. Vilonel (Head of Namibian Police Armoury) who added that there are many elements in the Act that needed to be changed, although they were both confident that it would be soon tabled in Parliament. Amendments which the NFP proposed to be made to the Arms and ammunition Act of 1996 according to both Mrs Dempers and Inspector Shaama

include the introduction of the competency testing of firearm licence applicants, firearms licence duration limit and the increase of minimum age for firearms licence applicant from 18 to at least 21 years among others.

According to Mrs Dempers, last year the NFP had started with awareness raising programme on the danger of firearms, ammunition and explosives whereby some materials were produced and sent to different regions. However, the main challenge which the NFP faced in carrying out the public awareness campaign was that there were no specific people assigned to perform this task or to make the Regional Focal Points active at the regions she admitted. She added that the police officers that are at the regions do have their daily duties assigned to them already.

The NFP was tasked with conducting national firearms and ammunition stocktaking, in order to ensure accurate records keeping, as well as the collection and destruction of surplus stock, enhancing existing border control and training of law enforcement officials. Yet, according to Chief Inspector Shaama these tasks have not been completed, as there were no records.

According to the Report by Lt Col E. T. Naikaku (October 2008) the former NDF Representative to the National Focal Point, the NFP held a workshop on 18 – 19 September 2008, to review the Arms and Ammunition Act of 1996 and the implementation strategy of the NNAP. The following points were considered at the workshop (Naikaku, 2008, p.2):

- a. Safe storage of arms.

The participants looked at the storage requirement in the Act if it was effective enough or need to be enhanced.

b. Age limit for the firearms licence applicant.

The age limit for firearms licence applicant stipulated in the Act was reviewed and it was suggested that the minimum age should be increased.

c. Establishment of an Appeal Board.

The workshop looked at the possibility of establishing a Firearms Appeal Board which would deal with the firearms licence applicant appeals which are currently dealt with by the Minister of Safety and Security.

d. Limitation of ammunition per calibre.

Participants further discussed the possibility of reducing the number of ammunition per calibre a firearm owner is authorised to have.

e. Declaration of unfitness to possess firearms.

The process of declaring a person to be unfit to carry a firearm was also discussed.

f. Banning of hand guns.

Furthermore the workshop discussed the possibility of banning ownership of hand guns (pistol) and proposed amendment of the Act to effect this change.

- g. Competency testing for firearms licence applicants.

Finally, the introduction of competency testing of firearm licence applicant into the Arms and Ammunition Act was also considered, and it was agreed that the Act should be amended to bring it on par with that of other SADC states such as South Africa and Botswana.

Another Report by Lt Col J.M. Sabata (2010), the current NDF representatives to the NFP stated that, monitoring and evaluation teams were dispatched to all 13 regions from October 2010 to December 2010 (Sabata, 2010, p.1). This visit which started from 25 October 2010 to 09 December 2010 had identified the following problems concerning the performance of the RFPs (Sabata, 2010, p.3)

- a. Poor turn out of the stakeholders to the meeting.
- b. Lack of understanding of the Namibian National Action Plan by the stakeholders.
- c. Regional Focal Points meetings were not conducted.
- d. Some Regional Focal Points did not have the secretaries to take care of the administrative matters of the NFP.
- e. Regional Focal Points members did not have terms of references and standing operating procedures or annual work plan. The NFP was expected to provide the terms of references to the RFPs members.

The report further stated that in reaction to the identified problems, the visiting NFP teams compiled a programme for the regions to activate their RFPs activities and a mechanism for consultation and information sharing (Sabata, 2010, p.3). In addition, it was agreed that all members of the Regional Focal Points would be trained on administrative matters such as records keeping and stock taking as well as on the understanding of the Small Arms and Light Weapons (Sabata, 2010, p.4).

Mrs Pauline Dempers (NANGOF Representative to the NFP) described the work of the NFP as encompassing looking at the Namibian Police firearms registry as well as the regular updating of the system in order to establish beyond reasonable doubt the number of firearms that are in circulation in Namibia. In addition, the NFP is also looking at various elements introduced in the SADC Protocol on the Control of Firearms and the UN Plan of Action on Small Arms so as to include these elements such as competency testing and brokering, into the NNAP. The Arms and Ammunition Act of 1996 according to her, has many loopholes which calls for the necessary amendment. These include the authorisation of a maximum of four firearms per person, which is felt by some informants (such as Councillor Shitongeni, Governor Nuyoma, Chief Abraham Kanime and Mrs Dempers) to be many; the age limit of 18 years which according to Mrs Dempers should be increased to 21 or 25 years; the absence of requirement for firearm competence testing and training for firearms licence applicants as well as the periodic renewal of firearms licences. To close these loopholes amendments were proposed by the NFP to bring the Arms and Ammunition Act on par with that of other SADC countries such as South Africa and Bostwana. Civil Society are discouraging civilian ownership of

firearms by proposing that the police and other law enforcement agencies should be well equipped to such an extent that they would be able to protect the people, she acclaimed. All the above cited shortcomings are included in the Arms and Ammunition Amendment Bill of 2008, said Mrs Dempers.

4.2.3.1 Civil Society (NGOs) Participation

The researcher has learned from informants that the civil society in Namibia does also participate in the programmes for the control of firearms through the participation of NANGOF representatives in the NFP and RFPs activities. However, Mrs Dempers felt that their participation in the NFP and RFPs did not go far enough and wanted this to be taken further so that it could not be seen like a window dressing. She further stated that there were some activities that the civil society is supposed to perform such as conducting public education and awareness campaign on the danger posed by the proliferation of firearms but there was no clarity. The directive from the Cabinet is very clear on the composition of the NFP and that any activities related to the NFP should be charged, which unfortunately did not happen over the years, she charged. She added that they (NFP) had a meeting the previous week (12-18 March 2012) about the Civil Society participation and the budgeting/financing of the NFP activities and she hoped that the relationship would be more practical for the implementation of the NNAP. The problem according to her is that the Government needs to change the way of budgeting as currently there is no clear budget line or vote for the small arms programmes or for NFP. However, the NFP had quarterly meetings and at first the relationship was difficult that the Civil Society was not fully engaged in the activities of the NNAP but with time she hoped

with consistence endurance, slowly the police would understand the importance of the role of the civil society.

4.2.4 Regional Focal Points on Small Arms and Light Weapons (RFPs)

The functions of the RFPs are to implement the NNAP at regional level (GRN, 2006, p.8). According to Tobias Hainyeko Constituency Councillor in Khomas Region there are Community Firearms Control Committees at constituency level, which report to the Regional Focal Point. According to the NNAP, the monitoring of government implementation of regional and international obligations on combating illegal proliferation of firearms would be done through monthly progress reports from the Regional Focal Points (RFPs) to the NFP and from NFP to the National Management Committee (NMC), while the NMC would submit quarterly reports to Cabinet.

4.2.5 Monitoring and auditing of firearms held in a persons possession and by gun dealers

The question of the monitoring and auditing of the use of firearms licences as required by the SADC Protocol on Control of Firearms generated different responses. Although the firearms possession licence according to the Arms and Ammunition of 1996 can only be terminated when the holder is declared unfit by the competent court or when the holder dies. However, according to the Namibian Police (NAMPOL) Head of Central Firearms Registry Chief Inspector Ignatius Nangombe, Section 9 of this Act empowers the Namibian Police with the prerogative to inspect firearms any where at any time if it so wish. This was confirmed by the respondents

from both G4S and Marine Security companies who noted that the police do visit their companies' premises from time-to-time to check the security and safety of their firearms stores. This was also confirmed by the CEO of Inter-Africa Security Services Mr Absai Nendongo who also added that the Ministry of Safety and Security (Police) does not only monitor the fire-arms records but also conduct through inspection of both the licences as well as physical guns count. The respondent from Safari Den Mr Alex Hatzenburg explained that his company keeps a register of arms procured as well as those which are sold and that the Namibian Police does inspect it from time-to-time. Further confirmation of this practice was provided by Chief Inspector Nangombe who attested that firearms dealers submit monthly reports to the Namibian Police about their stock that is sold against that which remained in stock. Furthermore, the Namibian Police follows on these by conducting quarterly inspection at the dealers' premises.

According to the study by Martin Boer (2004) the Namibian Police had two firearms licence databases; the pre 1998 data base and the post 1998 data base. This was confirmed by Inspector Vilonel, who went further to indicate that the two data bases have since been reconciled. Furthermore, Chief Inspector Moses Shaama also added that the establishment of the centralised firearms database for firearms held by civilians has been completed.

The above settled the scepticism of the NANGOF Representative to the NFP (Mrs Dempers) as to whether the NAMPOL does really conduct regular inspection of the gun dealers registers and stock, as per the requirement of the Act or not, especially

given the assumption that the police firearms registry was in a state of mess. She hoped that with the proposed amendments, it would be easy to inspect.

4.2.6 Successes and Failures

There were successes and failures encountered during the implementation of the SADC Protocol on the Control of Firearms in Namibia. According to Chief Inspector Shaama, the protocol is wide, and when it is implemented, they looked at pertinent issues first. He narrated the following as the achievements so far:

- Article 4 of the SADC Protocol on the Control of Firearms: Namibia is part of the UN, AU and SADC Protocols and agreements on the control of firearms. Namibia is as of now in 2012 participating in the negotiations for the UN Arms Trade Treaty (ATT) which aims at regulating legal international conventions on arms trade. Furthermore, the country is part of the International Tracing Instruments which has already been adopted by the UN General Assembly.
- Namibia has a computerised firearms control register, where civilian firearms are registered.
- All provisions (legislative measures) in Article 5 of the SADC Protocol are legislated, except Sections (i) and (m); competency testing of prospective firearms owners and brokering. Brokering means acting for a commission to facilitate the purchase or selling of firearms whereby acting as intermediary between a firearms manufacturer/dealer and a buyer/recipient (SADC, 2001, p.1).

- On the state owned firearms, the country is already in the process of commencing the remarking of both state and civilian owned firearms. A marking machine has already been acquired and the training of the users was completed.
- Voluntary surrender of firearms and ammunition is being addressed through current ongoing public awareness campaigns. However, the awareness campaign is being hampered by the budget constraint.

4.3 THE ARMS AND AMMUNITION ACT (ACT 7 OF 1996)

4.3.1 The status of the Act

The Arms and Ammunitions Act, 1996 (Act No: 7 of 1996) for Namibia “provides a framework for regulating manufacturing and possession of arms and ammunitions; by focussing on the dealing in, importation, exportation and manufacturing of arms and ammunition” (GRN, 1996, p.2). This legal instrument/policy regulates the ownership of firearms and ammunition by individual citizens and private organizations, by outlining the procedures for acquisition of firearms by private citizens and licensing thereof. This Act replaced the Arms and Ammunition Act of 1969. The Arms and Ammunition Act of 1969 was replaced because it was not relevant to the current political situation in the country. Inspector F. P. J. Vilonel cited several reasons in support of this repeal. First, the Act was enacted during the colonial rule just after the start of the armed struggle. Therefore, there were some elements in the Act that were put there to protect the colonial regime. For instance, in Section 1, the definition of ‘State’ includes self-governing territories and there were terms in the Arms and Ammunition Act of 1969 which refer to classes of persons or

areas (GRSA, 1969, p.3). Secondly, this law was passed long time ago and as time goes by, technology changes, therefore certain adjustments were needed in the law. However, he added, only few regulations such as increase the of the minimum age limit for firearms licence applicants from 16 to 18 years and the limit of the Act application to some areas or classes of persons were changed to suit the present situation.

The question was asked whether there were public consultations during the formulation of the Arms and Ammunition Act of 1996. According to the Mrs Pauline Dempers, if there was any consultation, she could not remember because by that time, the relationship between the civil society and the Namibian Police was not as good as it is now. However, with the proposed amendment contained in the 2008 Bill, the civil society has done its part, she maintained. Especially the media played the role of informing the public about the loophole in the Arms and Ammunition Act of 1996 and what the proposed amendments were about. Furthermore, some questionnaires were sent to the community to see whether they are for the changes and it appeared that the majority of the respondents approved the changes, she concluded.

4.3.2 The Effectiveness of the Arms and Ammunition Act (Act No: 7 of 1996) to prevent or reduce the use of firearms in criminal activities

Interviewees were asked if the Arms and Ammunition Act (Act No: 7 of 1996) was effective enough to prevent or reduce the use of firearms in criminal activities. Both Mr. Seth Gaeb and Chief Abraham Kanime (respondents from G4S Security Services

and Windhoek City Police respectively); felt that the firearms which are in the hands of individual citizens are too many and that the Act is too soft when it comes to the acquisition of firearms by individuals. However, Mr Absai Nendongo believes that although more amendments are needed in order for it to be strict on the issuing of firearms to private persons, the Act is effective. Councillor Zulu Shitongeni (Interviewee from Khomas Regional Council) pointed out that the Act might be good but the problem is that it may not be well implemented. Additionally, the Act is silent on the ways of extracting firearms which are already in private hands.

