



Submission on the Firearms Control Amendment Draft Bill, 2015

By

African Policing Civilian Oversight Forum

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1. The African Policing Civilian Oversight Forum (APCOF) welcomes the opportunity to comment on the Firearm Control Amendment Draft Bill, and affirms the importance of the need to strengthen the legal framework governing gun control. APCOF welcomes the trajectory of law reform (commencing in 1996) to put in place a regulatory framework that controls the acquisition, management and use of firearms.
2. The Constitution of the Republic of South Africa affirms the right to life, and, freedom and security of the person from violence from public and private sources. The Constitution also sets out the obligations of government and the role of the state in protection of its inhabitants. The National Development Plan affirms the state's responsibility in particular, to the provision of safe environments. It is within this context, it is argued, that the regulation and control of firearms should be located.
3. The Firearms Control Amendment Bill must be seen in context of other initiatives by the state to reduce harm and limit violence. The state has an obligation to regulate the use of these weapons, and take steps to limit harm.
4. The strengthening of the regulatory framework governing firearms is furthermore necessary and consistent with South Africa's regional and international obligations.

"Governments have a responsibility to ensure public safety and they have an interest in providing human security and development to their citizens. So they should ensure that small arms from Government stocks or from private ownership are not misused and do not enter illicit circuits, where their use may contribute to instability and to exacerbating poverty.

To attain those goals, within the UN, countries have agreed on several commitments on small arms control: the Firearms Protocol, the Programme of Action on small arms - including

*an Instrument on marking and tracing - and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.*¹

In addition to these international instruments, *the International Small Arms Control Standards (ISACS) 2012* aim is:

*"to ensure that the UN provides support to Member States on putting in place effective controls over the full life-cycle of small arms and light weapons — from manufacture, marking and recordkeeping to storage, transport and international transfer to the tracing, collection and destruction of illicit weapons".*²

6. The impact and consequences of firearm violence are well documented and acknowledged and serve as the primary motivation for stricter gun control law to limit opportunities for abuse and misuse. This is reinforced by the United Nations:

*"Small arms facilitate a vast spectrum of human rights violations, including killing, maiming, rape and other forms of sexual violence, enforced disappearance, torture, and forced recruitment of children by armed groups. More human rights abuses are committed with small arms than with any other weapon."*³

The Medical Research Council reports that South Africa's rate of firearm deaths is one of the highest in the world and a third of all homicides are a result of the use of firearms.⁴

7. This Submission argues that attempts to argue for a distinction between legal and illegal firearm management are flawed. The abuse, misuse and negligence of firearms by legal owners, theft of legal firearms as well as the

¹ <http://www.un.org/disarmament/convarms/salw/>

² <http://www.un.org/disarmament/update/20120829a/>

³ <http://www.un.org/disarmament/convarms/salw/>

⁴ R Jewkes, N Abrahams, S Mathews, et al. (2009). Preventing Rape and Violence in South Africa: Call for Leadership in a New Agenda for Action. Medical Research Council Policy Brief, Pretoria, p.2

use of illegal firearms require that the Bill adopt a holistic focus on firearm control in order to stay focused on the primary objective of the Bill - which is to reduce gun violence.

8. The ambit of the Bill must therefore by necessity extend to all ownership, management and use of firearms by state and non-state functionaries. It is further critical that efforts to address inefficiencies within law enforcement agencies (including but not limited to SAPS), private security and other entities, are supported in relevant legislation, regulations and national instructions of these entities.

