MINISTRY OF POLICE

REPORT OF THE COMMITTEE ON FIREARMS CONTROL AND MANAGEMENT IN SOUTH AFRICA

2016

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EXECUTIVE SUMMARY

The primary aim of this report is to contribute towards developing a coherent and comprehensive policy position with regard to the strengthening of the control and management of firearms in South Africa, including the use and distribution of firearms. This report focuses on three key areas of firearms control in South Africa: The Strategic and Policy framework; the Legislative framework; and the Institutional Arrangements. It places the review of South Africa's firearms control regime in the context of international, continental, regional, and local best practice to provide a contextual understanding of the imperatives impacting on firearms control in South Africa as well as proposing solutions for more effective control over the use and circulation of firearms.

As part of a holistic approach to addressing the problem of the proliferation of firearms in South Africa, the Minister of Police appointed a Committee to review the existing strategic, policy and legislative frameworks for the control and management of firearms. The Committee, together with its task team, worked according to well defined terms of reference and discussed and debated various approaches to each of the issues it was tasked to address.

Firearm violence is a leading cause of death in South Africa, with a recorded homicide rate of 33/100, 000 populations against the global average homicide rate of 6.2/100, 000 populations. Furthermore, firearms are one of the leading instruments of homicide; the data shows that as with the murder rates over the last three years, there has been a steady increase year-on-year in firearm-related murders in South Africa. Firearm-related death and injury exact an enormous price on our society and its economy: it is estimated that the total cost of firearm-related murders in 2009 (5, 513 total deaths) amounted to almost R26 billion in 2015 Rands.

The instrument used in homicide is an important consideration, as certain types of instruments, particularly firearms, significantly increase the risk of a victim of assault becoming a homicide victim. Firearms (mostly handguns) are often the preferred weapon

of choice in violent crime, with the most recent data showing that in almost all serious and violent crimes, such as murder, attempted murder, and aggravated robbery, in over 90 per cent of cases a handgun (pistol/revolver) is used to commit the crime.

In so far as the research findings are concerned, the report considers the evolution of the use (and misuse) of firearms (both legal and illegal) in South Africa, as well as examining the firearms environment. Throughout the period of colonisation and during the apartheid era, the use of firearms was a major threat to the internal security of South Africa. Under the new democratic dispensation, the use of firearms remains a major concern that threatens safety and security in the country. Furthermore, the report looks at factors which contribute to the proliferation of firearms in the country including the demand-supply dynamic of small arms control, the movement of weapons from the legal pool into the illicit market, as well as the loss and theft of firearms from both civilians and state institutions. The report also examines in some detail particular challenges facing South Africa with regard to effective control over firearms use; this includes the growth of the Private Security Industry, particularly as it relates to control over the use and distribution, as well as the management of firearms across private security companies, as well as the manner in which it profits from the insecurity and fear of the people in South Africa. The other challenge is the use of firearms in domestic violence and the poor implementation of existing laws to reduce the risk of intimate partner violence and other forms of injury in the home.

Various types of firearm management systems have been analysed in order to inform the development of an effective policy change in so far as the firearms environment is concerned, with particular attention given to the UNDP global norms and standards on firearms legislation. This review shows that the comprehensive policy and legislative frameworks that exist at the global and regional level are not fully incorporated into domestic law in South Africa. This pertains particularly to the control of the civilian possession and ownership of the type and number of firearms permitted. For example, the private possession of fully automatic and semiautomatic firearms is almost universally

prohibited, whereas in South Africa private collectors are allowed to possess automatic weapons such as machine guns.

The comprehensive review of national policy and legislation with regard to firearms control in South Africa indicates that there are some serious shortcomings in this regard. This includes fundamental errors in law as seen in the Preamble to the FCA as well as poor adherence to international and regional norms. Furthermore, a number of challenges relating to the implementation of the FCA were also identified, with particular emphasis on the use of firearms in domestic violence and firearm renewals. Many of the shortcomings identified are addressed through the recommendations section. In developing its policy position on firearms control in South Africa, the Committee considered the long term vision of a safe and secure country as articulated in the National Development Plan 2013. The report therefore considers two types of societies, one which is effectively being a gun-free South Africa; or a society in which firearm ownership is severely limited, and within a framework of restricted firearm ownership in South Africa. The report states that a gun-free society, being the most preferred ideal, is one that South Africa could adopt as a long term goal, whilst a restrictive control regime with limited access to firearms, should be adopted as building blocks in the short to medium term approach in reaching the ideal.

The review also examined the institutional capacity and organisational structures tasked with implementing firearms control in South Africa, more particularly the FCA. Major challenges were identified within the Central Firearm Registry, the key implementing agency. This report recognises that there is an urgent need to re-organise and capacitate the CFR to ensure that it is in a position to properly implement the FCA. The report also advocates for the enhancement of the relations between the CFR and the Firearms Appeal Board to ensure that the appeals are considered timeously with all the relevant information promptly submitted to the Firearms Appeal Board by the CFR.

Finally, for the recommendations expounded in this report to be effective there ought to be a change of approach regarding private protection by civilians. The FCA is at odds

with what ought to be its primary purpose. In order to achieve some of the comprehensive overhaul of the legislation, some provision must be made for buy-back programmes and funding thereof.

It must also be noted that the desired objectives enunciated in this report will not be realised if there is no concise strategy to tackle crime and violence. There also ought to be social cohesion, coordination within all spheres of government and civil society to tackle the scourge of crime and violence in the country. Therefore, the report recognises that a multi-pronged approach is required in dealing with the demand for firearms by the civilians, and to this end advocates for the holding of educational programmes and campaigns to educate and sensitise the public about the FCA and other means available to self-defence which exclude firearm use. These campaigns and educational programmes must be accompanied by on-going research on the issue of crime and violence to identify the root causes and find solutions.

SECTION ONE: INTRODUCTION AND RATIONALE

CHAPTER ONE

1. Background, Objective and Methodology

1.1. Background

Following a number of reports, crime statistics and court judgements, as well as the dictates of the National Development Plan (NDP) on the use of firearms in violent crime, and calls by a number of organisations for the Minister of Police to attend to violent crime; the Ministry of Police in conjunction with the Civilian Secretariat for Police (CSP) organised a seminar on the amendments to the Firearms Control Act No 60 of 2000 (FCA) on 05 June 2015 in Cape Town. The seminar received a number of presentations on the following:

- The proposed amendments to the FCA;
- Statistics on firearms ownership in South Africa;
- A report on the functioning and institutional capacity of the Central Firearms Registry (CFR) to implement the Act;
- An inspection in loco report by the Deputy Minister of Police on a visit to the CFR.

It was agreed that the proposed amendments (the Firearms Control Amendment Bill 2015) to the principal Act (namely the FCA), given the additional information made available at this seminar, might not add value to achieving the goal of the non-proliferation of firearms in South Africa. Furthermore, it might also not contribute to or strengthen the South African Police Services (SAPS) mandate of effective control over the distribution and use of firearms in the country.

From the deliberations at the seminar, it was clear that the Central Firearms Registry and other *entities* reporting to the Ministry such as the CSP, the Independent Police Investigative Directorate (IPID), and the Private Security Industry Regulating Authority

(PSIRA) did not have a common set of statistics to form a baseline to inform the proposed amendments to the Act.

The seminar deliberated on the reports and arrived at the conclusion that the CFR did not seem to have the capacity to implement the Act (in its current form) and that further work was required to review government's policy position on firearms control with a view to ensure that the proposed amendments are aligned to the strategic objectives of government as well as to the purpose and objectives of the principal Act.

The seminar further identified violent crime and the use of firearms as a major contributor to fear among most communities in South Africa. The uncontrolled proliferation of firearms and the use and misuse of firearms make many South Africans feel unsafe in their homes, on the streets and in other public amenities in the country The 2015 Victims of Crime Survey reports that 'South African households increasingly feel that the levels of violent and property crimes are increasing and this makes it unsafe to walk in parks or even allow their children to play freely in their neighbourhoods'. Analysis of the results shows that there is a similarity between 'victimisation levels and households' perception of crime', especially in relation to home robbery and housebreaking/burglary (Statistics South Africa, 2015).

In response, the Minister of Police appointed a Ministerial Committee, to review and develop a new policy framework aimed at guiding the legislative framework for firearms control in South Africa in support of creating a safe and secure environment. The Committee also constituted two task teams made up of members from the various entities reporting to the Minister namely: The Civilian Secretariat for Police; the Independent Police Investigative Directorate; the Private Security Regulating Authority; SAPS; and the Firearms Appeal Board.

1.2. Objective of the Committee

The objective of the committee (including the task teams) was to review the 2015 amendments to the Firearms Control Act within the current strategic, policy and legislative frameworks pertaining to safety and security in South Africa, with a view to advise the Minister and the Deputy Minister of Police on possible policy alternatives; including developing a clear policy position on the control and management of firearms, which will guide and inform any efforts to address the proposed amendments to the FCA, as well as any institutional support mechanisms in the implementation of the FCA or any other aspect of the Act.

The mandate of the Committee therefore was to:

- Review the policy and legislative framework pertaining to the control and management of firearms in South Africa
- Review and align the proposed amendments to the principal Act within a new policy framework
- Review the institutional mechanisms and capacity of the Central Firearms Registry and the Firearms Appeal Board to implement the principal Act in its current form as well as its proposed amendments
- Develop a report with recommendations to be tabled to the Minister for a decision.

1.3. Methodology

The scope of work of the committee was to review the policy and legislative frameworks for the control and management of firearms in the country, as well as the institutional mechanisms for the implementation of the FCA.

The primary methodology employed was a desktop approach which included reviewing and analysing the available secondary data and literature such as reports, research documents, annual reports, and other documentation relevant to the topic at hand. Several interviews were also conducted where recorded information was not readily available.

The Committee established two task teams responsible for two streams of work: the one stream focused on the policy and legislative frameworks; while the other concentrated only on the institutional mechanisms for implementation.

The two work streams reported to the main committee which had the powers to advise, recommend, and make decisions relating to the outputs of the two streams.

The work of the two task teams had limitations because it was focused only on the available data and literature. The limitations included: insufficient access to the relevant data; lack of sufficient information on the turn-around strategies of the CFR; and the roll out of the information management systems in the Registry.

It should be noted that the task team working on institutional mechanisms could have made a number of recommendations or arrived at different conclusions if the information was readily available, and/or in an instance that a full study was conducted on the functioning of the CFR and the Firearms Appeal Board.

1.4. Scope of the Report

This is a report of a Ministerial Committee established in terms of Section 132 of the Firearms Control Act No 60 of 2000 by the Hon. Nkosinathi Nhleko.

The work undertaken by the Committee and its task teams is part of a comprehensive and integrated approach to addressing the problem of the proliferation of firearms in South Africa, and the related gun violence and gun death and injury. In reviewing the broader strategic, policy and legislative environment of firearms control and management, the report locates itself within South Africa's primary strategic framework, namely the National Development Plan. The NDP proposes an integrated approach to safety and affirms personal safety as a human right. Its overarching vision is a country in which all feel and are safe; an environment which promotes mutual respect and dignity.

Historically, the firearms environment in South Africa was managed in terms of the Arms and Ammunition Act of 1969 (hereafter referred to as the old Act). The old Act was repealed in order to ensure more effective control of the distribution and use of firearms, and in line with the new democratic dispensation. Currently, the environment is managed and controlled in accordance with the Firearms Control Act which regulates all matters pertaining to the firearm, the user, as well as the use of the firearm.

The primary purpose of the FCA is to curb the proliferation of firearms in South Africa and to address firearm-related crime by removing illegal firearms from society and ensuring the effective control over legally owned firearms, including in the hands of government (Firearms Control Act, 2000).

This report provides a comprehensive review of the global and regional contextual framework for firearms control and management, and identifies the key strategic, policy and legislative imperatives to consider in developing an appropriate firearms control policy for South Africa. The primary focus of the research report is to examine the legislative framework of firearms control in South Africa, in particular a review of the Firearms Control Act within the contextual framework of global, regional and national policy and legislative principles and guidelines, making recommendations on how best to incorporate these principles into the firearms environment in South Africa.

The report gives the historical context of the firearm environment in South Africa, examines the state of the firearms environment as compared to other countries in the world, and identifies policy gaps that might require the attention of the Minister. The review of the legislative framework looks into the proposed amendments to the FCA and compares them to the policy objectives with a view to determine gaps.[1] The identified gaps are outlined in detail with recommendations on how best to strengthen the firearms control regime in South Africa including the implementation of outstanding clauses of the 2006 Amendment Act as well as the proposed 2015 amendments to the Act.

It also examines the institutional mechanisms and capacity of the key implementing agencies, namely the Central Firearms Registry and the Firearms Appeal Board, to implement the legislation in its current form, including future amendments.

The research conducted indicates that there are serious shortcomings in the control mechanisms as envisaged in the FCA. It is further important to note that while the old Act was repealed, there are firearm owners who are currently licensed in terms of this Act.

Lastly, the report records the observations of the team which assisted in developing recommendations to the Minister on the policy and legislative frameworks as well as the institutional capacity of the implementing agencies. The recommendations will be used to advise the Minister on the best possible solutions and a way-forward regarding the firearm environment and the proposed amendments to the principal Act.

CHAPTER TWO

1. Rationale

Firearm violence is a leading cause of death in South Africa. The statistics indicate that South Africa has one of the highest recorded homicide rates in the world at 33/100, 000 populations, with firearms being one of the leading instruments of homicide: the global average homicide rate is 6.2/100, 000 populations (SAPS, 2015; UNODC, 2014). Furthermore the data also shows that as with the murder rates over the last three years, there has been a steady increase year-on-year in firearm-related murders: in Gauteng, firearm homicides increased from 1,413 in 2012/13 to 1, 608 in 2014/15 (The Times, 2016). However, in the Cape Metropole there has been a dramatic increase in firearm homicides over the last five years, with gun deaths more than doubling, from 290 deaths in 2010 to 695 deaths in 2015—this from only one mortuary in the city, Salt River (The Times, 2016). Firearm-related death and injury exact an enormous price on our society and its economy: it is estimated that the total cost of firearm-related murders in 2009 (5, 513 total deaths) amounted to almost R26 billion in 2015 Rands (Matzopoulos et al, 2014).

The instrument used in homicide is an important consideration, as certain types of instruments, particularly firearms, significantly increase the risk of a victim of assault becoming a homicide victim. Firearms (mostly handguns) are often the preferred weapon of choice in violent crime. The most recent data shows that in almost all serious and violent crimes, such as murder, attempted murder, and aggravated robbery, in over 90 per cent of cases a handgun (pistol/revolver) is used to commit the crime (Wits School of Governance, 2015). A similar pattern is observed in crimes such as carjacking, and robbery at residential premises. A noticeable difference in these violent crime categories is the increased use of high calibre weapons in the commission of cash in transit robberies (Wits School of Governance, 2015). Furthermore, with regard to contraventions of the FCA, such as the unlawful pointing or discharging of a firearm, in over 90 per cent of cases, a handgun is used; and finally the numbers for the unlawful possession of firearms show that handguns remain the weapon of choice for the commission of crime: handguns make up between 60 to 70 per cent of the weapons illegally held (Wits School of Governance, 2015).

In the Wits School of Governance report on the *Analysis of the Firearms Control Act on Crime* (1999 to 2014), the rates for firearm *choice* crimes (i.e. murder, attempted, and robbery at residential premises) show a steady decline over the first 11 years after the introduction of the FCA, reducing by eight per cent by 2010/11. In firearm *dependent* crimes (i.e. car and truck hijacking, bank robbery, and pointing/discharging a firearm) the rates also decline over the same period, reducing overall by nine per cent in 2010/11. However, it is significant to note that the percentage of firearms used in firearm dependent crimes in relation to other means remained stable across the 14 years. It is also worth noting that in both types of firearm crime, the rates increase over the period 2011 through to 2014 (Wits School of Governance, 2015).

Globally handguns are used in almost 40 per cent of homicides and are a common tool used in assaults, threats, robberies and sexual offences (Small Arms Survey, 2004; Safety and Violence Initiative, 2015). Other instruments such as knives and knobkerries are less likely to result in a fatality compared to firearms (Allen and Buckner, 1997). There

is good evidence that an environment with fewer firearms is characterised by less violence and furthermore that strengthening national firearms legislation reduces the number of homicides caused by firearms (Abrahams et al, 2013; Matzopoulos et al, 2015). Examples include South Africa which has shown a reduction of almost 50 per cent from 34 gun deaths a day in 1998 to 18 gun deaths a day in 2009 (Matzopoulos et al, 2014); and since the introduction of stronger gun laws in 1996, Australia has not had any firearm-related massacres; furthermore, research is beginning to show that strong firearm legislation also reduces other kinds of violent crime such as attempted murder and assault (Taylor and Jing, 2015).

South Africa has a unique opportunity to put in place a firm foundation to build a safe society in which all people living in South Africa feel safe from crime and violence and live in safe and peaceful environments (National Development Plan, 2012).

1.1. The firearms environment in South Africa

In trying to understand the context in which firearm-related violence occurs, it is important to examine the factors that contribute to an environment in which the possession and use of firearms is seen as both legitimate and necessary; and one in which the ready availability of firearms makes them the weapon of choice in the commission of crime.

The report looks at a number of factors which contribute to this environment including the supply and demand factors for acquiring firearms as well as the loss and theft of firearms.

1.1.1. The Demand for Firearms

Historically, efforts to reduce the proliferation of firearms, has over emphasised addressing the supply side of the equation, namely controlling the weapon. In 2006 at the United Nations Review Conference on the Programme of Action to Combat the Illicit Trade in Small Arms and Light Weapons (UN PoA), there was recognition that in order to better understand the factors that drive small arms dynamics, strategies to address the demand side of the equation are essential. This is because effective small arms control

efforts depend not only on the co-operation of states and state agencies but also on the participation of non-state actors, both groups and individuals: and this requires not only an understanding of the roles and behaviour of such actors, but also of their competing motivations and means (Atwood et al, 2006).

Research conducted by the Small Arms Survey in 2006, of which South Africa was one of five country case studies (Brazil, Colombia, Papua New Guinea, and the Solomon Islands), observed that demand reduction must be treated as an essential component of small arms control in both theory and practice (Small Arms Survey, 2006).

Firearms play a role in South Africa's social, political, economic and cultural landscape. South Africa has the highest number of licensed firearms owners in the southern African region (reference). There is an extensive network of hunting, recreational shooting and sports shooting clubs and associations, with sports shooting being recognised as an official sport in certain high schools. There are shooting ranges in virtually every major town; and approximately 500 registered firearms dealers.

Apart from the firearm networks listed above, there is also a demand for firearms from other sectors of society and the economy. In particular, this demand is fueled by the high rate of crime and firearm-related violence. Many people refer to the high levels of violent crime as a reason for wanting a firearm for self-defence (Gould et al, 2003).

Some communities experience an increase in the level of firearm-related violence during taxi wars, tribal wars, farm killings, trade union rivalry, and drug and gangster related activities. People affected by this type of firearm-related violence will cite these issues as a reason for needing a firearm. The challenge that the implementers of the legislation will be confronted with is the ability to distinguish between a genuine need for a firearm and a need for a firearm to partake in the violent activities mentioned above. The other contentious issue will be, even if it can be proven that a person is personally affected by this type of violence, that the firearm owner is at risk of being targeted by criminal elements because of the mere possession of a firearm.

There is substantial research mainly in Europe and the USA which shows that the mere possession of a firearm can lead to increased rates of victimisation—both for the gun

owner and those living in the household (van Kesteren, 2014; Hemenway, 2010). There is a view that the display of a firearm can destabilize or immobilize the victim and thwart any attempt of resistance or fight back while maximizing the offender's chances of success. On the contrary, Bartol and Bartol argue that the presence of a weapon can sometimes induce people to become violent (the so called weapons effect) which in essence results in assaultive acts that would otherwise not have occurred. Stimuli such as anger, high emotions or frustration during domestic arguments or bar-room brawls result in impulsive violence which is aggravated by the immediate availability of lethal weapons like a gun (Robin, 1991).

Firearms also have strong symbolic power and this can manifest in different ways within different sections of the population in South Africa: for some owning a firearm is a marker of a particular form of masculine identity; for others it is the symbol of the AK-47 as a means by which independence was won; and for yet others the possession of firearms provides a measure of citizen autonomy (Gamba, 2000). Cock argues that South Africans have also sought firearms for reasons of status; and this helped to create a gangster phenomenon where firearms are seen as a confirmation of status and style (Cock, 1997). Furthermore, research shows that aspects of white South African culture legitimised firearm ownership, and firearms were therefore easily available for use as a personal safety measure, and that following the democratic transition, firearm ownership has been driven by the fear of crime (Kirn, 2013). This assertion is debatable taking into account the different socio economic dynamics within South African society. It should however be noted that the circumstances pre and post democracy are different when it comes to among others the high number of firearms in circulation, the lethality of modern firearms, and the easy accessibility of firearms, to name a few.

It must also be noted that illegal firearms are used to commit crime because it is difficult for police to link the user thereof to the crime committed (Gamba, 2000). Handguns (pistols and revolvers) are mostly used in violent crime and also feature high on the list of lost or stolen firearms, a pattern that has not altered significantly since the first base-line data was recorded in 2000 (Chetty, 2000; Wits School of Governance, 2015).

For example, in 2000, a handgun was used in 92 per cent of murders; and it remains at this level throughout the 14 years. A similar pattern emerges for the preference for handguns in the commission of crimes such as attempted murder (94 per cent) and aggravated robbery (96 per cent), including bank robbery at 90 per cent. Similar to the Chetty findings in 2000, the Wits School of Governance Report shows that the use of assault rifles such as the AK 47 are primarily used in bank robberies or cash-in transit heists, but even then forms less than one per cent of these crimes. Perhaps one of the most significant findings of this Report is the reduction in the proportion of firearm homicides relative to the overall homicide rate over the last 14 years. In 200/01, at the start of the introduction of the FCA, 50 per cent of all homicides in South Africa were firearm-related; in 2013/14, firearm-related homicides have now been reduced to 35 per cent of all homicides (Wits School of Governance, 2015). It is worth noting that in 2011/12, the lowest firearm homicide rates were recorded at 30 per cent of all homicides.

1.1.2. Illegal pool of firearms

Pro-firearm lobbyists believe that gun crime is primarily committed with illegal firearms and that the only solution is to rid the country of illegal weapons through a comprehensive crime control approach rather than a gun control approach (Firearms Summit, 2015). This is based on a number of assumptions: that crime control and gun control are mutually exclusive; that the weapon used to commit the crime has no relevance to the levels and impact of crime; that crime is committed with illegal firearms and not legal firearms; and that controlling firearms will not reduce crime (Gun Free South Africa Briefing 5, 2015).