Another concern brought about by Chief Kanime was the fact that the Arms and Ammunition Act, 1996 permit the possession of side arms (pistols) by private individuals. A farmer may have a rifle to protect own animals or a security company may need rifles to protect properties, but hand guns are not needed to be possessed by individuals, because everybody can own it and this pose a threat even to law enforcement agencies, he opined. Another deficiency which was detected in the Act is that; it is silent on the carrying of firearms visible in public places by people other than those who belong to law enforcement agencies, added Chief Kanime. Furthermore, some of the interviewees believe that the penalties/sentences for would be offenders stipulated in the Act are so lenient that they could not deter people not to violate the law. However, Mrs Corne Mayer (the Head of the Marine Security Company) said that she did not experience any problem with the Act.

On the question if it was possible for private security guards in Namibia not to carry firearms while on duty, Both Mr Gaeb and Mr Nendongo held that it was not

possible to be implemented in Namibia because the society here is very armed. Furthermore, Namibia's crime rate was higher and security measures in Namibia are not yet up to the same standard as that of Botswana they added.

4.3.3 Needed amendments

The study established that the formulation of amendment to the Arms and Ammunition Act, 1996 is still under way. It was confided to this researcher by one of the key informants that there were many elements to be changed in the Act. Therefore, it takes long time to complete. One example of the elements which to be included in the Act was of the ballistic testing. That means to introduce the necessary scientific and forensic systems that would allow for the linkage of the spent cartridge to the gun from which it fired, and to the owner of that particular firearm. This, according to Inspector Vilonel, would help reduce firearms crimes in the country.

The Arms and Ammunition Act of 1996, said Chief Inspector Shaama, was not yet fully compliant to the SADC Protocol on Control of Firearms, the Bamako Declaration and the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. According to him the following issues are still to be addressed:

- a. The incorporation in national laws of elements for monitoring and auditing of licences held in person as well as provisions that regulate firearms brokering as required by both the SADC Protocol (Article 5) and the UN Protocol on Firearms (Article 15) (SADC, 2001, p.6 and UNGA, 2001, p.9).

- b. Remarking of both state and civilian owned firearms as per Article 9 of the SADC Protocol and Article 8 of the UN Protocol (SADC, 2001, p.7 and UNGA, 2001, p.5).
- c. Public awareness campaign programmes on the danger of the proliferation of firearms which expected to result in voluntary surrender of illicit small arms and light weapons as per requirement of the Bamako Declaration (OAU, 2000, p.4) is being hampered by budget constraint. However, the above deficiencies are being addressed by the impending amendment to the Act, he asserted.

4.4 THE PROCESS OF PURCHASING FIRE-ARMS

Interviewees described the long process which a prospective firearms owner is required to undertake in order to be issued with a firearm licence as follows:

It starts with the dealer sourcing the gun outside the country applying to the Ministry of Safety and Security for an import permit. This is followed by the completion of an End- User Certificate by the firearms dealer, undertaking that the firearm would not be exported to another country without notifying the original supplier and obtaining export permit from the Namibian Government. Firearms according to the respondents are sourced from legally recognized international firearms manufacturers anywhere in the world. Article 5 (Sections 1 &2) of the SADC Protocol requires member states to enact necessary legislation aiming to combat and eradicate the illicit manufacturing of firearms as well as to punish the violators of the UN Security Council mandated arms embargoes (SADC, 2001, p.5). A firearm importer as per Section 23 of The Arms and Ammunition Act of 1996 can be either a

gun dealer or an individual (GRN, 1996, p.17). Then the acquired consignment is imported into Namibia.

For individual firearms buyers the first step is to present the Identification Document to the firearms dealer and purchase the required firearm. This according to Mr Hatzenburg the interviewee from Safari Den does not mean that the gun will be issued to the buyer immediately as he/she has to fill in an application form (Pol 563) which should be submitted to the police by the dealer. In fact in terms of Section 3 of the Arms and Ammunition Act of 1996, after purchasing a firearm, the firearm licence applicant goes to the police station which is in charge of the area where the applicant resides and submits the application form. This was explained by Chief Inspector Ignatius Nangombe the Head of the Central Firearms Registry. At the police station, the applicant is taken fingerprints to ascertain that he/she does not have criminal record. Furthermore, the applicant should prove that he/she is in possession of a safe by producing a receipt for the purchase of a safe, and is 18 years or more. Finally, the applicant should be physically and mentally fit. The applicant should be physically fit to handle a firearm and should not be mentally disturbed. However, there is no standard procedure of determining the fitness, as this depends on the discretion of the police officer who is handling the application, stated Chief Inspector Nangombe. In the meantime the firearms remains at the gun shop until the purchase is approved by the police. The waiting period can be two months or more.

This study has established from the key informants that since the SADC Protocol came into force, no administrative changes have been experienced by the firearms

dealers. There are no specific administrative changes which the researcher envisages to have been contemplated. However, Article 7 of the SADC Protocol requires member states to coordinate the review of their “national procedures and criteria for issuing and withdrawing of firearms licences” (SADC, 2001, p.7).

The above process slightly differs from that of other SADC countries. For instance, in Botswana, it starts with the application and issue of a permit to acquire a firearm. After the permit is granted, the firearm is to be registered and the applicant to be issued with a registration certificate. The last step is to apply for a firearm licence and eventually issue of the licence (GBW, 1981, p.2 – 6). Meanwhile in South Africa, the process starts with the application for a firearm competency certificate which is given if the applicant has passed a competency test. The South African firearms competency certificate has a duration of five (5) years. The final stage is the issuing of a licence to possess a firearm, which is renewable (GRSA, 2000, p.13-15).

The procedure of acquiring firearms by organizations such as security companies is almost the same as that of individuals. The only difference is that the company needs to be registered with the Security Enterprises and Security Officers Regulation Board (SESORB) and to have a fitness certificate issued by the police, before the firearm licence is approved. This is because the firearms for security companies are to be used by other people than the owners. The security fitness certificate, according to the interviewees for the G4S Security and Inter- Africa Security Service companies, allows the company to buy many firearms (10 or 15 firearms) depending on how

many places they need to guard with arms, and keep them. However, each firearm should have its application form for which a separate licence is issued.

The security fitness certificate is issued by the Inspector General of Police after being satisfied that the applicant (Security Company) has met all security requirements needed to keep many firearms. Mr Seth Gaeb, a respondent from G4S Security Services explained that the security fitness certificate is needed because the company will issue the firearms to its employees (guards) when going for duties. The police look at the security measures which the company put in place to safeguard the firearms, such as storage facilities, level of training of the guards and so forth. According to both Mr Gaeb and Mr Nendongo, this security fitness certificate is very important because without it, the firearms would not be released.

As the Inspector General of Police needs all the details prescribed in the firearms application form before a licence is issued, this has created a feeling among security companies that the applications for firearms licences by private security companies take too long to be approved, about three to four months. Apart from the delay which may be caused by administrative procedures, all interviewed Security Companies representatives stated that they did not experienced any difficulties in obtaining firearms licenses when they apply for them.

Mr Gaeb explained that, when the company (G4S) receives new firearms, each gun is given a bar code and then the details of the firearms are loaded into the computer using special software. This bar code is linked to the gun's serial number by the

software for identification purpose. This, according to Mr Gaeb is a security measure introduced by the company to make sure that all movements of firearms are monitored and any missing firearms can be soon detected. Furthermore, the use of the barcode links the fire-arm to the person who signed it out of the store last time. The barcode use is a voluntary control measure which G4S Security Services introduced. Each security company has its own fire-arms control arrangements, but they all have to satisfy the Inspector General that firearms would be well kept and controlled. All the security companies' respondents affirmed that the police have full access to their firearms registers/databases. Meanwhile apart from fire-arms licences which are issued by the Namibian Police, Security Companies businesses are regulated by the Security Enterprises and Security Officers Act (Act No 19 of 1998) through the Security Enterprises and Security Officers Regulation Board (SESORB) (GRN, 1998, p.2).

The SADC Protocol does not set specific procedures of how firearms owned by security service providers should be controlled. However, Article 5 Section 3 (a, i and j) of the Protocol requires state parties to incorporate elements in their national laws that prohibit unrestricted possession of firearms by civilians, ensure effective control of firearms including the storage and usage thereof as well as monitoring and auditing of firearms licences held by civilians (SADC, 2001, p.5- 6). Meanwhile, in South Africa, the licensing and control of firearms owned by security companies are regulated by Chapter 6 (20) of the Firearms Control Act of 2000. Section 20 (5) (b) of the Act states that "a security company which holds a licence to possess a firearm

for business use may only provide the firearm to a security officer in its service who holds a competency certificate” (GRSA, 2000, p.16).

The problem identified by Mrs Dempers concerning the process of acquiring firearms was that of brokering (the use of a middle man in firearms deal whom the country do not have control over). The NFP according to the Mrs Dempers was trying to stop the use of brokers, but it met stiffer resistance from some stakeholders. These obstacles caused some delays to the amendments, but they were overcome lately, she declared. However, she has expressed her disappointments about the delay of the amendment which she said did not reach parliament yet despite significant efforts the NFP put in to motivate the importance of this amendment. Although the practice is forbidden by the SADC Protocol on Control of Firearms, the Arms and Ammunition Act of 1996 is silent about the use of brokers and people are taking advantage of this. Therefore, an amendment to the Act is proposed, she concluded. The Firearms Control Laws of South Africa, Botswana and Zimbabwe are also quiet about the brokering practice.

4.5 FIREARMS IN NAMIBIA

4.5.1 Sources of Firearms

The study found out that legal firearms in civilian hands are imported in Namibia by firearms dealers through normal import procedures. This was related to the researcher by interviewed firearms dealers and Inspector F. P. J Vilonel (a key informant). A previous study by Boer (2004) revealed that apart from the firearms which were acquired legally, Angola was suspected to be the main source of illegal

firearms found in Namibia. This was attributed to the civil war fought in that country and the wide open borders between the two countries. However, this has not been factually proven.

The researcher further learned from the respondents that during the colonial rule in Namibia, rifles were distributed to tribal leaders for protection against the then perceived threat of combatants of the people's Liberation Army of Namibia (PLAN). Although these guns were not withdrawn at independence, it has been established from key informants that efforts have been made since, by the current government to have these firearms back. It is understood from key informants that most of those firearms had been returned back to the Namibian Police Armoury and would be destroyed because they are very old. According to Inspector Vilonel, those guns were not necessarily weapons of war but the tribal leaders were only given old fire-arms which are ex- military stock for protection purposes. Meanwhile, most respondents confirm that some firearms fall into civilian hands through theft from legal civilian owners or from the security agencies and those were lost.

These findings reveal that there are two main known ways how the firearms which are in the civilian hands in Namibia were sourced. One way is through importation by legally registered firearms dealers. The second source was through the distribution by the previous colonial government to tribal leaders. Furthermore, there are those legally obtained firearms that fall in the wrong hands, either after being stolen or lost. Although there are suspicions that firearms are entering the country

illegally from neighbouring countries, none of the key informants confirm this with support evidence.

4.5.2 Reasons for Acquiring Firearms by private citizens in Namibia

This paper further has found out that in Namibia, firearms are acquired by private citizens because of various reasons, mainly for the purpose of hunting, sports shooting, protection of properties, self-protection and protection of livestock (Boer, 2004, p.122). According to the Governor of Khomas Region, Mr Samuel Nuyoma, the main reasons for acquiring firearms by private citizens are self and property protection, as the majority of the Namibians are not hunters. Similarly, according to Mr Alex Hatzenburg the interviewee from Safari Den company (Gun dealer), the reasons cited by most of their customers, for acquiring firearms are: self-defence and protection of properties (hand guns), and hunting (rifles). However, both the Namibian Firearms Control Law and the SADC Protocol did not stipulate possible reasons for acquiring firearms. On the question as to how often do the authority turn down the applications for fire-arms licenses of their customers, Mr Hatzenburg responded that there are rare occasions where the police rejected the applications. On the other hand, other respondents namely: Councillor Zulu Shitongeni, Chief Abraham Kanime and Mrs Pauline Dempers perceive the reasons (such as self-protection) cited by firearms licence applicants as so twist that they need to be reviewed so as to ascertain if they are really valid. Chief Inspector Ignatius Nangombe the Head of the Central Firearms Registry also confirmed that hunting, sports, self and property protection and collection were the most reasons given by firearms licence applicants.

