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APPRAISAL OF THE APPLICATION OF FIREARMS ACT ON MEMBERS OF THE ARMED FORCES OF NIGERIA

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Abstract

The regulation of firearms is a critical aspect of maintaining law and Order within any nation, and Nigeria is no exception. The Firearms Act CAP F28, enacted as part of the laws of the Federation of Nigeria in 2004, serves as the primary legal instrument governing the possession, use, and distribution of firearms. However, the application of this Act to members of the armed forces of Nigeria presents a unique set of challenges. These challenges stem from the distinct operational requirements, hierarchical structure, and legal status of military personnel. The armed forces, by their very nature, require access to firearms for the purpose of national defence, internal security, and the maintenance of peace. This necessitates a careful balance between ensuring that military personnel are adequately equipped to fulfil their duties and preventing the misuse or unauthorised proliferation of firearms. Understanding how the firearms Act is applied to this specific group is therefore crucial for promoting accountability, transparency, and adherence to the rule of law. This paper appraises the critical gap in understanding the practical application of the Firearms Act to the Armed Forces of the Federal Republic of Nigeria. Specifically, it investigates the extent to which the Act is enforced, the challenges encountered in its application, and the implication for both military operations and civilian safety. The paper adopts doctrinal method of research. By appraising these issues, the paper seeks to contribute to a more informed and effective approach to firearms regulation within the military context.

Key Words: Application, Firearms, Act, Armed-forces, Nigeria

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1.1 Introduction

In Nigeria, the Firearms Act[1] which was promulgated in 1959 remains the principal enactment for the control and combating the menace of illegal dealing or possession of small arms and light weapons by unauthorized persons. In 2004, the Act was collated as part of the Laws of the Federation of Nigeria (LFN 2004) under chapter F28. The Firearms Act[2] expressly prohibited illegal possession, trade and transfer of firearms.[3] The Act provides that no person shall have in his possession or under his control any firearms of one of the categories specified in Part I of the Schedule to the Act except in accordance with a license granted by the President acting in his discretion.[4]

The Act has out rightly prohibited persons from having in their possession any prohibited firearms without having a license granted by the President of Federal Republic of Nigeria[5]. The statute further stipulates that the grant of license to persons to have in their possession prohibited firearms is at the discretion of the President. In this regard, where the President declines to exercise his discretion to grant a license to own a prohibited firearm, he shall not be compelled to do so.

Additionally, the statute equally provides that no person shall by way of trade or business buy or sell or transfer or expose for sale or transfer or have in his possession for sale or transfer any firearms unless he is registered as a firearms dealer.[6] The legal implication of this law is that for a person to be permitted to trade in firearms, he must have registered with the authorities as a legitimate firearms dealer. Any act short of this registration contravenes the provision of this statute and as such attacks penal sanction.[7]

Generally, the statute applies to all persons not to possess, own or trade in arms and ammunition without authorization except persons who are either having license to own prohibited firearms or registered as a legitimate dealer with the authorities. In the wording of the statute, it granted exemption to certain categories of persons to possess, own or trade in firearms without license.[8] A side the exemption of certain persons encapsulated in the Statute, members of the Armed Forces of Nigeria and Police Force are equally exempted from the application of the statute. The statute unequivocally said that the provisions of this Act shall not apply to any member of the armed forces of federation, or to a member of the police force, in relation to any firearm or ammunition issued to him for official purposes, and an officer of such armed forces or of the police force shall, if the Inspector-General of Police is satisfied that he is required to purchase or acquire a firearm or ammunition therefor for his own use in his capacity as such officer, be entitled without payment of any fee to the grant of a license therefor.[9]

[1] Cap 146, LFN 1990.
[2] Cap F28 LFN 2004.
[3] See Parts II and III of the Firearms Act Ibid.
[4] See 3 Ibid
[5] Ibid
[6] Ibid
[7] Ibid
[8] See Section 37 Ibid.
[9] See Section 38 Ibid

Taking a meticulous study of the statute exempting the armed forces and police force, it is crystal clear that the Act is not applicable to members of the Armed Forces and Police Force provided the arms and ammunition where issued for official purpose. Additionally, the Inspector-General of Police if satisfied shall grant a license free of charge to a member of the armed forces who purchases his personal firearms. In this regard, the research questions that require answers are:

a. Are members of the armed forces subject to the provisions of the Firearms Act if the arms and ammunition are not issued for official purpose?
b. Would the firearms Act apply to a member of the armed forces who is in possession of an unlicensed personal weapon?