A common belief is that firearm-related crime is only committed with illegal weapons and that the only solution therefore is to mop up illegal guns through amnesties, buy-backs, police search and seizure as well as intelligence operations. However, unless the avenues through which firearms leak into the illegal pool of weapons is closed, valuable resources will have to be spent on costly, time consuming and sometimes dangerous mop up operations (GFSA Briefing 3, 2015). Unlike drugs, which are illegal from the moment they are manufactured, firearms are manufactured legally; so every illegal weapon started out being legal before it was leaked into the illegal pool (GFSA Briefing 3, 2015).

There are three ways that legal firearms are diverted into the illicit market in South Africa:

- Legal firearms are smuggled from neighbouring countries, though research indicates that this is low, and that guns are more likely to be smuggled *to* neighbouring countries (Mc Kenzie, 1999);
- Fraud, corruption and poor implementation of the FCA means that people who are not 'fit and proper' are issued with firearm certificates, licences, permits or authorisations (GFSA Briefing 3, 2015);
- Loss and theft of firearms from civilians and state institutions. Data shows that firearm loss and theft is the most significant source of illegal firearms in South Africa (GFSA Briefing 3, 2015).

1.1.3. Lost and stolen firearms

Firearm loss usually involves negligence on the part of the owner e.g. leaving his/her gun in the car, under the bed or in a cupboard from where it can be stolen (Altbeker et al, 2000).[2]

Section 120 (8) of the Firearms Control Act notes that, "*A person is guilty of an offence if he or she-*

> *(b) loses a firearm, or is otherwise dispossessed of a firearm owing to that person's failure to-*
>
> *(i) lock the firearm away in a prescribed safe, strong-room or device…;*
>
> *(ii) take reasonable steps to prevent the loss or theft of the firearm while the firearm was on his or her person or under his or her direct control; or*
>
> *(iii) keep the keys to such safe, strong-room or device in safe custody*."

The penalty for being found guilty of contravening Section 120 (8) of the Act is a maximum of five years' imprisonment; as well as the risk that the person may never be allowed to own a firearm again. Section 9(2)(f) states that an individual applying for a firearm

competency certificate (the first step to applying for a firearm licence) may only be issued with such if the person "has *not been convicted of any offence under…this Act…and sentenced to a period of imprisonment without the option of a fine*".

The observation is that firearm owners who lose their guns through negligence are less likely to acknowledge this fact for fear of being prosecuted for negligence.[3] If negligence has not been proven, a person who has lost a firearm is still eligible to be issued with another firearm licence. Failure to follow-up on cases of negligent loss of a firearm can be attributed to the lack of capacity within the South African Police Service.

If the evidence shows that the illegal pool of firearms is made up of firearms that were previously lawfully licensed, legislation should be strengthened to ensure a zero tolerance to the loss of firearms.

Data from various sources on the number of guns that are lost or stolen each year is not consistent. This is because different processes are used to collect and monitor data: statistics cited in the SAPS Annual Reports are based on Supply Chain Management record keeping while data from the CFR is dependent on paper reports being recorded electronically. What this means is that SAPS data is likely to be more accurate, at least until all paper reports have been recorded onto the CFR system.

CIRCULATIONS: Firearms reported found, lost or stolen 2000-2014 as at October 2014

Owner	**Found but not reported**	**Reported Lost Not found**	**Reported Lost Found**	**Reported Stolen Not found**	**Reported Stolen Found**	**Total**
Dealer	767	108	19	1 572	433	2 899
Firearms Manufacturer	1	-	-	2	1	4
Gunsmith	2	-	-	-	3	5

Individual	19 143	4 298	1 208	105 091	25 936	155 676
Institution	381	108	12	1 639	221	2 361
Physical government department excluding SAPS	4 991	2 091	273	13 311	2 358	23 024
Security Services	1 657	517	154	13 300	2 985	18 613
TOTAL	**26 942**	**7 122**	**1 666**	**134 915**	**31 937**	**202 582**

Source: Wits School of Governance Report, 2015.

Over a 14-year period a total of 202 582 firearms were lost or stolen, with almost 27, 0000 found but not reported. The majority of weapons were stolen (95 per cent), with only five per cent reported lost. By far the most significant loss and theft occurs in the owner category of individual civilians: a total of 136, 533 firearms were reported lost and/or stolen over this 14-year period, with just over 19, 000 not reported, totalling a loss of 155 676 firearms. This can be broken down into an overall loss and theft of approximately 11 000 firearms annually, which means that individual firearm owners lose about 30 firearms a day. From this, it can be inferred that legally obtained firearms contribute to violent crimes in the event that they are allegedly lost or stolen. Other significant losses occur in government departments other than the SAPS, with loss and theft amounting to just over 23 000 firearms; and in the private security industry posting a total loss and theft of 18 613 weapons.

1.1.4. The Private Security Industry

South Africa's large and heavily armed private security industry (PSI) originated in the mid-1980s when the apartheid regime attempted to depoliticise its counter-insurgency

operations by deploying private companies instead of the police or armed forces (Blecher, 1996). Since the transition to democracy in 1994, the private security industry experienced phenomenal growth for commercial rather than political reasons: it is not only one of the largest globally, but also far out numbers state law enforcement officials (Florquin, 2011). Yet, even though the PSI is so large—it does not have the same level of oversight as that which governs SAPS. One often over-looked factor is that private security personnel are civilians, and hence this applies crucially in terms of how the Firearms Control Act applies to the use of firearms by PSI personnel. This growth has led to an increase in the proliferation of firearms, effectively giving rise to the privatization of personal security needs. Given the significant numbers of loss and theft of firearms from the security services as discussed above, this requires greater attention in the policy and legislative reform process.

1.1.5. The use of firearms in Intimate Partner Violence (IPV)

While women make up just 10 per cent of firearm-related homicide victims in South Africa, firearms play a significant role in violence against women; they are used to kill, rape, threaten and intimidate (Matzopoulos et al, 2015). A summary of research into IPV in South Africa shows the following:

- Women are most vulnerable to being shot by an intimate partner in the home (Shaw, 2013): more women in South Africa (57%) are murdered by their intimate partner than by strangers (Abrahams et al, 2013);
- A legal firearm is used in 75 per cent of cases in which a woman is shot and killed; and in 60 per cent of cases this shooting occurs in her home (Abrahams et al, 2010);
- 32 per cent (1,147) of women killed in South Africa in 1999 died from gunshot injuries; this was reduced to 17 per cent (462) in 2009 (Abrahams et al, 2013);
- Legal firearm ownership significantly increases the risk of intimate femicide–suicide (the killing of a female by her intimate partner followed by the suicide of the perpetrator within a week of the homicide), with two-thirds (66 per cent) of intimate femicide–suicide perpetrators in 1999 owning a legal gun (Mathews et al, 2008);

- The high percentage of firearms used in intimate-femicide-suicide is attributed to the lethality of guns and the ease with which they can be used, with international research showing that firearms are up to 12 times more likely to result in death than non-firearm assaults in IPV (Shaw, 2013);
- In South Africa, 83 per cent of victims that were shot were killed and of the women victims of firearm-related deaths, 68 per cent were killed with a single shot, most often to the head and face (Mathews et al, 2008);
- A significant proportion of intimate partner-suicide perpetrators are employed in the police, army or private security industry, reflecting that easier access to firearms is a major contributing factor in these crimes (Mathews et al, 2008);
- Firearms are often used in rape —41 per cent of rapes reported by adult women to the police in Gauteng Province in 2003 involved a firearm (Jewkes et al, 2009);
- Research in the USA shows that the four main types of threatening gun-related behaviour used by men in IPV is threatening to shoot their partner; cleaning, holding, or loading a gun during an argument; threatening to shoot a person or pet the partner cared about; and discharging a gun during an argument with their partner (Rothman et al, 2005).

SECTION TWO: GLOBAL AND REGIONAL CONTEXTUAL FRAMEWORK FOR FIREARMS CONTROL IN SOUTH AFRICA

The report examines the strategic, policy and legislatives frameworks at the global, continental, and regional level in order to understand the context of firearms control in South Africa within a broader framework and to inform the development of appropriate policy that will guide the legislative review process of firearms control and management in the country.

CHAPTER THREE

2. Global imperatives impacting on firearms control in South Africa

3.1. Strategic and Policy framework: International Instruments

South Africa is party to a number of international instruments, which advocate measures to deal with crime and violence through strategies focused on prevention and law enforcement. Broadly speaking, these approaches are organised into two categories:

- Law enforcement (focused on domestic and transnational crime) and state security strategies (focused on organised crime and terrorism); and
- Prevention strategies (focused on crime prevention and reducing risk and opportunities for crime).

Internationally, there has been growing acknowledgement of the benefits of focusing on crime and violence prevention and recognition of the impact of safety on development and poverty alleviation strategies. This is reflected in the National Development Plan 2030, as well as the Medium Term Expenditure Framework 2014-2019 (MTSF) and other policy developments in South Africa.

Firearms control is a key component in both law enforcement and prevention approaches and features in a number of international and regional instruments.

3.1.1. The Law Enforcement and Preservation of State Security Agenda

The Impact of the illicit trade of firearms on global security, organised crime and terrorism.

Efforts to address the proliferation and illicit trading of firearms across States are the subject of a number of international instruments, which acknowledge the threat of firearms proliferation to global security.

The United Nations (UN) *Convention against Transnational Organized Crime* addresses ‘combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition’ (UN Resolution, 2000). The Convention acknowledges the impact of domestic illicit activity on transnational organised crime, and requires states to

take steps to: reduce opportunities; limit the enabling factors for illicit trafficking and use of firearms; and to impose appropriate sanctions.

The Convention is supplemented by the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (*known as the *Firearms Protocol)*, and the only binding Protocol addressing issues of small arms control and ratified by South Africa in 2004. The Protocol seeks to promote, facilitate and strengthen cooperation among states parties (UN Resolution, 2001). The Protocol emphasises the importance of prevention and advocates measures to improve control including effective record-keeping and marking of firearms (Article 7).

Internal Controls - use of firearms by state functionaries.

The focus of state control and use of firearms is addressed to some extent in the abovementioned instruments and is supported by a growing body of soft law, which focuses on the use of firearms by law enforcement officials. At an international (United Nations), Continental (African Commission) and regional level (SADC), initiatives to address policing and law enforcement standards have included a focus on the use of firearms by law enforcement officials as a crucial measure in ensuring a human rights compliant approach to policing. These guidelines advocate a series of legislative, regulatory, administrative, and operational measures on the use of firearms by state functionaries in a range of contexts (e.g. arrest, detention, incarceration and public order policing).[4]

3.1.2. Crime Prevention

The commitment to crime prevention is reflected in a number of United Nations instruments which acknowledge the importance of crime prevention in: preventing crime and victimization; promoting community safety; contributing to sustainable development; and reaping the long term benefits of prevention, including reducing the costs of the formal criminal justice system and social and economic costs of crime (UN Guidelines for the prevention of crime, 2002; ECOSOC, 2002).[5]

These include the *ECOSOC Resolution 2005/22 Action to promote effective crime prevention,* which advocates a balanced approach between crime prevention and criminal justice responses, and calls on all states parties to:

- Develop and implement effective crime prevention strategies at national, regional and local levels;
- Support a more integrated approach to building capacity in crime prevention and criminal justice; and
- Promote crime prevention cooperation as a contribution to strengthening the rule of law.

The UN *Guidelines for the Prevention of Crime* also promotes a wide range of approaches to prevention including social crime prevention, locally based crime prevention strategies, situational crime prevention, and reintegration of offenders to reduce recidivism (UN, 2002). Addressing risk and reducing opportunities for crime, are key components of these approaches.

The UN *Standards and Norms on Crime Prevention* (Norms) address the issue of gun violence directly (UN, 2002):

> *Provision 39: Firearm regulation for purposes of crime prevention and public health and safety,* recognises the importance of firearm regulation in addressing violence against women and children; promoting justice for victims of crime; addressing the problem of children and youth as both victims and perpetrators of crime; and strengthening the rule of law. It promotes a regulatory approach to the use of civilian firearms focusing on: regulation and storage of firearms; penalties and sanctions for offences involving abuse of the unlawful possession of firearms; amnesty programmes; licensing systems; record-keeping including the marking of firearms; and collaboration between member states to curb illegal trading of firearms.

The Norms further encourage states to embark on research and evaluation on:

- The nature and extent of violence through crime surveys on violence against women;
- Data collection and information through gender-disaggregated needs assessments (to assist in decision and policymaking in crime prevention and criminal justice) on the different forms of violence against women, its causes and consequences;
- The relationship between victim and offender;
- The use of firearms, drugs and alcohol, particularly in cases of violence against women in situations of domestic violence; and
- The relationship between victimisation or exposure to violence and subsequent violence (UN, 2002).

Provision 46: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, advocates strategies and measures to deal with the elimination of violence against women by requiring states to ensure suspects appearing before court in respect of violent crimes are restricted in their possession and use of firearms and other regulated weapons (UN, 2002).

Section 49: Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, address the issue of 'use of force' and firearms by law enforcement officials and advocate a range of preventative and remedial measures (UN, 2002).

Measures to reduce illicit manufacturing and trafficking of firearms and ammunition encouraging bilateral, regional and international cooperation are also addressed in the Norms, which reiterate the importance of national legislation and procedures regarding possession, confiscation, seizure, forfeiture, disposal of firearms, and effective record-keeping (UN Firearms Protocol, 2002).

The approaches advocated above recognise the need for an intersectoral approach to prevention, which acknowledges the interdependency and interrelatedness of interventions that respond to crime and violence, and which address risk factors that contribute to it.[6]

South Africa is signatory to a range of instruments, which reinforce the State's obligations to take steps to address violence against vulnerable groups including: women, children, older persons and persons with disabilities, refugees and displaced persons (UN CEDAW, 2004; Beijing Declaration, 1995).

International, continental and regional instruments provide valuable authority and support to initiatives to address violence. The status of international law is clearly articulated in the Constitution of the Republic of South Africa. Courts, tribunals and forums must consider international law and may consider foreign law when interpreting provisions of the Bill of Rights (section 39(1)(b) and (c)). Similarly, courts must consider international law interpreting legislation (section 233) (Constitution RSA, 1996).

3.1.3. The Geneva Declaration on Armed Violence and Development

The Geneva Declaration, adopted in 2006, and endorsed by over 100 states, is a diplomatic initiative aimed at addressing the interrelations between armed violence and development; it is the strongest political statement to date that addresses the impact of armed violence within a development context. Given that the majority of armed violence deaths occur in countries that are not affected by armed conflict, the international community recognises that armed violence is a major obstacle to achieving the global development goals.

The Declaration was initiated by the government of Switzerland with several African states including Kenya and Mali playing a significant role in its development; more than 20 African states have endorsed the Declaration including Angola, Ghana, Mozambique and South Africa (Geneva Declaration, 2006).

Under the Declaration, States have undertaken to:

> "stem the proliferation, illegal trafficking, and misuse of small arms and light weapons and ammunition, and lead to effective weapons reduction, post-conflict disarmament, demobilization and reintegration, and small arms control, including control of arms transfers and of illicit brokering" (Geneva Declaration, 2006).

3.1.4. Sustainable Development Goals

In September 2015 the UN adopted 17 Sustainable Development Goals (SDGs) as part of the 2030 Agenda for Sustainable Development (UN, 2015). The goals seek to address poverty and inequality through a range of interventions. It is significant that the goals acknowledge the relationship between poverty, inequality and lack of development with issues of safety and access to justice. Whilst all the goals address areas of risk to crime and violence, of particular relevance, to this report, are Goals 11 and 16, which have a direct focus on crime and violence.

Goal 11: *Make cities and human settlements inclusive, safe, resilient and sustainable.*

The targets included speak directly to the creation of safe public spaces (transport systems and public spaces) and include:

11.7

‘By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities.’

Goal 16: *Promote peaceful inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*

The targets address the issue of reduction in violence and deaths, and the strengthening of national institutions to prevent violence and combat crime and include:

16.1

Significantly reduce all forms of violence and related death rates everywhere

16.3

Promote the rule of law at the national and international levels and ensure equal access to justice for all

16.4

By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets, and combat all forms of organized crime

16.6

Develop effective, accountable and transparent institutions at all levels

16.a

Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in

particular in developing countries, to prevent violence and combat terrorism and crime.

The SDGs add impetus to strategies that seek to prevent violence, combat crime, address risk factors, and strengthen the State's ability to build effective institutions. This is consistent with the approach of the NDP, which articulates the role of the state in building citizens' capabilities to reach their full potential, contribute to society, and live meaningful lives; and, the importance of a capable, developmental, professional and responsive state.

South Africa has committed to this new global development agenda, and will be required to report on progress in achieving these goals through regular and systematic review mechanisms (IOL, 2015). South Africa's own developmental agenda as reflected in both the NDP and the MTSF 2014-2019 is aligned with these global goals and now faces the critical task of ensuring effective implementation, monitoring and reporting on its progress. In addition, new policy developments reflected in the White Paper on Safety and Security and the Draft Integrated Urban Development Framework reflect an alignment with the SDG's approach in focusing on integrated solutions and recognising the particular challenges faced by urban environments.

3.2. Legislative Framework: Global Norms and Standards for Firearms Control

As a member of the United Nations, South Africa has over the years ratified a number of conventions, protocols, and agreements dealing with the control and management of firearms. In compliance with these international instruments, several countries have undertaken significant reforms to regulate firearm ownership through the process of strengthening national laws and policies, such as Australia, Brazil, Belgium, Cambodia, Turkey and the United Kingdom.

In addition to the trend by governments to strengthen outdated, weak or incomplete national firearm laws, several multilateral processes have contributed to the strengthening of national arms control regimes: these include the UN *Firearms Protocol* (2001), making

it the first legally binding international agreement on small arms control; and the UN *Programme of Action (UN PoA) to Prevent, Combat and Eradicate the Illicit trade in Small Arms and Light weapons in All its Aspects,* the most significant multilateral process on small arms control.

The *UN PoA* urges States to:

> *"ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of small arms and light weapons within their jurisdiction. These records should be organised and maintained in such a way to ensure that accurate information can be promptly retrieved and collated by competent national authorities" (UN, 2001).*

Finally the *International Tracing Instrument* (ITI), adopted at the UN General Assembly in 2005, is an important addition to global efforts to curb the illicit small arms trade as the international community prioritises working together to prevent the movement of once legally held firearms into the illicit market (Persi Paoli, 2009).

The marking of firearms is seen as a key component in the international community's efforts to prevent (or at least reduce the risk of) diversion, and furthermore to improve tracing and weapon stockpile security. The latter is particularly relevant for stability and collaboration at the regional level (GFSA Briefing 6, 2015). Marking is a fundamental element of any tracing system as it allows for the unique identification of weapons and the establishment of associated records. Marking all firearms with unique identification information increases the chances of successfully tracing illegally held weapons to the point of their diversion.

The ITI urges member States to: mark and keep records; adopt the practice of marking firearms; and consider the marking of ammunition (as Brazil has done recently) (ITI, 2005).

These international instruments came about as a result of the fact that the majority of small arms and light weapons are in the hands of private individuals. It is estimated that

civilians hold nearly 75 per cent (650 million) of the global stockpile of 875 million firearms (Small Arms Survey, 2007). This includes farmers, collectors, hunters, sports shooters, private security guards, armed insurgents, and criminal gangs. In South Africa, almost 70 per cent of licensed firearms are held by civilians (excluding private security guards) (Wits School of Governance, 2015). There is also a growing awareness that the availability of small arms (both legal and illegal) among civilians is a contributor to rising levels of violence, as well as being a major factor in the ongoing theft and loss of firearms, which in turn are used in the commission of violent crime. Further, the majority of perpetrators and victims of violence are also civilians (UNDP, 2008).

Developing and implementing national firearm laws, which regulate civilian and state possession and use, can go some way towards preventing and reducing the misuse, loss and theft of guns in the hands of ordinary citizens and also prevent the leakage of legal firearms into the illicit market. Underpinning most national approaches to regulating the possession of firearms by civilians is an attempt to balance the prevention of social harm (crime, inter-personal violence and suicide) with legitimate civilian use (Small Arms Survey, 2011).

Furthermore, the evidence in support of the link between strong firearms control and lives saved continues to mount (Sutton et al, 2010; Aguirre et al, 2009). While South Africa's experience confirms global studies showing that stricter firearm legislation saves lives; recent research in Australia has examined the impact on firearm-related crime in general — which is important, as fatalities constitute only a small portion of gun violence. The study concludes that Australia's firearms law reforms led to significant reductions in armed robbery and attempted murder (Taylor and Li, 2015). That firearms legislation would reduce gun-related crime makes sense, since the availability of a firearm is often the factor determining whether or not a criminal — especially a young person — decides to proceed with a particular crime or not (Peters, 2015; Gould, 2015).

Although there are variations in approaches to strengthening national firearm laws, most countries' laws are based on a combination of the following standards developed by US criminologist F. Zimring in 1991 as a measure for effective gun control (Zimring, 1991):

- prohibit/restrict certain *types* of weapons and ammunition;
- prohibit/restrict certain *uses* of weapons and ammunition;
- prohibit/restrict certain *users* of weapons.

The Zimring standard is a key feature of the United Nations Development Programme (UNDP) *How to Guide* on firearms legislation. These are discussed in detail below:

3.2.1. Prohibited and restricted firearms

Most countries prohibit the civilian possession of firearms whose inherent risk outweighs their utility. This includes fully automatic, semi-automatic and selective-fire assault or military rifles (such as the AK-47 and South African manufactured R1, R4 and R5 rifles). In a 2004 survey of 115 countries, 79 of the 81 respondents banned the civilian possession of military weapons, with Kenya and Yemen not specifically reporting a ban on these weapons (Cukier and Sidel, 2006). Countries that prohibit the civilian possession of automatic guns include Australia, China, Colombia, India, Indonesia, Latvia and Peru Cukier and Sidel, 2006). Those banning civilian possession of semi-automatics include Argentina, Canada, the Czech Republic, France and New Zealand.[7]

Access to handguns is frequently banned or severely restricted, given their concealable nature and prevalence in criminal violence. In South Africa handguns (pistols and revolvers) are most often used in violent crime such as murder, attempted murder, robbery with aggravating circumstances and car hijacking (Wits School of Governance, 2015). Countries such as Botswana and the UK have banned civilian handgun ownership, with others such as Australia and Canada allowing handguns only for professional security guards and target sports shooters (UN, 1998).

3.2.2. Regulating the use of firearms

The regulation on the use of firearms includes policies which prescribe the terms and minimum competencies for the legitimate use of guns and can include provisions for safe storage, restrictions and/or prohibitions of the possession of firearms in specified locations (such as the carrying of guns in public), as well as defining 'legitimate use' (UNDP, 2008).