There seems to be mixed reactions about the impact of the Arms and Ammunition Act of 1996 on the gun related crimes in Namibia, since the Act came into force in 1996. While a progress has been acknowledged in terms of firearms licensing, a lot still need to be done on the withdrawal of illegally acquired guns from private hands. It has further been established that there is a concern by key informants from NANGOF, Khomas Regional Council and Windhoek City Police about the number of firearms an individual is allowed to possess by the Act (four firearms), as one person can not be in full control of all four firearms at the same time. According to Chief Abraham Kanime, although the Act require firearms owners to be in possession of a safe where to keep the firearm when it is not being used, some people do borrow others safe just to show them to the police that they have a safe while in reality they do not have any. As a result, some firearms may fall into wrong hands. However, according to Inspector Vilonel this number may be justifiable as the law may have to take into account the fact that each of the four firearms; may be required for different purposes; one is a hand gun for self-protection, the second one is a shot gun for shooting birds, the third one is a small rifle for shooting small animals (games) and the fourth one is a big rifle for shooting big animals (games). He further added that the law also provides for exceptional cases, where a person can be allowed to have more than four firearms. An example for this is, a gun collector, a professional hunter or a security company. Chief Inspector Shaama (Coordinator of the NFP) also echoed these sentiments by stating that the law makers had good reasons to provide for the maximum of four firearms, taking into account; self-protection, property and cattle protection, hunting and sport shooting. While the concern of respondents who feel that the maximum number of firearms an individual

can own and its possible contribution to firearms contribution crimes is genuine, the reasons by those who support the authorised quantity are also valid.

According to the Mrs Pauline Dempers (NANGOF Representative to the NFP), the reaction of the gun dealers to the proposed amendments to the Act was negative at the beginning. This was because the amendment would have opened the possibility for the reduction of the number of firearms per person and that the possible introduction of the requirements for a competency testing for both current firearms owners and future firearms licence applicants may hold negative implications for their businesses, she assumed. The gun dealers feared that the amendment would cause reduce sales and that they might go out of business, she added. Furthermore, when the Inspector General of the Namibia Police proposed that there would be a moratorium in place after the approval of the Amendment Act, to give the police time to put everything in order, the gun dealers were threatening to sue the government, stated Mrs Dempers.

4.5.3 Firearms and crimes

4.5.3.1 Concern over the possession of firearms by private citizens and their possible use in committing crimes

The study found that, although gun related violence were traditionally associated with civil war and ethnic conflicts, recent studies such as that by Gun Free South Africa (cited in IANSA, 2010) and Hemenway (2011) show that firearms are now commonly used to settle disputes within families and communities and Namibia is not exempted from that. Furthermore, there is an indication through media reports

that handguns are commonly used in armed robberies as well as in domestic and gender violence in Namibia now, as illustrated by the examples cited earlier in this paper. Moreover, it is evident that not only illegally acquired firearms are a threat to public safety, but those which are legally owned could also pose a threat. As Hemenway (2011, p.4) stated, the presence of a gun in the home can make domestic quarrels, disputes, assaults and robberies more deadly. This argument reflects of the situation in Namibia where incidences of domestic violence involving firearms are being reported daily as demonstrated in the examples in this study. Firearms contribute to domestic violence and endanger the community, stated Council Zulu Shitongeni (Chairperson of Khomas Regional Council). He gave an example of the case of Lazarus Shaduka who was accused of causing the death of his wife through gun shot on 13 July 2008 as mentioned early in this thesis. His concern was echoed by Mrs Pauline Dempers, the NANGOF Representative to the NFP who said that the increase of firearms especially those in the hands of the civilians are fuelling domestic violence and crimes in the country and therefore are a cause of concern. If many people have arms, people may feel frightened especially women and the vulnerable, said Khomas Governor Samuel Nuyoma.

According to Mrs Dempers, Namibia's political background has largely influenced the problem of firearms proliferation in the country. She specifically referred to the firearms from the era of liberation war plus the firearms that are illegally brought in the country from neighbouring countries. This, according to her, has resulted in the increase of firearms in the civilian hands. Furthermore, the Arms and Ammunition Act of 1996 is not effective enough to control the firearms and to make things worse

the Namibian Police up until this day cannot with certainty say how many firearms were in Namibia. Therefore, this was a matter of concern because it is fuelling domestic violence and arms robberies, she asserted. Besides, it appears that the anxiety about the increase of firearms in private hands and its alleged use in committing crimes and domestic violence in Namibia is not only felt at national government level but also at regional and local levels. In separate interviews with the Khomas Regional Governor Mr Samuel Nuyoma and the Chairperson of the Khomas Regional Council Councillor Zulu Shitongeni, both expressed their concern about the increase of firearms in the community. Moreover, Mr Seth Gaeb (the G4S respondent) also felt that the number of firearms in private hands is too many. Furthermore, there is a feeling that it is too easy to acquire a firearm in Namibia as far as conditions and requirements are concerned. The above concerns were also confirmed by the Chief Abraham Kanime.

4.5.3.2 Use of legally acquired firearms in criminal activities

A question was put to Chief Kanime as to how often incidences occurred where legally acquired firearms are used to commit criminal activities in Windhoek. In his response he cited three ways in which criminals may get hold of legally acquired firearms. Firstly, there are those who willingly give their guns to criminals to be used in robberies. Secondly, there are those who use own firearms to commit crimes. Thirdly, there are firearms that have been stolen from legal owners. Hence confirming the fact that most of the weapons used in committing crimes and other types of violence are legally owned, compared to incidences where illegal firearms are used.

4.5.4 Security measures to safeguard the use of legal acquired firearms for illegal purposes

When interviewees were asked as to what control measures the security companies put in place to ensure that their firearms are not used for other reasons than the intended purpose, there were different answers from different companies. Mr Seth Gaeb said that the G4S Security Services has a “Firearms Management System”, a computer based software which is used to register the issue and control/account for their firearms and other equipment. According to Mr Absai Nendongo, all Inter-Africa Security Services firearms are always handled by a Shift Captain, who issues out and receives in the firearms. The company has strict instruction that firearms are only issued during working shift, he added. At Marine Security according to Mrs Corne Meyer (Marine Security respondent), the company has a firearm register and all firearms are signed out when there is a need to use firearms and signed in after each tour of duty.

This study has discovered that the Namibian Police has also experienced cases of lost or stolen police firearms. As Inspector Vilonel stated, the loss normally happens during operations. Furthermore, there were also some cases of break in and many firearms which belong to the police had been stolen. However, according to him most of the lost and stolen weapons have been recovered.

4.6 THE SADC PROTOCOL ON THE CONTROL OF FIREARMS, AMMUNITION AND OTHER RELATED MATERIALS

It emerged through this research that there are diverse views about the effectiveness of the SADC Protocol on Control of Firearms, Ammunition and Other Related Materials, on the firearms control measures in Namibia. Some key informants are of the opinion that the Protocol has brought some positive changes, especially to the law enforcement agencies. On the other hand, there are those who believe that although the Protocol itself might be good, it is not being implemented well.

Mr Ezekiel Senti (informant for SADC Secretariat) viewed the following as some of the successes achieved by the organization in implementing the SADC Protocol on the Control of Firearms, Ammunition and Other Related materials:

- Member states work together in combating, eradicating the scourge of illicit arms, through cross-border operations ranging from bilateral to multilateral.
- Unilateral conduct of raids on illicit arms, resulted in destruction of obsolete firearms or confiscated firearms.
- Voluntary surrender campaigns in some countries goes with incentives for surrendered firearms.
- SADC participated at the AU Strategic meetings on Small Arms, which resulted in some member states to enact the necessary laws in this regard.
- Member states have procured marking machines for small arms with the help of donor funding.

All the above were cited by Mr. Senti as some of the achievements by SADC member states because of the Protocol.

4.6.1 The Effect and Influence of the SADC Protocol on Firearms on the State Security Agencies

The question was also asked as to what effect or influence does this Protocol have on the work of the Namibian Police. According to the Head of the Namibian Police Armoury Inspector F.P.J Vilonel, it does have a great influence on their work, especially when they are importing their firearms and/or ammunition. The Protocol provides for special measures and requirements which the importing and exporting countries have to meet. These include co- ordination of procedures for import, export and transit of firearms shipments (SADC, 2001, p.5). These, according to him may sometimes cause a lot of delays, but the measures are there to protect both the manufacturing and importing countries.

In response to a question as to whether the Windhoek City Police has any role to play in the implementation of the SADC Protocol, Chief Abraham Kanime affirmed that they are fully involved at all levels as the Windhoek City Police works hand-in-hand with the National Police and as such complement their (national police) work. Furthermore, on the question whether the SADC Protocol has any effect on the work of the Windhoek City Police, Chief Kanime replied that once the Protocol is fully implemented and once the Arms and Ammunition Act is amended, they would really benefit and it will positively affect their operations. Amendments such as introduction of the competency testing of firearms licence applicants, limit of

firearms licence duration, increase of minimum age for firearms holders from 18 to 21 years, et cetera would contribute to the reduction of firearms related crimes in the country, thus lessen the burden from law enforcement agencies, he maintained. Firstly, there are a lot of firearms in the community, especially side arms (pistols). Secondly, there are always shootouts between the Windhoek City Police and the criminals he added. If the Protocol is fully implemented and the control of firearms becomes effective, this will yield positive effect by lessening the pressure and danger in the Windhoek City Police working environment, he concluded.

The SADC Protocol on Firearms requires member states to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies. Chief Kanime confirmed that the City Police has an inventory and do conduct regular inspections as per requirement of the Arms and Ammunition Act, 1996. In the event of a loss of a firearm, according to the City Police Chief, they follow the normal procedures which are set up to report loss of or damage to government properties.

4.6.2 The Disparity between the SADC Protocol on the Control of Firearms and the Namibian Arms and Ammunition Act, 1996

4.6.2.1 Shortcomings in the Act

There is an indication that the Arms and Ammunition Act of 1996 has some elements which do not conform to the SADC Protocol on Control of Firearms, Ammunition and Other Related Materials. One example is Section 3 of the Arms and Ammunition Act of 1996 which does not prescribe a mandatory competency testing

and training for firearm licence holder applicants as well as Section 5 that does not put duration limit for a firearm possessing licence which are some of requirements in the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials as well as the SARPCCO Standard Operating Procedures for the SADC Protocol on Firearms.

This study further found out that there are no regular checks of firearms and firearm licenses as it required in the SARPCCO standard operating procedures for the SADC Protocol on Firearms. Also the paper noted that Section 8 (1) of the Namibian Arms and Ammunition Act of 1996 which allows for the taking of a firearm(s) by a person other than the owner with consent of the licensed holder (GRN, 1996, p.9) is in contrast with the SARPCCO Standard Operating Procedures for the SADC Protocol on Firearms Chapter 7 Section 2, which states that borrowing of a firearm from another person is not allowed. The Namibian Law is silent about the capability test of this second person to hold a firearm, while the SADC Protocol on Control of Firearms, ammunition, and Other Related Materials Article 5 Section 3 (a) requires member states to incorporate in their national laws: “provisions that ensure effective control of firearms including the storage and usage thereof, competency testing of prospective firearm owners” (SADC, 2001, p.6). However, Chief Inspector Ignatius Nangombe (the Head of the Central Firearms Registry) response to this concern was that, in the pending amendments to the Arms and Ammunition Act of 1996, Section 8 (1) will be supported by the competency testing which has been introduced in the amendment. The law will then requires the second person to pass a competence testing before borrowing the firearm, stated Chief Inspector Nangombe.

Although in the SADC Protocol, states parties promised to enact necessary legislation and take necessary measures in line with the protocol requirement and to incorporate elements of the protocol in their national laws (SADC, 2001), it has been discovered that Namibia's Firearms Control Law still has to be reviewed. However, the researcher was informed that these shortcomings are addressed in the amendment to the Arms and Ammunition Act of 1996 which is still to be approved by the Cabinet before taken to the Parliament, asserted Chief Inspector Shaama.

The SADC Protocol obliges member states to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies. Inspector F. P. J Vilonel has confirmed that the Police have their own centralised computerised inventory of all firearms and ammunition held by the Namibian Police. However, he added that Namibia does not have one national firearms inventory for all the security forces and other state bodies, but each force has its own centralised inventory instead. Meanwhile the Chief Inspector Shaama (NFP respondent) also confirmed and added that the problem of not having a national inventory of firearms and ammunition held by security forces is being addressed.

