



HELENSUZMAN FOUNDATION

For attention: Mr Ntwana

Department of Police

Firearms Committee

Email: comments.fcabill@csp.gov.za

Deadline: Monday, 2 August 2021

02 August 2021

Dear Mr Ntwana

Submission in response to the call for comments on the draft Firearms Control Amendment Bill 2021

We attach our written submission in response to the call for comments on the draft Firearms Control Amendment Bill, 2021.

We would like to confirm our interest in making oral representations to the Committee at a later convenient date.

Should you have further enquiries, please contact Mihloti Sherinda (Email: mihloti@hsf.org.za) or Anton van Dalsen (Email: anton@hsf.org.za).

Yours sincerely

Francis Antonie

Director



HELENSUZMAN FOUNDATION

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1. Introduction

The Helen Suzman Foundation (“HSF”) welcomes the opportunity to make submissions to the Firearms Committee on the draft Firearms Control Amendment Bill 2021 (“the Bill”). The HSF sees this engagement as a way of fostering critical, yet constructive, dialogue between civil society and government.

The HSF is a non-governmental organisation whose main objective is to promote and defend the values of our constitutional democracy in South Africa, with a focus on the rule of law, transparency and accountability. The HSF’s interest in participating in these proceedings centres on our commitment to our constitutional obligations of the achievement of equality and the advancement of human rights and freedoms. Central to our work is the defence of the rule of law.

The HSF welcomes the fact that Government is responding to different aspects in connection with crimes of firearm violence. It is indeed the duty of the state to provide safety security to the people of South Africa and such “national security must be pursued in compliance with the law, including international law”.¹ In advancing the duty to protect the lives of the people of South Africa, the Constitution of the Republic of South Africa enjoins

¹ Section 198 (c) of the Constitution.

the state to respect, protect, promote and fulfil the rights in the Bill of Rights.² The right to life, security of the person, and human dignity are relevant to this Bill's interpretation.

This Bill proposes amendments to the Firearms Control Amendment Act of 2006 in the following respect: (a) a proposed amendment to its purpose/objective, (b) the definition of "firearms" to include muzzle loading firearms; (c) the limitation of the number of licences and firearms that can be issued to dedicated hunters and dedicated sport-shooters, and (b) the repeal of section 13 and 14 of the Act. Further, (d) a designated Firearms Officer at each police station has been assigned at each police station to improve control over firearms in possession of the police, other official institutions and private security service providers.

Our comments are set out below.

2. Purpose

The purpose of the Bill is to reduce the proliferation of firearms in society and in turn, to reduce gun-related criminal activity. Consequently, the Bill seeks to amend the purpose of the Firearms Control Act "to restrict access to firearms by civilians and to comply with regional and international instruments on firearms regulations".

The HSF's submission in this regard is two-fold: (a) this objective can be achieved by less restrictive means, and (b) this objective has to be seen in conjunction with other state duties in relation to the safety of citizens as found in the Constitution, and must be read in line with the objects and spirit of the Bill of Rights. As such the purpose of the Bill must accordingly be amended to include "and the protection of rights contained in the Bill of Rights".

3. Clause 15: the repeal of section 13 and 14.

In clause 15, the Bill provides for the repeal of sections 13 and 14 of the Act. Section 13 provides for a licence to possess a firearm for self-defence purposes. The consequence of the repeal of the section is that the registrar may not issue a licence to any natural person who needs a firearm for self-defence. Section 14 provides a licence to possess a restricted firearm for self-defence. The consequence of this deletion is that a licence for a semi-

² Section 7(2) of the Constitution.

automatic rifle or shotgun cannot be issued to any natural person who requires it for self-defence.

The HSF's submission in this regard is that, in light of the submission above that the object sought to be achieved, i.e. 'to restrict access to firearms by civilians', can be achieved by less restrictive means. This specific amendment is therefore not supported. While taking cognisance of the important objective of reducing the proliferation of firearms in society, the proliferation of firearms in society does not warrant the repeal of section 13 and 14 on the ground of self-defence. Given the level of violence that is prevalent in South African society, prohibiting the issuing of licences for self-defence purposes, will lead to increasing feelings of insecurity and as a result, illegal methods to acquire firearms will increasingly be used. This cannot be the aim of the Bill.