3.2.3. Who can own a firearm?

States impose restrictions on who can lawfully possess firearms, primarily by establishing licensing systems and risk assessment criteria for determining eligibility (Small Arms Survey, 2011). The criteria can involve: age restrictions; mental (and sometimes physical) health requirements; evidence of drug dependency or alcohol abuse; criminal records, including protection orders or a history of family violence; and general public interest considerations. Many states explicitly look to evaluate whether an applicant is a 'fit and proper' person who can be trusted with the responsibility of owning a firearm.

3.2.4. Legitimate use of firearms

Definitions of 'legitimate use' or 'genuine reason' vary greatly from country to country. However, in most instances, a person is required to have a 'genuine reason' for acquiring a firearm, and in most countries the national legislation specifies what constitutes a good reason (Small Arms Survey, 2011).

Although state's laws differ in how they interpret and apply the principal of *regulating the use of firearms* by civilians, there are important similarities in what constitutes valid or lawful justifications. These generally fall into the following categories: hunting; sports shooting and competition; employment or profession (such as farming, pest control, etc.); performance, or art (including theatre or film); collection or exhibition such as in a museum; and protection of person or property (Small Arms Survey, 2011).

3.2.5. Self –Defence

Many countries that permit the possession of firearms for self-defence purposes restrict the type of weapon that can be held under such a licence, including some level of proof that such a weapon is required for this purpose. South Africa is a case in point (see Section 13 of the FCA) as is Singapore, where a person has to show proof that there is a serious threat to her or his life and that there is no other way of overcoming the threat. In many of these countries this does not mean the use of that firearm in self-defence will always be justified by law (Small Arms Survey, 2011).

For many South Africans having a firearm in the home is about protecting themselves, their families and their possessions against a stranger intruder, but research in South Africa shows that you are four times more likely to have your gun used against you than to be able to use it successfully in self-defence (Altbeker, 1999; Altbeker et al, 2000).

This is supported by international evidence which shows that owners of handguns (pistols/revolvers) are significantly more often victims of contact crimes (murder, assaults, robbery); and households that own firearms run a higher risk of seeing their members being criminally victimised — either by household members or by outsiders who are not put off by the presence of a gun (van Kesteren, 2014).

3.2.6. Owner licensing processes

The owner licensing process includes putting in place administrative systems to keep track of who owns what weapon(s) for which purpose, with practices differing across countries and jurisdictions. A number of different terms are also used, known as licence terminology: a permit to acquire; a licence or permit to possess; a parallel permit; and a permit to carry (GFSA Briefing 1, 2015).

Many countries have adopted a two-tier licensing system, whereby a person is required to obtain a permit to acquire a firearm, and then has to apply for a licence to possess or keep the firearm; this includes Croatia, Finland, Kazakhstan, Singapore, and Switzerland. Canada applies the *licence the person; register the gun* approach, as in South Africa

(Small Arms Survey, 2011). In other countries such as Belize and the UK a single licence or permit is required for the possession of a firearm, with no requirements to obtain a separate permit to acquire. In several countries (as in South Africa), the licensing authority may refuse to issue an authorisation but is required to give a reason which must be 'grounded' or for any 'good and sufficient reason' (Small Arms Survey, 2011).

3.2.7. Registration

Firearms are regulated through a process of registration, which entails keeping accurate records on sales and possession of firearms as well as ammunition. The process varies considerably from country to country – with some countries not having a formal centralised register – instead recording information obtained through the owner licensing process. Several states such as Australia, Brazil, Canada, Estonia, Switzerland and notably South Africa require comprehensive records of all information relating to firearms (GFSA Briefing 1, 2015).

3.2.8. Renewal of licence to possess a firearm

The system of firearm licence renewal is an integral part of the licensing and registration system requiring that **genuine need** for the **continued ownership** of the firearm must be proven, making provision for the legal gun owner to reaffirm his/her responsibility for the firearm registered in his/her name (GFSA Briefing 1, 2015).

Imposing a limited duration on a gun licence provides for the following:

- Regular confirmation that the licensed owner is still qualified to have a firearm;
- An incentive for complying with licensing – this places a responsibility on the licence holder to maintain 'fit and proper behaviour' since there is a risk the licence may be revoked.

CHAPTER FOUR

4. Regional imperatives impacting on firearms control in South Africa

The African Charter on Human and Peoples' Rights (African Charter) was developed in accordance with the Organization of African Unity Charter which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples" (OAU, 1982).

Adopted in June 1981 in Banjul, the African Charter entered into force in October 1986. Article 4 and 6 of the African Charter are relevant to this discussion.

> *Article 4:* …. [E]very human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.
>
> *Article 6:* Every individual shall have the right to liberty and to the security of his person. No one may be deprived …… by law.

4.1. Strategic and Policy Framework: Regional Instruments

Since 2000, a number of continental and regional agreements pertaining to the control of small arms and light weapons (SALW) have been adopted, reflecting a growing commitment by African States to address the issue of firearms control.

These agreements are:
the *Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons* (Bamako Declaration, 2000); *the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community* (SADC Firearms Protocol, 2001); *Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa* (Nairobi Protocol, 2004); and *ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials* (ECOWAS Convention, 2006).

4.1.1. *The Bamako Declaration*

The Bamako Declaration was adopted on 1 December 2000 with South Africa as a signatory. It was agreed that it is vital to address the problem of the illicit proliferation, circulation, and trafficking of SALW in a comprehensive, integrated, sustainable and efficient manner.

The problem needed to be addressed through, amongst others, the promotion of comprehensive solutions to the problem of illicit circulation and trafficking of small arms and light weapons that include both control and reduction, as well as supply and demand, the enhancement of the capacity of member States to identify, seize and destroy illicit weapons and to put in place measures to control the circulation, possession, transfer and use of SALW.

The member States were also expected to adopt national programmes for the responsible management of licit arms; the voluntary surrender of illicit arms and light weapons; the identification and destruction by competent national authorities and where necessary, of surplus, absolute and seized stock in possession of the state, with appropriate international financial support.

4.1.2. *Nairobi Protocol*

The *Nairobi Protocol,* which came into force in May 2006, arose from a concern with the proliferation of small arms and light weapons in the region, recognising the exacerbating factors of 'internal political strife, terrorist activities and extreme poverty', and the need to put in place a strategy, structures and processes 'to promote democracy, the observance of human rights, the rule of law and good governance, as well as economic recovery and growth'. [8]

The Nairobi Protocol is one of the most specific regional agreements on the regulation of civilian firearm possession. The objectives of this Protocol are to –

- Prevent, combat and eradicate the illicit manufacturing of, and trafficking in firearms;

- Control possession, accumulation and use of small arms and light weapons in the sub-region;
- Prohibit unrestricted civilian possession of small arms; with a total prohibition on the use of all light weapons, including automatic and semi-automatic rifles and machine guns;
- Ensure the effective control of all firearms owned by private security companies through a registration process and regular auditing;
- Promote and facilitate information sharing and cooperation between governments in the sub-region, and inter-governmental structures, and organizations and civil society, in all matters relating to the illicit trafficking;
- Promote cooperation at the sub-regional level as well as in international fora; and
- Encourage accountability, law enforcement and efficient control and management of SALW held by States Parties and civilians.

The Protocol requires States to develop national legislative measures to address: illegal trafficking, manufacturing and possession of firearms; limitations on unrestricted civilian firearm ownership; regulation, control and monitoring of civilian and state possession; marking and tracing and record keeping; public community education and awareness programmes; corruption; interstate and interagency cooperation.

At the regional level, the *SADC Firearms Protocol* and the *Nairobi Protocol* (both of which are legally binding) are the most advanced and specific on the regulation of firearms in the hands of civilians (SADC Firearms Protocol, 2001).

4.2. Legislative Framework: Regional Norms and Standards

The international community has recognised that the **failure to control** and reduce the number of firearms in the hands of civilians in post-conflict settings, **and** to **restrict civilian access to firearms** in non-conflict settings, can **lead to high levels of crime** and increase the likelihood of a relapse into armed violence. It can also significantly

prolong cycles of poverty and jeopardise sustainable development. Controlling and reducing firearms in the hands of civilians is therefore imperative for consolidating peace and stability at both a national and regional level (Buchanan and Widmer, 2006).

In recognition that the cross-border movement of firearms is directly related to how well states regulate their internal stockpiles, regional security agreements increasingly include provisions calling for careful regulation of firearms in the hands of civilians. For example, Securicor Botswana, reports that South Africa is implicated in almost every firearm-related case, possibly reflecting the readier availability of firearms in South Africa than in Botswana (McKenzie, 1999).

4.2.1. SADC Firearms Protocol

The *SADC Firearms Protocol* requires States to take a range of steps to address the illicit use and trade of firearms as well as improve controls over the civilian possession of firearms. As a member of SADC, South Africa is a party to the *SADC Firearms Protocol*, under which it is obligated to adopt provisions within its domestic legislation to strengthen controls over civilian possession, including a prohibition on unrestricted possession, registration of all civilian owned weapons, the introduction of competency testing as part of the licensing process, and a restriction on the number of firearms an individual may own.

The State parties to the Protocol "undertake to incorporate the following elements in their national laws as a matter of priority":

- Incorporate in domestic law prohibitions on unrestricted possession of small arms by civilians, including the total prohibition of the possession and use of light weapons by civilians;
- Coordinate procedures for the import, export and transit of firearm shipments;
- Ensure regulation and centralised registration of all civilian owned firearms in their territories;
- Ensure measures for the proper control over the manufacturing of, possession and use of firearms, ammunition and other related materials are in place;

- Promote legal uniformity and minimum standards in respect of the manufacture, control, possession, import, export and transfer of firearms, ammunition and other related materials;
- Provide for the seizure, confiscation, and forfeiture to the state of all firearms, ammunition and other related materials manufactured or conveyed in transit without or in contravention of licenses, permits, or written authority;
- Ensure the effective control of firearms including the storage and usage thereof, competency testing of prospective firearm owners and restriction on owner's rights to relinquish control, use, and possession of firearms, ammunition and other related materials;
- Prohibit the pawning and pledging of firearms, ammunition and other related materials;
- Prohibit the misrepresentation or withholding of any information given with a view to obtain any licence or permit;
- Improve operational capacity of the police and other agencies including training and development of effective systems;
- Undertake coordinated reviews of national procedures and criteria for issuing and withdrawing of firearm licences, establishing and maintaining a national electronic database of licensed firearms, firearms owners and commercial firearms;
- Address measures for effective control and use of state owned firearms;
- Establish systems for marking and effective record-keeping of firearms.

SECTION THREE: NATIONAL CONTEXTUAL FRAMEWORK FOR FIREARMS CONTROL IN SOUTH AFRICA

CHAPTER FIVE

5. National imperatives impacting on firearms control in South Africa

5.1. Strategic and Policy Framework: National Instruments

5.1.1. Constitution of RSA

The Constitution of the Republic of South Africa (1996) is the supreme law of the country and binds all other laws and conduct (Constitution RSA, 1996). The Bill of Rights (Chapter 2) applies to all law, natural and juristic persons, and binds the legislature, executive, the judiciary and all organs of state. The rights contained in the Bill of Rights may be limited only in terms of Section 36, or as provided elsewhere in the Bill itself Constitution RSA, 1996).

Key to the discussion on gun violence are the provisions on:

- The right to life (s11);
- The right of the child to be protected from maltreatment, abuse or degradation (s28 (1)(d); and
- Freedom and security of the person from all forms of violence by either public or private sources (s12 (1) (c)).

These provisions form the basis for justifications on the limitations of state and non-state parties to firearm use and ownership. However, in the exercise of its prerogative to limit firearm ownership or use, the state must comply with provisions of the Constitution and the Bill of Rights. Parties can therefore invoke the following provisions to challenge legislation or state action: the right to justice administrative action (s33), and the right to property——in the case of confiscation or removal of property (s25).

It is therefore critical that efforts to limit the ownership and use of firearms comply with requirements of the Constitution. Legislation, which limits a 'right', must comply with requirements of Section 36 of the Constitution. Further, administrative processes that

advocate confiscation, removal or limitation on ownership must be sound, clearly stipulated in law, and adhere to principles of just administrative action. Similarly, the implementation of these legal provisions must be legally compliant both administratively and procedurally to withstand scrutiny. Inevitably, the development and implementation of legislation will require a balancing of rights and protections of different interest groups.

Recent cases have drawn attention to this issue and warrant further analysis given emerging jurisprudence (Justice Alliance, 2012). For example, the high profile Pistorius case (aside from the specifics of the appeal) raises important questions regarding the current legal framework and the determination of the standard for the 'justifiable' use of force and firearms for personal protection/self-defence. Similarly, cases threatening legal action demonstrate the impact of administrative inefficiencies in the Central Firearms Registry, including corruption and fraudulent practices, in undermining legislative efforts to strengthen firearms control.

The common law and statutory law, which are supported by subordinate regulations and administrative protocols, provide a framework for the use of firearms in the case of both civilians and law enforcement officials.

5.1.2. National Development Plan 2030

The NDP was approved by Cabinet in September 2012 and is the Government of RSA's strategic framework. The NDP argues for a multidimensional approach to building a safe society that recognises interrelated factors including the underlying root causes of crime; lack of social cohesion; opportunity and motive for crime (availability of targets, vulnerable groups or **availability of weapons**), situational factors (spatial and environmental), and targeted interventions:

> *"An effective safety strategy will involve taking a systems view of all these factors and pinpointing the interventions that will greatly improve safety, with the best return on human, technical and financial resources. It will also be crucial to identify which agencies and institutions across government departments, civil society and*

the private sector are best placed to lead and contribute to these interventions" (NDP 394, 2012).

Further, the NDP acknowledges the need to address safety as a core component to addressing deprivation and affirms personal safety as a human right (NDP 460, 2012):

"Personal safety is a human right. It is a necessary condition for human development, improved quality of life and enhanced productivity. When communities do not feel safe and live in fear, the country's economic development and the people's well-being are affected, hindering their ability to achieve their potential. This is acute in the case of women, who are more vulnerable and less likely to achieve their potential in unsafe environments".

Safety is acknowledged in the NDP in a number of references linked to economic growth and transformation: "*A safe and secure country encourages economic growth and transformation by providing an environment conducive to employment creation, improved education and health outcomes, and strengthened social cohesion"* (NDP 386, 2012), and recognition of community safety as a core human capability alongside education, health and social protection (NDP 44, 2012).

The role of firearms is relevant to the context of crime and violence but are also noted in *Chapter 10: Promoting Health*, which acknowledges the role of **access to firearms as a contributing factor** to *Goal 5: Reduce injury, accidents and violence by 50% from 2010 levels* (NDP 34, 2012). This reflects an acknowledgement of **gun violence prevention strategies as a core component of strategies** that seek to promote health and curtail mortality. Attention needs to be placed on the importance of safety as a social determinant of health and the role of effective firearms control in promoting health outcomes and the preservation of life.

5.1.3. Medium Term Strategic Framework (2014 – 2019)

The Medium Term Strategic Framework (MTSF) is government 's strategic plan for the current electoral term. The MTSF provides a framework for implementation of the National Development Plan and a mechanism for Parliament and cabinet to monitor government's progress and impact in achieving these commitments. Government departments are required to align their five-year strategic plans and annual performance plans to achieve the outcomes identified in both the MTSF and the NDP.

The MTSF contains 14 priorities. Of particular relevance to firearms control are provisions contained in:

> ***Outcome 3: All people in South Africa are and feel safe***
>
> *'…. people living in South Africa feel safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the street and children play safely outside. As a result of substantially reduced levels of serious and violent crime, businesses are thriving and local and foreign investors are establishing new businesses. This in turn leads to the creation of new job opportunities and the reduction of poverty and inequality. The Criminal Justice System is well-resourced, professional and is staffed by highly skilled officials who value their work, serve the community, safeguard lives and property without discrimination, protect communities and citizens against violent crime and respect people's rights to equality and justice. South Africa's borders are effectively safe guarded, secured and well-managed.'*

5.1.4. Integrated Social Crime Prevention Strategy

The Integrated Social Crime Prevention Strategy (the Strategy) finalised in 2012 by the Department of Social Development, seeks to facilitate integrated responses across the social cluster, including the justice, security and peace cluster. The Strategy acknowledges the **role of firearms in contributing to feelings of 'unsafety'**, **the impact of gun violence, and the accessibility of guns in communities.** The *'Prevention, reduction and law enforcement with regard to gun violence'* is identified as one of the 13 themes of the Strategy (ISCPS, 2014).

The relationship between firearms and violence is explored in a range of contexts, including: the particular vulnerability of young men as perpetrators and victims; the relationship between guns and gender based violence; and children's exposure to gun violence (to name a few). Strategies and research which draw these linkages, provide impetus to arguments to strengthen prevention strategies and highlight the role of other departments (for example those responsible for the provision of services to victims who have already succumbed to violence, or through prevention measures aimed at reducing risk).

5.1.5. Draft Policies

Draft White Paper on Safety and Security

The Draft White Paper on Safety and Security emanates from a review of the 1998 White Paper on Safety and Security which proposed two distinct policy interventions — one addressing an integrated approach to crime prevention; and the other focusing on the internal policing environment.

The White Paper seeks to provide an overarching framework for safety, crime and violence prevention, and facilitate the provision of well-resourced implementation and coordination systems across all sectors. The approach advocated in the White Paper focuses on: addressing risk factors in the individual, family, community, and structural domains; building resilience; and putting in place protective measures to reduce risk at primary, secondary and tertiary level. The White Paper acknowledges the impact of gun violence and advocates strategies across all sectors to address issues of accessibility of firearms and the prevention of gun violence through targeted interventions.

Draft White Paper on Police

The Draft White Paper on Police was also published for public comment in 2015. Public comment received on the draft White Paper proposed a range of issues which needed to be addressed including: the need for the White Paper to reflect and elaborate more on the recommendations contained in the NDP (in particular the National Police Board); to

include a clearer problem statement and responding to proposals on how to address the key challenges identified in the police itself including policing strategies; to address the issue of gun control and gun violence more directly; as well as the issue of policing responses to gender based violence (Portfolio Committee on Police, 2015).

5.2. Legislative Framework: National legislation pertaining to Firearms Control

This section briefly examines the key legislation that is relevant to and has a bearing on the effective control and management of firearms in South Africa. The review also looked at two additional aspects of the use and distribution of firearms pertinent to firearms control in South Africa, namely, the control over the use of firearms by the private security industry; and the use of firearms in domestic violence which includes discussion on the challenges of enforcing the provisions of both the FCA and the Domestic Violence Act in this regard.

5.2.1. The Firearms Control Act

The Firearms Control Act No 60 of 2000 provides for the regulation of firearm ownership and use through the establishment of a comprehensive system of firearm control and management. The primary purpose of the Act is to prevent the proliferation of illegal firearms, and to prevent crime involving the use of firearms; as well as to enable the State to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms (Firearms Control Act, 2000). The Act is discussed in detail in the remainder of this report.

5.2.2. The South African Police Services Act

The South African Police Services Act No 68 of 1995 (SAPS Act), as amended, provides for the establishment, organisation, regulation, and control of the South African Police Service (SAPS), and related matters. The Act must be read in conjunction with the obligations and responsibilities assigned to police management and police officials in the FCA.

Section 13 (3) (b) of the SAPS Act permits police officials to use only the minimum force reasonable to the circumstance, in performance of their official duties. Greater detail on the operational requirements for the use of force and firearms, are provided for in SAPS standing orders and national instructions. In addition, the Regulations of Gatherings Act deals with the use of firearms in the context of public order police operations.

The police (including all law enforcement personnel: correctional service officials, traffic officials, municipal law enforcement and municipal police) are subject to international standards on the use of force and firearms, which are articulated in a range of international, continental and regional instruments, including soft law.[9] These provide a clear normative framework for the regulation of firearms by state personnel and address issues of training requirements, operational use of firearms, and remedial action in cases of abuse.

5.2.3. The Correctional Services Act

Section 32 of the Correctional Services Act No 111 of 1998 permits the minimum use of force by correctional services officials. Section 34 of the Correctional Services Act stipulates the circumstances in which correctional services officials may use firearms.

5.2.4. The Criminal Procedure Act

The Criminal Procedure Act No 51 of 1977 (as amended) provides for the use of force and firearms by police officials when affecting an arrest. The section permits the use of deadly force [which includes the use of a firearm (s49 (1) (c)].

Of contention are circumstances in which deadly force may be used. Section 49(2) provides for the use of deadly force in circumstances where the suspect resists arrest, and/or attempts to flee.

5.2.5. The Regulation of Gatherings Act

The Regulation of Gatherings Act No 205 of 1993 provides for the permitted use of force by police officials during public gatherings (section 9 (2)). Section 8 (4) prohibits the

possession of a firearm, an imitation firearm or object that could be mistaken for a firearm, by a participant at a public gathering.

Section 9(2)(d) permits a police official to use a firearm in the following circumstances:

> *"If any person who participates in a gathering or demonstration or any person who hinders, obstructs or interferes with persons who participate in a gathering or demonstration-*
>
> *(i) kills or seriously injures, or attempts to kill or seriously injure, or shows a manifest intention of killing or seriously injuring, any person; or*
>
> *(ii) destroys or does serious damage to, or attempts to destroy or to do serious damage to, or shows a manifest intention of destroying or doing serious damage to, any immovable property or movable property considered to be valuable, such a member of the Police of or above the rank of warrant officer may order the members of the Police under his command to take the necessary steps to prevent the action contemplated in subparagraphs (i) and (ii) and may for that purpose, if he finds other methods to be ineffective or inappropriate, order the use of force, including the use of firearms and other weapons".*

5.2.6. The Dangerous Weapons Act

The Dangerous Weapons Act No 15 of 2013 provides for prohibitions and sanctions on the possession of dangerous weapons. A dangerous weapon is defined as:

> *"any object, other than a firearm, capable of causing death or inflicting serious bodily harm, if it were used for an unlawful purpose".*

In addition, this Act amends provisions of the Regulation of Gatherings Act 1993 and section 120 of the FCA.

5.2.7. The Private Security Industry Regulation Act

The Private Security Industry Regulation Act No. 56 of 2001 provides for the regulation of the private security industry, related matters, and the establishment of a regulatory authority. The Act deals with firearms in the following sections:

- Section 34(1)(d)(ii)(dd) on powers of inspectors in respect of reviewing possession and authorisations of firearms;
- Section 35(1) (m) on the power of the Minister of Police to make regulations regarding the issuing, possession and use of firearms and other weapons by security service providers;
- Section 23(1)(d) and Section 24 deal with prohibitions on registration of a person as a security service provider in cases where a person has been found guilty of an offence listed in the Schedule (this includes a person under investigation or who is in the process of being criminally prosecuted for such an offence, or who has been convicted of an offence more than 10 years prior to submission of the application).