The SADC Protocol on Control of Firearms, Article 5 Section 3 (j) urges member states to incorporate in their national laws; elements of monitoring and auditing of licenses held in a person's possession (SADC, 2001, p.6). Although, the Arms and Ammunition Act, 1996 is silent about the monitoring and auditing of licenses which is a requirement by the SADC Protocol, Article 5 (3) (j), both Mr Seth Gaeb and Mr Absai Nendongo (respondent from G4S and Inter-Africa Services respectively) have

confirmed that the police do visit security company premises to check the security and safety of their firearms stores. However, all informants confirmed that there was no monitoring and auditing of firearms licences held by private individuals, the researcher has learned.

The Arms and Ammunition Act of 1996 is not fully compliant with international policy instruments on control of firearms, stated Mrs Pauline Dempers (NANGOF respondent). Therefore, the NFP was looking at how to improve it to close the loopholes. Without the proposed amendments, she added, the work that was stipulated in the NNAP would not materialise. However, she was disappointed that the amendment process was taking too long.

Despite the above observations, the researcher was informed by the Chief Inspector Shaama that Namibia has done a lot to promote legal uniformity and minimum standard procedures in the region, in respect of manufacture, control, possession, import, export and transfer of arms and ammunition as required by the SADC Protocol on Control of Firearms; and that the remaining deficiencies would be addressed by the pending amendment to the Arms and Ammunition Act of 1996.

4.6.2.2 Shortcomings in the Protocol

The SADC Protocol requires member states to regulate the number of arms a person may possess, but does not dictate specific number of firearms an individual can have. As a result, each country determines how many firearms per person can be licensed

in the country, the study revealed. For example, in Namibia, private individuals are permitted to own up to four fire-arms (GRN, 1996, Section 3 (7)).

4.7 DISCUSSION OF RESULTS

This study found out that the uneasiness about the increase of firearms in private hands and its alleged use in criminal activities is not only a national problem, but has also been felt at regional, continental and global levels. This problem has been in the international, continental and regional agendas since the beginning of 2000. As it was indicated by the findings, though there is a political will in Namibia to address the problem of the proliferation of firearms, there appears to be no enough emphasis put on the implementations of the political decisions. According to Chief Inspector Moses Shaama and Mrs Pauline Dempers, the fact that the office charged with the implementation of international, continental and regional firearms control instrument was placed at the lower level of the government structure makes it difficult for the implementation to succeed. There supposed to be a constant link from the top policy makers up to the lower level of implementers. Furthermore, the programmes on the control of firearms can not be successful if it is not backed by the adequate budget.

The researcher observed that there are good efficient legal procedures of importing firearms for civilian use in Namibia. However, the fact that the law makes no limit as to how many firearms should be imported into the country by private gun dealers is a matter of concern as they import according to the need of their customers. This may contributes to the increase of firearms in the civilians' hands in the country. Moreover, although Inspector F.P.J Vilonel (the Head of the Namibian Police

Armoury) said that the weapons that were given to the tribal chiefs during the colonial rule were old and do not pose any threat, the fact that these firearms were manufactured as weapons of war is a matter of concern and they should not be in civilian hands.

There are diverse views on the validity of the reasons that firearms licence applicants give when applying for licences. The Arms and Ammunition Act of 1996 does not prescribe any genuine reasons that may necessitate the acquisition of firearms by private citizens. This, according to the informants makes it difficult for the approving authority to reject an application. Furthermore, the fact that after the approval of the licence application, there is no follow up (monitoring) to find out if the firearm is really used for the approved purposes also makes things difficult for firearms accountability. This has created a loophole that everybody can have a gun if she/he wants. In addition, the duration of firearm possession licences in Namibia has no limit, according to the Arms and Ammunition Act of 1996. These overlooking may undermine the efforts to curb the increase of firearms and its use in criminal activities. However, according to the NFP respondents, this problem has been taken care of by the amendments to the Arms and Ammunition Act of 1996, whereby a possible duration was proposed.

The process that followed by prospective firearms owners, both individual and corporate citizens, to acquire firearms in Namibia appears to be efficient, but the problem seems to be only caused by the loopholes in the regulating instrument. However, the way of determining the fitness of perspective firearms holders used by

the Namibian Police appears not to be efficient, as it depends on the discretion of the one who is in charge. The fact that there are no requirements for competency testing of perspective firearms users as well as training on the use of firearms compromise the public safety. This problem has also been attended to with the proposal of the competence test which is said to be included in the amendment to the current Act. Moreover, there are no standard procedures subscribed by the law on how security service companies should safeguard their firearms and ammunition, the study noticed. As a result, each company has devised its security measures to make sure that their weapons are not used for other purposes than the intended use. This may result in security lapses as some companies may not put up efficient security measures.

Although gun crimes were traditionally associated with civil war and ethnic conflicts, the trend now shows that guns are used to settle disputes within families and communities and Namibia is not exempted to that as it was illustrated by the newspaper reports presented earlier in this thesis. This is believed to be a threat to public safety. Therefore, the majority of the interviewees felt that the increase of firearms in private hands is unprecedented and causes insecurity in the communities. It is feared that the increase in the number of private firearms in the country coupled with defective firearms control law fuels domestic violence and incidences of armed robberies in the country.

Furthermore, there is a concern that hand guns are commonly used in domestic and gender violence in Namibia, the study discovered. This was testified by the interviewees and by some of the incidences involved firearms cited in this paper.

Moreover, there are strong opinions that the increase of privately owned firearms negatively impacted on the safety of the community and that, it is too easy for an individual to acquire a firearm in Namibia. However, there is also a solid indication that not only the illegally acquired firearms pose a threat to the public safety, but also those which are legally owned. This could only be rectified by the tightening of the firearms control instruments and their efficient implementation especially on monitoring and safekeeping of firearms.

The researcher again learned that the majority of the firearms used in committing crimes in Windhoek are those which were acquired legally and fall into the hands of the criminals in one way or the other. This problem is alleged to be caused by the country's Arms and Ammunition Act which is presumed not to be tough enough to curtail the number of firearms in possession of individuals in the country. It is hoped that the proposed amendments to Arms and Ammunition Act of 1996 may help curb this increase. However, these proposed amendments are taking too long to be realised, a fact that cast doubt on the seriousness of the policy makers about the problem caused by firearms in the country.

It appears that the SADC Protocol on Control of Firearms has some shortcomings. Firstly, it does not provide for punitive remedies in the events of non-compliance by a state party. Hence it would be like a toothless dog which could not bite. Secondly, it does not prescribe a specific number of firearms an individual citizen should be allowed to possess. This was left to the discretion of individual member countries to decide. Furthermore, the Protocol does not say anything about the duration of a

firearm licence. As a result of these deficiencies, there are differences on the way SADC countries regulate the dealing in and the possession of firearms in their countries. The study further established that there is no legal uniformity and standard on the way the use and possession of firearms are regulated in different SADC member states. This is contrary to what member states pledged in the SADC Protocol on Control of Firearms.

Although the SADC Secretariat indicated that some successes were achieved in the implementation of the Protocol, the fact that only some member states had enacted laws in connection with the implementation of the SADC Protocol on the Control of Firearms is still a matter of concern. Another worry to Namibia could be that its northern neighbour, Angola is one of the countries that had not yet signed and ratified the SADC Protocol on the Control of Firearms. There are suspicions from different quarters in Namibia that apart from the firearms that are legally imported into the country, there are also some firearms coming in by what ever means through neighbouring countries.

Moreover, the challenges that were identified by the previous studies by Stott (2003, p.6) as hindrances to the implementation of the SADC Protocol on the Control of Firearms, Ammunition and Other related Materials are the same challenges that still being faced by the SADC member states according to the SADC Secretariat. This shows that the implementation of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials is taking a slow pace, which in turn makes the protocol ineffective.

It appears that Namibian private companies who deal in firearms or use firearms in executing their daily business are not well conversant with the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials. However, there are indications that the state security agencies are well aware of the SADC Protocol and know its implications on their work. Meanwhile, it has been noted by key informants that some of the gun dealers were resisting the amendment to the Arms and Ammunition Act of 1996, especially the proposal to reduce the number of firearms per person and the introduction of the competence testing for existing and future firearms owners. This shows that these people do not care about public safety, but are mainly concerned about maximising their profit in stead.

It has been established that Namibia had made significant efforts to implement the international, continental and regional instruments on the control of firearms, and some progress has been achieved. Moreover, the country formulated a National Action Plan on Small Arms and Light Weapons, aimed at implementing the UN, AU and SADC Firearms Control Instruments in 2005 the study revealed. This could prove that there is a political will by the Namibian government. However, there are indications that the process of the SADC Protocol on the Control of Firearms implementation in Namibia is very slow, which is caused by the lack of well functioned implementation structure and insufficient resources.

The researcher further learned that Namibia has done something to bring the country's Arms and Ammunition Act in line with the UN, the AU and the SADC Protocols/Agreements on the Control of Firearms as indicated by the achievements

cited by Chief Inspector Shaama. However, the fact that the amendments to the Act take long time to reach the Namibian Parliament is a matter of concern. However, the formulation of enabling laws, policies and putting into place programmes alone could not solve the problems caused by the proliferation of firearms. It needs political commitment to make sure that these laws and programmes are implemented, by availing resources and treating the implementation of the Protocol as very crucial to the SADC regional safety and security.

The National Management Committee on Small Arms and Light Weapons (NMC) was tasked with the formulation of policies on firearms, but according to some of the interviewees, this task has not yet been fulfilled because of several reasons. Furthermore, it was revealed that the NNAP has been only partially implemented because of lack of resources. Chief Inspector Shaama identified the main obstacle to the full implementation of the NNAP as lack of implementing structure, especially at national level. According to him, the National Focal Point (NFP) does not have a structure. Therefore, it does not have a budget. As members of the NFP are drawn from different institutions, it is always difficult to fund their expenses when travelling outside their areas of work, said the Chief Inspector Shaama. He further added that another problem is that, the implementing support office for the NNAP (NFP co ordination office) is just a sub-division in the Namibian Police, hence it does not have a coordination power at national level. This is cited as the main cause of delaying the implementation of the NNAP. Therefore, it appears that the problems regarding the implementation of the firearms control programmes do not receive enough attention at high political structure. Additionally, there are no structures at

the regional level specifically to perform the activities of the Regional Focal Points on Small Arms and Light Weapons (RFP). The Police Officers who are there have their normal duties and only perform the RFP activities as additional work when asked to. This, according to the Civil Society Representative to the NFP makes the function of the RFP non-existent.

The task of conducting a national firearms and ammunition stocktaking in Namibia, collection and destruction of stock, enhancing existing borders control and training of law enforcement officials, which according to the NNAP was supposed to be carried out by the NFP did not materialise. This, according to Chief Inspector Shaama was because there were no correct firearms records and there is a lack of resources. Furthermore, the public awareness campaign which was supposed to result in the voluntary surrender of firearms is also said to be slow again because of lack of resources. These are vital activities for the implementation of the SADC Protocol in Namibia. Therefore, it can be concluded that despite the formulation of the good implementing programme, the Namibian National Action Plan on Small Arms and Light Weapons and the lack of proper implementation makes it ineffective.

The study revealed that the authority does monitor firearms held by security companies, and inspect firearms registers for gun dealers as required by the SADC Protocol on Control of Firearms, Ammunition and Other Related Materials. However, no monitoring and auditing of firearms licences held in a person's possession (individuals) as prescribed by the SADC Protocol have been done. Although Section 9 of the Arms and Ammunition Act of 1996 empowers the

Namibian Police to inspect firearms or demand to see the firearms and licences, this is not sufficient enough as it only happens where the police have the suspicion.

There are many weaknesses in the country's quest to implement the SADC Protocol on Control of Firearms. Firstly, there is not enough public awareness education on the danger of firearms and ammunition in the country. This was said to be caused by the non-existence of the RFPs structures at the regions and the lack of funding for the public awareness activities. Secondly, the Arms and Ammunition Act 1996 does not prescribe a competence testing or training for the use of a firearm as a precondition for firearms licence holder applicants. Thirdly, the law does not set down a duration limit for firearm possession licence. Fourthly, the Act does not prescribe the monitoring and auditing of firearms and licenses as required by the SADC Protocol on the Control. Furthermore, the Act permits the possession of firearms by a person other than its legal owner. Lastly, the Act does not prohibit the carrying of firearms to places where alcohol is served. All the above mentioned shortcomings according to the key informants necessitate the amendment of the Arms and Ammunition Act of 1996 so that it would be effective.