It is also noted, as set out below, that the proliferation of illegal firearms is a consequence of multiple factors, many of which will not be extinguished by removing the ground of self-defence as a reason to own a firearm. Studies demonstrate that firearms in the hands of criminals are stolen from multiple sources, including from police personnel.

3.1. The reasons for the repeal

The Bill relies on research on the (a) abuse of firearms for domestic violence, (b) availability and proliferation of illegal firearms, (b) socio-economic factors such as gender inequality, (c) lack of implementation of the Act and other legislation, and (d) the theft of firearms from licensed gunowners. Up to 45% of murders in 2017 were committed with a firearm

The HSF's submission is that the repeal of the statutory grounds to carry a firearm on the basis of self-defence, will not resolve the social ills that are associated with gun-related violence. In fact, it would be better to implement the Act to ensure that firearm owners are monitored on their ownership of firearms and in the event that they become unfit, they are dispossessed of their firearm. To achieve a reduction in the abuse of firearms within the context of domestic violence, a monitoring of fitness of licence holders can be prioritised. This would require an expanded strategy on the implementation of the legislation.

Another method can include a strict test for obtaining the licence and assessment of other factors before a licence is issued or renewed. The factors can include: history of violence,

domestic abuse and any other factor relevant to ensure that such licence is reasonably issued to a fit holder.

3.2. The stolen firearms

The Bill repeals sections 13 and 14, including amongst other grounds, the fact that guns are stolen from licenced gunowners by criminals. The problem with this justification is that guns are also stolen from law enforcement facilities or personnel. The HSF's submission is that the reduction of licenced gunowners may not necessarily resolve this problem but may render civilians more vulnerable to criminal attack.

While it is difficult to trace the loss of guns in the SAPS and Metro-police, from 2011, the Minister of Police in a parliamentary address, reported that some 20 000 guns had disappeared from the hands of the police.³ Further, between 2013 and 2017, 2 200 firearms went missing in the SAPS, the Police Ministry stated in answer to a parliament question.⁴

... the Police Ministry released statistics that about 2,200 SAPS firearms were stolen or went missing in the past three financial years. This was in answer to a parliamentary question by DA MP Zak Mbhele.

Albeit thin on context, the Ministry's figures show that in the 2014/15 financial year almost 70 police firearms went missing. Of this, 12 went missing from bathrooms and at least five went missing while the police officer was under the influence of alcohol. In the same financial year 612 service firearms were reported stolen, mainly through robberies in township areas and house break-ins. A further 79 firearms have not been classified, meaning it is not clear if they were stolen or missing.

Firearms are also stolen from evidence rooms. In 2019, the Ekurhuleni Metro Police Department (EMPD) armoury audit report indicated that 700 weapons were missing, stolen

³ <https://www.bbc.com/news/world-africa-12689342>

⁴ <https://www.groundup.org.za/article/2200-police-firearms-lost-three-years/>

or unaccounted for in the Ekurhuleni Metro.⁵ For the 2018/2019 financial year, 505 firearms went missing at the SAPS, including half a million rounds of ammunition.⁶

These numbers may be an indication that removing self-defence as a rationale for gun ownership may not curb the proliferation of firearms, as the loss of firearms occurs across the board.

3.3. The constitutional hurdles

Some of the rights in the Bill of Rights must be balanced in achieving state goals. As mentioned above, it is important to reduce the proliferation of guns and to reduce criminal elements in society including the killing of women and children. However, the achievement of these objectives may trample on the constitutional rights of citizens. This section discusses the constitutional rights which the state has a duty to protect.