Marking and Tracing

9. APCOF supports provisions in the Bill (section 23 (A) and (B) which advocate marking of firearms which is consistent with international best practice.⁵

Improved oversight and accountability over use of firearm by all state functionaries⁶

10. APCOF supports provisions in the Bill that enhance responsibility by all state functionaries including:
 - Inclusion of provisions for ballistic sampling and application of microdots on all guns held by official institutions - S98 (A) and (B) - Clause 23.
 - Requirements that the Registrar submit quarterly reports to Minister and Parliament on loss and theft, as well as disciplinary steps taken against members for negligence S124 Clause 24.
 - Appointment of DFOs at each police station (S124: 4-7)

⁵ **Marking and tracing**

If national law enforcement officials were able to trace small arms back to their last legitimate owner, who might then be held accountable, this would form an effective measure against illicit trade and diversion. For that purpose, it is essential that the weapon be marked upon production and import, and that appropriate records be kept. Existing stocks should also be marked. <http://www.un.org/disarmament/convarms/salw/>

⁶ *UN Principles on Use of Force and Firearms by Law Enforcement Official, Special Provisions*

11. *Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:*

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

- Responsibilities of senior command structure in respect of storage and use of firearms and supervision and control of DFOs (Clause 25 -S 124A & 124 B).
- Compliance by official institutions (Clause 30 - Schedule 1C)

Strengthening responsibility of gun owners and alliances

11. APCOF supports measure to place the burden on persons applying for gun licenses to demonstrate 'fit and proper' status. It is appropriate and good practice that the onus for demonstrating 'fit and proper' status is shifted to applicants and that this is over a continuum of a person's lifetime. In addition the penalty for non-renewal for proscribed period is welcomed (Clause 10 - S24).

In addition:

- APCOF supports provisions strengthening responsibility of respective associations - to verify applications by members and obligation to report on suspended, expelled on persons who have not renewed membership; standing of members. (Clause 2 -S 8) and Clause 7 (S -16) and Clause 8 (S -17).
- APCOF supports provision related to placing responsibility on owner of firearms to ensure it undergoes ballistic sampling. (Clause 11 (S -23B))

Penalties

12. Sanctions are critical in dealing with non-compliance but will only be effective if they are actioned and implemented. APCOF supports increased penalties and minimum sentencing (Clause 29; Clause 32; Clause 33) - these are significant deterrents but also an important indicator of a zero tolerance approach to crime and violence.

Appeal Board

13. APCOF welcomes enhanced capacity and strengthened independence of the Appeal Board, which must function independently of the Office of the Central Firearms Registrar. (Clause 26 (s128); Clause 27 (s131). This is critical in ensuring greater accountability and oversight.

OBJECTIONS

Limiting number of guns

14. APCOF notes with concern the increase in limit in the firearms from 4 to 5. One gun is one too many. The logic of the increase is weak (new classifications of firearms with new technology and innovations will result in an abuse of this provision - if a gun owner wants an additional firearm i.e. a cap-and-ball fire- arm, then he/she should exercise this within the current limit). The principle of restricting the number of firearms in legal ownership should not be tampered with. This proposal also fails to acknowledge the unacceptable high levels of gun violence and negligence by both legal and illegal gun owners.⁷ The limit should in fact be reduced or at a minimum the status quo retained.

Increasing ammunition allowance

15. APCOF objects to this increase for above reasons.

Under 21 ownership-

16. Expanding right to ownership beyond "compelling reasons." Attempts in current Bill to allow for additional reasons are problematic and ignore risk factors and arguments of competency.
17. APCOF recommends gun ownership for personal use is increased to 25 years (as is case of Brazil).

RECOMMENDATIONS

18. APCOF supports calls for Minister to implement firearm free zones in the

⁷ SAPS has reported that in the past three years 227 929 (73 577 in 2013/14) individual firearm licenses were approved but, over the same period, 29 067 firearms (7 589 in 2013/14) were lost by legal owners. South African Police Service (2014) Analysis of National Crime Statistics. Available at: <http://www.saps.gov.za/about/stratframework/annualreports.php> (accessed 26 February 2015).

principal Act - in particular, the case of schools (Clause 35 s 140). Research findings on presence of guns in schools require urgent intervention.⁸

19. It is critical that the Act addresses the intersection between gender based violence and gun violence. It is recommended that S38 (s9) give clarity to grounds for exclusion and that a firearm license should in fact be suspended in instances of a complaint/ application for protection order and when an interdict is granted.