The researcher further learned that Namibia does not have a centralised inventory for all firearms held by security forces and other state bodies as prescribed by the SADC Protocol on the Control of Firearms. This was confirmed by the NAMPOL respondents who said that each force has its own centralised firearms inventories. The reason for this, according to Inspector Vilonel was that the national centralised inventory would compromise the security of the country, because if somebody gets

access to that inventory can get all information about the country's security state. However, Chief Inspector Shaama has reported that this problem is being addressed. It is not clear how long it will take for the centralised inventory for firearms held by the security forces to be created as it is now over ten years since the Protocol was adopted.

Despite the above mentioned weaknesses, the country has also scored some successes. The first achievement is the creation of the coordination mechanisms such as the Namibian National Focal Point. Furthermore, the country criminalised the illicit proliferation of firearms. Besides, Namibia has enacted a law on the control of firearms and ammunition (the Arms and Ammunition Act, 1996). Additionally, the study has noted that Namibia has established a centralised national firearms data base which is also one of the requirements of the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials.

The Arms and Ammunition Act of 1996, does not prescribe possible reasons for acquiring firearms by private citizens. This could not help curb the increase of firearms in civilian hands, as it depends on the discretion of the approving authority to determine if the given reason is valid or not. Moreover, it has been established that the Act requires the owners of legally owned firearms (both private and corporate citizens) to keep their firearms safe so that they could not be used for illegal activities. Hence, the law obliges individuals to obtain a safe where the gun will be kept, before a licence is issued. This is a good security measure; but it can only work if it is backed by monitoring of individual civilians' firearms. However, it is not clear

if firearms are really kept in safer places as according to the interviewees there are suspicion that some firearms licence applicants do borrow safes from their friends just to prove to the approving authority that they have safes where to keep the guns and to return the safe later to the owners after the approval of the licence application. It was however, confirmed by interviewees that the Namibian Police Officers do visit private security companies' premises to see how they safeguard their weapons. Furthermore, monitoring is also done through monthly reports which firearms dealers submit to the Namibian Police as well as through police quarterly inspections at the dealers' premises.

Moreover, Chief Inspector Shaama has also concurred that the Arms and Ammunition Act was not yet in line with the International, Continental and Sub-Continental Firearms Control Instruments. However, he has also revealed that an amendment to rectify the deficiencies was already under way. A sub-committee was created to review the Act, and this exercise had been completed, he added. It is not clear why these amendments are taking too long, keeping in mind that the NNAP has started in 2005.

There are mixed views on the number of guns a civilian person is allowed to own by the Arms and Ammunition Act of 1996. While other interviewees felt that the number is too high, NAMPOL respondents justified the authorised number saying that the main cited reasons (hunting, self and property protection, sport and collection) for owning four firearms were genuine.

Meanwhile, there seems to be mixed responses about the impact of the Arms and Ammunition Act of 1996, on the gun related crimes in Namibia since the Act came into force. Some interviewees felt that the law makes it too easy for individuals to acquire firearms and the authority has no strong legal ground to refuse the application. Furthermore, there is a concern by law enforcement agencies and those who provide security services that the fact that the Act permits individuals to own handguns pose a risk to the law enforcement personnel when performing their duties, as they could not distinguish between who is armed and who is not. It would be good if handguns are prohibited to be owned by private individuals like in neighbouring Botswana. There is also a consensus among the interviewees that the Arms and Ammunition Act is not effective enough, therefore amendments are necessary. However, even with all the proposed amendments, the Act would not be effective if it is not well implemented.

On the issue of the maximum of four (4) firearms that a person is allowed by the Act to possess, there are mixed responses. Some interviewees such as Mrs Pauline Dempers, Councillor Zulu Shitongeni and Chief Abraham Kanime felt that the number of authorised firearms per person is too higher. On the other hand, there are those such as Chief Inspector Moses Shaama, and Inspector F. P. J Vilonel who believe that four firearms per person are basically reasonable. They argued that a person needs to have one handgun for self protection, one shotgun for shooting birds, one small rifle for hunting small games and one big rifle for hunting big animals. They furthermore reasoned that the law-makers in approving the maximum quantity of firearms per person took into consideration that Namibian citizens are supposed to

have separate guns for self protection, property protection, hunting and sport. However, both Chief Kanime and Mrs Dempers are of the opinion that the “self protection” reason would not be valid enough if the police and other security agencies were well equipped in such a way that they can be able to protect the people. That means, through improved policing and fighting of crimes the need for self protection can be addressed.

A comparison made between the Firearms Control Laws of Botswana, Namibia, South Africa and Zimbabwe proves that there are many variations between the SADC member states Firearms Control Legal Instruments. Although the SADC Protocol on the Control of Firearms Ammunition and Other Related Materials calls for the uniformity of the member states Firearms Control Laws, it appears that the uniformity has not been achieved yet.

In the specific case of Namibia, the Arms and Ammunition Act 1996 contains some elements which do not conform to the SADC Protocol on Control of Firearms, Ammunition and Other Related Materials, such as, the Firearms Control Law allows for the possession of firearm by person other than the legal owner, contrary to the SARPPCO Standard Operating Procedures for the Implementation of the SADC Protocol on the Control of Firearms. Moreover, the Arms and Ammunition Act, 1996 does not oblige training and competency testing of prospective fire-arms owners, despite it being one of the requirements of the SADC Protocol. However, according to the Coordinator of the NFP, this concern has also been addressed by the pending amendment to the Act. For instance, Section 8 (1) of the Act which allows the

possession/operation of a firearm by person rather than its licensed owner will be supported by the competency testing which was proposed in the amendment to the Arms and Ammunition Act of 1996.

Mandatory competence testing for prospective firearms licence holders will be very important in addition to Namibia's Firearms Law, in order to determine if the applicant is capable to own and handle a firearm. Secondly, no duration limit of firearms possession licence is prescribed in the Act. The Act was supposed to prescribe the duration of firearms possession licences. Personal characters changes from time- to-time. Therefore, it is necessary that a licence should expire after a specific time frame so that firearm licence holders can come for renewals whereby allowing for competence testing to be performed. The introduction of licence renewal can also address the need for regular check and auditing of firearms held by individuals as required by the SADC Protocol. Regular monitoring of individual firearm is necessary in order to make sure that the firearms are well secured. The SADC Protocol on the Control of Firearms itself also has some deficiencies. For instance, the Protocol is silent about the duration of firearms licences. It was supposed to propose a range of possible time frame for the duration of firearm licences, instead of leaving it to individual member states to decide.

Safeguarding of legal owned firearms appears to enjoy much attention of the law enforcement agencies and private security companies. However, the fact that there are incidences of break ins where security services firearms fall into the hands of the criminals means that more needs to be done to improve the safe keeping of firearms.

This can be done by strengthening security of firearms stores and employing efficient firearms registration measures.

Although the Civil Society is said to be participating in the process of combating the proliferation of firearms in Namibia, their role in these activities seems not to be taken seriously by their partners in the government. It appears that the relationship is not very practical as it is supposed to be. This worries the civil society in Namibia.

4.8 CONCLUSION

In conclusion, chapter four dealt with the presentation and analysis of the data collected through this research, using a qualitative content analysis method. After the problems caused by the increase of firearms were realised, several control instruments were put in place at national, sub-continental, continental and international levels between 1996- 2001. These are: the Arms and Ammunition Act (Act No: 7 of 1996) of Namibia, the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, and the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. The study came to the conclusion that Namibia has made some progress in implementing the above agreements. The SADC Protocol had come into force in November 2004. It calls for the promotion of legal uniformity of the member states Firearms Control Laws. However, it appears that this has not yet been achieved. Furthermore, the SADC Protocol itself also has some weaknesses, which

need to be rectified. In particular, the study looked at what Namibia has done to implement the SADC Protocol on the Control of Firearms, the disparities between the SADC Protocol and Namibia's Arms Control Law, as well as compared what both documents say and what is actually happening. There are also some setbacks that need to be corrected, such as the inadequate funding of the implementation activities and the establishment of proper structures for the control of small arms and light weapons programmes.

Meanwhile, the fact that the Arms and Ammunition Act of 1996 does not give guidelines on determining possible reasons for acquiring firearms by private citizens in Namibia and the quantity of firearms a person is authorised to own in Namibia are some of points of concern about the Act. There are different views in Namibia about the effect of the SADC Protocol on Control of Firearms on solving the problem caused by firearms in the region. Some members felt that the Protocol is working, while others are of the opinion that it is not being implemented well. Moreover, it has been revealed that there are elements in the Namibian Arms and Ammunition Act that are not compatible to the SADC Protocol on the Control of Firearms, and it is understood that the Act is being amended. However, there is hope that these shortcomings will be addressed by the proposed amendment to the Act, although it is taking too long to take effect. Furthermore, there are indications that most of the firearms used to commit crimes in Namibia are those which were legally acquired. This is an indication that there are lapses in the safe keeping of firearms in Namibia.

It appears that the state security apparatus and private security companies have put in place efficient measures to safeguard their firearms. However, it has also been established that there were cases of loosing and stealing of security agencies' firearms. Despite the few setbacks, Namibia has achieved some successes on the implementation of the UN, the AU and the SADC Fire Arms Control Instruments.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

The challenges inherent in the proliferation of firearms and the threat it poses to public safety and national security has been a topic of debate nationally, regionally, continentally and globally since the end of the Cold War. Being the last region in the African continent to be liberated from the colonial rule, the SADC Region which also suffered from protracted civil wars that followed immediately after independence in some of its member states, has been more exposed to the evils caused by the increased proliferation of fire-arms. Such situations created threats to public safety and national security in the region, as such weapons are more often used in committing crimes, robberies, murder, domestic and gender based violence. This concern led to a number of initiatives at different levels which resulted in the adoption of international, continental, sub- continental and national instruments on the control of Firearm, Ammunition and Other Related Materials.

This paper looked at what Namibia has done to implement the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials, the disparity between what the SADC Protocol says and what Namibian Laws and Policies say, as well as what both the documents state and what is happening on the ground. The data used in this paper were collected from statutes, books, government records and documents, previous published surveys on this and other related topics, journals, magazines, theses and dissertations as well as from key informant interviews.

The study came to the conclusion that Namibia has made some progress in implementing the UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons as well as the SADC Protocol on Control of Firearms. However, although SADC Heads of States and Governments indicated their commitment towards addressing the problems caused by firearms by adopting the Protocol, it appears that things are not moving fast at the national level. For instance, the Namibian Arms and Ammunition Act of 1996 does not meet some of the SADC Protocol requirements and the SADC member states' National Firearms Control Instruments are not yet harmonised.

The research has shown that the Namibian Arms and Ammunition Act does not prescribe genuine reasons for acquiring firearms by civilians, which could guide the Firearms Licensing Officers when considering firearms licence applications. Furthermore, most of the respondents also felt that the maximum number of firearms which the Act authorised a person to possess was too higher.

Other deficits which the study discovered in the Act are: the duration of licence to possess fire-arms which has no duration limit and the Act does not require firearms licence applicants to undergo a competence testing as required by the SADC Protocol. Additionally, mandatory training for prospective firearms owners on the use of firearms as well as monitoring and auditing of firearms licences are also not yet incorporated in the Namibian Firearms Control Law.

The study also revealed that the Namibian Arms and Ammunition Act authorises the possession of firearms by other person than the licence holder, with the consent of the owner although this is prohibited by the Southern Africa Regional Police Chiefs Cooperation organisation (SARPCCO) standard operating procedures for the SADC Protocol on Control of Firearms. Moreover, some informants strongly believe that the law should prohibit carrying of firearms by civilians at places where alcohol is served. Another issue emanate from the research is a need for the establishment of a Firearms Board which should deal with the granting of firearms licences. However, there is hope that these shortcomings will be addressed by the proposed amendment to the Arms and Ammunition Act, though it is taking long to take effect.

While all the informants agreed that the government has taken significant steps to implement the UN, AU and SADC Firearms Control Instruments, there are some setbacks concerning the implementation of the Namibian National Action Plan on Small Arms and Light Weapons (NNAP). The identified problems are: insufficient public awareness campaign on the danger posed by firearms as well as inadequate participation of civil society in the implementation of the Firearms Control Programmes. In addition, the study discovered that the NNAP implementation structures have some discrepancies; therefore they need to be reviewed.