Offences listed in the schedule include: *'" Any offence in terms of legislation pertaining to the control over the possession and use of firearms and ammunition'* and *'culpable homicide involving the use of a firearm or any form of intentional violence".*

This Act is in the process of being amended through the Private Security Industry Regulation Amendment Bill, which has been approved by Parliament and is pending promulgation into law. The amendment seeks to improve accountability over the industry and strengthens provisions related to the control and management of firearms.

Aspects of the Bill which deal with firearms include:

- *Section 10(b)(v):* the requirement for the Council to report to the Minister of Police quarterly in respect of:

"(v) the number of firearms registered to, lost by, stolen from, and transferred by security businesses or destroyed in terms of the Firearms Control Act, 2000 (Act No. 60 of 2000);

(vi) instances in which firearms were discharged by a security 10 officer in the performance of his or her duties causing death or injury".

- *Section 33* which amends section 36 of the principal Act in respect of information to be provided to the Firearm Authority. The amendment proposed includes the insertion of:

"(3) The Authority must inform the Registrar as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000), at the time of any new registration, suspension, sale, transfer, liquidation, merger, lapsing or termination of the registration or ownership of a security service provider or any other material change or reason that would necessitate the licensing, relicensing or disposal of firearms in the possession of such security service provider;

(4) The Registrar mentioned in subsection (3) must, at the written request of the director, submit a list of all firearms registered to a particular security service provider, to the Authority within 30 days of the request being made;

(5) The Authority must report to Parliament in its annual report information provided by the Authority to the Registrar in terms of subsection (3").

The Amendment Bill acknowledges the growth of the private security industry and raises concern with respect to the accessibility of firearms and impact on national security:

"'The Private Security Industry has grown tremendously over the past years since the establishment of the Private Security Industry Regulatory

Authority (the Authority). Since the promulgation of the Private Security Industry Regulation Act No. 56 of 2001 (the Act), government and civil society have been concerned with the regulation of the industry, particularly with regard to effective regulation, given the challenges of the growth and funding of the Authority, which is wholly derived from the contributions of the private security industry. In addition, given the increasingly complex national security challenges post the 11 September 2001 events in the United States of America, as well as the changing nature of the private security industry globally and developments that could impact on the security of states, concerns have been raised about the potential or capability of elements operating in the private security industry to access sensitive information or threaten national security through access to firearms and information technology. As a developmental state, South Africa, in looking at its national security from a long-term perspective, needs a legislative framework that will also address such a potential or capability in a pro-active manner by, amongst others, limiting the extent of foreign participation. The control by South African citizens of security companies is therefore necessary to this end, in addition to advancing the empowerment of South African citizens in the private security industry".

Challenges in the implementation of the FCA in relation to the Private Security Industry

It needs to be acknowledged that the growth of the private security industry in South Africa is in a large part derived from civilians' fear and insecurity, and the profits derived there from raises a number of ethical issues which needs further consideration. Another issue to consider is whether and to what extent the existence and growth of private security companies (PSCs) have led to an increase in the proliferation of firearms and ammunition, and consequently firearm-related death and injury in South Africa (Jaynes, 2012).

Although the Montreux Document provides some guidance regarding the management of PSCs, the national laws of many countries do not provide sufficient prescriptions regarding the storage and management of PSCs arms and ammunition holdings in order to prevent loss and theft. This is a noticeable gap in global standards, especially with regard to ammunition controls, with very few countries' national legislation establishing clear guidelines on the storage and management of ammunition. However, a common requirement is that 'PSC personnel do not take service weapons home' (Jaynes, 2012).

Similarly, the use of firearms by PSC personnel is also regulated and monitored unevenly across different countries and jurisdictions. In France and China, for example, PSCs use of firearms are limited to 'cash-in-transit' operations, whereas in most countries, the kind of weapon that can be used by PSCs is strictly prescribed. For example, the majority of countries prohibit the use of fully automatic or military-style weapons by PSC personnel, restricting use to handguns.

The Central Firearms Registry of the SAPS is required to keep a record of every firearm licensed. According to the CFR, as of 17 September 2003, 1 643 private security companies, out of a total of 3 252, were registered as possessing 58 981 firearms (CFR, 2003). This was the first time data had been made available by the CFR on the number of firearms in the hands of private security companies, and therefore it has not been possible to identify historical trends with accuracy. Research undertaken in 2011 found that PSI companies would prefer to work with unarmed guards as it is widely acknowledged that the use of weapons (guns) brings not only significant risk but also increased business costs, such as higher insurance costs (Jaynes, 2012).

Ironically, the FCA, which intended to address the non-proliferation of firearms, may have contributed to an increase in the number of firearms owned by private security companies. This is based on the fact that the Act forbids private security officers from using their own firearms on duty, which was not the case previously.

In order to conform to the new legislation, most private security companies have acquired a substantial number of firearms. The number of approved applications by CFR for the

period 1999 to 20 October 2014 was approximately 61 253 while refused applications were around 6 000 (Wits School of Governance, 2015). However, it would appear that the amendments to the FCA have not been adequately incorporated into PSIRA legislation and regulations. Furthermore, there is also a general lack of knowledge about the legal framework within which PSCs function, in particular with regard to their powers of arrest, stop and search, and use of force (Jaynes, 2012).

The Private Security Industry Regulating Authority (PSIRA) expressed concern that the number of firearms registered to private security companies by the CFR may not be an accurate reflection of the true number. PSIRA provided a variety of reasons for doubting the veracity of the CFR data which included the following:

- The practice by some security companies of exchanging or trading their firearm licences;
- Uncertainty caused by the rate at which security companies emerge and go out of business;
- The possibility that registered security companies have not licensed all their firearms.

Another important issue raised by the PSIRA was the location of firearms owned by security companies whose registration had been withdrawn by PSIRA. There is no mechanism for the automatic cancellation of firearm licences held by security companies once they are deregistered by PSIRA. In some instances, security company registration and subsequent voluntary deregistration is often a ploy and a device by unscrupulous people to obtain firearms (Interviews with private security personnel). PSIRA provides the CFR with a list of all de-registered companies on a monthly basis and the CFR is expected to send personnel to physically check the firearms and recover them where necessary.

The arsenal of firearms in the possession of some of these security companies ranges from hand guns, machine guns, assault rifles and a variety of other firearms. The type and calibre of firearms used by security companies is sometimes similar to that used by the SAPS and the South African National Defence Force (SANDF).

Security companies like civilians are also responsible for accounting for the loss and theft of firearms. The majority of losses of firearms within the security industry occur in companies responsible for safeguarding assets in transit. The reasons for these losses are recorded thus:

- Security officers transporting assets are attacked more frequently than other security officers;
- Many of the attacks are successful;
- Attackers are likely to be armed;
- The security officers are likely to be armed; and
- Security officers' firearms are generally stolen during successful attacks.

5.2.8. The Domestic Violence Act

South Africa's Domestic Violence Act No 116 of 1998 (DVA) recognises that domestic violence includes intimate partner violence, as well as child and elder abuse; it also includes different forms of violence, such as physical and sexual, economic, emotional, verbal and psychological. The SAPS does not have a domestic violence crime category. The extent and nature of domestic violence has to be determined from a range of other crimes, including assault, pointing a firearm, intimidation, rape, or attempted murder (Vetten, 2014). The absence of this information further complicates the knowledge of how many women experience domestic violence and IPV since this is significantly under-reported.

Challenges in the implementation of the DVA with regard to firearm misuse

A number of challenges have been identified with regards to the implementation of the DVA. The DVA allows local magistrates courts to grant interim and permanent protection orders. These are issued against the person engaging in acts of violence, called the "respondent". Protection orders can assist in protecting women from abuse or sexual assault by their intimate male partner in that the order requires the respondent to stop the abusive behaviour. They also allow the police to intervene if the abuse continues.

The court can also order the police to remove a firearm or any other dangerous weapon from the respondent, whether the respondent has a licence to possess a gun or simply has access to it. The law says the magistrate can remove a firearm in the following circumstances:

- The respondent has threatened or expressed the intention to kill or injure himself or herself, or any other person in the domestic relationship, whether or not this would be with the gun or the dangerous weapon involved [s 9 (a)];
- Possession of the firearm is not in the interests of the victim or any other person in the domestic relationship because of the respondent's:
    - State of mind or mental condition;
    - Inclination to violence;
    - Use of or dependence on intoxicating liquor or drugs [s 9 (b)].

In the 2008 *Guidelines for the Implementation of the Domestic Violence Act for Magistrates* were issued to magistrates ("the DVA guidelines"). These too contain guidance around how the courts should deal with firearms in the context of domestic violence. Part A of the guidelines requires magistrates to establish whether any objects, weapons or instruments have been used to commit abuse; and whether the respondent is in possession of a firearm. Where a firearm has been removed Part C of the guidelines requires magistrates to instruct the clerk of the court to forward a certified copy of proceedings to the SAPS National Commissioner to enable the latter to act in terms of the FCA.

Despite this policy and legislative framework, service providers report in addition to delays in securing final protection orders; local courts hardly ever order the police to remove guns (Vetten, 2006; Vetten, 2014). A study of applications for protection orders in 2000/01 found that a very small proportion required the removal of guns from perpetrators (Vetten, 2006). The reasons for this include that there is low reporting of gun use by IPV victims as well as poor responses from criminal justice structures responsible for removing firearms. This is the case even in instances where the removal of a firearm is a requirement once a case of IPV involving a firearm has been reported (Shaw, 2013).

The low removal rate of firearms following the reporting of IPV or domestic violence is of particular concern as international research shows that displaying a firearm in a domestic altercation is a predictor of actual use, with many victims of femicide reporting having been threatened with a firearm before being shot (Geneva Declaration Secretariat, 2011). It was also found that a gun in the home is much more likely to be used to threaten and injure family members than to protect the home from intruders (Hemenway, 2011).

Further a record of partner violence, such as in the issuing of a protection order or records of abuse in the DVA register, does not necessarily translate into safety for women:

- One third of women killed in IPV had a protection order against their male partner: 338 women (33%) killed by their intimate male partners in 2009 were in possession of a protection order at the time (Abrahams et al, 2013);
- Half of police officers with domestic violence cases against them are allowed to keep their firearms: only 70 firearms were seized from SAPS members in response to the 137 cases of domestic violence reported at 301 stations in the period between 1 October 2013 and 30 September 2014; of concern is that 80 of these were criminal cases (CSP, 2014).

Challenges in the implementation of the Firearms Control Act in domestic violence cases

In the 11 years between 1 July 2004 and March 2015, only 8,605 individuals were declared unfit to possess a firearm under section 102 of the Firearms Control Act (Phiyega, 2015). This figure amounts to 0.5 per cent of all licensed civilian gun owners; an exceptionally low figure considering that South Africa has one of the highest levels of IPV in the world, which often involves firearms (Shaw, 2013).

The most recent female and child homicide study shows that the number of women killed by their intimate partner has dropped from four to three women a day between 1999 and 2009 largely due to the decline in the number of women shot and killed compared to deaths by other means, including stab and blunt force injuries (Abrahams et al, 2013). Figures from this study show that while 405 women were shot and killed by their intimate

partner in 1999, 226 fewer women were killed in 2009. The researchers attribute this decrease in gun deaths to the implementation of the FCA, stating that, “this study has shown the effectiveness of the Firearm(s) Control Act in the reduction of crime and violence overall in our country” (Abrahams, 2012).

CHAPTER SIX

6. South African Government’s Policy Position on Firearms Control

6.1. Historical Context

Firearm ownership began with the arrival of Jan Van Riebeeck and other European settlers in the Cape in 1652. Similar to other colonial settler societies, the availability and use of firearms enabled the settlers to dispossess and control the indigenous people of South Africa (Kirsten, 2008). Johann Bax introduced the first firearms-related legislation in 1677, regulating the unlawful supply of firearms, gun powder and lead to Hottentots; and Simon van der Stel introduced the first safe keeping legislation in 1688 (Welch, 1999).

For most of the nineteenth century, the white settlers and the indigenous people of South Africa were engaged in the struggle for land: “first in the eastern Cape between the Xhosa and the British; then in Natal between the Zulus and the Dutch and the British; and then in the interior” (Callinicos, 1980). The Vereeniging Treaty of 1902 (Clause 12) preserved the rights of Boer males to own and keep their private firearms (Welch, 1999). The denial of firearm ownership to the indigenous people of South Africa was repeated throughout the country’s history.

The end of the second South African war resulted in the establishment of the Union of South Africa (1910) in which the Boer republics and the British colonial territories became united under one government. From that day forward, any serious challenge to the Union was always repulsed by state-sanctioned violence.

Soon after they were proclaimed as provinces, firearm laws were introduced to Natal, the Orange Free State, the Transvaal, and the Cape Province soon after they were proclaimed as provinces. The laws in three of the provinces, namely, Natal, Orange Free State, and the Transvaal had greater restrictions on the possession of firearms by persons of colour than in the Cape Province. In the Free State, residents had to apply to their resident magistrate to purchase rifles and ammunition: this provision was needed to prevent the establishment of a militia in the Boer Republics. After 27 years of the founding of the Union of South Africa, the Arms and Ammunition Act of 1937 was promulgated. During that time any white person older than 14 years could be issued with a licence to possess a firearm. Non-Whites were required to apply and get consent of the Minister of Justice (Welch, 1999).

The system of apartheid following the National Party electoral victory in 1948 was ruthlessly maintained by the security forces and their extensive arsenal until the early 1990s (Gould et al, 2003). Soon after becoming a Republic, the Arms and Ammunition Act No 75 of 1969 was promulgated and operationalised in 1972: it regulated civilian firearm ownership during the apartheid era; and ownership was restricted to whites only until the mid-1980s. A 1983 amendment made special provision for certain categories of black South Africans, such as police officers, to apply for personal firearm licences, particularly as they were increasingly targets of anti-apartheid forces.

After the 1976 Soweto uprising many white people felt threatened, resulting in an increase in the number of firearms sold and licensed. Some civilians were helped by the government of the day to easily obtain firearms and firearm licences (Cawthra, 1986). Further, there are no accurate records of weapons supplied to the TBVC States (Transkei, Bophuthatswana, Venda, and Ciskei); it is also not known if the weapons that were returned to the State during the political transition match those that were delivered to the TBVC States. During this period, South Africa was faced with many challenges, in particular the abundance of firearms that were scattered all over the country. This could partly be apportioned to the bloody conflict that preceded the peace talks with different groupings arming themselves, including the use of a ‘third force’. Prior to 1994, the main

source of illicit arms was external to South Africa, and the arms entering the country were primarily through the means of weapons smuggling. Following the 1994 democratic elections, special status licences were introduced for collectors, hunters and sports-shooters (Welch, 1999 as cited in Pretorius).

At this time, the administration of the Act was transferred from the Justice Department to the South African Police Services (Welch, 1999 as cited in Pretorius).

In 1994, the majority of the 3.5 million licensed firearms were in the hands of white South Africans, with 1500 new applications for firearms being submitted daily. Firearm applications peaked in the lead up to the first democratic elections in April 1994: 236 033 new licences were issued that year (Chetty, 2000). CFR data shows that up until 1998, the number of handgun licences issued surpassed that of shotgun licences by more than one million: this demonstrates that the demand for guns as a means of self-defence was greater than the demand for sporting and hunting weapons (Gould and Lamb, 2003).

In 1996, government adopted the National Crime Prevention Strategy (NCPS) which identified firearm-related crimes as one of several priority crimes. The NCPS proposed a comprehensive strategy for firearms control which included establishing a policy committee to review national legislation; and forging regional links to combat illegal weapons trafficking (e.g. Operation Rachel with Mozambique). In 1997 the Minister for Safety and Security appointed the *Committee for the Investigation into a New Policy for the Control of Legal Firearms in South Africa* as well as the *Committee of Inquiry into the Central Firearms Registry* to investigate the role and function of the CFR (Kirsten, 2008).

Both reports submitted to the Minister identified gaps and weaknesses in the then Arms and Ammunition Act (1969) and the existing operational system within CFR. Recommendations included the need for a comprehensive approach to address the misuse of firearms; improved systems to track illegal firearms trafficking; better

accounting systems; and stricter controls over civilian gun ownership. A key recommendation of the Policy Committee was unambiguous in its intent:

> "*to cut down on the number of firearms in the country and to protect South African citizens from the crime associated with both illegal and legal firearms*" (Department of Safety and Security, 2000).

Following a comprehensive review of South Africa's firearms control regime, a new law was passed by a majority in parliament in October 2000, and is known as the Firearms Control Act No 60 of 2000.

An important component of the policy process that informed the firearm legislation was the collection of baseline data on firearm use and distribution. The baseline data played a central role in shaping key aspects of the new law such as limitations on the number of firearms owned; limiting the use of a handgun for self-defence to one; introducing a two-tier licensing and registration system; and licence renewals (Chetty, 2000). Further baseline data that assisted in the formulation of the law was the lack of compliance by gun owners to the relatively lax requirements of the Arms and Ammunition Act which included: CFR records are 70 per cent inaccurate, primarily because firearm owners failed to inform the CFR or the office of Home Affairs about their change of address (Institute for Security Studies, 1999); and, in 16 per cent of cases involving firearms, inaccuracies resulted because gun owners did not notify the CFR of the loss, theft or sale of a firearm (Tshwete, 1999).

6.2. Policy Ideal: Towards a gun-free South Africa

The South African government's policy position on firearms control is aligned with the broader national strategic framework as articulated in the National Development Plan: a society in which all people living in South Africa feel safe from crime and violence and live in safe and peaceful environments (NDP, 2012).

In terms of the NDP's Vision 2030, the people living in South Africa are expected to feel safe at home, at school and at work, and they should enjoy a community life free of fear.

It is further envisaged that the police service should be well-resourced and professional, staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights to equality and justice.

These broad policy objectives can only be realised through adopting a clear policy on small arms control which seeks to strengthen South Africa's national firearms control regime and to reduce gun deaths. This approach to developing policy on firearms control is in line with the approach envisaged in the international and regional instruments referred to earlier in this report. The international and regional benchmarking conducted also confirms this policy approach.

Given numerous factors such as the context of high levels of violent crime, including firearm-related violence; an entrenched firearms culture in some communities; the strategic and policy frameworks operating in South Africa; and the examples of good practice regarding firearms control at the global and regional levels, government's view is that the attainment of a gun-free society should be an ideal which we strive to achieve. However, in the short-term, measures must be put in place to ensure that there is a more effective control and management system of firearms in South Africa, in line with a policy position that severely limits firearm ownership and use.

Moving towards a gun-free society will present a number of challenges including the economic cost of compensation as well as ensuring well capacitated implementing agencies.

As a policy option, a gun-free society, that is a society in which all people feel and are safe, has more benefits and far outweighs one in which a culture and acceptance of gun ownership and use is commonplace. A gun-free society dictates that a society is free from guns, whether legal or illegal.

What follows is a discussion on a gun-free society, its elements and benefits, and what is considered as an ideal option in the long term.

6.2.1. The Inalienable Right to life

The first important benefit of a gun-free society is that the inalienable right to life is guaranteed. After all, every human being has the inherent right to life, which must be protected by law (Constitution RSA, 1996). In this case, therefore, where there is a total absence of firearms in the hands of civilians (including the misuse of such firearms), the right to life would be protected. The constant threat posed by the proliferation of firearms (legal or illegal), negatively impacts upon this right. As the state has a fundamental role and responsibility to protect the rights of its citizens, one way of achieving this is to create an enabling environment for a gun-free society.

There is no recognised right on the part of civilians to possess or bear arms under international human rights law; as noted by the UN Special Rapporteur on Human Rights and Small Arms, Barbara Frey, "[T]here is no independent or supervening right in international human rights law of self-defence that would require States to provide civilians with access to small arms; nor does the principle of self-defence diminish the State's responsibility to use due diligence to keep weapons out of the hands of those most likely to misuse them" (UN Special Rapporteur, 2006). The Special Rapporteur also noted that States should be required to "enforce a minimum licensing standard designed to prevent small arms from being used by private actors to violate human rights" (Ibid, para 42).

Other rights, which are of significant importance in this debate, include the right to liberty and the pursuit of happiness along with the peace of mind of the entire citizenry. These rights are of profound importance in so far as the debate on the possession and use of firearms is concerned. Living in a gun-free society is preferable to living in one that is filled with gun violence.

6.2.2. Good Quality of Life and Social Stability

The second benefit of a gun-free society is the assurance of a good quality of life and social stability. It is inconceivable that any government would not strive towards ensuring that its citizens enjoy a good quality of life and social stability. There are many ways of

striving to achieve this public good, one of which is the total eradication of firearms in the society. However, this is not the only way for achieving a good quality of live and social stability. Social ills such as inequality, unemployment and poverty should also be comprehensively addressed as part of the solution.

The NDP for example recognises that:

> *"safety and security are directly related to socioeconomic development and equality: a safe and secure country encourages economic growth and transformation by providing an environment conducive to employment creation, improved education and health outcomes and strengthened social cohesion" (NDP p.386, 2012).*

This recognition of the link between inequality and violence is further supported by a global study on homicide which suggests that there is an association "between crime, development and income distribution", and that countries with high levels of income inequality are "afflicted with homicide rates almost four times higher than more equal societies" (UNODC, 2012).

Through the total eradication of firearms, deaths resulting from gun violence in South Africa would be significantly minimised. In the case of S v Mbatha, S v Prinsloo 1996 2 SA 464 474, Langa J quoting from the Human Science Research Council document, *'Recent Crime Trends'*, noted that the intolerably high levels of gun violence, has a 'profound negative effect' on the quality of life and social stability. Quality of life and social stability cannot flourish in a society that tolerates gun violence including the acceptance of firearm possession and use as a cultural norm.

Researchers, Alba and Messner, have questioned the quality of life in the kind of society where routine social order depends upon the massive armament of the citizenry. They argue that "in a society where many are armed, others will be afraid to assert their rights in the ordinary encounters with strangers — to honk their horn when their car cuts us off, for example — out of fear of being confronted with a gun" (Alba and Messner, 1995).

Another important point raised by these researchers is the psychological effect on a community's residents of the knowledge that many guns are in its homes, on its streets, and even in its schools. They argue that this could indicate that fear is the dominant emotion inspired by the pervasiveness of guns and gun crime. The question of whether it is worth it for a society to be subjected to this psychological spell, with firearms everywhere, casts serious doubt on the need for a society to be armed.

Whilst the negative effects of the acceptance of high levels of firearm ownership and consequently high levels of gun violence in South Africa has always characterised this society, the need of a corrective measure would lie solely in building a gun-free society. As noted, South Africa is not unique in this regard: in the case of the United States, there is a nurturing of firearm ownership wherein guns have attained a symbol of strength and manliness (Burstein, 1995).