This paper therefore, appraises the application of the Firearms Act on members of the Nigerian Armed-forces. In achieving this aim, the paper considers the jurisdictional challenges and problems associated with prosecuting charges drafted under the Firearms Act in Court Martial trials. The paper also discusses the constitutional roles of the Nigerian Armed-forces, the application of the Firearms Act to Members of the Armed Forces of Nigeria, and the legal Implication of immunity of members of the Armed-forces being in Possession of Firearms and ammunition.

1.2 Constitutional Role of the Armed-forces in Nigeria

The constitution of Federal Republic of Nigeria (1999) established the Armed Forces in the country and state their respective duties. These duties are provided as follows:

a. Defending Nigeria from external aggression.
b. Maintaining its territorial integrity and securing its borders from violation on land, sea or air.
c. Suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so by the President, subject to such conditions as may be prescribed by an Act of the National Assembly.
d. Performing such other functions as may be prescribed by an Act of the National Assembly.[10]

Having outline above the constitutional roles of the Armed Forces, it is pertinent to state that the most complex role of the Armed Forces is the Suppressing insurrection and acting in aid of civil authorities to restore order when called upon to do so. This is because the Armed Forces have constantly been dragged to the court by either individuals or institutions challenging their legitimacy to perform this role. In the case of *Hon. Minister of Defence & Anor vs Ochikiri & Ors.*[11] The Court of Appeal held that…In relation to issue No.2, it is clear that the provision of Section 217 (2) (c) of the CFRN (as amended) could not have avail the Appellants. Indeed, there

[10] See Section 217 (2) Ibid.
[11] (2020) LPELR-51352(CA).

was not an iota of evidence in the trial Court that the Appellants were called upon to suppress any insurrection or to act in aid of civil authorities to restore orders…[12]

Also, in *APC vs PDP & ORS*[13] the Court of Appeal said that the law does not appear to make any provision or provide a role for the Armed Forces or the military to dabble in civil activities like elections to elect civilian leaders except perhaps, to exercise their right of franchise to vote, in their Barracks.[14] Thus, even the President of Nigeria has no powers to call out the Armed Forces and unleash them on a peaceful citizenry who are exercising their franchise to elect their leaders. And even in the event of insurrection or insurgency, the call on the Armed Forces to aid civil authorities to restore order, must be with the approval of the National Assembly[15]

In view of these judicial authorities it will be apt to state that the appropriate time to call on the Armed Forces to aid civil authority to restore order is when there is need to suppress insurrection or breakdown of law and order. However, it is the humble opinion of these researchers that the deployment of the armed forces all over the country today has constitutional backing and statutory authority considering the security situations.

The Court of Appeal in the case of *Hon. Minister of Defence & Anor vs Ochikiri & Ors*[16] defined suppression of insurrection as "any act or series of acts of armed rebellion or conspiracy against the authority of the Federal Government or of a State government or any attempt to overthrow by force of arms the government of the Federation or of a State."[17] It is in line with this definition that the Armed Forces were deployed across the country to restore law and order particularly in areas affected with terrorism and banditry.

1.3 Application of the Firearms Act to Members of the Armed-forces of Nigeria

Generally speaking, the Firearms Act in Nigeria is a crucial piece of legislation that regulates the possession, use and distribution of firearms in the country. The statute is divided into several parts, each addressing a specific aspect of firearms regulation. The Firearms Act is enforced by the police who are responsible for issuing licenses, register firearms, and monitor compliance with the Act. The statute also provides for penalties and fines for individuals who violate its provisions.[18] In recent years, there have been efforts to amend the Firearms Act to address emerging security challenges in Nigeria. For example, a bill introduced in 2022 aimed to tighten firearms control and prevent the proliferation of illegal arms.[19] Overall, the Firearms Act plays a critical role in regulating firearms in Nigeria and promoting public safety. Its provisions and

[12] Ibid
[13] (2015) LPELR-24349(CA).
[14] Ibid
[15] Ibid
[16] (2020) LPELR-51352(CA).
[17] Ibid
[18] www.commonlii.org. visited on 9/3/25 at 5.15 pm
[19] Ibid

application are essential for preventing the misuse of firearms and reducing the risk of gun-related violence.