5.2 RECOMMENDATIONS

In view of the shortcomings identified in both the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials and the Namibian Arms and

Ammunition Act 7 of 1996; that need to be rectified, the following measures are recommended:

5.2.1 Genuine Reasons for Acquiring Firearms

Both the Namibian Arms and Ammunition Act No 7 of 1996 and the SADC Protocol did not provide guidelines for determining genuine reasons for individual citizens to possess firearms. The guidelines can guide the Security Officer (Licensing Officer) when approving applications for firearms licences so that the licences can only be given to those who really need them. Although these guidelines may not have been experimented elsewhere in the SADC Region, it can add to firearms control measures and contributes to the reduction of firearms in civilian hands. In other countries such as Australia, the Police have a set of “Genuine Reasons” for acquiring firearms and any person wishing to obtain a firearm licence must have at least one of the genuine reasons (NSW, n.d. p.1). These guidelines can therefore also be implemented in Namibia either through the Act of Parliament or through Cabinet Regulation so that it can be easy for the Licensing Officer to assess whether the reason cited by an applicant is genuine or not.

5.2.2 Duration of Firearm Licences

The SADC Protocol does not prescribe the duration of private individual firearms licence. It appears that this was left to individual member states to determine as to how long a licence to possess a firearm should last. As a result, each country determines how long a firearm licence would last before renewal. While the licence to possess firearm in Namibia does not have duration limit according to the Arms

and Ammunition Act of 1996, other countries such as South Africa, Botswana, Zimbabwe and Kenya have limited life spans of firearms licences, ranging from one to ten years depending on the type of a firearm (GRSA, 2000; GBW, 1981; GZIM, 1956 and KLR, 2009). Although this exercise may be expensive to accomplish, making firearm licences renewable enables the authority to monitor and audit firearms in civilian possession. This in return would help control and account for all legally acquired firearms in the country. Therefore, the Arms and Ammunition Act 7 of 1996 should be amended to make provision for periodical firearms licence renewal.

5.2.3 Authorised Maximum Number of Firearms per Person

According to some of the key informants, the maximum number of firearms (four firearms) an individual is authorised to own by the Arms and Ammunition Act is high. As Mrs Dempers (NANGOF respondent) puts it, “If we were five adults (18 years and above) in the house and each of us acquires four firearms, we would end up having twenty firearms in the house, which is equal to an army unit”. Therefore, it would be good if the maximum quantity of authorised firearms per person was reduced to two, except for those which are acquired for collection purposes. This concern may not have been proved to be genuine, but the reduction of maximum authorised number of firearms per person can in turn reduce the quantity of firearms in civilian hands, which in effect would also reduce the chances of the number of firearms falling into the hands of the criminals. As stated earlier in this study, in Botswana where firearms licences are renewed after three years and the number of authorised firearms per person is less than that of Namibia, the problem with the

proliferation of small arms and light weapons was lower than in other neighbouring countries (Gould and Lamb, 2004, p.23). This can also be attested by the fact that the police in Botswana are not armed while on patrol and Private Security guards do not carry guns like the situation in Namibia (Gould and Lamb, 2004, p.26).

5.2.4 Introduction of Competency Testing for Prospective Firearms Owners

The SADC Protocol Article 5 Section 3 (i) urges for the incorporation of competency testing for firearms licence applicants in member states Firearms Control Instruments as one of the requirement (SADC, 2001, p.6). However, this is one of the oversights in the Namibian Fire Arms Control Law and its introduction can reduce the cases of gun related incidents as people who are not physically or mentally fit to possess firearms would not be given licences. Competency testing reduces the chances of firearms licences being given to people who may not be competent to handle and take care of firearms. The South African Firearms Control Act, 2000 (Chapter 5) requires an applicant for firearm licence to undergo a competency testing and obtain a competency certificate before a licence is issued (GRSA, 2000, p.11- 12). The competency test according to the South African Firearms Control Act also includes a test on the applicant's knowledge of the Act and the practical test regarding the safe keeping and handling of a firearm amongst others (GRSA, 2000, p.12). According to Gould and Lamb (2004, p.148), competency testing was one of the key elements in the South African Firearms Control Legislation and Minimum Standards for Firearms Competency was developed and approved by the South African Qualification Authority. Although this may not totally eradicate firearms related crimes, it will have a positive influence on the trend of firearms related incidents.

Therefore, the Arms and Ammunition Act of 1996 should be amended to include competency testing of prospective firearms owners before granting of a licence as well as before the renewal.

5.2.5 Prohibition of carrying/possession of firearms at places where alcohol is served

A number of key informants indicated that most of the firearms related incidents do happen at bars or places where alcohol is served. Therefore, they believe that some firearms related incidents could be avoided if firearms are forbidden to be taken to places where alcohol is consumed. Although Section 36 (1) of the Arms and Ammunition prohibits carrying of firearms in public places without being completely concealed (GRN, 1996, p.22), it does not forbid taking firearms to places where alcohol is served (bars). In South Africa, the Firearms Control Act (Chapter 16, Article 120 (4)) prohibits handling of firearms while in the influence of subsistence which has an intoxicating effect (GRSA, 2000, p.41). Even though this may not have been implemented elsewhere in the region, the prohibition of taking firearms to places where alcohol is served can help prevent the misuse of firearms. The responses from most key informants suggest that most gun-related crimes in Namibia are committed after excessive consumption of alcohol.

5.2.6 Establishment of a Firearms Board

The Arms and Ammunition Act should make provision for the establishment of a firearms board, to deal with the application and granting of firearms licences and permits. It would be good if the Act provides for the establishment of a firearms

commission or a board to deal with the approval of firearms licences instead of leaving the decision to the Inspector General of Police and the Minister. As the board would be composed of more than one person with expertise, they can thoroughly scrutinise firearms licence applications, making sure that the applicants meet all the requirements and fit to possess firearms. In neighbouring Botswana firearms licence applications are approved by the Arms Quota Board, and as was reported in Gould and Lamb (2004, p.22), Botswana does not have substantial problem with the proliferation of firearms in comparison with other neighbouring countries.

5.2.7 Mandatory training for firearms licence applicants in the handling of firearms

As was stated earlier in this study, some of the firearms related incidents occurred in Namibia happen because of mishandling of firearms. Therefore, if prospective firearms owners undergo training on the use and handling of firearms before the approval of the licence, those types of incidents will be reduced. The key informants from Khomas Regional Council, the Windhoek City Police and NANGOF Trust felt that if training of firearm licence applicants on how to handle and use firearms can be made mandatory in the Arms and Ammunition Act No 7 of 1996, the level of gun related incidents would diminish. The South African Firearms Control Act 60 of 2000 (Chapter 5, Section 9) requires a firearm licence applicant to “have successfully completed a prescribed test on knowledge of the Firearms Control Act as well as the prescribed training and practical tests on the safe handling of firearms before an application is approved” (GRSA, 2000, p.12). Furthermore, in Australia (New South Wales State) persons who have never held firearms licences before are required to

complete firearms safety training course before the licence approval is granted (NSW Police, n.d., p.2). Although there is no statistical supporting evidence yet if the training has reduced gun related incidents in both Australia and South Africa, introducing training for firearms licence applicants as a prerequisite before a licence is granted is a positive control measure.

5.2.7 Monitoring and auditing of firearm licences held in person's possession

In the SADC Protocol Article 5 (3) (j) State Parties undertook to incorporate in their national laws, monitoring and auditing of firearms licences held in person's possession (SADC, 2001, p.7) as part of legislative measures. Although Chapter 1 (Section 9) of the Arms and Ammunition Act 7 of 1996 empowers the Namibian Police to go out and inspect firearms anywhere at any time in the country (GRN, 1996, p.11), it only happens when they have suspected that something is wrong. The Act does not make provision for monitoring and auditing of firearms licences as the licences are not renewable. Monitoring and auditing are part of control measures by the authority to control the movements of firearms in the civilians' possession. This can only be done through periodic licence renewals when licence holders are required to present their firearms and licences to the Police for renewal.

5.2.8 Prohibition of possession of firearms by a person other than the owner

Chapter 1 (8) of the Arms and Ammunitions Act 7 of 1996 authorises the possession of firearms by other person than the owner, with the consent of a licence holder in certain circumstance without holding any licence for a period of not more than 21 days (GRN, 1996, p.16). This could be for the purpose of self protection, hunting, or

keeping custody of the arm. However, it does not oblige this other person to undergo the same vetting/screening procedures which the licence holder went through before the firearm is given. To avoid giving firearms to people who are not competent to hold firearms, the Act should be amended so that the other person be obliged to go through the same screening procedure which the licence holder went through during the application process, before the arm is given. This will prevent firearms from falling into wrong hands. The South African Firearms Control Act also permits a licence holder to allow other person to use their firearm, but it should be under the licence holder's supervision (GRSA, 2000, p.16).

5.2.9 Public awareness campaign on the danger of firearms

Public awareness education on the danger posed by firearms and information dissemination about the instruments that are there to control firearms is regarded by most of the key informants as an effective way of encouraging civilians to surrender illegal firearms and ammunition which may still be within the community and discouraging civilians from further acquiring more firearms. Although it is a requirement by both the UN and SADC Protocols on Control of Firearms, public awareness campaign in Namibia is moving at a slow pace according to the key informants. This is attributed to the lack of sufficient funds budgeted for the programme, according to the NFP and NANGOF respondents. The report by the International Action Network on Small Arms (IANSA) 15 April 2010 indicated that public awareness campaign on security threat posed by firearms has worked in South Africa in 2010, when over 32000 firearms were collected from circulation, the majority of which were voluntary surrendered to the police (Iansa, 2010). Therefore,

if the Namibian government and the International Donors can increase funding for public awareness campaign as promised in the NNAP, more illegal firearms will be surrendered to the police.

5.2.10 The structure of the NMC and the NFP on Small Arms and Light Weapons

Both the Coordinator of the NFP (Chief Inspector Shaama) and the NANGOF Representative to the NFP (Mrs Dempers) related to this researcher that the NFP was not effective enough because it does not receive enough attention from the political leadership. They attributed this weakness to the fact that the NMC which was supposed to be the link between the NFP and the political leadership was inactive. The NFP which is the main implementing agency of the Namibian National Action Plan on Small Arms and Light Weapons (NNAP) needs political support if the programme is to succeed. For instance, both Chief Inspector Shaama and Mrs Dempers expressed their disappointment about the problem of insufficient budget for the NFP programmes, which they said was presented to the NMC long time ago but still yet to be solved. They felt that the NMC is may be not well composed, as it is only formed up by Permanent Secretaries who my not well understand the importance of the NNAP. If the NMC structure can include experts on security field who have better understanding of the activities of the NNAP, the implementation of the programmes would improve.

5.2.11 Adequate funding for NNAP programmes

Another problem identified by both the NFP and NANGOF respondents was that the NFP does not still have a budget specifically to cater for the NNAP programmes. While NFP members who are drawn from government ministries can have their expenses for participating in NNAP activity funded from their perspective departmental budgets, there is no mechanism within the government of financing the NGOs representatives' participation in the NNAP activities. Therefore, there is a need for the government to adequately budget for NNAP activities including the participation of NGO members in the NFP and RFPs programmes. This can be done by creating a sub-vote in the national budget specifically to cater for NNAP activities including programmes that will be executed by the NGOs, such as public awareness campaigns.

5.2.12 Amendment to the Arms and Ammunition Act (Act No: 7 of 1996)

This study learned from both the literature and key informants that there is a need to amend the Namibian Arms and Ammunition Act 7 of 1996, to bring it in line with SADC Protocol on Control of Firearms, the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons as well as the UN Protocol Against Illicit Manufacturing of and Trafficking in Firearms. Furthermore, the key informants stated that the process of amending the Act started well back in 2008, but the bill has not yet reached the Parliament for approval. The implementation of the SADC Protocol in Namibia will not succeed if the Arms and Ammunition Act No 7 of 1996 is not

amended. Therefore, it is recommended that the process of amending the Arms and Ammunition Act No 7 Of 1996 should be accelerated.

5.2.13 Reactivation of the Regional Focal Points (RFPs) Structures

The Regional Focal Points (RFPs) are the driving forces for the implementation of the NNAP programmes at regional level. If these structures are not functioning well, the NNAP will not achieve the intended goal which is to combat the illicit proliferation of firearms. According to the respondents as well as information from the reports of the NDF representatives to the NFP, the RFPs were not well structured as there were no Police Officers dedicated to perform the functions of the Regional Focal Points at the regions. The Police Officers who are there have their main duties, and only attend to the RFP programmes when they have time, asserted Mrs Dempers. For continuity purpose, it could be good if each Regional Police HQ appoints a Police Officer to be responsible for the coordination of the RFPs programmes in the regions.