6.2.3. The Eradication and Minimising of Crime

Another benefit of a gun-free society is the eradication (at the most) or the significant reduction (at the least) of crime. At the heart of a gun-free society lies the achievement of low levels of crime in the society, in particular violent crime. Violent crime is fueled by the availability of firearms and the means to commit crime. Moody and Marvell show that 'guns make crime easier to commit'. This is because, '[a]rmed criminals are more easily able to secure victim cooperation… [and]… guns…can increase the number of criminals and encourage current criminals to me more active (Moody and Marvell, 2005). The significant reduction of crime, therefore, becomes an interesting benefit of a gun-free society. Several studies of European nations demonstrate that where firearm availability is greater, the firearm homicide rate was higher, and particularly in the case of suicide (Lester, 1992).

In a USA study on firearms and violence in America, two connected observations were made, namely: one, that where the level of firearm ownership in the general population is high, guns frequently substitute for other weapons in the commission of crime; and two, that where firearms are frequently used in crime, the rate of homicide is higher, ceteris paribus (Kleck, 1991).

6.2.4. The Elimination of Unlawful Access, Possession and Use of Firearms

A gun-free society would eradicate the unlawful access, possession and use of firearms in society. Lord Bingham of Cornhill CJ observed in R v Avis [1998] 1 Cr App R (S) 178, that: 'the unlawful possession and use of firearms… [w]as a grave source of danger to society', provoking 'an escalating spiral of violence'. This buttresses the idea that a gun-free society is a viable option in terms of eliminating the unlawful possession and use of firearms, and thereby contributing to the security of its citizens.

There is a growing realisation that public security strategies need to adopt a multi-dimensional approach which includes strategies to address human security and citizen safety, especially in regions such as Africa, which together with Latin America, ranks amongst the most violent regions in the world. These new approaches tend to be more democratic, people-centred and emphasise prevention rather than repression (Citizen Security Dialogues, 2014).

As discussed under regional instruments, most States in Sub-Sahara Africa recognise that small arms and light weapons can circulate quite easily from one country to another, fueling high levels of crime, particularly in urban areas. South Africa is not insulated from the proliferation of these weapons, often contributing to the distribution and movement of firearms across our national borders, to our neighbouring countries.

The enormity of gun violence, therefore, in South Africa, especially through the use of illegal firearms cannot be overemphasised; this is often fueled by easy access to firearms.

6.2.5. Reduction in Domestic Violence

The fifth benefit of a gun-free South Africa would be the reduction in domestic violence. Many South African women are at risk of becoming victims of gun violence in the home. A national study on violent crime found that more women (57 per cent) were murdered by their husbands or boyfriends (called intimate femicide) than by strangers; with firearms playing a major role in these murders: guns were used in 17% of the reported cases (Shaw, 2013). Over a ten-year period (from 1999 to 2009) there was an almost 50 per cent reduction in the intimate femicide rates: in 1999, 32 per cent (1,147) of

women killed in South Africa died from gunshot injuries whereas in 2009 this reduced to 17 per cent (462) (Abrahams et al, 2013). According to Abrahams, the reason for this drop in intimate femicide is because of a decline in the number of women that were shot and killed compared to deaths by other means, including stab and blunt injuries (Ibid). This decrease in gun deaths is attributed to the implementation of the FCA: "this study has shown the effectiveness of the Firearm(s) Control Act in the reduction of crime and violence overall in our country" (Abrahams et al, 2012).

Further, international research shows that one of the most effective strategies for reducing firearm-related domestic violence is restrictive civilian firearm possession, which disqualifies high-risk individuals from gun ownership and thus limits the likelihood of abuse *before* it takes place, instead of removing guns *after* the fact (Shaw, 2013).

6.2.6. Reduction of Accidental Death and Suicide with Firearms

Another benefit of a gun-free society is the reduction of accidental death from firearms. According to Cook, 'where firearms are more readily available, there will be a higher accidental death rate from firearms' (Cook, 1982). A gun-free society guarantees the absence of accidental firearm-related deaths. In testing the hypothesis on the question of 'crime as opportunity', Lester, a researcher at the Centre for the Study of Suicide in the USA, concludes that increased firearm availability, therefore, creates additional homicides/murders, rather than merely changing the murder weapon of choice; these findings coincide with some of the most recent research from Europe which shows that there is little substitution effect as referred to elsewhere in this report (Lester, 1991).

The easy access and availability of firearms in South Africa facilitates and creates the risk for accidental death and injury (often unintentionally), including the use of a firearm in the case of suicide and the increasing phenomenon of murder-suicide, especially among SAPS members. The road rage phenomenon, which has now become a South African narrative, could be addressed to some extent through the total eradication of firearms.

International studies consistently show a clear link between firearm possession and firearm-related suicides: countries with low gun ownership levels have low levels of

gun-related suicide, while countries with high levels of firearm ownership see high rates of gun-related suicides (Duquet and van Alstein, 2015). In addition, studies also show a link between the type of firearm available and its use in suicide: in countries where handguns are more prevalent, these will be the weapon of choice; while countries with more long guns (rifles and shotguns) available will see more suicides involving these weapons (Ibid).

Studies also show that most gunshot suicides are committed with legally-held firearms, and that a significant share of these are service weapons used by police, army or security officers; a finding that concurs with South African research which shows that legal firearm ownership significantly increases the risk of intimate femicide–suicide (the killing of a female by her intimate partner), followed by the suicide of the perpetrator within a week of the homicide; two-thirds (66 per cent) of perpetrators owned a legal gun and a significant proportion were employed in the police, army or private security industry, reflecting that easier access to firearms in these professions, creates a risk for these types of firearm-related deaths (Mathews et al, 2008).

Global research shows that men are more at risk of suicide by gunshot; and the majority of firearms are also in the hands of men. The research also shows that with the likelihood of suicides being impulsive, limiting access to firearms is an effective way to reduce the risk of suicide (Duquet and van Alstein, 2015). Further, when a firearm is not available, there is a very small risk that the person will substitute a gun for another method, and if they do, any other method is significantly less lethal than a firearm (Daigle, 2005).

SECTION FOUR: LEGISLATIVE REVIEW OF FIREARMS CONTROL IN SOUTH AFRICA.

Section four, consisting of five chapters, examines in detail various aspects of the legislation pertaining to firearms control in South Africa and forms the central focus of the work of the Ministerial Committee.

The legislative review included a 22 country comparative analysis, with particular consideration of the international and regional guiding instruments and protocols on firearms control and practice in these countries, as well as using the globally accepted Zimring standard that seeks to control the type of firearm, the use of the firearm, and the user of the firearm (as contained in the UNDP *How to Guide on Firearms Legislation*). The following countries were considered: Botswana, Egypt, Mozambique, Nigeria, Northern Ireland, Hungary, Germany, Great Britain, India, Australia, Brazil, Canada, Israel, Japan, Lebanon, Mexico, New Zealand, Norway, Russia, Singapore and Switzerland (Chapter seven).

The legislative review also included a comprehensive review of the principal Act, namely the FCA, including issues of interpretation with reference to the preamble and the purpose of the FCA (Chapter eight). Further the review looked at the 2006 Firearms Control Amendment Act that were for reasons unknown not operationalised, and makes recommendations for immediate implementation (Chapter nine). This section also provides a way forward on the Firearms Control Amendment Bill of 2015 (Chapter ten). Finally, the review also looks at the institutional arrangements with regard to the implementation of the FCA, including examining the organisational structure and capacity of both the CFR and the Firearms Appeal Board to implement the Act (Chapter eleven).

CHAPTER SEVEN

7. Comparative Analysis of the Firearms Control Act

7.1. Background

The South African legislative framework on firearms is governed by the Firearms Control Act No 60 of 2000. The predecessor of the FCA is the Arms and Ammunition Act No 75

of 1969 (the old Act). The old Act was repealed to ensure more effective control of firearms under the new democratic dispensation. This was due to the fact that the old Act did not adequately exercise control over firearms possession: a good indicator of this is that there were effectively no limits on the number of firearms any one person could own; and there was no requirement for regular licence renewals.

It is further important to note that while the old Act was repealed, there are still firearm owners who are licensed in terms of this Act; this as a result of the North Gauteng High Court Judgement of SA Hunters A.O. vs the Minister of Safety and Security. This judgement granted an interim interdict against the then Minister of Safety and Security to the effect that licences issued under the old Act will be deemed to be lawful and valid pending the final determination of that case. Even though this judgement was delivered in June 2009, the SA Hunters has not pursued a final order or judgement. The effect of this is that there are about a million firearms that are not licensed in terms of the FCA but are governed by the old repealed legislation. The legislative review process included how to address the particular challenges that this outstanding case presents for effective firearms control.

7.2. Regulatory Principles

The United Nations Development Programme, *How to Guide on Small Arms and Light Weapons Legislation,* recognises that the existence and enforcement of a comprehensive legislative and regulatory framework is critical for the effective control of firearms. The *Guide* establishes three essential principles for regulating small arms in the hands of civilians (UNDP, 2008). These principles are:

- Regulating the *user* of the firearm;
- Regulating the *use* of the firearm; and
- Regulating the *firearm* itself.

In line with the above principles, this legislative review looked at firearm ownership as prescribed in the FCA in respect of the following:

- Minimum age requirements
- Reasons for firearm ownership and possession
- Criminal history requirements
- Health requirements
- Training and testing requirements
- Sports-shooting and hunting
- Private collection
- Firearm licence renewals
- Temporary authorisation
- Prohibited or restricted firearms and ammunition
- Limitations on numbers of firearm
- Deceased estate firearms
- Firearm amnesties
- Imports and Exports; and
- Administration of the law.

This chapter reviews the above provisions of the FCA as compared to the 22 countries researched, and makes recommendations based on good practice regionally and globally.

7.2.1. Minimum age requirements

Some countries in this study require a minimum age for possessing a firearm to be 18 years whilst the rest of the countries require a minimum age of between 21 and 25 years of age. Very few countries have a lower age requirement of 16 years like New Zealand. In some instance the age requirement is lowered or increased depending on the calibre of the firearm and the purpose for which the firearm is required. The South African legislation requires the minimum age to be 21 years.

This requirement of 21 years can be lowered by the Registrar in terms of section 9(5)(a) if there are “compelling reasons which require the person to obtain a competency certificate or licence to possess a firearm licence” (FCA p.20, 2000).

The compelling reasons are not listed in the Act. In practice the fact that a person is a dedicated sports-shooter, a hunter, or is gainfully employed has been accepted as a compelling reason for lowering the age requirement for acquiring a competency certificate or licence to possess a firearm. It is worth noting that in some countries like Germany the minimum age requirement is increased from 18 years to 27 years where a person requires a firearm that is of a high calibre and/or the person is a marksman.

Recommendation:

The minimum age at which a person can acquire a firearm must be retained at 21 years.

7.2.2. Reasons for firearm ownership and possession

In the majority of the countries in which legislation was considered a person must have and/or furnish a genuine or good reason for wanting a licence to possess a firearm. In most of these countries a good reason is listed as amongst others, hunting and/or sports-shooting; and in Australia, Northern Ireland, New Zealand, Great Britain and Japan requiring a firearm for self-defence is not considered a good and/or genuine reason. In Botswana there is a total prohibition on civilian possession of handguns; civilians are only permitted to own a very limited number of rifles for hunting and sporting purposes.

A few of the countries that are considered to have more developed economies like Russia and Switzerland impose very minimum restrictions on the purpose for which a firearm may be possessed and self-defence is accepted as one of the reasons for needing a firearm. In the same vein there are quite a number of countries considered to have well developed economies who have restrictions on the possession of a firearm for self-defence and these include Canada, Germany, Japan, China, Northern Ireland, Great Britain, and Australia.

In Mozambique, like in South Africa, a person can possess a firearm for self- defence, hunting, sports-shooting, as a collector, and for films and training purposes. While there are these similarities the Mozambican legislation imposes some restrictions on the calibre and make of firearm that may be possessed by a sports-shooter, hunter and collector. The FCA places no such restrictions on the type and make of firearms that may be possessed by persons the Act refers to under the category of dedicated hunting, dedicated sports-shooting and under private collection.

Recommendation:

There must be restrictions on the type, calibre, and number of firearms that may be possessed by civilians.

Requiring a license for self-defence must be dealt away with and individuals must furnish a good and/or genuine reason for requiring a firearm.

7.2.3. Criminal history requirements

The African countries (i.e. Botswana, Mozambique and Nigeria) that were studied and may be classified as developing countries all considered criminal conviction as a reason for exclusion. The Botswana legislation totally prohibits people with any criminal conviction from possessing a firearm. In Mozambique just like in Botswana the applicant should not have a criminal record and in addition the applicant must submit a certificate of criminal record that is no less than three months old.

The FCA does not have an expressed provision excluding persons with criminal convictions from possessing or owning a firearm.

Recommendation:

Persons with any criminal conviction and a history of violence should be prohibited from owning firearms.

7.2.4. Health requirements

Most of the countries considered for this study require persons applying for a firearm licence to undergo physical and mental health assessments. The South African legislation has no such provision.

The FCA rather states that for a person to be issued with a competency certificate he or she:

> "is of stable mental condition and is not inclined to violence; and is not dependent on any substance which has an intoxicating or narcotic effect".

In practice this means the actual exclusion as a result of a physical or mental health illness, proclivity to violence or substance abuse, will only take place if the information indicating these issues is submitted. This then means if no such information is made available a person who is mentally and/or physically ill and is inclined to violence may be issued with a firearm licence.

Recommendation:

The FCA read with its regulations must have an expressed provision requiring persons who want to apply for a licence to possess a firearm to undergo a physical and mental assessment.

7.2.5. Training and testing requirements

The FCA and its regulations provides for two separate but related assessments. The first is a proficiency test which entails the completion of prescribed practical tests on shooting and the safe handling of a firearm. The second test is knowledge of the Firearm Control Act which is theoretically based. Both assessments are administered by accredited training institutions. The successful completion of these tests will result in a proficiency certificate being issued to the potential firearm owner by the accredited training agency.

Once a proficiency certificate has been issued the applicant can then apply for a competency certificate during which time background checks (including criminal records and spousal interviews) are conducted by the Designated Firearm Officer at station level. The competency certificate is issued by the CFR.

In the majority of countries studied these assessments are administered by the state implementing institution. In the South African context this important task has been delegated to private individuals and institutions with no real oversight exercised by the CFR. It is important to note that most countries in addition to requiring technical ability and knowledge of the weapons also require special training in safe storage and safety courses of firearms.

7.2.6. Sports-shooting and hunting

In the majority of countries studied, research has indicated that the phenomenon of “dedicated status” for sports persons and hunters is not practiced; the practice being that a limit is placed on the number of firearms which a person can possess, irrespective of category of ownership. This includes excluding ownership of prohibited and restricted firearms. Section 16 of the FCA provides for a category of a licence to possess a firearm

for dedicated hunting and dedicated sports-shooting: with no limit on the number of firearms owned under this category. This provision in the FCA goes against accepted global norms of limiting both the type and the number of firearms any one person can possess.

Australia has been successful in implementing national gun laws that restrict the ownership of semi-automatic weapons to dedicated sport-shooters, with no exceptions for any other circumstances under which civilians may be of the view that such weapons are required, for example, in the case of conducting a business that requires the handling of large amounts of cash. Since the introduction of this law in 1996 Australia has not experienced massacres in which semi-automatic rifles were used. The use of semi-automatics have also been a feature in massacres in both the UK and USA; in the former, the 1996 Dunblane massacre also resulted in severe restrictions on civilian firearm ownership (Mason, undated).

Recommendation:

It is therefore imperative that a limit be put on the number of firearms that a civilian can possess irrespective of status of ownership.

7.2.7. Private collection

Sections 17 to 19 of the FCA provide for a category of licence referred to as licence to possess a firearm and ammunition in private and public collections. There is a perception that there are civilians who amass lethal weapons masquerading as firearm collectors. In the majority of countries researched, collectors can collect an unlimited number of firearms on the condition that these are de-activated and without the possession of ammunition for those types of firearms; some also exclude prohibited and restricted firearms from being a collector's item.

In terms of these sections of the FCA prohibited and restricted firearms can be collected without any condition and or limit. This goes against good practice in other countries and flouts accepted global norms on civilian firearms possession.

Recommendation:

The FCA needs to be aligned with the global norms on civilian possession.

7.2.8. Firearm licence renewals

In terms of section 24 of the FCA a licence holder is required to renew his or her license 90 days before the expiry of such a licence. Failure to renew within the stipulated period will result in the termination of the licence.

Where the licence is finally terminated; the licence holder must dispose of the firearm. If the licensee does not comply he/she therefore will be in possession of an illegal firearm and ammunition. The relevant firearm and ammunition must be confiscated by the police.

There are approximately 122 000 firearm owners who are not in compliance with the provisions of section 24 of the FCA (Reference). The SAPS has not taken any steps to confiscate these firearms and related ammunition. Failure by the SAPS as the implementers of the legislation to apply the provisions of section 24 of the FCA renders the legislation nugatory.

Recommendation:

Greater attention needs to be given to this section on licence renewal with regard to specific provisions on the licence renewal process.

7.2.9. Temporary authorisation

In contrast to the majority of countries in which non-citizens are not allowed to possess firearms, South Africa does allow non-citizens to possess firearms. Section 21 of the FCA empowers both citizens and non-citizens to possess firearms for a temporary period, as determined by the Registrar. There is a view that this section is sometimes used by non-citizens who want to circumvent the process of applying for a firearm licence. This section has several weaknesses, providing opportunity for fraudulent practice and corruption:

- It does not state how many times a person can apply for a section 21 authorisation for a particular firearm;
- It does not specify how many firearms a person can possess with a section 21 authorisation;
- No background checks are required; and
- The criteria specified in section 9 of the Act need not apply.

It is important to note that there are no stringent requirements under this section that a person has to meet unlike when applying for a firearm licence; in effect this means that most of the conditions specified under Section 9 of the FCA do not apply.

Recommendation:

This is another section of the Act that requires some attention with regard to bringing it in line with international norms and practice.

7.2.10. Prohibited or restricted firearms and ammunition

In most of the countries studied, fully automatic rifles (machine guns, submachine guns, assault rifles, machine pistols) may not be possessed by private individuals (Botswana, Brazil, Canada, Egypt, Great Britain, Lebanon, Mozambique, Nigeria, Spain, Switzerland).

In most countries studied the possession of prohibited or restricted firearms are exclusively limited to defence (military) or other governmental institutions, including Brazil and Norway. In South Africa, fully and semi-automatic firearms may be kept by collectors, in a safe, in a reversible inoperable condition. Prohibited or restricted firearms are described as “military-style semi-automatic rifles, shotguns with a magazine capacity of more than three cartridges, rifles with a calibre above .308 (7,62mm) and rim fire rifles holding more than 10 cartridges”. Furthermore, semi-automatic firearms may be possessed by people described as dedicated hunters, sports-shooters and in some instances individuals and entities that meet the necessary criteria for exemption.

Recommendation:

Civilians should be prohibited from owning and/or possessing firearms that are of the same calibre as those used by the police and the military.

7.2.11. Limitations on number of firearms

In the majority of countries reviewed, firearms legislation limits the number of firearms that may be possessed by individuals. In some countries such as China, the private possession of firearms by individuals is not allowed, and in others there are limitations in respect of the calibre of the weapon which may be possessed by civilians.

In section 13 of the FCA one firearm is allowed for self-defence; whereas under section 14 the limit is four firearms in total for occasional sports-shooting and hunting. The number of firearms permitted in respect of business purposes, dedicated hunting, dedicated sports-shooting and private collection are unlimited. In respect of the number of cartridges, 200 cartridges may be possessed for self-defence, occasional hunting and occasional sports-shooting, whilst the number of cartridges which may be possessed for dedicated sports-shooting and dedicated hunting is unlimited.

Recommendation:

The FCA should without exception, limit the number of firearms that may be owned by civilians irrespective of the category of owner.

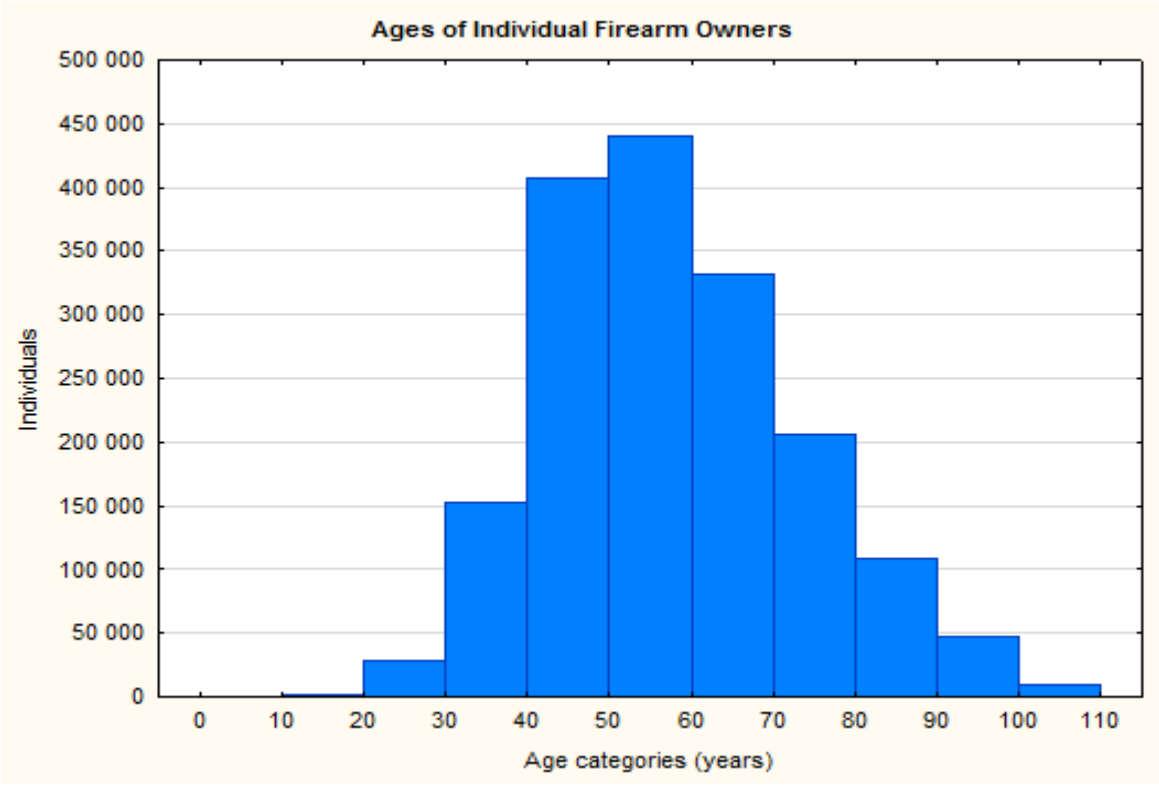
7.2.12. Deceased estate firearms

Deceased estate firearms are the firearms legally acquired but left behind by the deceased person(s). Accurate information on deceased firearm owners is fundamental to the control and management of firearms in South Africa. The data collected indicates that the information on deceased estates is generated by the Department of Home Affairs and the Master of the High Court. In an instance where a deceased person owned a firearm, the information relating to its whereabouts is not a core function of the Master of the High Court.