20. Grounds for exclusion and declaration of unfitness should include - established substance including alcohol abuse. Research demonstrates link between substance abuse and violence.⁹

21. All forms of gun advertising should be prohibited - this is consistent with arguments regarding restrictions on alcohol and smoking and ever more so given the that guns are lethal weapons.

22. APCOF calls for

- More research on gun violence.
- Capacitating local stations to effectively deal with gun violence and calls for station plans to include information and diagnostic on illegal weapons in the precinct together with detail on the location and size of the markets;
- The need for greater control of SAPS 13 stores;
- The destruction of weapon stockpiles confiscated/ or received via amnesty;
- The need for greater education and training in terms of the gun amnesty process;

⁸ 24.1% of school learners know other learners who have bought guns to school; Learners who knew others who bought guns to school were twice as likely to be assaulted at school than those who did not know others who bought firearms to school; 17.2% of secondary school learners report that firearms are easy to access in their communities. *Burton and Leoschut L 2013 National School Violence in South Africa: Results of the National School Violence Study, CJP Monograph No:12*

⁹ The Medical Research Council reports that nationally, South Africa has one of the highest per capita alcohol consumptions levels in the world. *R Jewkes, N Abrahams, S Mathews, et al. (2009). Preventing Rape and Violence in South Africa: Call for Leadership in a New Agenda for Action. Medical Research Council Policy Brief, Pretoria, p.2* This is significant because many fatal and non-fatal forms of violence are initiated while the perpetrator is under the influence of alcohol and drugs, including assault, homicide and rape. SAPS reported a national rate of 131.7 per 100 000 people driving under the influence of alcohol or drugs in 2013/2014 and the rate of drug related crime (the unlawful possession of drugs and dealing drugs) at 492.1 per 100 000 people. Source: *South African Police Service (2014). An Analysis of the National Crime Statistics.*

- The importance of a wholistic 'Use of Firearms Policy' by law enforcement and security agencies which addresses issues of training; on-going learning, support and counselling; management and appropriate use of firearms. Compliance with this Policy that should regulated and be part of the process of accreditation for companies applying for firearm licenses and a requirement government departments that use firearms.
 - Removal of licenses from security companies that are being deregistered and or are non compliant.
 - That the role of SASETA in offering training to support compliance be investigated.
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Annexure 1

Background on APCOF

The African Policing and Civilian Oversight Forum is a network of African policing practitioners from state and non-state institutions. It is active in promoting police reform through strengthening civilian oversight over the police in Africa. APCOF takes the view that strong and effective civilian oversight assists in restoring public confidence in the police; promotes a culture of human rights, integrity and transparency within the police; and strengthens working relationships between the police and the community. APCOF achieves its goals through undertaking research; providing technical support and capacity building to state and non-state actors including civil society organisations, the police and new and emerging oversight bodies in Africa.

APCOF was established in 2004 as a coalition of police oversight bodies and practitioners in Africa. APCOF was registered in 2006 as a not-for-profit Company (section 21) under South African Company law and subsequently as a Trust in 2012. APCOF's Secretariat is based in Cape Town, South Africa.

The objectives of APCOF are to:

- Create and sustain public confidence in police
- Develop a culture of human rights, integrity, transparency and accountability within the police

- Promote a good working relationships between the police and the community
- Promote good working conditions in the police

APCOF works on a range of issues such as:

- Promoting fair treatment of citizens by police agencies within the continent
 - Exchange of information and better practices among oversight bodies
 - Campaigning for the establishment of police oversight bodies in countries where they do not currently exist
 - Campaigning for improved resource allocation
 - Standard setting for policing and civilian policing oversight bodies in Africa
 - Promoting better working conditions for police officials
 - Encouraging and supporting the formation on regional networks to promote the issues of police reform.
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