5.2.14 Full participation of Civil Society in the county's Firearms Control Activities and Programmes

Although the NNAP provides for fully participation of NGOs in the implementation of the Firearms Control programmes, the NANGOF respondent felt that the NGOs are not fully engaged and their participation in the fight against the proliferation of illicit small arms and light weapons is minimal. Both respondents from the Namibian Police and NANGOF agreed that the Civil Society participation is vital especially in public awareness education if the NNAP is to succeed. Therefore, the Civil Society

should be fully engaged and participate in the activities and programmes for the control of small arms and light weapons so that the NNAP could succeed. For instance in South Africa, Gun Free South Africa a non-governmental organization use different methods to spread messages about gun violence such as using the “shocking statistics of gun related violence, posters and flyers“ to make the public aware of the danger posed by firearms in June 2011, a method which was reported to be successful (IANSA, 2011, p1).

5.3 TOPICS FOR FURTHER RESEARCH

Since there is a belief by key informants that there is a relationship between the illicit proliferation of firearms and crimes in Namibia, this study suggests the following:

- a. Another study should be carried out to investigate the impact of the implementation of the SADC Protocol on Control of Firearms on firearms related crimes in the SADC Region in general and in Namibia in particular.
- b. To investigate and determine as to what extent does civilian firearms loss and theft contribute to the illegal pool of firearms in Namibia.

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APPENDICES

APPENDIX 1

QUESTIONS FOR KEY INFORMANT INTERVIEWS

1. Questions for interview with the Minister of Safety and Security

- a. SADC adopted a Protocol on the Control of Firearms in the Region in 2001. What programmes have Namibia embarked upon so far to implement this Protocol?
- b. What are some of the successes attained and what are challenges that have been encountered during the implementation of the Protocol in Namibia?
- c. The Protocol requires member states to promote legal uniformity and minimum standard in respect of manufacture, control, possession, import, export and transfer of arms and ammunition. What have been done about this in Namibia?
- d. According to the Protocol, state parties have to enact necessary legislation to establish as criminal offences under their national laws to: prevent, combat and eradicate the illicit proliferation of firearms as well as to incorporate elements of the Protocol into their national laws (p.5). Does the Namibian Arms and Ammunition Act provide adequate framework for the fulfilling this national mandate?
- e. Is there any civil society involvement to complement the government efforts to Control Firearms and Ammunition in the country?

- f. According to the Arms and Ammunitions Act 1996, an individual may own up to four fire-arms. How does the quantity of four firearms per person compare to international practice?
- g. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs was supposed to have been created to review the Arms and Ammunition Act 1996, has the Act been reviewed?
- h. The NNAP on Small Arms and Light Weapons was supposed to end in 2010. Has it completed all its programmes? If not, what has replaced it?
- i. The duration of firearms possession licence in Namibia is indefinite (boundless). Other countries have duration limits like; South Africa (5 years), Botswana (5 years) and Zimbabwe (3 years). Why Namibia does not have a limit?
- j. Some of the gun related incidents do happen because of mishandling of firearms by legal owners. This is an indication that some firearms licence holder may have obtained licences while they do not know how to properly handle a firearm. Why does the Arms and Ammunition Act not compel firearms licence applicant to undergo training on the handling of firearms before a licence is issued like in neighbouring South Africa?

2. Questions for interview with the Chairperson of Parliament Committees on Defence, Security and International Relations and one member from the opposition

- a. According to the SADC Protocol, state parties have to enact necessary legislations to establish as criminal offences under their national laws to: prevent, combat and eradicate the illicit proliferation of firearms as well as to incorporate elements of the Protocol into their national laws (p.5). Has Namibia in your view done enough in this regard?
- b. The Protocol requires member states to promote legal uniformity and minimum standard in respect of manufacture, control, possession, import, export and transfer of arms and ammunition. What role can your committee play in this regard?
- c. Angola has not ratified the Protocol; does this in your view affect Namibia?
- d. What role did the Parliament play in enhancing public participation in the processes that led to the adoption of the Arms and Ammunition Act, 1996 which was formulated?
- e. According to the Arms and Ammunition Act 1996, in the sense that if the Inspector General refuses an application, the law allows the applicant to appeal to the Minister of Safety and Security to consider the application. In your view do you think that the Minister would be adequately qualified to exercise such oversight? How does this compare to other countries' best practice in this regard?

- f. According to the Arms and Ammunitions Act 1996, an individual may own up to four firearms. How does the quantity of four firearms per person compare to international practice?
- g. What oversight role does the Parliament in general and this committee in particular, play with regard to the implementation of the Arms and Ammunition Act of 1996?

3. Questions for interview with the Chairperson of the National Management Committee of the NNAP for Arms Management and Disarmament:

- a. What is the number of countries required to ratify the SADC Protocol on Firearms for it to be effective/implemented?
- b. How many countries have so far ratified the Protocol?
- c. Which countries have refused to ratify the Protocol, and why?
- d. What are some of the success and failures that have been encountered during the implementation of Protocol in Namibia?
- e. The National Management Committee (NMC) on Small Arms and Light Weapons were tasked with formulation of National Policies on Fire Arms, Ammunition and Explosives. Has this task been accomplished? If not, why?
- f. Is the Arms and Ammunition Act, 1996 fully compliant with the following international policy instruments? Such as:

- (1) SADC Protocol on Control of Firearms, Ammunitions and Other Related Materials.
 - (2) The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.
 - (3) The UN Protocol against the Illicit Manufacturing of and Trafficking in Fire Arms, their Parts and Components and Ammunition.
- g. According to the Arms and Ammunitions Act, 1996, Section 14: licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time to time (GRN, 1996, p.16). Whose responsibility is to conduct the inspection at the fire-arms dealers' places and at what intervals? How does this compare to international best practice?
- h. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?
- i. According to the Arms and Ammunitions Act 1996, an individual may own up to four fire-arms. How does the quantity of four firearms per person compare to international practice?
- j. The SADC Protocol requires member states to establish and maintain complete national inventories of firearms and ammunition held by security

forces and other state bodies. Does Namibia have this and which law(s) regulates this?

- k. By 2004, Namibia was said to have been in the process of establishing a centralised national firearms data base which is one of the requirements of the SADC Protocol. Has this materialised?
- l. The SADC Protocol requires member states to promote legal uniformity and minimum standard in respect of manufacture, control, possession, import, export and transfer of arms and ammunition. What have been done about this?
- m. The NNAP was tasked with; conducting a national firearms and ammunition stocktaking, ensuring accurate records keeping of stock, collection and destruction of surplus stock, enhancing existing border control, and training of law enforcement officials and others (p.11- 13). Has this been achieved?
- n. The NNAP on Small Arms and Light Weapons was supposed to end in 2010. Has it completed all its programmes? If not, what has replaced it?
- o. What are the successes and failures of the NNAP?
- p. Section 8 (1) of the Namibian Arms and Ammunition Act, 1996 allows for taking a fire-arm (s) by a person other than the owner, with consent of the licence holder. This contradicts the SARPPCO standard operating procedures chapter 7, Section 2 which prohibits borrowing of a firearm from another person. Why has Namibian opted for this alternative arrangement?

- q. Article 5 (3) (i) of the SADC Protocol requires state members to incorporate in their national laws provision that ensures the effective control of firearms including competency testing of prospective firearms owners. The Namibian Law does not provide for this. Why?
- r. The duration of firearms possession licence in Namibia is indefinite (boundless). Other countries for example, South Africa, Botswana and Zimbabwe have duration limits. Why Namibia does not have a limit?

4. Interview questions for two members of the National Management Committee of the Namibia National Action Plan for Arms Management and Disarmament:

- a. The National Management Committee was created to effectively deal with the issues of illicit trade in small arms and light weapons (GRN, 2006, p.1). It was tasked with the formulation of the National Policies on Firearms, Ammunition and Explosives. Has this task been accomplished? If not, why?
- b. The NNAP was tasked with conducting a National Firearms and Ammunition Stocktaking, ensuring accurate records keeping of stock, collection and destruction of surplus stock, enhancing existing border control and training of law enforcement officials and others (p.11- 13). Has this been achieved?
- c. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs

was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?

- d. What are some of the successes and failures that have been encountered during the implementation of the Protocol in general?
- e. The SADC Protocol requires member states to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies. Does Namibia have this, and which law(s) regulates this?
- f. The Protocol requires member states to promote legal uniformity and minimum standard in respect of manufacture, control, possession, import, export and transfer of arms and ammunition. What have been done about this?
- g. According to a study by Gould and Lamb (2004, p.128), Namibia was in the process of establishing a centralised national firearms data base in 2004, which is one of the requirements of the SADC Protocol. Has this materialised?
- h. Is the Arms and Ammunition Act, 1996 fully compliant with all international policy instruments?
- i. Were there wider (enough) consultations when the Arms and Ammunition Act, 1996 was formulated?

- j. According to the Arms and Ammunitions Act of 1996, an individual may own up to four firearms. How does the quantity of four firearms per person compare to international practice?
- k. According to the Arms and Ammunitions Act, 1996, Section 14 licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time-to-time (GRN, 1996, p.16). Whose responsibility is to conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?
- l. What is the impact of the Arms and Ammunition Act, 1996 on the gun related crime since it came into force on 26 January 1996?
- m. The NNAP on Small Arms and Light Weapons was supposed to end in 2010. Has it completed all its programmes? If not, what has replaced it?

5. Questions for interview with the Coordinator of the National Focal

Point:

- a. What are some of the successes and failures that have been encountered during the implementation of the SADC Protocol in general?
- b. Were there wider (enough) consultations in Namibia when the Arms and Ammunition Act, 1996 was formulated?

- c. Is the Arms and Ammunition Act, 1996 fully compliant with all international policy instruments?
- d. According to the Arms and Ammunitions Act, 1996, Section 14: licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time to time (GRN, 1996, p.16). Whose responsibility is to conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?
- e. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?
- f. The SADC Protocol requires member states to establish, maintain and complete national inventories of firearms and ammunition held by security forces and other state bodies. Does Namibia have this, and which law(s) regulates this?
- g. According to a study by Gould and Lamb (2004, p.128), Namibia was in the process of establishing a centralised national firearms data base in 2004, which is one of the requirements of the SADC Protocol. Has this materialised?
- h. The SADC Protocol requires member states to promote legal uniformity and minimum standard in respect of manufacture, control, possession, import,

export and transfer of arms and ammunition. What have been done about this?

- i. The NNAP was tasked with; conducting a national firearms and ammunition stocktaking, ensuring accurate records keeping of stock, collection and destruction of surplus stock, enhancing existing border control, and training of law enforcement officials and others (p.11- 13). Has this been achieved?
- j. The NNAP on Small Arms and Light Weapons was supposed to end in 2010. Has it completed all its programmes? If not, what has replaced it?
- k. What are the successes and failures of the NNAP?
- l. Section 8 (1) of the Namibian Arms and Ammunition Act, 1996 allows for taking a firearm (s) by a person other than the owner, with consent of the licence holder. This contradicts the SARPPCO standard operating procedures Chapter 7, Section 2 which prohibits borrowing of firearm from another person. Why?
- m. The SADC Protocol requires member states to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies. Does Namibia have this, and which law(s) regulates this?
- n. According to the Arms and Ammunitions Act, 1996, Section 14: licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time to time (GRN, 1996, p.16). Whose responsibility is to

conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?

- o. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?
- p. Article 5 (3) (i) of the SADC Protocol requires state members to incorporate in their national laws provision that ensure the effective control of firearms including competency testing of prospective firearms owners. The Namibian Law does not provide for this. Why?
- q. The duration of firearms possession licence in Namibia is indefinite (boundless). Other countries like South Africa, Botswana and Zimbabwe have duration limits. Why Namibia does not have a limit?
- r. Some of the gun related incidents do happen because of mishandling of firearms by legal owners. This is an indication that some firearms licence holder may have obtained licences while they do not know how to handle a firearm. Why does the Arms and Ammunition Act not compel firearms licence applicant to undergo training on the handling of firearms before a licence is issued?
- s. Are there any statistical evidences of the proliferation of unlicensed firearms in circulation in Namibia?

6. Questions for interview with the Namibian Police representative to SARPCCO:

- a. SARPCCO was tasked to be an implementation agency of the SADC Protocol on the Control of Fire Arms. What progress has been achieved so far, and what are the challenges?
- b. How many countries have so far ratified the Protocol, and how many SADC countries have so far signed the Protocol?
- c. Which countries have refused to ratify the Protocol, and why?
- d. How many SADC member states have ratified all the UN, AU and SADC Legal Instruments on the Control of Firearms?
- e. The SADC Protocol requires member states to establish, maintain and complete National Inventories of Firearms and Ammunition held by security forces and other state bodies. Does Namibia have this, and which law(s) regulates this?
- f. The Protocol requires member states to promote legal uniformity and minimum standard in respect of manufacture, control, possession, import, export and transfer of arms and ammunition. What have been done about this?
- g. Is the Arms and Ammunition Act, 1996 fully compliant with all international policy instruments?