Regarding members of the Armed Forces, the Firearms Act exempt them from its application when the firearms were issued for official purpose. This immunity does not extend to a civilian who is in possession of an unlicensed firearm. The Court of Appeal in the case of *Yakubu vs State*[20] held that the Appellant cannot take advantage of this provision because she is not a military officer and much more that the immunity is not absolute, as the Section only protects members of the Armed Forces to whom the firearm is issued to for official purpose. For even a military officer to enjoy the immunity, the onus is on him to show that the firearm was issued to him for official purpose.

Section 38 of the Firearms Act[21]provides that the provisions of the Act shall not apply to the Armed Forces of the Federation or to the Nigerian Police Force in relation to any firearm or ammunition issued to him for official purposes, and an officer of such Armed Forces or of the Police Force shall, if the Inspector-General of Police is satisfied that he is required to purchase or acquire a firearm or ammunition therefor his own use in his capacity as such officer, be entitled without payment of any fee to the grant of a license therefor.[22]

The legal implication this immunity is that the Armed Forces are not subject to the same regulations and requirements as civilians regarding firearms possession and use they have the right to carry firearms conspicuously in public because the arms belongs to the state and it is their tool of work. To support this opinion, the Court of Appeal in *Major Jacob Iyela vs Nigerian Army*[23] held that in the interpretation of statute, inclusive of decrees, words should be given their natural and ordinary meaning. In the instant case, the appellant being a member of the Armed Forces is exempted from the provisions of section 9 of the Firearms Act, Laws of the Federation of Nigeria, 1990.[24]

To authenticate the non-application of the Firearms Act to members of the Armed Forces, the Court of Appeal further held that: "My understanding of section 9(1) of the Firearms Act where it survives section 237 of the Armed Forces Decree No 105 of 1993 as amended is that it does not relate to personnel of the Armed Forces". This decision of the Court of Appeal has been reaffirmed by the Supreme Court in *Major Iyela's case*[25] where it said:

> "As I indicated earlier above that this appeal turns, wholly on this issue. Even if all the remaining issues are resolved in favour of the appellant, the appeal still fails, the entire proceedings having been rendered null and void by the fundamental defect in the proceedings. On the whole I do not fancy any reason to interfere with the decision of the Court of Appeal which is

[20] (2021) LPELR-56351(CA).
[21] Cap F28 LFN 2004.
[22] Ibid
[23] (2005) ALL FWLR 1561
[24] Ibid. Section 9 provides that no person may buy, transfer, expose for sale, or possess for sale, any firearm or regulated ammunition unless they are registered firearms dealers.
[25] (2008) LPELR-2014(SC)

> therefore affirmed. And for the foregoing reasons, the appeal be and is hereby dismissed".[26]

In view of the above judicial authorities, it is unequivocally clear that the Firearms Act is not applicable to members of the Armed Forces. Once a member of the Armed Forces is found in possession of arms and ammunition unlawfully belonging to the state, it is advisable that the prosecution should exploit other laws to dispose the case rather than using the Firearms Act that is likely to jeopardize the success of the case because to establish that a person is in unlawful possession of arms under the Firearms Act, there must be evidence that he has no license to possess the arm.[27]

1.4 The Legal Implication of Immunity of Members of the Armed Forces in Possession of Firearms and Ammunition

Having discussed the application of the Firearms Act to members of the Armed Forces, it is imperative to note that the Armed Forces Act by virtue of Section 237[28] clearly indemnify members of the Armed Forces from criminal liability arising from possession, storage or transmission of firearms or ammunition issued for official purpose. In the wordings of Section 237 of the Act " a member of the Armed Forces shall for the purposes of the Armed Forces be exempt from a provision of any enactment relating to the storage, possession or transmission of firearms, explosives, gun-powder or ammunition of war".[29]

In these researcher's view, the legal implication of this law is that a member of the Armed-forces who was officially issued firearms, explosive, gun-powder or ammunition of war can store, take possession or transmit these items from one place to another without any criminal liability. This storage can be in his house provided the firearms or ammunition was issued officially. However, if a member of the Armed Forces is arrested for storing arms and ammunition in his house, the prosecution is under legal obligation to prove beyond reasonable doubt that the essence of the storage was for the purpose of committing a crime because mere being in possession is not an offence. In *Major Iyela Case (Supra)* it was held that:

> Mere possession of a consignment of ammunition without more is not enough to ground a conviction. The criminal intent attendant to possession must be established; moreso, when the appellant in the instant case never denied possession of the consignment of ammunition discovered in his house and did his best to explain the circumstances that prevented him from returning them to their rightful place. It was never suggested that

[26] Ibid
[27] See Yakubu vs State (Supra).
[28] Armed Forces Act Cap A20 LFN 2004.
[29] Ibid

> the appellant intended to use the ammunition found in his residence for an illegal purpose.[30]

Conversely, would a member of the Armed Forces be criminally liable under the Firearms Act if he is found is possession of service firearms or ammunition without authorization? The answer to this question is in the negative. This is because service firearms and ammunition belong to the Federal Government and as such it requires no license or registration to be in possession of a member of the Armed Forces. One of the ingredients of under Section 9 of the Firearms Act[31] that a prosecution must prove to succeed in offence of unlawful possession of firearms is that it must prove that the firearm in possession of the accused is without license. Where the prosecution fails to prove this ingredient, the court will discharge and acquit the accused. The Supreme Court in the case of *Mohammed vs FRN* Said:

> The law is settled that for the prosecution to secure conviction for the offence of illegal possession of firearms, it must prove beyond reasonable doubt that (i) the accused person was found in possession of firearms; (ii) the firearms found with the accused comes within the definition of firearms in the Firearms Act; and (iii) the accused had no license to possess the firearms. In other words, once a person is shown to be in possession of firearm and has no license permitting him to be in possession, he is guilty of an offence.[32]

In view of the above judicial authority, it is crystal clear that applying the Firearms Act to members of the armed forces in this situation is practically impossible because what the prosecution needs to proof in its case is the fact that the accused soldier does not have license to possess the firearm. It should be noted that the firearm belongs to the state and the state does not require license on its property. Another question begging for an answer is should a member of the Armed Forces go scot free who is found in possession of service firearms without authorization? The answer is also in the negative. As we earlier said, being in possession of the service firearms without authorization is a criminal act. However, the criminal act cannot be accommodated under the Firearms Act because members of the armed forces don't need license to be in possession of service firearms whether issued officially or not. In our opinion, it is advisable that the prosecution should always avoid charging erring members of the Armed Forces for Illegal Possession of Firearms because service firearm requires no license to be in their possession. Thus, the prosecution could exploit other relevant offences that have stiffer punishments in the Penal or Criminal Codes such as Theft, Stealing, Criminal Misappropriation, Criminal Breach Trust etc.

Would the firearms Act apply to a member of the Armed Forces who is in possession of an unlicensed personal weapon? The answer to is in the affirmative. This is because it is the

[30] (2005) All FWLR 1561.
[31] Cap F28 LFN 2004.
[32] Ibid

requirement of the law that member of the Armed Forces can own their personal firearm however the ownership must be with a license issued free of charge by the Inspector-General of Police.[33] Thus, it will be very easy and smooth for the prosecution to prove the accused had no license to be in possession of the firearm which is one of the fundamental ingredients that must be proved to secure a conviction.[34] To this end, it is our humble submission that regarding personal firearms, members of the Armed Forces cannot enjoy immunity for any infraction committed. Because the immunity is only affects service firearm and does not extend to personal firearm.

1.5 Problems Associated with Prosecuting Charges Drafted under the Firearms Act

The Firearms Act does not apply to members of the Armed Forces when the firearms or ammunition is either issued for official purpose or it belongs to the service. The reasons for the non-applicability to members of the Armed Forces is because of the exemption in section 38 of the Firearms Act,[35] Section 237 of the Armed Forces Act[36] and the subsisting decisions in the cases of *Major Iyela (supra) and Mohammed vs FRN (supra).*

These statutes and judicial authorities have not only made it challenging for the smooth prosecution of cases of firearms in court martial but have clearly brought in legal impediments that has made trial and conviction impossible. In our view, any case of firearms brought pursuant to the Firearms Act[37] is calculated to give a criminal window to escape the cause of justice at the expense of the service. It is strongly advisable that prosecutors should always exploit other substantive criminal laws to charge and prosecute the members of the Armed Forces who is/are found culpable for infraction involving firearms offences.