Since there is no system linking the SAPS and the Master of the High Court, firearms in deceased estates end up not being accounted for. This scenario was notably captured in a presentation by then Director Bothma (2001):

> *"A number of firearms which are licensed in the names of deceased's persons are currently in circulation in South Africa. There is a great uncertainty within communities regarding the procedure to be followed to license these firearms. Persons in possession of these firearms are afraid to produce them for fear of prosecution. An awareness campaign will be launched internally and externally to ensure that these firearms are officially licensed or alternatively destroyed".*

The graph below indicates that the majority of licensed firearm owners are between the ages of 40 and 70 years of age (Source: Wits School of Governance).



Recommendation:

Given these demographics, there must be a coordinated policy approach among government institutions in dealing with firearms in deceased estates.

7.2.13. Firearm amnesties

According to section 138 of the Firearms Control Act an amnesty means an 'indemnity against prosecution for the unlawful possession of a firearm or ammunition'.

Firearm amnesties are seen as one of the tools that are available to governments to control both legal and illegal stocks of firearms, and are used around the world for this purpose. However, several factors, such as the conditions of the amnesty, timing and duration, as well as the socio-political context, can either contribute to or hinder the success of an amnesty (Kirsten, 2005).

In the case of South Africa, the Minister of Police is allowed to gazette an amnesty period where all citizens are encouraged to hand in legal and illegal firearms. South Africa has implemented a number of amnesty programmes as a way to reduce the number of illegal firearms in the country. The 2005 Amnesty saw the most successful implementation of the programme with 33 246 firearms removed from circulation, including 608 794 rounds of ammunition. During the amnesty period a further 65 166 firearms (the majority being handguns) were removed from circulation as a result of voluntary surrender of legally owned firearms, police confiscation operations and special operations such as Sethunya II. Another amnesty was declared in 2010. This initiative was also successful, and it yielded 11 887 firearms and 129 234 rounds of ammunition. In these previous amnesties there were no buy-back programs.

Recommendation:

The Minister of Police should give serious consideration to conducting firearms amnesties as part of efforts to strengthen the State's control over the proliferation of firearms in the country.

The SAPS should ensure the safe storage of all firearms and ammunitions that are collected for destruction.

7.2.14. Imports and Exports

The FCA under section 73 allows for the importation, exportation and carrying in transit of firearms and ammunition and the condition attached to this is that a person must have a permit. The requirement that must be met for a person to be issued with a permit is that such a person must be a fit and proper person. There is no other requirement stipulated in the FCA.

In countries like Kenya which is a major tourist destination, the importation of firearms and ammunition is prohibited. In Canada, while there is not a total ban on the importation of arms there is a bar against importing restricted firearms and the limit on the number of ammunition rounds that can be imported is 5000. In Mozambique, a country that shares a similar history to South Africa—transitioning from a country at war in which firearms were widely used, to a democratically elected government—the number of firearms that can be imported is limited to two rifles, one shotgun, and 100 rounds of ammunition per firearm calibre. The importation of handguns and semi-automatic handguns is prohibited. The country also has no authorised dealers and manufacturers. In India on the other hand, there is a total prohibition on exports and imports of small arms and the requisite ammunition.

The FCA, while it provides that there must be a permit, does not place any further conditions regarding the number and the calibre of firearms and ammunition that may be imported, exported and carried in transit. The FCA must also provide for a category of persons who can export firearms and ammunition and it must clarify for what purpose to ensure amongst others that firearms and ammunition do not land in the hands of insurgents and terrorists seeking to undermine and overthrow democratically elected governments.

Recommendation:

The FCA must limit the number and restrict the calibre of firearms that may be imported and exported.

The importation of restricted firearms ought to be prohibited.

The FCA must also clearly state who qualifies to be issued with an export, import and carry-in transit permits and for what purpose.

7.2.15. Administration of the law

In all the countries considered, the responsibility of implementing the firearm legislation lies with the State. The State implementing agency may vary from the Commissioner of Police, the Minister of Police and/or the Department of Defence. In South Africa, this responsibility is with the National Commissioner of Police although some important aspects of the implementation of the Act have been outsourced to private entities as indicated above.

Recommendation:
All aspects of the implementation of the FCA must be assigned to the CFR.

Alternatively: *CFR must have the resources and capacity to monitor that the FCA is not flouted by the private individuals and agencies accredited to implement some sections of the FCA.*

CHAPTER EIGHT

8. Recommendations to strengthen the Firearms Control Act 2000

It is noted that although the Firearms Control Act complies to a limited extent with the *Firearms Protocol*, the *UN PoA*, and the *Bamako Declaration*, there are areas where the FCA needs to be strengthened and improved upon as demonstrated in the preceding chapters. The FCA was primarily aimed at curbing the proliferation of firearms in South Africa. The review of the regional and national legislative frameworks as well as the country case study analysis indicates that there are serious shortcomings in the control mechanisms envisaged in the FCA.

In this chapter of the legislative review of firearms control in South Africa, some detail is given on those sections of the FCA that are in direct contrast to what the SADC Firearms Protocol and the UN PoA require of member States with regard to the domestic regulation of firearms. For example, sections 16 to 20 of the FCA still allow for the stockpiling of small arms by civilians.

8.1. The Firearms Control Act and the Constitution

As stated earlier in the preceding paragraphs, the FCA in its Preamble refers to the right to life and the right to the security of the person; rights entrenched in the South African Constitution in the Bill of Rights under section 11 and section 12. The firearm laws of all the countries considered in this study do not reference their Constitution.

The Constitution, in referring to the right to life is referencing the United Nations Universal Declaration of Human Rights. The latter provides for, amongst others, the Right to Life. It has been said that the mention of the Right to Life in the Universal Declaration of Human Rights is a moral principle based on the belief that every human has the right to live and, in particular, should not to be unjustly killed by another human being. The concept of the right to life is central to debates on the issues of capital punishment, war, abortion, euthanasia and justifiable homicide. In interpreting the Bill of Rights, the Constitution states that one must amongst others consider international law.

If there is acknowledgement and not necessarily consensus, that firearms by their nature are lethal weapons, and that the possession of firearms therefore cannot be equated with affording an individual a right to life, and freedom and security of the person. Further, the language used in the principal Act and in particular in its Foreword and Purpose, works against the intention of controlling firearms and limiting their proliferation. The judgment in the case of the SA Hunters demonstrates the consequence of referencing the Constitution in the Firearms Control Act. In that case the applicant argued referring to the Preamble of the Act that the respondent (i.e. the then Minister) needed to establish the factual material basis for seeking to limit the rights of firearm owners. The Constitution

does not give any person the right to possess or own a firearm for self-defence or otherwise. The Preamble to the Act rather than referencing the Constitution ought to denote its purpose.

Recommendation:

The Preamble should be amended as suggested above.

The Constitution, while it does not give any individual a right to bear arms, does provide for the protection of property rights. The relevant section of the Constitution is section 25 which states:

> *"No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property".*

It is trite to suggest that property is only limited to land. It therefore follows that a firearm is also the property of a person who owns it. Any changes to the firearm licensing regime might lead to the confiscation under the law of existing licensed firearms due to the person no longer being compliant with the new law. Since in terms of section 25 property rights are protected, people who currently own firearms cannot be legally dispossessed of their firearms by the mere fact that they are no longer compliant with the new law. While this is so, the very same section 25 permits the deprivation of property if it is done in terms of the law of general application.

In allowing for the deprivation of property, the Constitution clearly stipulates that compensation which is just and equitable must be paid to the owner. This therefore means any measures that are adopted to limit the proliferation of firearms including the legal dispossession must take cognisance of the cost to be incurred. There is therefore nothing stopping the State from enacting a law that will provide for strict limitations on the number and the calibre of firearms that can be privately owned as long as there will be provision for just compensation to individuals who will be compelled by law to surrender their firearms.

Countries like Brazil which wanted to limit the number of privately held firearms embarked on a firearm buyback programme with much success.

Recommendation:

A study must be conducted on the financial implications of a firearm buyback programme so that monies can be appropriated for this purpose if needed.

8.2. The Foreword and Purpose

The title of the Firearms Control Act and its explanatory memorandum strongly suggests that the primary purpose for its enactment was to curb the proliferation of firearms; to control legal firearms and reduce the proliferation and availability of illegal small arms in South Africa. However this intent of curbing the proliferation of firearms is not carried through into the clauses of the FCA and in its implementation including the Regulations of 2004. What the FCA does instead is through its practice, de facto, to guarantee every citizen the right to be armed under the law.

The FCA in its Foreword and its purpose appears to equate the ownership of a firearm to a right to life and security and freedom of a person.

Recommendation:

The Foreword to the Act must be deleted in its entirety. If it is agreed that the FCA must have a Preamble that states: In terms of the Constitution the duty to maintain public order, to protect and secure citizens lies with the State. The Preamble should also recognize that the State as a signatory to regional and international instruments on small arms and light weapons control and other related matters has an obligation to enact firearm legislation that complies with the applicable international and regional instruments. Further, the preamble should recognise that the easy availability of firearms to civilians and their uncontrolled presence constitute major threats to sustainable development, citizen security, and the stability of the State.

The section dealing with the purpose of the Act is at odds with the initial aim and objective of the legislation as articulated in the 2000 policy position on firearms control in South Africa; i.e. the curbing of the proliferation of firearms, be it illicit or licit. This section in effect entrenches the right to own a firearm for as long as it is a legal firearm. There is no basis in SA law for giving effect to such a right.

Recommendation:

Section 2(a) must be deleted in its entirety and be replaced with wording that states the purpose of the FCA is to restrict access to firearms by civilians to ensure public order, to secure and protect civilians, and to comply with regional and international instruments on firearms control.

8.3. Section 1: Definitions

The mere fact that a person is a registered member of an association is sufficient grounds for that person to be issued with a licence as a 'dedicated hunter' or 'sports-person' or as a 'private collector'. The registering of these individuals is conducted by private agencies with no real oversight exercised by SAPS, the entity charged with the administration of the FCA.

Recommendation:

The definition of a dedicated hunter {and all other dedicated categories} should be strengthened to ensure this licence category is not abused in order to stock pile firearms by civilians in contravention of international and regional instruments on firearms control. The definition should also cater for the possession of a competency certificate and the involvement of the registrar confirming the status of a dedicated hunter/ sports person or private collector.

8.4. Section 4: Prohibited firearms

This section prohibits the ownership of firearms which are considered inappropriate for civilian use due to their lethality and to reduce the risk for mass killings. This prohibition is waived for licences issued under the following Sections: section 17 (private collection); section 18(5) (projectiles and cartridges manufactured to be discharged by prohibited firearms if deactivated); section 19 (public collection); and section 20(1) (b) (theatrical, film or television production) which is not in keeping with international norms and standards.

Recommendation:

The FCA in keeping with international norms and standards and regional instruments must prohibit without exception the ownership of restricted firearms by civilians.

8.5. Section 9: Application fora competency certificate

Section 9(2) lists the requirements that must be met for a competency certificate to be issued to a person applying for a firearm licence. The reading of this subsection expressly states that these requirements must be met by a person who previously did not have a competency certificate, that is a first-time applicant. In reality this means where a person was issued previously with a competency certificate but later after its issuance falls short of any or all of the preconditions stipulated under section 9(2) the police cannot by law refuse to issue this person with a competency certificate after its expiry if no declaration was made in terms of sections 102 or 103 that this person is unfit to possess a firearm.

Section 9(6)(a) is also ambiguous in its meaning and open to misinterpretation stating that a competency certificate will be issued to a person who once had it if she or he still complies with the requirements as may be prescribed. The Regulations where they refer to a competency certificate do not refer to any requirements. Instead regulation 14 refers to an investigation conducted by the Registrar in terms of section 124 (3) to determine if a person is a fit and proper person. Section 124 (3) in turn talks about an investigation that the Registrar is empowered to conduct in carrying out his or her duties under the FCA. To compound this issue section 9(2) (c) refers to a fit and proper person. This

concept of a fit and proper person is not described anywhere in the FCA including in its Regulations.

From this review of these relevant sections of the Act it is clear that there are no stated qualifying criteria that a person who previously owned a competency must meet before he or she can be re-issued with a competency certificate. This omission in the FCA and its Regulations in reality means a person can be issued with a competency certificate and ultimately a firearm licence even if he or she is a convicted criminal for as long as he or she was not declared unfit to possess a firearm under the Act.

Regulation 14 must state in clear terms that the factors listed therein entitles the Registrar to hold that a person is not a fit and proper person to be issued with a competency certificate and thereby a firearm licence and the Registrar will then be empowered to refuse to issue a competency certificate to such a person.

Further section 9(2)(f) only disqualifies a person from being issued with a competency certificate if that person has been convicted of an offence under the FCA or the old Act and sentenced to a period of imprisonment without the option of a fine. This means, for example, that where a person is convicted of theft or fraud which is not related to the FCA or the old Act, that person may qualify for a competency certificate even if he was sent to direct imprisonment. In the majority of the countries studied where a person has been convicted of any offence (not just a firearm-related offence) that serves as a disqualification from having access to a firearm. The FCA ought to adopt this approach.

It is also problematic that under section 9 there is no requirement for persons to undergo medical testing before they can be issued with a competency certificate. But the same section 9 (2(d) says a person must be of a stable mental condition and not be inclined to violence. If a person is not assessed by a medical practitioner it is doubtful that the police official who does the background check can in all instances say with a level of expert knowledge that such a person is indeed mentally stable, is not inclined to violence, or is not dependent on substances which have a narcotic effect. In addition, given the evidence

of the strong link between the abuse of alcohol and engaging in acts of violence, more specific criteria needs to be developed with regard to section 9 (2)(e), denoting that the abuse of alcohol or 'problem drinking' may be denoted as grounds for automatic disqualification from applying for a competency certificate.

Furthermore, given the discussion in chapter five on the challenges to implementing the FCA in relation to the abuse of firearms in domestic violence cases, section 9 needs to be strengthened to ensure maximum protection for women and children in the home, and to reduce the risk for firearm death and injury in the home.

Section 9 does not say anything about suspended sentences which then create doubt about whether such a person should be refused a competency certificate.

Recommendation:

The Act must clearly state the qualifying criteria that must be met by a person who has previously been issued with a competency certificate for this person to be reissued with a competency certificate.

Section 9(2) must disqualify a person who has any criminal conviction from being issued with a competency certificate regardless of whether this person was sentenced to direct imprisonment or not.

There must be further requirement for persons to undergo medical (physical and mental) testing before they can be issued with a competency certificate.

Dedicated sport persons and dedicated hunters as is the case with private/public collectors must be issued with competency certificates specifying that it relates to a competency to possess a firearm as a dedicated sports person and/or hunter. The Regulations will then provide for the criteria to be met by such persons to be issued with a competency certificate.

Any person (s) with an interim protection order against them (in terms of the DVA) is automatically disqualified from applying for a firearm licence.

The declaration of unfitness must only expire at the end of the unfitness declaration and section 9 (4) must be amended and reference to "end upon the expiry of the period of 5

years calculated from the period for which the declaration is valid whichever occurs first", must be removed.

Regulation 14 (provisions regarding competency certificate) must clearly state that the factors listed therein entitle the Registrar to hold that a person is not a fit and proper person to be issued with a competency certificate.

SAPS to consult with the Department of Health and other health related entities such as the Medical Research Council to determine more precise wording for section 9 (2) (e) as it pertains to 'problem drinking'.

8.6. Section 13: Licence to possess firearm for self-defence

This section does not provide or list any requirements that must be met for a person to be issued with a licence under this section except to mention that if a person cannot reasonably satisfy the need of self-defence by means other than the possession of a firearm. The use of the word “self-defence” as a reason for needing a firearm is contested and in most countries studied self-defence is not considered a genuine reason for possessing a firearm. This is to be expected as self-defence is a common law concept which is founded on the reasoning that a person who is a victim of an unlawful attack may resort to force to deter the attack and any harm or damage inflicted upon an aggressor in the course of such resistance in not unlawful. From the common law definition, it is therefore clear that self-defence or private defence as it were is just that; a defence to be used as a justification for inflicting harm to repel an unlawful attack.

The duty to protect citizens is that of the State so as to ensure that there is rule of law, peace and order. In a court of law therefore private defence is used to exclude unlawfulness of an act which may otherwise be seen as unlawful because it promotes private vengeance and the taking of the law into one’s own hand. To have a law (i.e. the FCA) that states that a person can acquire a firearm for self-defence is therefore an anomaly because the defence is now used in preparation for an attack rather than justifying the attack.

The other dimension to this claim that possessing a firearm for self-defence is justified as a means to give effect to the right to life is that the right to life extends to every human being including convicted criminals. In instances where a person cannot install a safe that can be affixed to a wall as required in terms of the regulation; will refusing such a person a firearm licence not amount to saying his or her life is expendable simply because he or she does not have the appropriate safe.

Recommendation:

Section 13 must be deleted in its entirety and no license should be issued to individuals for "self-defence" purposes (as is the case in countries like Botswana, Australia, Germany, Great Britain, and Japan).

Alternatively: (*following the example of Australia, China, Germany, Great Britain, Japan, Lebanon, New Zealand, Norway and Northern Ireland) a requirement be stated as a good reason with a total prohibition on possession of handguns by civilians. The regulations will list examples of what could be deemed as good reason and specifically excluding self-defence.*

8.7. Section 14: Licence to possess restricted firearm for self-defence.

This section allows individuals to be issued with licences for restricted firearms for the purpose of self-defence. The section is a clear violation of the *SADC Firearms Protocol* and other international instruments.

Recommendation:

In keeping with international norms and standards civilians should be prohibited from possessing restricted firearms.

8.8. Section 16; 16A; and 17: Licence to possess firearm for dedicated hunting, dedicated sports-shooting, and private collection respectively.

There is no limit as to the number of firearms and/or firearms licences that a person can be issued with under these sections. Furthermore, since the introduction of the FCA in 2000 there has been an increase in the application for and approval of rifles, both in the dedicated and the occasional hunting category, with almost 350 000 new firearms approved during this period under review (1999 to 2014) for owner categories under section 15, s16, and s16A (153 519 and 193 276 respectively) (Wits School of Governance, 2015).

In the African region, South Africa has the largest number of privately owned firearms. Even countries that are at war and are the constant target of terrorist groups have fewer privately owned firearms when compared to South Africa. There is sufficient evidence across the world that the presence and availability of firearms (in particular handguns) contribute to higher levels of violent crime including homicide and suicide (Duquet and van Alstein, 2015; Statistics South Africa, 2015).

What also stands out is that in terms of sections 13, 15, 16 and 17, a person can be issued with a licence irrespective of whether they have been convicted of a serious and violent crime. Even though the competency testing requirements enquire as to the fitness of a person by looking at amongst others whether a person has an inclination to violence, in practice if a person is convicted of a violent crime but is not sent to direct imprisonment and no determination is made about his fitness to possess a firearm in terms of sections 102 or 103, the person is not prevented from applying for or acquiring a firearm licence.

Recommendation:

These sections (viz: s16; s16A; and s17) should be removed in their entirety as there is no rational justification for it. Section 15 is able to accommodate individuals who engage in hunting and/or shooting activities whether for farming purposes or recreational purposes.

Alternatively: *there should be a strict limit as to the number of the firearms a person should possess under these sections. There must also be a proviso for submission of periodical proof of participation in hunting and/or shooting activities with the consequence that failure to submit such proof will result in the forfeiture of the licence. Section 16 and s16A if they are retained should also state the calibre of firearms to be licensed under each section and there must be a prohibition on the licensing of restricted firearms.*

With regard to private collectors (section 17) there must be a requirement that a collector of firearms must not be a collector for ammunition. Civilians, even if they are collectors, must be prohibited from collecting restricted firearms unless these are deactivated and are no longer functioning and/or operable and have been in such a state for more than

10 years. The collector of firearms cannot share and/or stay in the same building or household as the collector of ammunition.

8.9. Section 18: Permit to possess ammunition in private collection.

The set number of ammunition rounds that a person can hold or have in a private collection in terms of this Act is high and not in line with the *SADC Firearms Protocol* and other international instruments on small arms control. This section permits the holding of ammunition including rifle grenades which are manufactured to be discharged by a prohibited firearm if the propellant has been removed. When compared with legislation of countries studied for the purposes of this report the FCA is quite permissive in allowing the accumulation and possession of lethal weapons and ammunition by private citizens.

Recommendation:

The number and calibre of ammunition must be limited. A collector of ammunition cannot be a collector of arms and these types of collectors must not stay in the same building and/or household.

8.10. Section 21: Temporary authorisation to possess firearm.

This section allows the Registrar to issue a temporary authorisation to possess a firearm to a non-citizen. The Act does not provide for criminal record checks, competency testing and other requirements to ascertain the eligibility of a non-citizen to possess a firearm.

Further there is no minimum set number of temporary authorisations that can be granted to such persons. It is a section that is open to abuse and there appears to be no rational justification for its existence. Most of the countries considered in this study do not issue non-citizens with firearm licences.

Recommendation:

This section must be repealed.

8.11. Section 22: Holder of licence may allow another person to use firearm.

This section enables a holder of a licensed firearm to allow any other person to use the firearm while under his or her supervision regardless of that other person's age.

Recommendation:

Persons under the age of 16 must be prohibited from handling firearms in terms of this section.

8.12. Section 24: Renewal of firearm licences

There are a number of challenges in this section including lack of clarity on a clear cut-off date for renewing firearm licences, as well as lack of uniformity in the renewal period for various category of licence holders such as hunters, dealers and gunsmiths.

Recommendation:

This section requires a comprehensive review.

This section should also specify that failure to renew the licence within the stipulated time will not result in the termination of the licence but might attract a fine.

8.13. Section 102: Declaration by Registrar of person as unfit to possess firearm; Section 103: Declaration by court of person to be unfit to possess firearm; and Section 104: Effect of declaration [read with section 9(2) (p) and section 9 (4)]

It is stated elsewhere in this report that the number of declarations of unfitness (whether by the police or the courts) and the removal of firearms in intimate partner violence is relatively low when compared with the cases of domestic violence and IPV cases reported. This is in part due to the fact that in terms of section 102(1) (a) an enquiry into the fitness of a person to possess a firearm and ultimately its removal from possession can only happen if a final protection order in terms of the DVA has been issued.