- h. According to the Arms and Ammunitions Act, 1996, Section 14: licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time-to-time (GRN, 1996, p.16). Whose responsibility is to conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?
- i. According to the Arms and Ammunitions Act 1996, an individual may own up to four firearms. How does the quantity of four firearms per person compare to international practice?
- j. According to a study by Gould and Lamb (2004, p.128), Namibia was in the process of establishing a centralised national firearms data base in 2004, which is one of the requirements of the SADC Protocol. Has this materialised?
- k. The National Management Committee (NMC) of the NNAP was tasked with formulation of National Policies on Firearms, Ammunition and Explosives. Has this task been accomplished? If not, why?
- l. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?
- m. Section 8 (1) of the Namibian Arms and Ammunition Act, 1996 allows for taking a firearm (s) by a person other than the owner, with consent of the

licence holder. This contradicts the SARPCCO standard operating procedures chapter 7, Section 2 which prohibits borrowing of firearm from another person. Why?

7. Questions for interview with the Head of the Namibian Police Armoury:

- a. What mechanism exists within the Namibian Police for the handling and processing of firearms licence applications by individual citizens?
- b. What are the main reasons for acquiring firearms by private citizens?
- c. What is the impact of the Arms and Ammunition Act, 1996 on the gun related crime since it came into force on 26 January 1996 and why was the Arms and Ammunition Act, 1969 replaced?
- d. According to the Arms and Ammunition Act 1996, in the sense that if the Inspector General refuses an application, the law allows the applicant to appeal to the Minister to consider the application. What were the reasons for this and what make the minister more qualified to exercise such oversight?
- e. According to the Arms and Ammunitions Act 1996, an individual may own up to four firearms. How does the quantity of four firearms per person compare to international practice?
- f. According to the Arms and Ammunitions Act, 1996; Section 14: licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be

inspected from time-to-time (GRN, 1996, p.16). Whose responsibility is to conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?

- g. What is the number of firearms returned by the former tribal authority guards after the implementation of the Arms and Ammunitions Act 1996?
- h. What are some of the success and failures that have been encountered during the implementation of the SADC Protocol in general?
- i. The SADC Protocol requires member states to establish and maintain complete national inventories of fire-arms and ammunition held by security forces and other state bodies. Does Namibia have this, and which law(s) regulates this?
- j. The SADC Protocol calls for member states to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies. Has Namibia done this yet?
- k. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?
- l. According to a study by Gould and Lamb (2004, p.128), Namibia was in the process of establishing a centralised national firearms data base in 2004, which is one of the requirements of the SADC Protocol. Has this materialised?

- m. Are there cases of lost or stolen firearms that belong to the security forces and other state bodies?
- n. According to a study by Martin Boer (2004), the police had two firearms licences database, the pre 1998 database and the post 1998 database. Have these two databases been reconciled?
- o. The SADC Protocol Article 5 requires monitoring and auditing of firearms licences held in a person's possession. Is this happening in Namibia?
- p. Are there statistical evidences of the proliferation of unlicensed firearms in circulation in Namibia?

8. Questions for interview with the NDF member of the National Focal Point on Small Arms and Light Weapons

- a. What are some of the success and failures that have been encountered during the implementation of the SADC Protocol in general?
- b. The SADC Protocol requires member states to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies. Does Namibia have this, and which law(s) regulates this?
- c. How often do you experience cases of stolen and lost firearms?
- d. What do the NDF do with the obsolete or old firearms and ammunition?

- e. The National Management Committee (NMC) of the NNAP was tasked with the formulation of National Policies on Firearms, Ammunition and Explosives. Has this task been accomplished? If not, why?
- f. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub-committee composed of government officials and NGOs was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?

9. Questions for interview with the Khomas Regional Governor and the Chairperson of Khomas Regional Council:

- a. There is a concern in the world, the SADC Region and in Namibia about firearms in private hands, especial their use in committing crimes and domestic violence. Is this also a concern in your community?
- b. What is the impact of the Arms and Ammunition Act, 1996 on the gun related crime since it came into force on 26 January 1996?
- c. According to the Arms and Ammunitions Act 1996, an individual may own four fire-arms. How does the quantity of four firearms per person compare to international practice?
- d. Since the SADC Protocol on fire-arms came into force, is there any change on the control of firearms in Namibia?
- e. What are the main reasons for acquiring firearms by private citizens?

- f. What impact does the proliferation of firearms has on the community?

10. Questions for interview with a NGOs (NANGOF) representative to the NFP:

- a. What impact does the proliferation of firearms has on the community?
- b. Since the SADC Protocol on firearms came into force, is there any change on the control of firearms in Namibia?
- c. What are some of the successes and failures that have been encountered during the implementation of the SADC Protocol in general?
- d. Is the Arms and Ammunition Act, 1996 fully compliant with all international policy instruments?
- e. Were there wider (enough) consultations when the Arms and Ammunition Act, 1996 was formulated?
- f. Why was the Arms and Ammunition Act, 1969 replaced?
- g. What is the impact of the Arms and Ammunition Act, 1996 on the gun related crime since it came into force on 26 January 1996?
- h. According to the Arms and Ammunitions Act, 1996, Section 14: licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time to time (GRN, 1996, p.16). Whose responsibility is to

conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?

- i. According to the Arms and Ammunitions Act 1996, an individual may own up to four firearms. How does the quantity of four firearms per person compare to international practice?
- j. The National Management Committee (NMC) of the NNAP was tasked with formulation of national policies on firearms, ammunition and explosives. Has this task been accomplished? If not, why?
- k. The Namibia National Action Plan (NNAP) on small arms and light weapons indicates that a sub- committee composed of government officials and NGOs was created to review the Arms and Ammunition Act 1996, has the Act been reviewed?
- l. The Bamako Declaration requires states to educate the public about the danger of fire-arms and to promote participation of the NGOs. Is this happening in Namibia?

11. Questions for interview with four gun dealers in Windhoek:

- a. Firearms sale is a controlled business. What are the procedures followed if somebody wants to acquire a firearm? And what is the procedure followed when importing firearms?

- b. The Arms and Ammunitions Act, 1996 is the law that regulate the acquisition of firearms in Namibia. Does this law have any effect on your business?
- c. According to the Arms and Ammunitions Act, 1996, Section 14: licensed dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time to time (GRN, 1996, p.16). Whose responsibility is to conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?
- d. What are the main reasons for acquiring firearms by private citizens?
- e. How often do your customers applications for firearms licences turned down by the authority? And what are some of the reasons that make the authority to turn down an application?
- f. SADC had adopted a Protocol on the Control of Fire Arms, Ammunitions and Other Related Materials in 2001. Since then, have you observed any changes on the regulation of firearms acquisition in Namibia?

12. Questions for the Director General of the SADC Organ on Politics, Defence and Security:

- a. How many SADC countries have so far signed the Protocol on the Control of Firearms, Ammunition and Other Related Material?

- b. What is the number of countries required to ratify the SADC Protocol on firearms for it to be effective/implemented?
- c. How many countries have so far ratified the Protocol?
- d. Which countries have refused to ratify the Protocol, and why?
- e. When did the Protocol come into force?
- f. What are some of the successes and failures that have been encountered during the implementation of the protocol in general?
- g. How many SADC member states have ratified all the UN, AU and SADC Legal Instruments on the Control of Firearms?
- h. The Protocol requires member states to promote legal uniformity and minimum standard in respect of manufacture, control, possession, import, export and transfer of arms and ammunition. What have been done about this?
- i. The Southern African Regional Police Chiefs Cooperation Organization (SARPPCO) was tasked to be an implementation agency of the SADC Protocol on the Control of Firearms. What progress has been achieved so far, and what are the challenges?
- j. Are SADC and SARPPCO still operating under two separate structures? If yes, why has it taken that long to bring them under one structure?

- k. Are there members of SADC who are not members of SARPPCCO? If yes who are they, and what are the reasons for not joining the Organization (SARPPCCO)?
- l. What is the legal status of the SARPPCCO Standard Operating Procedures for the SADC Protocol on Firearms, in terms of being legally binding on the SADC member states?

13. Questions for interview with the Head of Windhoek City Police:

- a. Your work complements that of the Namibian Police in Windhoek, are you aware that there is a SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials of which Namibia is a signatory, and do you have any role to play on this protocol implementation?
- b. Does the SADC Protocol affect your work in any way?
- c. In your view do you think Arms and Ammunition Act (Act No.7 of 1996) is effective enough to control the possession of firearms by individual citizens in Windhoek?
- d. The SADC Protocol requires member states to establish and maintain complete national inventories of firearms and ammunition held by security forces and other state bodies. Does City Police have inventory of its firearms, and which law(s) regulates it?

- e. The SADC Protocol Article 5 requires monitoring and auditing of firearms licences held in a person's possession. Is this happening in Namibia?
- f. When you are carrying out your work in Windhoek, how often do you encounter incidences where legally acquired firearms are used to commit criminal activities?

14. Questions for interview with Heads of three of the 18 private security companies in Windhoek:

- a. Do you use firearms when rendering service to your clients, what is the process of obtaining the licences for these firearms?
- b. The Arms and Ammunitions Act, 1996 is the law that regulate the acquisition of firearms in Namibia. Does this law have any effect on your business?
- c. Does each firearm you own has a separate licence or you apply for one licence for all the company's firearms, and what is the maximum firearms does the law permit a security company to own?
- d. Do you experience any difficulties in obtaining firearm licences when you apply for them?
- e. What control measures do you put in place to ensure that your firearms are not used for other activities than the intended purpose?

- f. Being in the profession of providing security to your customers, in your view do you think the Namibian Arms and Ammunition Control Law is effective enough to prevent or reduce the use of firearms in criminal activities?
- g. In neighbouring Botswana, the law does not permit private security personnel to be armed (to carry firearms) while on duty. Do you think it is possible to implement that practice in Namibia?
- h. The SADC Protocol Article 5 requires monitoring and auditing of firearms licences held in a person's possession. Is this happening in Namibia?

15. Questions for interview with the Namibian Police Head of Central Firearms Registry Sub-Division

- a. What mechanism exists within the Namibian Police for the handling and processing of firearms licence applications by individual citizens?
- b. What are the main reasons for acquiring firearms by private citizens?
- c. According to the Arms and Ammunitions Act, 1996; Section 14: licensed firearms dealers are required to keep updated registers, containing all information about their stock and sales of arms and ammunition, which would be inspected from time-to-time (GRN, 1996, p.16). Whose responsibility is to conduct inspection at the firearms dealers' places and at what intervals? How does this compare to international best practice?

- d. The SADC Protocol Article 5 requires monitoring and auditing of firearms licences held in a person's possession. Is this happening in Namibia?
- e. Section 8 (1) of the Namibian Arms and Ammunition Act, 1996 allows for taking a firearm (s) by a person other than the owner, with consent of the licence holder. This contradicts the SARPCCO standard operating procedures Chapter 7, Section 2 which prohibits borrowing of firearm from another person. Why has Namibian opted for this alternative arrangement?

APPENDIX 2

KEY INFORMANT INTERVIEWEES

The following people were interviewed as key informants:

NAME	POSITION	INSTITUTION
1. Hon. Samuel Nuyoma	Regional Governor	Khomas Region
2. Hon. Zulu Shitongeni	Regional Council Chairperson Constituency Councillor	Khomas Region Tobias Hainyeko
3. Mr. Alex Hatzenburg	Buyer (Weapon & Ammunition)	Safari Den
4. Mr. Seth Gaeb	Manager: Admin & Logistics	G4S Security Services
5. Chief Abraham Kanime	Chief of City Police	City of Windhoek
6. Mr Absai Nendongo	Chief Executive Officer	Inter- Africa Security Services

7. Inspector F. P. J Vilonel	Chief of Armoury	Namibian Police
8. Chief Inspector Moses N. Shaama	Coordinator of National Focal Point	Namibian Police
9. Mrs Corne Meyer	Managing Director	Marine Security
10. Chief Inspector Ignatius Nangombe	Head of Central Firearms Registry	Namibian Police
11. Mr Ezekiel Senti	SADC Secretariat (On behalf of the Director General of the Organ on Politics, Defence and Security)	SADC HQ
12. Mrs Pauline Dempers	NANGOF Representative to the NFP	NANGOF Trust