It is pertinent to recall that the Nigerian Army lost in *Major Iyela's case* on appeal both at the Court of Appeal and Supreme Court not on merit but due to avoidable technicalities that occurred during the trial stage and post-trial stage. The avoidable technicalities are as follows:

a. The subsequent reconvening of the court martial on 4 August 1998 that substituted its earlier judgment from compulsory retirement of 28 August 1998 to dismissal from service.
b. The inability of the prosecution to prove that the consignment found in the residence of the *Major Iyela* was for the purpose of committing a crime.
c. The fact that the consignment being service property requires no license to be in possession of *Major Iyela.* Hence, this made it impossible for prosecution to secure a fair and just conviction under Section 9 of the Firearms Act.

It is submitted that the significance of legal review of cases remanded for court martial cannot be overemphasized. This is because it will aid the prosecution to understand the case

[33] See Section 38 Firearms Act Cap F28 LFN 2004.
[34] See Mohammed vs FGN (*Supra*)
[35] Cap F28 LFN 2004
[36] Cap A20 LFN 2004
[37] Cap F28 LFN 2004

theory and also appreciate the strength and weakness of a case. However, where the prosecution drags an accused for court martial trial without a legal review of the case, he is likely to jeopardize the case at the expense of the service.

From the itemized facts above in *Major Iyela case,* assuming at the court martial stage the prosecution avoided charging him under the Firearms Act and went to the Penal Code and charged him for either Criminal Misappropriation or Criminal Breach of Trust, possibly the appeal might have been in favor of the Nigerian Army. This is because all those legal issues the prosecution needs to prove include (a) that the accused does not have a license to be in possession of firearms and that (b) the essence of keeping the consignment in his residence was for the purpose of committing an offence wouldn't have been issues for determination.

However, these legal issues and the subsequent sentence of 4 August 1998 were responsible for the loss of the appeal by the Nigerian Army. To this end, it is our humble view that prosecution should always carry out a legal review of a case before proceeding for court martial trial. Doing so will not only aid in knowing the case theory but also will direct the prosecution on the nature of the charge they can proffer against the accused with suffering any legal impediment.

1.6 Conclusion

This paper appraises the application of the Firearms Act[38] to members of the Armed Forces. In discussing the application, we were able to discuss the constitutional roles of the Armed Forces of Nigeria considering the fact that firearms and ammunition is the main tool of their business. The paper also discussed the extent to which the Firearms Act[39] applies to members of the Armed Forces and also the legal impediments involved in its application. We considered the immunity legally accorded to members of the Armed Forces while in possession of firearms both under the Firearms Act and the Armed Forces Act[40]. Additionally, the paper analyses the notorious cases of *Major Iyela* and *Mohammed vs FRN[41] (supra)* particularly on how these cases directly affected the application of Firearms Act to members of the Armed Forces. The paper equally discusses how erring service personnel accused of being in possession of service firearms without authorization can be prosecuted in court martial without any legal impediment.

Based on the above, the paper finds as follows:

a. The Firearms Act applies to members of the Nigerian Armed-forces only where they are in unlawful possession of their personal firearms;
b. Charges are, more often than not, drafted under the provisions of the Firearms Act, instead of the provisions of the Penal and Criminal Codes where the accused service personnel is in unlawful possession of firearms that are not personal, thereby creating jurisdictional problems before the Court Martial; and

[38] Cap F28 LFN 2004.
[39] Ibid
[40] See Section 38 of the Firearms Act and Section 237 of the Armed Forces Act Cap A20 LFN 2004.
[41] (2005) All FWLR 1561. And (2025) LPELR-80420(SC).

c. There is lack of effective legal review of investigations in cases bordering on firearms.

In view of the above findings, the following recommendations are therefore proffered:

a. The Prosecution should endeavor to charge erring service personnel under the Firearms Act[42] in cases of unauthorised possession and use of personal firearms by military personnel;
b. All cases of illegal possession of firearms and ammunition that are not personal should be brought under the Penal or Criminal Codes for offences of stealing, criminal misappropriation, Criminal Breach of Trust, as the case may be.
c. There should be an effective legal review of investigations in cases of firearms which will guide the prosecution on the nature of charge to be drafted against an accused service personnel.

[42] Cap F28 LFN Op.Cit.