Most of the domestic violence cases occurring within IPV do not end with the granting of a final protection order but are left or withdrawn at the stage where there has only been an interim protection order issued. Nevertheless, as stated in the report, the findings on IPV show that the violence in these types of relationship does NOT abate just because there has been an interim protection order issued or even with the withdrawal of the case. More often than not victims of IPV end up being killed in these cases by the very same firearm(s) which was not removed because there was no final protection order or the case was withdrawn.

A number of appeals referred to the Firearms Appeal Board against a declaration of unfitness made in terms of section 102 end up being upheld in part because the process envisaged by section 102 (2) – (4) has not been followed by the law enforcement official who made the declaration. In some instances, the Appeal Board will have no option but to overturn the decision made by the police because no record of the enquiry is on file and this is not submitted to the Board. Clearly this is in part a failure of proper implementation of certain provisions of the FCA enabling a person who should not be having access to a firearm, to possess one.

Another challenging issue is the proper interpretation and application of section 102 read with section 104 (6) and s9 (4). Section 104 (6) stipulates that after a period of 5 years calculated from the date of the decision leading to the unfitness to possess a firearm, the

person who has become or been declared unfit to possess a firearm may apply for a new competency certificate, licence, and authorisation permit in accordance with the provisions of the FCA.

In practice these sections are not implemented by the police. Even after a period of five (5) years has lapsed the police will refuse to entertain an application for a competency certificate arguing a person was declared unfit. This is despite the fact that section 9(4) states that the disqualification contemplated under section 9(2)(p) expires after a period of five (5) years from the date of declaration of unfitness or upon the expiry of the declaration period, whichever occurs first. For completeness section 9(2) (p) provides that a person who never had a competency certificate will be issued with this if he or she has not become or been declared unfit to possess a firearm in terms of the FCA or the old 1969 Act. The issue here is why the current Act provides for the declaration of unfitness to expire after five (5) years regardless of the offence that led to the declaration of unfitness. In practice it means that someone convicted of murder using a firearm is treated the same way as a person convicted of common assault.

Recommendation:

Section 102 must allow for a declaration of unfitness even in instances where there is an interim protection order.

Further the official charged with conducting a section 102 hearing must be properly trained on the rules of natural justice and the conducting of such an enquiry. The services of the Appeal Board can be utilised to provide advice on the type of training required.

There must be cooperation by SAPS with requests for information by the Appeal Board to ensure effectiveness of appeals and the prevention of court actions against the Appeal Board, SAPS and Minister by the members of the public.

Section 103(4) should be amended to read that a person declared unfit may at the expiry of the unfitness period approach SAPS to have the unfitness declaration uplifted from the system.

8.14. Section 131: Administrative work of Appeal Board.

The Appeal Board in terms of this section does not appoint its own staff, but its administrative work is performed by members of the SAPS as may be designated by the National Commissioner. The Act makes no provision for the Appeal Board to have a say on the designation of these members and while so designated they remain under the control of SAPS.

This section creates an impression that there is no separation of powers between the Appeal Board and the South African Police Services. The Appeal Board if it is to be seen as independent must have its own staff.

Recommendation:

The Appeal Board must have its own staff accountable to the Board and not SAPS.
The Appeal Board members should comprise at a minimum five members (up to and including eight) who represent diverse constituencies and interests.

8.15. Section 133: Right of appeal.

This section does not expressly exclude the right to appeal an unfitness declaration by the courts in terms of section 103. This section should state that the declarations of unfitness made by the court in terms of section 103 must be referred to the courts and not the Firearms Appeal Board. The Appeal Board as an administrative body does not have powers to determine or entertain appeals against decisions made by a court of law.

Recommendation:

The section should be amended to state that appeals against decisions of a court of law must be lodged with a court and not the Firearms Appeal Board.

8.16. Section 148: Inherited Firearms.

This section of the FCA deals with inherited firearms. The inheritance applies to both testate and intestate. A person who inherits a firearm must, if he or she wishes to keep

the firearm, apply for an appropriate licence, permit or authorisation in terms of the Act or, if he or she does not wish to acquire the firearm, or fails to obtain the appropriate licence, permit or authorisation to have the firearm deactivated or disposed of in terms of the Act. The FCA does not provide for firearms of deceased persons to be handed over to the police for safe custody pending the administration of the deceased estate as is the case in some countries. The problem may be exacerbated where the licence holder is a public or private collector, a dealer, occasional or dedicated hunter, an occasional or dedicated sports shooter and where there is a multiplicity of firearms.

Recommendation:

Section 148 must be amended to provide for the firearms of deceased persons to be handed to the police for safe keeping pending the final winding up of the deceased's estate. There is a need to establish an intergovernmental mechanism to manage firearms emanating from the estates of deceased persons. The legislation should be strengthened to require the Master of the High Court to inform the Registrar of any firearms left in a deceased person's estate.

CHAPTER NINE

9. The Firearms Control Amendment Act of 2006

The 2006 amendments were assented to on 17 August 2007. These amendments attempted to close some gaps in the principal Act. However, these amendments have not fully been operationalised. Some of the sections that are not yet operationalised can, in the short to medium term, while the overall legislative review of the firearms control is in progress, assist in the efficient implementation of the FCA. Below is the discussion on those sections of the 2006 amendments which have not yet been operationalised, with recommendations for implementation.

9.1. Amendment of section 1 by clause 1 (g): Insertion of fit and proper person definition

Definition of a fit and proper person— “means a person who complies with the requirements of section 9(2) and any regulations relevant to the competency of a person to possess a firearm in terms of this Act”.

The putting into operation of this section will address the anomaly present in the Act: the Act and the Regulations refer repeatedly to a ‘fit and proper’ person but this is not defined. The absence of the definition makes implementing the Act, in as far determining the eligibility of a person to be issued with a competency and/or to possess a firearm, challenging.

Recommendation:

Clause 1(g) is operationalised.

9.2. Amendment of section 6 by clause 5: Competency certificates, licences, permits and authorisations

“(1) The Registrar may issue a competency, licence, permit or authorisation contemplated in this Act on receipt of an application completed in the prescribed form, including such fingerprints as the Registrar may require”.

It is said that this amendment was aimed at removing the requirement for a full set of fingerprints for every application as this was technically unnecessary and a thumb print might be sufficient in some instances.

Recommendation:

Clause 5 is put into operation.

9.3. Amendment of section 21 by clause 16(2): Temporary authorisation to possess firearm

“The Registrar may, subject to paragraph (b), at any time by written notice withdraw an authorisation if any condition contemplated in subsection (1) (b) is not complied with”.

This amendment is aimed at ensuring that any action by the Registrar in terms of this section complies with Administrative Justice Act.

Recommendation:

This section is in line with what is discussed under the FCA legislative review and should not be operationalised since it is recommended that the entire section 21 should be repealed.

9.4. Substitution of Section 22 by clause 17: Holder of licence may allow another person to use firearm

"Despite anything to the contrary in this Act but subject to section 120(5), any person who is at least 21 years of age and a holder of a licence to possess a firearm or a competency certificate in respect of a muzzle loading firearm issued in terms of this Act may allow any other person to use that firearm or muzzle loading firearm while under his or immediate supervision, where it is safe to use the firearm or muzzle loading firearm and for a lawful purpose".

Another problematic part of this amendment is the inclusion of the wording competency certificate which does not speak to the wording of the amendment.

Recommendation:

This section in its current form should not be operationalised as its goes against what is said elsewhere in this report regarding prohibiting young people from having access to firearms.

This section of the 2006 amendment will then have to be dealt with under the new proposed amendments of 2016 and it must be redrafted to rectify the problems identified with its current wording.

9.5. Substitution of section 45 by clause 21: Prohibition of unlicensed manufacture of firearms, muzzle loading firearms and ammunition

"(1) No person may manufacture any firearm, muzzle loading firearm or ammunition without a manufacturer's licence.
(2) A manufacturer may only sell firearms or muzzle loading firearms and ammunition to a dealer or to the State, and may export firearms, muzzle loading firearms and ammunition subject to section 73(1)".

The failure to operationalise this section means there is no law governing the manufacturing of muzzle loading firearms. It is important that this clause is operationalised so that the manufacturing of muzzle loading firearms can be properly regulated. Arms so manufactured (without requisite manufacture's licence) can find their way into illicit end users.

Recommendation:
Clause 21 must be operationalised.

9.6. Amendment of section 56 by clause 22: Termination of manufacturer's licence

Subsection 1 of section 56 is amended by deleting one year and replacing it with five (5) years with the consequence that a manufacturer's licence terminates after five (5) years.

The purpose for extending the validity period of a manufacture's licence is not clear. The period of five years is long if one takes into account the importance of regular renewals which are amongst others aimed at ensuring that the license holder's circumstances still qualifies the holder to manufacture arms.

Recommendation:
Amendment of Section 56 by clause 22 should <u>not</u> be operationalised.

9.7. Amendment of section 70 by clause 23 - Termination of gunsmith's licence

Subsection 1 of section 70 is amended by deleting one year and replacing it with five years with the consequent that a gun smith licence terminates after five years.

Recommendation:

For the same reasons stated under paragraph 9.6 this clause should not be operationalised.

9.8. Amendment of section 73by clause 24: Prohibition of import, export or carriage in-transit of firearms, muzzle loading firearms and ammunition without permit

"73 (1) No person may import into or export from South Africa any firearms, muzzle loading firearms, or ammunition without an import or export permit issued in terms of this Act.

(2) No person may carry in transit through South Africa any firearms, muzzle loading firearms or ammunition without an in-transit permit issued in terms of this Act".

The failure to operationalise this clause means muzzle loading firearms can be imported, exported, or carried in-transit without a permit. This means there is no control of movement over such arms. This is a contravention of various international and regional instruments providing for the control over such arms since they can be used in conflict ridden countries for the further destabilisation of governments and displacement of communities.

Recommendation:

Amendment of section 73 by clause 24 should be operationalised.

9.9. Amendment of section 88 by clause 25: Cancellation of firearm transporter's permit

This section has been amended to include a provision to give the transport permit holder an opportunity to be heard by allowing and considering representations from the transport holder prior to withdrawing and/or cancelling the permit.

This amendment ought to be operationalised to ensure that a decision taken by the Registrar complies with the rules of natural justice.

Recommendation:

Amendment of section 88 by clause 25 must be operationalised.

9.10. Amendment of section 94 by clause 28: Prohibition of possession of firearm parts

"(1) For the purposes of this section, 'firearm part' means a slide, bolt or breech-block of a firearm, or a device designed to be attached to the barrel of a firearm in order to muffle or moderate the report of that firearm".

Section 94 prohibits the possession of certain firearm parts. It is important to note that some firearm parts can change the calibre of a firearm if attached to a particular firearm including how that firearm functions. It is therefore of paramount importance that a definition of a firearm part for the purposes of this section is inserted and operationalised. The absence of a definition renders the section and the prohibitions attached meaningless.

Recommendation:

Section 94 as amended by clause 28 must be operationalised.

9.11. Amendment of section 96 by clause 29: Exemptions

"(2) An application for the export of firearms and ammunition made in terms of this Act must be submitted by the Registrar to the National Conventional Arms and Control Committee in accordance with the provisions of the National Conventional Arms Control Act 2002 (Act No 41 of 2002)".

This amendment ought to be operationalised to ensure that the appropriate entity tasked at a national level with dealing with the export of conventional arms is responsible by law for handling export of firearms made in terms of the FCA.

It must be noted that the 2015 Firearms Control Amendment Bill also amends this section 96 (1) but it does not mention section 96 (2) which is still not operational.

Recommendation:

Section 96 as amended by clause 29 must be operationalised.

9.12. Amendment of section 102 by clause 30: Declaration by Registrar of person as unfit to possess firearm

The heading of section 102 has been amended to include a muzzle loading firearm. The other subsections have also been amended to insert muzzle loading firearm wherever reference is made to a firearm.

The bulk of the amendments proposed under Section 102 do not address most of the challenges that have been identified with regard to the implementation of section 102 in its current form. This is not to say the amendments made in terms of section 102 if operationalised will not be useful in ensuring more effective implementation of this section.

Section 102 ought to be further amended to address all the gaps identified in its implementation as discussed in the preceding chapters reviewing the FCA.

Recommendation:

In the short term, amendment of section 102 by clause 30 should be operationalised.

9.13. Amendment of section 103 by clause 31: Declaration by court of person to be unfit to possess firearm

In the same manner as section 102 above the heading of section 103 has been amended to include a muzzle loading firearm. The other subsections of 103 have also been amended to insert muzzle loading firearm wherever reference is made to a firearm.

The added section 103 (6) ensures that persons who have paid an admission of guilt fine after being found guilty of offences mentioned in section 103 and its schedules are subjected to an enquiry into their fitness to possess a firearm. The offences mentioned in section 103 and its schedules are of a serious nature and a person who is convicted of such offences should not be absolved from the provisions of section 103 just because an admission of guilt fine has been paid.

Recommendation:

Section 103 (6) as amended by clause 31 must be operationalised.

9.14. Amendment of section 104 by clause 32: Effect of declaration

Clause 32 of the Firearms Control Amendment Act, 2006, provides for alignment with section 104, with the insertion of the term muzzle-loading firearm in the Act.

Recommendation:

Clause 32 should be operationalised.

9.15. Amendment of section 110 by clause 33: Chapter 2 of Criminal Procedure Act, to apply

Clause 33 of the Firearms Control Amendment Act, 2006, inserts the term muzzle loading firearm in section 110 in order to allow for search and seizure of the same under this section.

Recommendation:

Clause 33 should be operationalised.

9.16. Amendment of sections 111, 113, 114, and 117 by clauses 34 through to 37

Clauses 34 through to 37 of the Firearms Control Amendment Act, 2006, insert the term "muzzle loading firearm". In section 111- search and seizure in the course of policing operations in terms of South African Police Service Act, 1995; section 113 – bodily samples and body prints; section 114 - ballistic testing; and section 117 - presumption of possession of firearm or ammunition, to make provisions related to firearms also applicable to muzzle loading firearms.

Recommendation:

Clauses 34, 35, 36 and 37 should be operationalised.

9.17. Amendment of and Substitutions for sections 135, 136, 137, 145, 146, 148 and 149

Clauses 42, 43, 44, 46, 47, 49, and 50 of the Firearms Control Amendment Act, 2006, inserts the term "muzzle loading firearm" in all these above sections in order to make the same measures applicable to firearms also applicable to muzzle-loading firearms.

Recommendation:

Clauses 42, 43, 44, 46, 47, 49 and 50 should be operationalised.

9.18. Amendment of section 118 by clause 38: Presumptions relating to failure to report

Clause 38 of the Firearms Control Amendment Act, 2006, includes “dispossession” as one of the factors which will lead to the presumption to apply in respect of the use of a firearm licensed to a person.

Recommendation:

Clause 38 should be operationalised.

9.19. Amendment of section 120 by clause 39: Offences

Clause 39 of the Firearms Control Amendment Act, 2006, inserts the clause muzzle loading firearm in the offences section in order to provide for offences committed with a muzzle loading firearm as is the case with a firearm.

Recommendation:

Clause 39 should be operationalised.

9.20. Amendment of section 132 by clause 41: Establishment of Ministerial Committees

Clause 40 of the Firearms Control Amendment Act, 2006, makes provision for a consultative forum which may be established by the Minister in order to assist him or her in respect of any matter dealt with in terms of the FCA.

Recommendation:

Clause 40 should be operationalised.

9.21. Amendment of section 133 by clause 41: Right of appeal

The Firearms Control Amendment Act, 2006, in clause 41 provides for the power of the Appeal Board to subpoena documents and files.

Recommendation:

Clause 41 should be operationalised.

CHAPTER TEN

10. Firearms Control Amendment Bill of 2015

The majority of the amendments proposed by the Firearms Control Amendment Bill of 2015 are supported and will go some way to ensure that the FCA is in compliance with international and regional standards and the stated policy of government of restrictive firearm ownership and possession.

Whilst this is the case, the Bill does not deal with the bulk of the problems that have been identified in this review of the FCA. The sections which the Bill has not effectively dealt with are discussed in detail in chapter eight and include among others, the Preamble to the Act as well as sections 16, 16A, and s17.

Recommendation:

Based on the foregoing the 2015 Firearms Control Amendment Bill ought to be recalled so the extensive amendments proposed in this review are incorporated.

CHAPTER ELEVEN

11. Institutional Capacity and Organisational Arrangements

As already indicated in the terms of reference, the task team was also tasked with the responsibility to look into the institutional capacity of the CFR and the Firearms Appeals Board (FAAB) to implement the Firearms Control Act.

11.1. Background

The matters relating to the capacity of the CFR to implement the Act arose as a result of the fact that not all the provisions of the Act are implemented, specifically the provisions relating to the renewal of firearm licences. These were coupled with other concerns and challenges raised by the different stakeholders such as the Parliamentary Portfolio Committee on Police, court judgements, and a report by the Civilian Secretariat for Police Task Team, a report of the Ministerial Task Team established by the erstwhile Minister of Police, Minister Mthethwa and other reports produced on the Central Firearms Registry.

The different reports referred to a number of challenges relating to the following:

- A lack of proper planning;
- The inability and a lack of capacity to implement the legislation, particularly around the renewal of licences;
- Backlog in the processing of applications for firearm licences; and
- System challenges that have resulted in a lack of integrity of the firearms data.

These capacity concerns and challenges are among some of the key drivers for the institutional review. A review was conducted to determine whether the CFR has the institutional capacity to implement the provisions of the FCA in its current form, as well as the proposed amendments.

It has to be mentioned that the CFR has undergone a number of institutional review exercises since its establishment. There have been a number of task teams, consulting firms, and internal organisational and process review interventions that have yielded little or no result at all.

11.2. The functions of the Central Firearms Registry and the Firearms Appeal Board

The CFR and the Firearms Appeal Board (FAB) are established in terms of sections 124, 127, 128, and 129 respectively of the FCA. In terms of the Act, the Minister of Police appoints members of the Firearms Appeal Board and the National Commissioner of Police is the Registrar of Firearms. It therefore follows that the responsibility to implement the FCA lies with the National Commissioner of Police. The CFR and FAB as the implementation arm of the Act have a number of functions that have been allocated to them by the Act.

The functions of the Registry emanate from the functions allocated to the Registrar in terms of section 124 of the Act while the functions of the FAB are allocated in terms of sections 130 and 131.

The Registrar must perform his or her functions in accordance with such directions as the Minister may issue.

The Registrar must:

- Establish and maintain the Central Firearms Register;
- Establish and control the Office of the Central Firearms Register;
- Recover the fees payable in terms of this Act;
- Develop a training curriculum for competency testing in terms of this Act;
- Conduct research into firearm policies;
- Monitor the implementation of this Act;
- Conduct public education programmes concerning the provisions of this Act;
- Designate police officials as Designated Firearms Officers; and
- All other matters relating to the safe possession and use of firearms.

The Registrar may:

- Conduct any investigation or enquiry which he or she deems necessary in order to exercise his or her powers or carry out his or her duties in terms of this Act; and
- Make recommendations to the Minister on any matter relating to this Act

The functions listed above are not conclusive; there are other additional functions including the function of the Firearms Appeal Board that are allocated to the Registrar in terms of the Act which will be further discussed under the institutional capacity of the CFR.

In terms of the Act, the Registrar is also expected to appoint a person as the Head of the CFR. The Head of the CFR is appointed in terms of section 127 of the Act. In terms of this section, the National Commissioner must delegate the responsibilities to manage, perform and exercise some of the duties and functions allocated to him or her by the provisions of section 124 of the Act.

In terms of section 127, the Head of the Central Firearms Registry must perform the following functions:

- Manage the Office of the Central Firearms Register;
- Perform the duties assigned to him or her by the Registrar; and
- May exercise such powers as may be delegated to him or her by the Registrar.

11.3. Organisational Structure

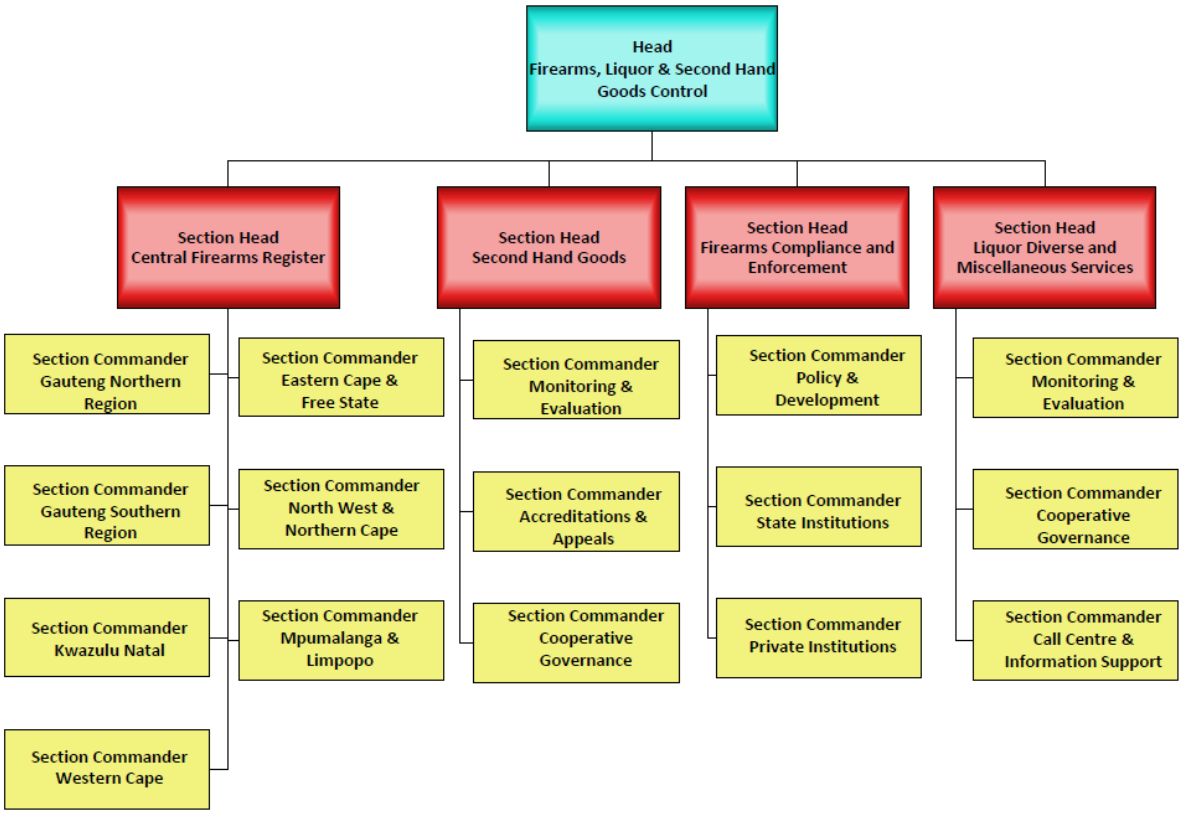
The CFR has an approved organisational structure that was developed and finalised by the CSP while the Firearms Appeal Board does not have a defined or documented structure. The Appeal Board has five members appointed to adjudicate on the firearms appeal cases and all the support staff members were seconded to assist the Board from the CFR.