Right to life and private defence

While the common law right to self-defence remains intact and other weapons may be used for this purpose, it is arguable that the use of a firearm may be justified in specific situations, as being proportional to the threat encountered. In South Africa, many house robberies occur through the use of firearms and in that context, the use of a firearm as protection is not disproportional.

It cannot be gainsaid that the state has a positive duty to protect the lives of its citizens. It does so by providing a police force. In the event of the absence of law enforcement, citizens must be able to protect themselves.

The difficulty of balancing competing interests

A couple of issues arise for the state in this context: (a) the safety of gunowners through owning guns for self-defence, (b) the safety of spouses or family members of gunowners who harm them domestically, (c) protecting the general public from guns being stolen from licenced firearm owners or the state.

⁵ https://static.pmg.org.za/RNW1082-2021-05-17-Annexure_A.pdf

⁶ <https://www.sabcnews.com/sabcnews/cele-responds-to-parliamentary-question-on-lost-firearms/>

It may seem to offer a simple solution to take away licences from private gunowners but it renders the very citizens the state seeks to protect vulnerable to attack from criminals who have access to illegal firearms. It indicates how this proposed method may not achieve its overarching constitutional duty to protect citizens.

The HSF therefore submits that since the Constitution and the jurisprudence of the Constitutional Court require the state to promote the spirit, purports and objects of the Bill of Rights, private citizens should be allowed to own firearms for purposes of self-defence.

3.4. Improved implementation of legislation

The HSF submits that an improved implementation of legislation would achieve the optimal realisation of the objectives mentioned above of (a) eliminating the illegal proliferation of firearms, (b) restricting access to firearms by civilians.

First, as argued above, a strict and transparent test for gun-ownership and monitoring of license-holders will more readily ensure gun-ownership is in the right hands.

Secondly, the Firearms Amnesty has achieved considerable success. The Minister of Police has reported in Parliament that in 2019/20 about 47 409 firearms and 319 435 rounds of ammunition were surrendered. Whereas in 2020/2021, 102 535 firearms and 404 524 rounds of ammunition were surrendered.⁷ This shows the significant need to redirect resources into reducing the illegal proliferation of firearms into other less restrictive means.

Thirdly, the HSF submits that a strategy for efficiently processing licence applications and renewals would play an important role in the monitoring and implementation of legislation.

The Minister of Police submitted in Parliament that

‘the Portfolio Committee on Police had visited the CFR [Central Firearms Registry] in the past week and our Deputy Minister also visited this environment early this year. We have agreed that the CFR needs a complete overhaul – the environment is

⁷ <https://www.gov.za/speeches/minister-bheki-cele-police-ipid-and-civilian-secretariat-police-service-dept-budget-vote-0>

*infested with numerous challenges. In this regard, we will be announcing a turnaround plan for the CFR in due course.*⁸

While this assurance that the Central Firearms Registry will be overhauled is to be welcomed, it is important to note that licence applications have been put on hold and the backlog is substantial.⁹

4. Conclusion

This submission assumes that not only is it constitutionally impermissible to repeal the provisions that permit the ownership of a firearm on the ground of private-defence, but it will also not solve an existing problematic situation, where private citizens are legitimately concerned about their personal safety. The objectives sought by this legislation - that is to reduce the illegal proliferation of firearms and to restrict access to firearms by civilians - can be achieved by less restrictive and arbitrary means including the (a) monitoring of firearm-holders by imposing a stricter test for the issuing and renewal of licenses, (b) further extension of the Firearm Amnesty, (c) the efficient operation of the Central Firearm Registry and (d) improved implementation of the legislation in general.

In practical terms, removing firearms from civilians would not solve the problem of illegal firearms which are already in circulation. And as pointed out earlier, no doubt come from either lost by state employees or stolen from state institutions.

⁸ <https://www.gov.za/speeches/minister-bheki-cele-police-ipid-and-civilian-secretariat-police-service-dept-budget-vote-0>

⁹ See this submission by the CFR to the portfolio committee on challenges experienced by the CFR <https://static.pmg.org.za/140820presentation.pdf>