The organisational structure of the CFR was last reviewed and approved in 2010 by a task team from the CSP. Its approved structure as contained in the work study report dated 17 March 2011 titled *'Restructuring of the Central Firearm Register'* provides for the establishment of the Firearms, Liquor and Second Hand Goods Control (FLASH). The FLASH component consists of four sections which includes the CFR and Compliance and Enforcement dealing specifically with the implementation of FCA.

The CFR section consists of seven units that are responsible for the processing of firearm applications from all nine provinces while the Compliance and Enforcement section handles policy development and compliance from state and private institutions.

It is reported that the work study report and structure were implemented only at Head Office while the structures in the provinces and at stations were partially or not implemented at all. The level of implementation differs from province to province and station to station.

Refer to approved structure below.



11.4. Organisational Processes and ERP Systems

In 2001 immediately after the promulgation of the Act, the SAPS conducted a Business Process Reengineering (BPR) with a view to align the business processes of the two entities to the strategy in order to fulfill the requirements of the Firearms Control Act.

As reported by Technology Management Services (TMS), the BPR conducted in 2001 was completed even though there was no evidence to support the statement. The outcome of the BPR process envisaged above was outsourced to an external service provider, Waymark, in 2004 in order to enhance the processes into an electronic system.

While the work of Waymark was continuing, a number of other interventions were put in place. The internal Organisational Development Unit of the SAPS was also requested in

2012 to conduct a gap analysis of the "*AS IS*" processes with a view to determine the gap on the processes linking the DFOs to the CFR. The aim of the exercise was to test the functionality with a view to improve the turn-around time in that phase of the firearm-licensing process. It is reported that the exercise was completed even though the report is still to be approved by management.

Waymark allegedly could not complete the contract as contained in the scope of work. This was due to the contract being terminated in 2014 by the National Commissioner due to the fact that the costs of the project were escalating above the projected budget.

Upon termination of the contract, the National Commissioner appointed the Centre for Scientific and Industrial Research (CSIR) to investigate and/or audit the work performed by Waymark as the contracted service provider against the scope of work with a view to determine the gap or the extent of the work that was outstanding. The investigation is not yet finalised.

It is reported that in order for the firearms licensing system to continue to operate, TMS was given an additional responsibility of implementing outstanding changes together with the State Information Technology Agency (SITA) as some of the functionalities as per the BPR were not completed. The TMS and SITA were further requested to ensure that the outstanding work is finalised.

The task team responsible for reviewing the institutional mechanisms had consultative meetings with staff in the CFR and TMS on these matters. During the consultation phase, TMS reported that the Enhanced Firearm Register System (EFRS) has managed to integrate the different systems which were developed in the Central Firearms Registry. However, the findings of the task team are contrary to the reports by TMS. The Central Firearm Registry is still running multiple processing systems which are not interlinked. Those systems are:

- Registration System
- Firearm Register System (FRS)

- Enhance Firearm Register System (EFRS)

The information technology (IT) infrastructure including the local area networks are outdated and therefore negatively affect the operation of the business. Due to time constraints, the task team could not manage to visit the IT Server room (also known as the “Data Centre”). The information technology resources and infrastructure get deployed without the approval of CFR executives.

11.5. Analysis of the Institutional Capacity

The capacity of the two entities to implement the Act cannot be discussed apart since almost all of their processes are linked in terms of the Firearms Control Regulations of 2004 and their organisational business processes.

Although the organisational structures of the two are separated, both institutions rely on the same data sets to carry out their functions. It is however important to mention that the Firearms Appeal Board is dependent on the CFR for information and data used in the processing of its work.

The Firearms Appeal Board is also dependent on the CFR in terms of support personnel, office equipment, physical location and office space. One critical matter to note as well is the fact that there have been a few modifications which are outside the scope of the empowering legislation which were made over the years with regards to the functioning of the Firearms Appeal Board.

The Firearms Appeal Board is currently supposed to be resourced from the Civilian Secretariat for Police in terms of its personnel expenditure, office equipment, and other logistical functioning; a matter which is outside the ambit of the Act.

The institutional capacity of the CFR and the Firearms Appeal Board to implement the FCA is non-existent and unsustainable. The structure in its current form together with the

business processes, ERP, and facilities makes a mockery of the notion of firearms control in the country while making the functioning of the two institutions ancillary.

The Act makes specific provisions for the establishment of organisational structures aimed at supporting the implementation of the legislation. The identification of the Registrar at the most senior level of the SAPS was intended to elevate the function of firearms control in South Africa. The delegation of functions of the Registrar to the lowest level in the organisation, or to a section of a sub-division on the SAPS organogram, dilutes the importance of the function.

The absence of defined work or business processes 15 years after the promulgation of the Act also undermines the functioning of the two implementing agencies, namely the CFR and the Appeal Board. The absence of integrated databases and a proper record-keeping and management system makes the implementation of a central firearms register as required in section 125 of the Act, almost impossible.

It therefore goes without saying that the institutional capacity is non-existent and the implementation of the Act in its current form will not be realised without looking at the proposed amendments. The successful implementation of the Act will require a total overhaul of the institution with a view to building capacity aimed at realising the objectives of the Act.

SECTION FIVE: CONCLUSION AND RECOMMENDATIONS

CHAPTER TWELVE

12. Conclusion

Empirical research indicates that countries with a strong national firearms legislative framework have low levels of crime in general and almost no violent crime. Furthermore, research on firearms and violence has resulted in important findings that can inform policy decisions. In particular, a wealth of descriptive information exists about the prevalence of firearm-related deaths, about firearms markets, and about the relationship between rates of firearm ownership and violence; in particular, violent crime.

In South Africa more often than not the argument for the unfettered right to firearm possession and ownership is based on the assertion that the levels of crime are high. The recent crime statistics indeed suggest that crime levels are unacceptably high. While this is the case, there is sufficient evidence in South Africa that the introduction of a stronger firearms legislative framework in 2000 has had an impact in reducing firearm-related crime as well as reducing the number of firearms in the hands of civilians, although to a limited extent. For example, in 1998 there were 4.5 million firearms, of which 78 per cent were registered to private individuals; and furthermore, 62 per cent of these firearms were pistols and revolvers (Chetty, 2000). As of October 2014, there are 4.4 million registered firearms, of which 68 per cent are registered to private individuals (totalling almost 3 million firearms); and 49 per cent of these firearms are handguns, that is pistols or revolvers (Wits School of Governance Report, 2015). Relative to 15 years ago, there are now fewer legal firearms registered to fewer individuals, and proportionally fewer handguns than rifles and shotguns: currently just over 1.7 million private individuals are licensed to own a firearm, making up the biggest category of licensed owners under the FCA. Private individual firearm ownership is concentrated in Gauteng, with over 500 000 registered owners, followed by KwaZulu -Natal with just over 200 000 registered owners, and then the Western Cape with 165 629 licensed firearm owners.

Over the last five years there has been a slight increase in the number of privately owned firearms, in particular shotguns; during this period the data also shows that there have been increases in a number of violent crimes such as robbery with aggravating circumstances. Furthermore, the mushrooming of the private security industry with armed response abilities, has possibly contributed to the increase in the proliferation of firearms. This state of affairs suggests that the private possession of firearms is having little impact on curbing violent crimes and/or deterring would be criminals.

In some of the countries (Australia, Brazil and United Kingdom) considered in this study, restrictive gun legislation was implemented following various mass shooting incidents. These incidences involved the use of licensed firearms. In the case of Australia, the government moved fast to prohibit the ownership, possession and sale of all automatic and semiautomatic weapons, at the same time banning the importation of such weapons. In order to bring effect to this, there was a federally financed gun buyback scheme: almost 700,000 guns were bought back and destroyed (New York Times, 2013). The Australian Institute of criminology found that gun-related murders and suicides fell sharply after 1996, with firearm suicides cut by 74 per cent.

This review has shown that the comprehensive policy and legislative frameworks that exist at the global and regional level are not fully incorporated into domestic law in South Africa. This pertains particularly to the control of the civilian possession and ownership of the type and number of firearms permitted. For example, the private possession of fully automatic and semiautomatic firearms is almost universally prohibited, whereas in South Africa private collectors are allowed to possess automatic weapons such as machine guns. In Australia, fully automatic firearms may only be possessed by private collectors in a deactivated form and even then subject to stringent safekeeping measures. In another example, dedicated sports-shooters, dedicated hunters, and collectors are not at all limited in terms of the FCA, in respect of the number of firearms allowed, including unlimited ammunition rounds. Although there are significant challenges in implementing the FCA, the fact that the Firearms Control Act is so liberal, in contravention of international and regional instruments on firearms, and goes as far as covertly

recognising that civilians have a right to be armed, makes its implementation extra challenging.

The comprehensive review of national policy and legislation with regard to firearms control in South Africa indicates that there are some serious shortcomings in this regard. This includes fundamental errors in law as seen in the Preamble to the FCA as well as poor adherence to international and regional norms. Furthermore, a number of challenges relating to the implementation of the FCA were also identified, with particular emphasis on the use of firearms in domestic violence and firearm renewals. In addition, the policy and legislative framework addressing the challenges of a growing private security industry is inadequate, particularly as it relates to control over the use and distribution, as well as the management, of firearms across private security companies. These shortcomings have been addressed through the recommendations section, and in particular, requiring the implementation of certain provisions of the 2006 Firearms Control Amendment Act as identified in this report, as well as the recall of the 2015 Firearms Control Amendment Bill, with the intention that all the critical issues identified in this report are addressed in the 2016 Firearms Control Amendment Bill.

The review also examined the institutional capacity and organisational structures tasked with implementing firearms control in South Africa, more particularly the FCA. Given the major challenges within the Central Firearm Registry, the key implementing agency, this report recognises that there is an urgent need to re-organise and capacitate the CFR to ensure that it is a position to properly implement the FCA. The report also advocates for the enhancement of the relations between the CFR and the Firearms Appeal Board to ensure that the appeals are considered timeously with all the relevant information promptly submitted to the Firearms Appeal Board by the CFR. The report further calls for the resourcing of the Firearms Appeal Board to ensure that it is able to execute its functions efficiently.

Finally, for the recommendations exposed in this report to be effective there ought to be a change of approach and tact regarding private protection by civilians. This adjustment

of the mind-set will not see the light of the day if the firearm legislative regime is in the state it is in. The FCA is at odds with what ought to be its primary purpose. In order to achieve some of the comprehensive overhaul of the legislation, some provision must be made for buy-back programmes and funding thereof. It should be noted that it might be problematic to make the Act retrospective in respect of existing owners and a legal opinion on that aspect is required.

In addition, the report recognises that a multi-pronged approach is required in dealing with the demand for firearms by the civilians, and to this end advocates for the holding of educational programmes and campaigns to educate and sensitise the public about the FCA and other means available to self-defence which exclude firearm use. These campaigns and educational programmes must be accompanied by on-going research on the issue of crime and violence to identify the root causes and find solutions.

It must also be noted that the desired objectives enunciated in this report will not be realised if there is no concise strategy to tackle crime and violence. There also ought to be social cohesion, coordination within all spheres of government and civil society to tackle the scourge of crime and violence in the country.

CHAPTER THIRTEEN

13. Recommendations

The Committee and its task teams worked according to well- defined terms of reference and discussed and debated various approaches to each of the issues it was tasked to address. The deliberations and recommendations of the Committee are contained in this report.

These recommendations are cognizant of the fact that the recommended policy position for firearm ownership and possession in South Africa must be restrictive. The recommendations then map out steps that should be taken to achieve this restrictive policy position. The deliberations in this report recognise that it will be impractical to

immediately implement a restrictive firearms control policy. For this purpose, the recommendations are clustered according to short to medium-term, as well as long-term measures.

13.1. Recommendations to be effected in the short to medium-term

To ensure an effective move towards a restrictive firearm control policy position greater control must be exercised in the short to medium-term over the firearms control management system in South Africa, including the legislative environment. This can only be achieved by taking the following steps:

a. Finalise the SA Hunters case by approaching the North Gauteng High Court to have the interim interdict granted in 2009 set aside.

b. Recall the 2015 Firearms Control Amendment Bill immediately and revise it to ensure that it incorporates the shortcomings identified within the FCA as detailed in this report; and includes the recommendations of this report.

c. Conduct an assessment and analysis of the organizational structure of the CFR as reviewed by Civilian Secretariat for Police in the work study of 17 March 2011 to determine if it has had any impact on improving the efficiencies and enhancing the capacity of CFR to deliver on its mandate as provided for in the FCA.

d. Conduct a full audit of the CFR firearm data base by an independent institution to ensure the integrity of the information kept by CFR is without question. This audit should establish a data base for firearms, permits and authorisations issued under the old act and a data base for those issued under the FCA. The audit should also establish the number of firearms and ammunition in the hands of the private security industry.

e. Conduct an investigation into sports-shooting in conjunction with the Department of Sports and Recreation in order to uncover the specifics behind this sport in as far as the appropriate number and type of firearms required.

f. Obtain immediate communication about the outcome of the CSIR system investigation and/or audit initiated by the National Commissioner on/about 2014.

g. Informed by the outcome of the analysis recommended in paragraph (b), to explore the feasibility of making CFR a division to align it with its mandate and to ensure that as a functionary performing a delegated task it is directly and instantaneously accountable to the National Commissioner and its entire management is focused on the implementation of the FCA.

h. Informed by the CSRI report mentioned in paragraph (c), to ensure that a complete CFR IT system overhaul in order to ensure that all the current systems are interlinked, and that the entire system functions at an optimal level and is able to fully implement all the provisions of the FCA, including outstanding amendments to the same.

i. Ensure that the staff and/or employees of CFR have a complement of IT technicians able to operate the IT systems.

j. Ensure that CFR as matter of urgency is moved into a new building that will have adequate and suitable storage facility, office space with upgraded furniture and equipment, a car parking facility, security system with proper access control, and 24hour security personnel.

k. Ensure that CFR officials tasked with conducting section 102 declarations, must as a matter of extreme importance, receive training on the rules of natural justice.

l. Ensure cooperation from the CFR with requests made by the Firearms Appeal Board for information and documentation to ensure the effectiveness of appeal processes and the prevention of court actions by applicants.

m. House the Firearms Appeal Board in a fitting building where CFR will be accessible to ensure there are no undue delays in furnishing requested information.

n. Consult the Firearms Appeal Board regarding the nature and number of staff designated to it by the National Commissioner to perform administrative functions.

o. Resource the Firearms Appeal Board appropriately to ensure it has well equipped furnished offices and a boardroom; and that all its members have laptops and computers, access to internet, cell phones and law reports.

p. Delete the Preamble to the Firearms Control Act in its entirety; and, alternatively be replaced with the following wording:

> *"In terms of the Constitution the duty to maintain public order, to protect and secure citizens lies with the State. The State as a signatory to regional and international instruments on the control of firearms, ammunition and other related matters, has an obligation to enact firearm legislation that complies with the applicable international and regional instruments. The easy availability of firearms to civilians and their uncontrolled presence constitute major threats to sustainable development and stability of the State".*

q. Ensure that the FCA read with its Regulations must have an expressed provision requiring persons who want to be issued with competency certificates to undergo physical and mental assessment at their own cost; persons with criminal convictions and a history of violence must be prohibited from owning firearms.

r. Prohibit civilians, without exception, from owning and/or possessing firearms that are of the same calibre as those used by the police and the military. The FCA should without exception limit the number of firearms and ammunition that can be owned by civilians and business.

s. Retain the minimum age for acquiring a firearm at 21 years.

t. Amend the following sections of FCA: sections 1, section2(a), section 4, section 9, section 13, section 14, section 16, section 16A, section 17, section 18, section 21,

section 22, section 24, section 102, section 103, section 131, section 133, and section 148.

u. The State should prepare to pay reasonable compensation to owners of firearms who might be dispossessed of the same as a result of any measures contemplated in this report.

v. While the extensive amendments of the FCA are in process, the following clauses of the Firearms Control Amendment Act of 2006 that were not operationalised should be put into operation: clause 1(g), clause 5, clause 21, clause 24, clause 25, clause 28, clause 29, clauses 30, clause 31, clause 32, clause 33, clause 34, clause 35, clause 36, clause 37, clause 38, clause 39, clause 40, clause 41, clause 42, clause 43, clause 44, clause 46, clause 47, clause 49, and clause 50.

w. Declare amnesty periods with a clear policy directive to be issued regarding the conditions of an amnesty; the State should consider giving full immunity without conditions to persons with both legal and/or illegal firearms.

x. Develop educational programmes to provide information about other alternatives to self-defence excluding the use of a firearm. A national awareness campaign must be conducted on the FCA including the risks of owning and possessing firearms.

y. Amend the FCA regulations regarding the official institution to ensure periodic maintenance of competency.

z. Empower the PSIRA to ensure compliance with the FCA by private security companies, through being able to monitor and evaluate the security industry. Legislation should enable PSIRA to have a database to register all firearms in the hands of the private security industry.

z. The physical inspection of firearms, including safe storage provisions, should form part and parcel of the renewal process of a firearm licence, including a fitness assessment of the person.

13.2. Recommendations to be implemented in the long-term

A restrictive firearm policy position will gradually move towards the realization of the ideal of a gun free society. To this end the following measures must be adopted in the long-term:

a. Put in place measures to improve the confidence of the public with regard to the state's ability to provide safety and security.

b. Advance the following strategies to reduce gun violence and the proliferation of firearms in general:
    - Adopt and integrated approach for stakeholder engagement;
    - Develop a comprehensive firearms reduction strategy;
    - Develop strategies to interrupt the source of illegal guns; to deter the illegal possession of guns; and to respond to illegal gun use;
    - Implement alternate preventative strategies as well as education initiatives;
    - Develop research and technical assistance strategies;
    - Conduct investigation and research regarding sports-shooting as a sport; the adequate number and type of firearms required for this sport.

c. Requiring a firearm license for "self-defense" must be dealt away with; meaning section 13 of the FCA must be deleted in its entirety: the FCA must instead have a provision requiring a person to submit a good and/or genuine reason for requiring a firearm licence.

d. Prohibit the possession of semi-automatic firearms by civilians.

e. Expunge the firearm licence category of persons labeled as "dedicated hunters and sport shooters"; sections 16 and s16A of the FCA.

f. Restrict the number and calibre of firearms that may be possessed by civilians.

g. Establish a two-tier licensing system regarding a licence to carry and a licence to possess.

h. Ensure that all aspects of the implementation of the FCA is assigned and performed by the CFR. Alternatively, where some of the functions are given to private agencies, mechanisms must be put in place to ensure that the CFR is able to constantly monitor that the FCA is not being flouted by the said agencies.

i. Scrap section 21 of the FCA.

j. Establish a National Violent Death Reporting System and a National Incident Based Reporting System.

k. Ensure that the various data bases of the Department of Home Affairs, Department of Justice and Correctional Services, Gun Dealers and Ports of Entry are modernised and linked to the CFR database.

l. Adopt ongoing appropriate education programmes as one of the critical success factors for the implementation of a progressive firearms policy and informing the public of alternate methods for self-defence.

k. Decentralise some of the functions of the CFR in order to place a greater onus on local police stations to ensure the veracity of the information supplied.

END NOTES

[1] The Firearms Control Amendment Bill was published in March 2015 for public comment. It was scheduled to come before Parliament during the 2015 parliamentary session; however due to a number of factors including the results of the research conducted by the Ministerial Committee it will now come as an amendment in 2016.

[2] Altbeker identified the top locations from which firearms are stolen as being: 49.5% were stolen while the firearm was on the person (indicating the ineffectiveness of carrying a firearm in self-defence); 12.1% were stolen from a safe; 11,9% were stolen from a vehicle; 11.8% from a cupboard; 8.5% from a bag; and 6.1% from other locations, including from under the bed or from the cistern of a public toilet.

[3] Altbeker' s research into the circumstances surrounding firearm loss and theft found that South African gun owners reported a firearm as being stolen from a safe in 12.1% of cases, which is "surprisingly high suggest(ing) either that the use of a safe for the storage of a gun does not result in the gun's safety being assured, or that victims are exaggerating the care that they are taking of their firearms in order to avoid being charged with negligence". P.18.

[4] *United Nations (UN) Soft law instruments*:
UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.; UN Code of Conduct for Law Enforcement Officials (adopted by UN General Assembly resolution 34/169 of 17 December 1979; UN Basic Principles on the Use of Force and Firearms for Law Enforcement Officials; UN Standard Minimum Rules for the Treatment of Prisoners.
Regional Soft law instruments:
Code of Conduct for Police Officials SARPCCO; East African Commission Common Standards; East African Community Standard Operating Procedures (September 2012); Luanda Guidelines: Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa (adopted 55 Ordinary Session in Luanda, Angola 28 April 2012-12 May 2014).

[5] Crime prevention is defined as 'strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes'.

[6] There is a growing recognition by policy makers and practitioners that crime prevention strategies must address risk factors at all levels: individual, family, community and society, as espoused in the socio-ecological model advocated by the World Health Organisation. In South Africa this approach is reflected in the White Paper on Safety and Security (Civilian Secretariat for Police) and Integrated Social Crime Prevention Strategy (Department of Social Development) and acknowledged in the National Development Plan, which emphasises the need to address the underlying causes of crime.

[7] There is little difference between a fully automatic and semi-automatic military assault rifle from a public safety perspective: a fully automatic AK-47 fires 200 rounds in 2.4 seconds; a semi-automatic Norinco AK-47 takes 4.6 seconds for the same number of rounds.

[8] Signatories include Burundi, DRC, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Tanzania, Uganda, Seychelles and Somalia.

[9] The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and African Charter on Human and Peoples' Rights reinforce the right to life. Other instruments which deal with the legitimate use of firearms include the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the United Nations Code of Conduct for Law Enforcement Officials, the United Nations Standard Minimum Rules for the Treatment of Prisoners (and Mandela Rules amendments thereto); regional instruments include the Southern African Regional Police Chiefs Cooperation Organization, (SARPCCO) Code of Conduct for Policing Officials, African Commission Luanda Guidelines which provide normative framework governing use of force and firearms by law enforcement officials.